THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CHS. 85 AND 91]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 60; Doc. No. R-138

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By an Order dated March 5, 2004, the Supreme Court of Pennsylvania amended Pa.R.D.E. 208(f)(4) and 214(d)(4) and by an Order dated April 30, 2004, the Supreme Court of Pennsylvania amended Pa.R.D.E. 201 and 216. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, such proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Executive Director and Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.3. Jurisdiction.

(a) *General rule.* Enforcement Rule 201(a) provides that the exclusive disciplinary jurisdiction of the Supreme Court and the Board under the Enforcement Rules extends to:

* * * * *

(6) Any attorney not admitted in this Commonwealth who practices law or renders or offers to render any legal service in this Commonwealth.

* * * * *

CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter B. ATTORNEYS CONVICTED OF CRIMES

§ 91.34. Temporary suspension upon conviction of serious crime.

* * * * *

(e) *Dissolution or modification of temporary suspension.* Enforcement Rule 214(d)(4) provides that:

* * * * *

(2) a copy of the petition shall be served upon Disciplinary Counsel **and the Secretary of the Board** (see § 89.27 (relating to service upon Disciplinary Counsel));

(3) a hearing on the petition **before a member of the Board designated by the Chair of the Board** shall be held within ten **business** days **[before a member of the Board designated by the Chairman of the Board] after service of the petition on the Secretary of the Board**;

(4) the designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five **business** days after the conclusion of the hearing; and

* * * * *

Subchapter C. RECIPROCAL DISCIPLINE

§ 91.51. Reciprocal discipline.

Enforcement Rule 216 provides as follows:

* * * * *

(3) Upon the expiration of 30 days from service of the Form DB-19, the Supreme Court may impose the identical or comparable discipline unless Disciplinary **[counsel] Counsel** or the respondent-attorney demonstrates, or the Court finds that upon the face of the record upon which the discipline is predicated it clearly appears:

* * * * *

(ii) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not consistently with its duty accept as final the conclusion on that subject; **or**

(iii) that the imposition of the same or comparable discipline would result in grave injustice**[; or] , or be offensive to the public policy of this Commonwealth.**

[(iv) that the misconduct established has been held to warrant substantially different discipline in this Commonwealth.]

Where the Court determines that any of said elements exist, the Court shall enter such other order as it deems appropriate.

(4) In all other respects, a final adjudication in another jurisdiction that an attorney**, whether or not admitted in that jurisdiction,** has been guilty of misconduct shall establish conclusively the misconduct for **the** purposes of a disciplinary proceeding in **[this] the** Commonwealth.

* * * * *

Subchapter G. EMERGENCY PROCEEDINGS

§ 91.151. Emergency temporary suspension orders and related relief.

* * * * *

(d) *Dissolution or amendment.* Enforcement Rule 208(f)(4) provides that:

* * * * *

(2) a copy of the petition shall be served upon Disciplinary Counsel **and the Secretary of the Board** (see § 89.27 (relating to service upon Disciplinary Counsel));

(3) a hearing on the petition **before a member of the Board designated by the Chair of the Board** shall be held within ten **business** days **[before a member of the Board designated by the Chairman of the Board] after service of the petition on the Secretary of the Board**;

(4) the designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five **business** days after the conclusion of the hearing; and

* * * * *

[Pa.B. Doc. No. 04-1681. Filed for public inspection September 10, 2004, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Proposed Amendments to Rules 311 and 342

The Appellate Court Procedural Rules Committee and the Orphans' Court Procedural Rules Committee propose to amend Pennsylvania Rules of Appellate Procedure 311 and 342. The amendment is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

Proposed new material is bold while deleted material is bold and bracketed.

All communications in reference to the proposed amendment should be sent no later than November 30, 2004 to:

Dean R. Phillips, Chief Counsel
Rebecca M. Darr, Deputy Counsel
Appellate Court Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

or Fax to
717-795-2116

or E-Mail to
appellaterules@pacourts.us

An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

By the Appellate Court
Procedural Rules Committee

HONORABLE JOSEPH A. HUDOCK,
Chair

EXPLANATORY COMMENT

Background

In 1992, the Supreme Court amended Rule 341 to redefine final orders as "any order that disposes of all claims and all parties." Pa.R.A.P. 341(b)(1). This amendment was intended to limit excessive and unnecessary interlocutory appeals that had proliferated under the "final aspect" doctrine. Under the final aspect doctrine, a final order was any order that either disposed of the entire case, or that, as practical matter put the appellant out of court. The 1992 amendments to Rule 341 added Subdivision (c), which provided for immediate appeals following a certification of finality where an order dismissed less than all claims and all parties. The discretion to certify an immediate appeal from such orders is circumscribed by specific criteria enumerated in the Note to Rule 341. Otherwise, where an order denies a motion to dismiss less than all claims and parties, the aggrieved party generally has to wait until the end of the entire case or seek permission to appeal immediately under Pa.R.A.P. 312 and 1311. However, appeals under 312 and 1311 are limited, by statute and rules, to orders involving a controlling question of law and where an immediate appeal would facilitate the ultimate resolution of the case.[1]

While elimination of the final aspect doctrine decreased the number of interlocutory appeals and is widely perceived by the bench and bar of this Commonwealth to have facilitated case management and the orderly administration of justice, it has caused significant problems for Orphans' Court litigants and judges. The alternative vehicles for appeal are not sufficiently inclusive to allow interlocutory appeals from certain Orphans' Court orders even though such interlocutory appeals are necessary to the orderly administration and adjudication of estates, trusts and other Orphans' Court matters.

In 1996, a panel of the Superior Court decided that an appeal filed by co-executors from an order approving the sale of the family farm and farmhouse was interlocutory under the 1992 amendment redefining final orders. *In re Estate of Habazin*, 679 A.2d 1293 (Pa. Super. 1996). Following input from the Orphans' Court bench and bar, and the recommendation of both the Orphans' Court and Appellate Court Procedural Rules Committees, the Supreme Court of Pennsylvania amended Pa.R.A.P. 342 to

[1] There are several other vehicles for interlocutory appeals. Pa.R.A.P. 311 permits interlocutory appeals as of right for certain specific kinds of orders while Pa.R.A.P. 313 permits an appeal as of right from collateral orders.

permit an immediate appeal from orders determining an interest in realty, personalty or individual rights upon a determination of finality by the Orphans' Court judge. Rule 342 did not limit the Orphans' Court judge's discretion to determine the propriety of an immediate appeal. Nonetheless, the right to appeal depended on the aggrieved party persuading the Orphans' Court judge that such an appeal was appropriate to facilitate the ultimate resolution of the case and the only way to seek review of the denial of such a determination was a petition for review, addressed to the intermediate appellate court, alleging an abuse of discretion. Such petitions for review are reviewed narrowly and very rarely granted.

Since 2001, Rule 342 has permitted interlocutory appeals in Orphans' Court proceedings while providing for some judicial oversight so that an aggrieved party is not given an unfettered immediate right to appeal orders such as those disposing of incidental property, making small interim distributions or permitting or compelling the payment of debts and taxes.[2] Within the last two years, however, several decisions have raised the issue of whether Rule 342 is sufficient in its present form to provide a comprehensive vehicle for interlocutory appeals in Orphans' Court matters.

For example, a number of Orphans' Court judges and practitioners have expressed the view that appeals from orders removing executors or trustees, or refusing to do so, should be immediately appealable as of right. Prior to 2001, such orders were considered immediately appealable as collateral orders. See *Estate of Georgianna*, 458 A.2d 989 (Pa. Super. 1983), affirmed, 475 A.2d 744 (Pa. 1984) (holding that if an immediate appeal was not allowed, such orders would evade appellate review resulting in the irreparable loss of important rights). See also *McGillick Foundation*, 642 A.2d 467 (Pa. 1994) (where the Supreme Court ruled on the merits of a trustee's removal without addressing the jurisdictional issue of whether or not the Orphans' Court order was final and immediately appealable). However, in 2002, a Superior Court panel held that, following the 2001 amendments to Rule 342, orders removing an executor or trustee, or declining to do so, were no longer immediately appealable. See *Estate of Sorber*, 803 A.2d 767 (Pa. Super. 2002) In *Sorber*, the Superior Court panel interpreted Rule 342 to be the sole vehicle for appeal of non-final Orphans' Court orders determining an interest in realty, personalty or status of individuals. *Sorber* held that the new Rule 342, in effect, overruled *Georgianna*.

The second decision calling Rule 342 into question is *Estate of Schmitt*, 846 A.2d 127 (Pa. Super. 2004), where a panel of the Superior Court sua sponte quashed an appeal from an order the Orphans' Court striking a caveat to a will. The *Schmitt* panel, citing *Sorber*, held that an Orphans' Court order in a matter involving the validity of a will is not final until confirmation of the final account of the personal representative. The *Schmitt* panel reached an arguably different result from Superior Court panels in *Estate of Janosky*, 827 A.2d 512 (Pa. Super. 2003) and *Luongo v. Luongo*, 823 A.2d 942 (Pa. Super. 2003), appeal denied, 847 A.2d 1287 (Pa. 2003). In each of those cases, the panels did not sua sponte raise the issue of whether orders determining the validity of a will are appealable as final orders and, in both cases, the panels determined the appeals on their merits.

In *Schmitt*, the Superior Court determined that since the aggrieved party had not requested a determination of finality under Rule 342, the Orphans' Court did not need to determine whether Rule 342 was broad enough to cover orders determining the validity of a will. Thus, the *Schmitt* decision left open the possibility that the only vehicle for appealing an order determining the validity of a will (or trust) might be an interlocutory appeal by permission pursuant to Rules 312 and 1311. However, because those rules mandate a strict standard which must be met before interlocutory appellate review will be allowed, including a requirement that the appeal involve a controlling question of law, Rules 312 and 1311 do not represent a realistic avenue of appeal for those seeking to challenge an Orphans' Court determination of an instrument's validity.

Orphans' Court judges and practitioners have suggested that orders determining the validity of a will are final orders because they determine the only matter at issue in a will contest, to wit, the validity of the will or trust itself. The fact that there may be subsequent litigation involving the administration of a will or trust after its validity is determined by order of court does not mean that the aggrieved party should be deprived of the opportunity for an immediate appeal. Once the validity of the instrument is determined, it is certainly conceivable that the administration of the estate or trust will be routine, such that there will be no ultimate determination of finality. In fact, most estates are settled on the basis of a family settlement agreement or receipt and release. See Fiduciary Review, July 2004. Simply put, the failure to allow an immediate appeal from either orders removing an executor or orders determining the validity of a will cannot be corrected following an appeal after distribution is complete.[3]

Summary of Recommendation

It is proposed that orders determining the validity of a will or trust be immediately appealable under Rule 311 as interlocutory appeals as of right. In order to assure that parties will have the opportunity to take an immediate appeal as of right from such orders, the Appellate Court and Orphans' Court Procedural Rules Committees recommend the adoption of proposed new Pa.R.A.P. 311(a)(9). While this recommendation ultimately begs the question of whether such orders are, in fact, true final orders, it is a practical resolution to a conceptual problem. It should be of no consequence to an aggrieved party whether the order is appealable as of right by express definition under Rule 311, or because it is interpreted by case law to be final under Rule 341(b) in that it ends a case as to all claims or parties.

In order to assure that orders removing executors and trustees, or refusing to remove such fiduciaries, are immediately appealable as of right, as was the practice prior to *Schmitt*, the Committees also propose to amend Rule 342 to clarify that the 2001 amendment was not intended to overrule *Estate of Georgianna*, or to otherwise

[2] Rule 342 currently reads as follows: "In addition to final orders pursuant to Subdivision (b) of Rule 341 or determined to be final under Subdivision (c) of Rule 341, an order of the Orphans' Court Division determining an interest in realty, personalty, the status of individuals or entities or an order of distribution not final under Subdivision (b) of Rule 341 or determined to be final under Subdivision (c) of Rule 341 shall constitute a final order upon a determination of finality by the Orphans' Court Division."

[3] For example, in the Pennsylvania Probate, Estates and Fiduciaries Code, ("the P.E.F. Code"), 20 Pa.C.S.A. § 101 et seq., personal representatives who act pursuant to a will that has been admitted to probate are protected. Section 793 of the P.E.F. Code states: "No appeal from an order or decree . . . concerning the validity of a will or the right to administer shall suspend the powers or prejudice the acts of a personal representative acting thereunder." Section 3329 of the P.E.F. Code provides: "No act of administration performed by a personal representative in good faith shall be impeached by the subsequent revocation of his letters or by the subsequent probate of a will, of a later will or of a codicil . . ." Accordingly, there is no effective remedy against the personal representative if he or she administers an estate under one instrument and, after a final accounting, an appellate court determines that such distribution was made under the wrong will.

preclude an aggrieved party from pursuing appeals in Orphans' Court matters under Rule 313 (Collateral Orders). The amendment to Rule 342 does not expressly authorize interlocutory appeals by permission under Rules 312 and 1311 because the Committees believe that Rule 342 fully covers permissive interlocutory appeals in Orphans' Court matters and, since such appeals are left entirely to the discretion of the Orphans' Court judge, the standard under Rule 342 is substantially broader than the standard under Rules 312 and 1311.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

* * * * *

(a) *General rule.* An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

* * * * *

(9) *Estate and trust matters.* An order determining the validity of a will or trust.

* * * * *

(g) *Waiver of objections.*

(1) Where an interlocutory order is immediately appealable under this rule, failure to appeal:

(i) Under Subdivisions (a)**(1)—(8)**, (b)(2) or (f) of this rule shall not constitute a waiver of the objection to the order and the obligation may be raised on any subsequent appeal in the matter from a determination on the merits.

* * * * *

(iii) Under **[Subdivision] Subdivisions (a)(9) or** (e) of this rule shall constitute a waiver of all objections to such orders and any objection may not be raised on any subsequent appeal in the matter from a determination on the merits.

* * * * *

Explanatory Comment—2004

Orders determining the validity of a will or trust, including, but not limited to, orders granting or denying the probate of a will, are immediately appealable pursuant to the 2004 amendment adding subdivision (a)(9). Prior to the 2004 amendment, the Superior Court often permitted an immediate appeal from such orders without determining the basis for an immediate appeal under the Rules of Appellate Procedure. See *Estate of Janosky,* 827 A.2d 512 (Pa. Super. 2003), and *Estate of Luongo,* 823 A.2d 942 (Pa. Super. 2003). However, in *Estate of Schmitt,* 846 A.2d 127 (Pa. Super. 2004), a panel of the Superior Court held that an order striking a caveat was not immediately appealable as a final order under Pa.R.A.P. 341(b). In response to the Schmitt decision, the Appellate Court Procedural Rules Committee determined that while orders deciding the validity of a will or trust are not strict final orders under Subdivision (b) of Rule 341, it is not practical to administer an estate or trust while there is a pending challenge to the validity of the instrument. Accordingly, the Committee believes that a party seeking to probate an instrument or to challenge the validity of an instrument should be allowed to take an immediate interlocutory appeal as of right under Rule 311 and shall be bound by the waiver doctrine if the party does not immediately appeal. See the 2004 amendment to Subdivision (g) of this Rule.

FINAL ORDERS

Rule 342. Orphans' Court Orders Determining Realty, Personalty and Status of Individuals or Entities.

In addition to final orders pursuant to **Rule 311(a)(9),** Subdivision (b) of Rule 341**,** or determined to be final under Subdivision (c) of Rule 341 **and collateral orders under Rule 313**, an order of the Orphans' Court Division determining an interest in realty, personalty, the status of individuals or entities or an order of distribution not final under Subdivision (b) of Rule 341 or determined to be final under Subdivision (c) of Rule 341 shall constitute a final order upon a determination of finality by the Orphans' Court Division.

Explanatory Comment—1976

See comment following Rule 341.

***Official Note:* This Rule was amended in 2001 to allow appeals from orders determining an interest in realty, personalty or the status of individuals, upon certification of the Orphans' Court judge. Prior to the 2001 amendment, this rule only permitted appeals from an order of distribution not final under Rule 341(b). The amendment to the Rule was not intended to preclude immediate of appeals in Orphans' Court matters as heretofore permitted under Rule 311 (Interlocutory Appeals as of Right) and Rule 313 (Collateral Orders). However, the Rule may have been ambiguous in that regard because in *Estate of Sorber,* 803 A.2d 767 (Pa. Super. 2002), a panel of the Superior Court interpreted the 2001 amendment to Rule 342 to preclude immediate appeals from collateral orders unless determined to be final by the Orphans' Court judge. To the extent that *Estate of Sorber* would not permit appeals pursuant to the collateral order doctrine codified in Rule 313, *Sorber* is no longer applicable.**

[Pa.B. Doc. No. 04-1682. Filed for public inspection September 10, 2004, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 5 AND 10]

Order Amending Rules 103, 114, 510, 511, 512, 540, 542, 543, 547, 571, 1000, 1001, and 1003 and Approving the Revision of the Comments to Rules 509, 529, 536, 560, and 565; No. 311 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the changes to the Rules of Criminal Procedure that establish one statewide, uniform procedure for handling court cases in which a defendant has failed to appear for the preliminary hear-

ing. By this new procedure, if a defendant fails to appear before the issuing authority for the preliminary hearing after notice and without cause, the defendant's absence will be deemed a waiver of the defendant's right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 24th day of August, 2004, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 29 Pa.B. 6454 (December 25, 1999) and 30 Pa.B. 4543 (September 2, 2000), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vols. 740 and 756), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

(1) Rules of Criminal Procedure 103, 114, 510, 511, 512, 540, 542, 543, 547, 571, 1000, 1001, and 1003 are hereby amended; and

(2) the revisions of the Comments to Rules of Criminal Procedure 509, 529, 536, 560, and 565 are hereby approved

all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective August 1, 2005.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

Rule 103. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

* * * * *

ARRAIGNMENT is the pretrial proceeding in the court of common pleas conducted pursuant to Rule 571.

* * * * *

PRELIMINARY ARRAIGNMENT is the proceeding following an arrest conducted before an issuing authority pursuant to Rule 540 or Rule 1003(D).

* * * * *

Comment

The definitions of arraignment and preliminary arraignment were added in 2004 to clarify the distinction between the two proceedings. Although both are administrative proceedings at which the defendant is advised of the charges and the right to counsel, the preliminary arraignment occurs shortly after an arrest before a member of the minor judiciary, while an arraignment occurs in the court of common pleas after a case is held for court and an information is filed.

The definition of information was added to the rules as part of the implementation of the 1973 amendment to PA. CONST. art. I, § 10, permitting the substitution of informations for indictments. The term "information" as used here should not be confused with prior use of the term in Pennsylvania practice as an instrument which served the function now fulfilled by the complaint.

* * * * *

Official Note: Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended April 30, 2004, effective July 1, 2004**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 amendments adding definitions of arraignment and preliminary arraignment published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 114. Orders and Court Notices: Filing; Service; and Docket Entries.

* * * * *

(B) Service

* * * * *

(3) Methods of Service

[Service] Except as otherwise provided in Chapter 5 concerning notice of the preliminary hearing, service shall be:

* * * * *

Comment

This rule was amended in 2004 to provide in one rule the procedures for the filing and service of all orders and court notices, and for making docket entries of the date of receipt, date appearing on the order or notice, and the date and manner of service. This rule incorporates the provisions of former Rule 113 (Notice of Court Proceedings Requiring Defendant's Presence). **But see Rules 511, 540(F)(2), and 542(D) for the procedures for service of notice of a preliminary hearing, which are different from the procedures in this rule.**

* * * * *

Official Note: Formerly Rule 9024, adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 and Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 114 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the August 24, 2004 changes concerning notice of preliminary hearing published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(1). Complaint Procedures

Rule 509. Use of Summons or Warrant of Arrest in Court Cases.

* * * * *

Comment

This rule provides for the mandatory use of a summons instead of a warrant in court cases except in special circumstances as specified therein. **[This change of procedure is provided for relatively minor cases even though they are indictable.]**

Before a warrant may be issued pursuant to paragraph (2)(c) when a summons is returned undelivered, the summons must have been served as provided in Rule 511(A), and both the certified mail and the first class mail must have been returned undelivered.

* * * * *

Official Note: Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; Comment revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001**; Comment revised August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 Comment revision adding a new second paragraph elaborating on paragraph (2)(c) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

PART B(2). Summons Procedures

Rule 510. Contents of Summons; **[Time] Notice** of Preliminary Hearing.

(A) Every summons in a court case shall command the defendant to appear before the issuing authority for a preliminary hearing at the place **[stated therein]** and **on the date and at** the time **[fixed therein which] stated on the summons. The date set for the preliminary hearing** shall be not less than 20 days from the date of mailing the summons unless the issuing authority fixes an earlier date upon the request of the defendant or the defendant's attorney with the consent of the affiant.

(B) The summons shall give notice to the defendant:

* * * * *

(3) that if the defendant fails to appear **[at] on** the **date, and at the** time and place specified **on the summons**, **the case will proceed in the defendant's absence, and** a warrant will be issued for the defendant's arrest.

[(B)] (C) A copy of the complaint shall be attached to the summons.

Comment

[Summonses in the] For the summons procedures in non-summary cases in the Municipal Court of Philadelphia **[are governed by the Rules of Chapter 10], see Rule 1003(C)**.

* * * * *

See Rule 511 for service of the summons and proof of service.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing.

For the consequences of defects in a summons in a court case, see Rule 109.

Official Note: Original Rule 109, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the August 24, 2004 amendments concerning notice that case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 511. Service of Summons**; Proof of Service**.

(A) The summons shall be served upon the defendant by **both first class mail and** certified mail, return receipt requested. A copy of the complaint shall be served with the summons.

(B) Proof of service of the summons by mail shall include:

(1) a return receipt signed by the defendant; or

(2) if the certified mail is returned for whatever reason, the returned summons with the notation that the certified mail was undelivered and evidence that the first class mailing of the summons was not returned to the issuing authority within 15 days after mailing.

Comment

This rule was amended in 2004 to require that the summons be served by both first class mail and certified mail, return receipt requested.

Paragraph (B) sets forth what constitutes proof of service of the summons by mail in a court case for purposes of these rules.

Official Note: Original Rule 111, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 111 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 112 September 18, 1973, effective January 1, 1974; renumbered Rule 511 March 1, 2000, effective April 1, 2001**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the August 24, 2004 amendments adding new paragraph (B) concerning proof of service published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 512. Procedure in Court Cases Following Issuance of Summons.

The defendant shall appear before the issuing authority for a preliminary hearing **on the date, and** at the time and place specified in the summons. If the defendant fails to appear, the issuing authority shall issue a warrant for the arrest of the defendant **and proceed as provided in Rule 543(D)**.

Comment

* * * * *

For the **[procedure] procedures in non-summary cases** in the Municipal Court **[of Philadelphia]**, see Chapter 10.

Official Note: Rule 113 adopted September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 512 and Comment revised March 1, 2000, effective April 1, 2001**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 amendments cross-referencing Rule 543(D) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

PART C(1). Release Procedures

Rule 529. Modification of Bail Order Prior to Verdict.

* * * * *

Comment

* * * * *

Once bail has been modified by a common pleas judge, only the common pleas judge subsequently may modify bail, even in cases that are pending before a district justice. See Rules 543 and 536.

Pursuant to this rule, the motion, notice, and hearing requirements in paragraphs (B)(1) and (C)(2) must be followed in all cases before a common pleas **[court]** judge may modify a bail order unless the modification is made on the record in open court either when all parties are present at a pretrial hearing—such as a suppression hearing—or during trial.

* * * * *

Official Note: Former Rule 4008 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 530. Present Rule 4008 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 529 and amended March 1, 2000, effective April 1, 2001**; Comment revised August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

PART C(2). General Procedures in all Bail Cases

Rule 536. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

* * * * *

Comment

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Once bail has been modified by a common pleas judge pursuant to Rule 529, only the common pleas judge subsequently may change the conditions of release, even in cases that are pending before a district justice. See Rules 543 and 529.

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

* * * * *

Official Note: Former Rule 4016**[,]** adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule **[536] 4016**. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 536 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004**; Comment revised August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

* * * * *

(F) Unless the preliminary hearing is waived by a defendant who is represented by counsel, the issuing authority shall:

* * * * *

(2) give the defendant notice**, orally and in writing,**

(a) of the **date,** time**,** and place of the preliminary hearing **[thus fixed.], and**

(b) that failure to appear without good cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and in the issuance of a warrant of arrest.

* * * * *

Comment

* * * * *

Under paragraph **[(C)] (D)**, if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before a defendant may be detained. See *Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Pursuant to the 2004 amendment to paragraph (F)(2), at the time of the preliminary arraignment, the defendant must be given notice, both orally and in writing, of the date, time, and place of the preliminary hearing. The notice must also explain that, if the defendant fails to appear without good cause for the preliminary hearing, the defendant's absence will constitute a waiver of the right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.

See Rule 1003(D) for the procedures governing preliminary arraignments in the Municipal Court.

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 amendments concerning notice that the case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 542. Preliminary Hearing; Continuances.

* * * * *

[(D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant.]

[(E)] (D) CONTINUANCES

(1) The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

[(1)] (a) * * *

[(2)] (b) * * *

[(3)] (c) the new date **and time for the preliminary hearing,** and the reasons that the particular date was chosen.

(2) The issuing authority shall give notice of the new date and time for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

(a) The notice shall be in writing.

(b) Notice shall be served on the defendant either in person or by both first class mail and certified mail, return receipt requested.

(c) Notice shall be served on defendant's attorney of record and the attorney for the Commonwealth either by personal delivery, or by leaving a copy for or mailing a copy to the attorneys at the attorneys' offices.

Comment

* * * * *

Former paragraph (D) concerning the procedures when a prima facie case is found was deleted in 2004 as unnecessary because the same procedures are set forth in Rule 543 (Disposition of Case at Preliminary Hearing).

For the procedures when a defendant fails to appear for the preliminary hearing, see Rule 543(D).

The proof of service by mail on the defendant of the notice of the continued preliminary hearing is comparable to proof of service under Rule 511(B), and must include:

(1) a return receipt signed by the defendant, or

(2) if the certified mail is returned for whatever reason, the returned notice with the notation that the certified mail was undelivered and evidence that the first class mailing of the notice was not returned to the issuing authority within 15 days after mailing.

For the contents of the transcript, see Rule 135.

Official Note: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and

142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and Comment revised March 1, 2000, effective April 1, 2001; **amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 amendments concerning notice published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 543. Disposition of Case at Preliminary Hearing.

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

[(A)] (B) If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged. **[In either event, the decision of the issuing authority shall be publicly pronounced.**

(B)] (C) * * *

* * * * *

(D) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 542(D)(2).

(2) If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the issuing authority shall:

(a) proceed with the case in the same manner as though the defendant were present;

(b) if the preliminary hearing is conducted, give the defendant notice by first class mail of the results of the preliminary hearing; and

(c) if the case is held for court or if the preliminary hearing is continued, issue a warrant for the arrest of the defendant.

(3) When the issuing authority issues a warrant pursuant to paragraph (D)(2)(C), the issuing authority retains jurisdiction to dispose of the warrant until:

(a) the arraignment occurs; or

(b) the defendant fails to appear for the arraignment and the common pleas judge issues a bench warrant for the defendant.

Upon receipt of notice that the arraignment has occurred or a bench warrant has been issued, the issuing authority promptly shall recall and cancel the issuing authority's warrant.

Comment

Paragraph **[(B)] (C)** was amended in 1983 to reflect the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases **[where] in which**, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 509 and 510.

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540(E)(2) or in a summons served as provided in Rule 511, and (2) whether the defendant had good cause explaining the absence.

If the issuing authority determines that the defendant did not receive notice or that there is good cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. See paragraph (D)(1). For the procedures when a preliminary hearing is continued, see Rule 542(D).

If the issuing authority determines that the defendant received notice and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without good cause, paragraph (D)(2)(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 542(A), (B), (C) and Rule 543(A), (B), and (C); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 542(D); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)(2)(c) requires the issuing authority to issue an arrest warrant if the case is held for court or when the preliminary hearing is continued.

Pursuant to paragraph (D)(3), the defendant must be taken before the issuing authority for resolution of the warrant, counsel, and bail in those cases in which a defendant is apprehended on the issuing authority's warrant prior to the arraignment or the issuance of a common pleas judge's bench warrant.

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

See Rule 571 (Arraignment) for notice of arraignment requirements.

See Rule 1003 (Procedure in Non-Summary Municipal Court Cases) for the preliminary hearing procedures in Municipal Court.

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 547. Return of Transcript and Original Papers.

(A) When a defendant is held for court, the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required **by these rules** to be recorded on the transcript **[under Rules 135 and 542]**. It shall be signed by the issuing authority, and have affixed to it the issuing authority's seal of office.

(B) The issuing authority shall transmit the transcript to the clerk of the proper court within **[five] 5** days after holding the defendant for court.

(C) In addition to this transcript the issuing authority shall also transmit the following items:

(1) **the** original complaint;

* * * * *

Comment

See Rule 135 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. See, e.g., Rules 542 and 543.

Official Note: Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1982, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 changes published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

PART E. Informations

Rule 560. Information: Filing, Contents, Function.

* * * * *

Comment

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When there is an omission or error of the type referred to in paragraph (C), the information should be amended pursuant to Rule 564.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing. When the preliminary hearing is held in the defendant's absence and the case is held for court, the attorney for the Commonwealth should proceed as provided in this rule.

Official Note: Rule 225 adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised April 23, 2004, effective immediately**; Comment revised August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 Comment revision concerning failure to appear for preliminary hearing published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 565. Presentation of Information Without Preliminary Hearing.

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Comment

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Under the Juvenile Act, a juvenile is entitled to substantially the same rights at a transfer hearing as a defendant would be at a preliminary hearing. See Juvenile Act, 42 Pa.C.S. § 6355. Therefore, to avoid duplicative proceedings, this rule permits the attorney for the Commonwealth to bypass the preliminary hearing when a juvenile has been transferred for prosecution as an adult.

Nothing in this rule is intended to preclude the attorney for the Commonwealth from filing an information or from having the date for the arraignment scheduled in those cases in which the issuing authority has conducted the preliminary hearing in the defendant's absence as provided in Rule 543(D).

Official Note: Rule 231 adopted February 15, 1974, effective immediately; amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 565 and amended March 1, 2000, effective April 1, 2001**; Comment revised August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 Comment revision concerning preliminary hearing in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

PART F. Procedures Following Filing of Information

Rule 571. Arraignment.

* * * * *

(E) At the conclusion of the arraignment, or after the common pleas judge issues a bench warrant because the defendant fails to appear for the arraignment, in cases held for court following a preliminary hearing in the defendant's absence, the

clerk of courts promptly shall notify the issuing authority that the arraignment has occurred or a bench warrant has been issued.

Comment

[Although this rule does not explicitly require formal arraignments, judicial districts must see to it that the purposes for which arraignments are held, as specified in this rule, are observed in some fashion in all court cases.]

The main purposes of arraignment are: to **[assure] ensure** that the defendant is advised of the charges; to have counsel enter an appearance, or if the defendant has no counsel, to consider the defendant's right to counsel; and to commence the period of time within which to initiate pretrial discovery and to file other motions. **Although the specific form of the arraignment is not prescribed by this rule, judicial districts are required to ensure that the purposes of arraignments are accomplished in all court cases.**

Concerning the waiver of counsel, see Rule 121.

* * * * *

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule 114.

In cases that are held for court following a preliminary hearing in the defendant's absence, paragraph (E) requires that, following the arraignment or the issuance of a bench warrant, the clerk of courts must inform the issuing authority in the most expedient manner, such as by telephone, or by facsimile or electronic transmission. In addition, the clerk should complete and return the notification form provided by the issuing authority. See Rule 543(D) (Disposition of Case at Preliminary Hearing).

Official Note: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 addition of paragraph (E) and the correlative Comment provisions published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT

Rule 1000. Scope of Rules.

[(A) The rules in this chapter govern proceedings in Municipal Court cases in the Philadelphia Municipal Court and appeals from Municipal Court cases.

(B) Except as provided in this chapter, procedure in Municipal Court cases shall be governed by the Rules of Criminal Procedure adopted and promulgated by the Supreme Court of Pennsylvania.]

(A) The rules in this chapter govern all proceedings in the Philadelphia Municipal Court, including summary cases; Municipal Court cases, as defined in Rule 1001(A); the filing of appeals from Municipal Court cases; the filing of petitions for writs of certiorari; and the preliminary proceedings in criminal cases charging felonies.

(B) Any procedure that is governed by a statewide rule of criminal procedure, but which is not specifically covered in Chapter 10, shall be governed by the relevant statewide rule.

Comment

The 2004 amendments make it clear that, except as otherwise provided in the rules, Chapter 10 governs all proceedings in the Philadelphia Municipal Court, including the procedures for instituting criminal cases charging felonies, preliminary arraignments, and preliminary hearings. See 42 Pa.C.S. § 1123 (Jurisdiction and Venue).

Official Note: Rule 6000 adopted December 30, 1968, effective January 1, 1969; amended March 28, 1973, effective March 28, 1973; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1000 and amended March 1, 2000, effective April 1, 2001**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 amendments clarifying the scope of Chapter 10 published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 1001. Disposition of Criminal Cases—Philadelphia Municipal Court.

(A) **[Any misdemeanor] A Municipal Court case is any case in which the only offense or offenses charged are misdemeanors** under the Crimes Code or other statutory criminal **[offense] offenses** for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years, including any offense under the Vehicle Code other than a summary offense**[, shall be a Municipal Court case]**.

* * * * *

(C) A **Municipal Court** case may be transferred from the Municipal Court to the Court of Common Pleas by order of the President Judge of the Court of Common Pleas, or the President Judge's designee, upon the President Judge's approval of:

* * * * *

Comment

This rule**, which defines "Municipal Court case,"** is intended to ensure that the Municipal Court will take dispositive action, including trial and verdict when appropriate, in any criminal case that does not involve a felony, excluding summary cases under the Vehicle Code. The latter are under the jurisdiction of the Philadelphia Traffic Court, see 42 Pa.C.S. §§ 1301—1303, 1321.

Official Note: Present Rule 6001 adopted March 28, 1973, effective March 28, 1973, replacing prior Rule 6001; amended June 28, 1974, effective July 1, 1974; paragraph (C) added February 10, 1975, effective immediately; title amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended June 19, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1001 and Comment revised March 1, 2000, effective April 1, 2001**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 amendments clarifying the definition of "Municipal Court Case" published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Rule 1003. Procedure in Non-Summary Municipal Court Cases.

(A) INITIATION OF CRIMINAL PROCEEDINGS

(1) Criminal proceedings in **court** cases **[which charge any misdemeanor under the Crimes Code or other statutory criminal offenses, other than a summary offense, for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years]** shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a **felony or** misdemeanor is committed in the presence of the police officer making the arrest; or

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law**[.]; or**

(c) an arrest without a warrant upon probable cause when the offense is a felony.

* * * * *

(C) SUMMONS AND ARREST WARRANT PROCEDURES

When an issuing authority finds grounds to issue process based on a complaint, the issuing authority shall:

* * * * *

(2) issue a warrant of arrest when:

* * * * *

(e) the identity of the defendant is unknown; **[or]**

(f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or

* * * * *

(D) PRELIMINARY ARRAIGNMENT

* * * * *

(3) At the preliminary arraignment, the issuing authority:

* * * * *

(d) shall also inform the defendant:

* * * * *

(ii) of the day, date, hour, and place for trial, which shall not be less than 20 days after the preliminary arraignment unless the issuing authority fixes an earlier date upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth; **[and]**

(iii) in a case charging a felony, of the date, time, and place of the preliminary hearing, which shall not be less than 3 nor more than 10 days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and

[(iii)] (iv) * * *

* * * * *

(E) PRELIMINARY HEARING IN CASES CHARGING A FELONY

In cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 542 (Preliminary Hearing; Continuances) and Rule 543 (Disposition of Case at Preliminary Hearing).

[(E)] (F) * * *

* * * * *

Comment

[Former Rule 6003 was rescinded and replaced in 1994 by new Rule 6003, renumbered Rule 1003 in 2000. Although Rule 1003 has been extensively reorganized, only paragraphs (D)(1) and (D)(3)(c) reflect changes in the procedures contained in the former rule.]

The 2004 amendments make it clear that Rule 1003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 1001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.

See Chapter 5 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.

The 2004 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 502 (Means of Instituting Proceedings in Court Cases).

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary **cases in** Municipal Court **[cases]** with the statewide procedures for private complaints in Rule 506 (Approval of

Private Complaints). In all cases **[where] in which** the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

* * * * *

Under paragraph (D)(4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

Official Note: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended March 22, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002**; amended August 24, 2004, effective August 1, 2005**.

Committee Explanatory Reports:

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Final Report explaining the August 24, 2004 changes clarifying preliminary arraignment and preliminary hearing procedures in Municipal Court cases published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

FINAL REPORT[1]

Amendments to Pa.Rs.Crim.P. 103, 114, 510, 511, 512, 540, 542, 543, 547, 571, 1000, 1001, and 1003, and Revision of the Comments to Pa.Rs.Crim.P. 509, 529, 536, 560, 565

Procedures when Defendant Fails to Appear for Preliminary Hearing

On August 24, 2004, effective August 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 103, 114, 510, 511, 512, 540, 542, 543, 547, 571, 1000, 1001, and 1003, and approved the revision of the Comments to Rules 509, 529, 536, 560, 565. These rule changes establish one statewide, uniform procedure for handling court cases in which a defendant has failed to appear for the preliminary hearing. If a defendant fails to appear before the issuing authority for the preliminary hearing after notice and without cause, the defendant's absence will be deemed a waiver of the defendant's right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.

I. BACKGROUND

In 1996, in response to questions from some district justices and the Administrative Offices of Pennsylvania Courts' (AOPC) Judicial Computer Project (JPC) Staff concerning the numerous variations in procedures across Pennsylvania for handling cases in which a defendant fails to appear for the preliminary hearing (FTAs),[2] the Committee undertook an extensive review of the procedures in place for handling these FTAs. Agreeing that there should be one statewide procedure, in 1998, the Committee recommended to the Court rule changes to establish a procedure that required, after a 10-day waiting period and after the issuing authority had considered whether the defendant received notice of the preliminary hearing and there was a good reason that would explain the defendant's failure to appear, the case would be forwarded to the court of common pleas for further proceedings.[3] The proposal also prohibited the district justices from issuing warrants for the defendant. In August 1999, the Court asked the Committee to reconsider this Recommendation, and to specifically address four questions—whether district justices should issue warrants in FTA cases; whether a clarification concerning the interplay of Rule 536 concerning bail and the proposed changes to Rule 543 was necessary; whether "further proceedings" needed to be defined; and whether the notice through counsel provision added to the proposed changes to Rule 543 was in conflict with Rules 512, 540, and 542.

The Committee reexamined the various practices around the state for handling failures to appear at the preliminary hearing, and reconsidered the issues that had arisen during the development of the original recommendation, including the problems related to timely service of district justice "bench warrants"; the concerns about sending the cases to common pleas court without a preliminary hearing or warrant, and without guidance as to "further proceedings"; the reticence on the part of common pleas judges to handle these cases; the likelihood that there would be many remands to the district justice for the preliminary hearing, resulting in unnecessary delays; and the impact of the procedures on Rule 600.

Many differing views were articulated during the course of this reconsideration, and another compromise position so that the district justice would issue a bench warrant in these cases and the case would remain with the district justice for disposition. Accordingly, a defendant's failure to appear without good cause and after notice of the preliminary hearing constitutes a waiver of the defendant's presence for any further proceedings before the issuing authority. When this occurs, the case is to proceed pursuant to Rules 542 and 543 in the same manner as if the defendant was present. "Further proceedings before the issuing authority" within the scope of this revised procedure means (1) the preliminary hearing could be conducted and, if a prima facie case is established, the case is held for court, and if not, then the charges are dismissed; or (2) the issuing authority could

[1] The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

[2] For example, some district justices issue warrants for the arrest of the defendant, and the case remains in their court until the defendant is returned on the warrant and the preliminary hearing is held. Other district justices declare the defendant a "fugitive" and forward the case to the clerk of courts for processing in the court of common pleas. Ordinarily, in these cases, the district attorney moves to file the information without a preliminary hearing. In other judicial districts, district justices conduct the preliminary hearing in the defendant's absence when a defendant fails to appear for the preliminary hearing, and the case proceeds in the same manner as if the defendant had appeared.

[3] The Committee's Report explaining this previous proposal was published at 26 Pa.B. 2307 (May 18, 1996).

grant a continuance, or (3) in certain cases, the issuing authority could convene the preliminary hearing to take testimony of the witnesses, and thereafter continue the hearing.[4] This new approach is consistent with the present practice in a number of magisterial districts, and enhances the goals the Committee set for the proposal: to move the case forward, to be fair and reasonable, and to protect the rights of the defendant.

II. DISCUSSION OF RULE CHANGES

A. *Rule 543 (Disposition of Case at Preliminary Hearing)*

The Committee initially reviewed the rules in Chapter 5 Part D, particularly Rules 542 (Preliminary Hearing; Continuances) and 543 (Disposition of Case at Preliminary Hearing), and agreed to incorporate into Rule 543(D), with additional elaboration of the procedure in the Comment, the substance of the proposal—the deemed waived provision, and the requirements that the issuing authority proceed with the case as though the defendant was present, and if the case is held for court or the preliminary hearing is continued, issue a warrant.

The cornerstone of the rule changes is that the issuing authority must determine whether the defendant has received notice of the preliminary hearing and whether the defendant has good cause for failing to appear before any formal action may be taken against a defendant who fails to appear.[5] If the issuing authority finds that the defendant did not receive notice or finds that there was good cause explaining the defendant's failure to appear, paragraph (D)(1) requires the issuing authority to continue the preliminary hearing to a specific date and time, and give notice as provided in Rule 542(D)(2).

1. *Waiver Procedures*

If the issuing authority determines that the defendant received notice and is absent without good cause, paragraph (D)(2) requires that the defendant's absence be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. The Rule 543 Comment explains that the duration of the waiver only extends to the period of time that the defendant is absent. Thus, if a defendant is arrested on the warrant issued pursuant to paragraph (D)(2)(c) or voluntarily appears, the waiver would no longer be in effect.

When a defendant fails to appear, the issuing authority is required to proceed with the case in the same manner as though the defendant was present, paragraph (D)(2)(a). The decision about how to proceed is left to the discretion of the issuing authority, and the Comment elaborates on what is intended by "further proceedings." For example, the issuing authority could conduct the preliminary hearing, which the issuing authority might want to do if all the witnesses are present and the Commonwealth is ready to proceed; continue the preliminary hearing; or hold the preliminary hearing for the purpose of taking testimony of the witnesses who are present and then continue the hearing to a date certain. When there is a continuance, the Comment instructs the issuing authority to send the required notice of continuance to the defendant, even though the defendant has absented himself or herself from the original proceedings.

2. *Arrest Warrant Procedures*

The Committee agreed when the case is held for court or the preliminary hearing is continued, the issuing authority must issue a warrant for the arrest of the defendant. This procedure is set forth in paragraph (D)(2)(c). Conversely, in those cases in which a preliminary hearing is held in the defendant's absence and the case is dismissed, no warrant would be issued.

In developing these arrest warrant procedures, the Committee considered that there are two options for handling arrest warrants issued following a defendant's failure to appear for the preliminary hearing: jurisdiction over the warrant could (1) stay with the issuing authority or (2) move with the case to the court of common pleas. We settled on a procedure in which the jurisdiction of the warrant stays with the issuing authority because, in most cases, the issuing authority will have set the bail and will be the most familiar with the case for purposes of making a post-arrest bail decision. By having the issuing authority retain jurisdiction in these cases, there is a greater likelihood that the defendant will be located quickly and processed in a timely manner without the delay that would occur with the case moving to the common pleas court. In addition, the Committee is sensitive to the fact that common pleas judges would not want the additional burden of handling these warrant cases prior to the arraignment.

Paragraph (D)(2)(c) requires the issuing authority to issue a warrant if the case is held for court or the preliminary hearing is continued. In addition, the Comment explains when the defendant is apprehended while the case is still within the issuing authority's jurisdiction, that the defendant is taken to the issuing authority for "resolution of the warrant, counsel, and bail." The issuing authority should proceed under Rule 536 concerning bail, and advise the defendant concerning his or her right to counsel if the defendant is not represented.

In establishing the warrant procedure in paragraph (D)(2)(c), the Committee recognized that there has to be an outside limit for the issuing authority's jurisdiction, and approved the concept, as set forth in paragraph (D)(3), that the issuing authority retains jurisdiction over the warrant until either the arraignment occurs in common pleas court or the common pleas judge issues a bench warrant when the defendant fails to appear for the arraignment—either of these "events" extinguishes the warrant. Once either event occurs, new paragraph (E) of Rule 571 (Arraignment) requires the clerk of courts to notify the issuing authority so the issuing authority recalls and cancels the warrant. Rule 543(D)(3) requires the issuing authority to promptly recall and cancel his or her warrant upon receipt of the notice.[6]

B. *Correlative Rule Changes Related to Notice*

1. *Notice of the Preliminary Hearing: Rules 114, 509, 510, and 540*

In developing the new procedures for handling FTAs, the Committee wanted to ensure there is a determination by the issuing authority that the defendant received notice of the preliminary hearing before a case may proceed in the defendant's absence. Under the present rules, notice of the date and time of a preliminary hearing is given to a defendant in one of two ways: (1) when a defendant appears for a preliminary arraignment, notice of the date and time for the preliminary hearing is given orally to the defendant at the preliminary arraignment, Rule 540(E)(2); and (2) when the case is begun by summons, the summons sets forth the place, date, and time for the preliminary hearing, Rule 510, and is served by certified mail, return receipt requested, Rule 511.

[4] The revised proposal was published for comment at 29 Pa.B. 6454 (12/25/99). A Supplemental Report explaining additional changes made after consideration of the publication responses was published at 30 Pa.B. 4543 (9/2/2000).

[5] See Section B below for the discussion of the correlative rule changes concerning the new notice provisions.

[6] The terms "recall" and "cancel" are taken from the district justices' computer manual for the procedures for handling warrants.

(a) *Oral and Written Notice at Preliminary Arraignment: Rule 540 (Preliminary Arraignment)*

The amendments to Rule 540(F)(2) require that the notice of the preliminary hearing be given to the defendant at the preliminary arraignment both orally and in writing. Noting that the preliminary arraignment can be a confusing time for a defendant, and in most cases the defendant is not represented, the Committee agreed adding the requirement that the notice of the preliminary hearing be in writing increases the likelihood that a defendant will remember the information he or she receives at the preliminary arraignment.

(b) *Notice in Summons: Rule 511 (Service of Summons: Proof of Service)*

The present rules do not address how an issuing authority is to determine whether the defendant actually receives a summons that was mailed, and the Committee agreed that it would be helpful to the bench and bar if the rules provide guidance in this area. In deciding how to best accomplish this, we looked at the Rules of Civil Procedure to see how this matter is handled in civil cases. Pa.R.Civ.P. 405 (Return of Service) provides, inter alia, that proof of service by mail:

> shall include a return receipt signed by the defendant or, if the defendant has refused to accept mail service and the plaintiff thereafter has served the defendant by ordinary mail,
>
> (1) the returned letter with the notation that the defendant refused to accept delivery, and
>
> (2) an affidavit that the letter was mailed by ordinary mail and was not returned within fifteen days after mailing.

The Committee agreed that a provision comparable to this, but modified for criminal practice, would allay the members' concerns about service by mail. Accordingly, Rule 511 (Service of Summons) has been amended as follows:

1. The title is expanded to include "proof of service."

2. The present text of the rule now is paragraph (A), and requires service of the summons by both first class mail and certified mail, return receipt requested.

3. New paragraph (B), modeled on the procedures in Civil Rule 405(c), sets forth what constitutes proof of service of a summons by mail: a returned receipt signed by the defendant or undelivered certified mail and evidence that the first class mailing was not returned to the issuing authority.

(c) *Rule 114 (Orders And Court Notices: Filing; Service; And Docket Entries)*

In developing the notice portions of the proposal, the Committee reviewed Rule 114. The requirements for notice in Rule 114 apply to proceedings in the court of common pleas, and therefore establish methods of service that are different from the requirements in Rules 510, 511, and 540 for notice of the preliminary hearing. Accordingly, as an aid to the bench and bar and to avoid any confusion about which rules apply, the Committee agreed that Rule 114 should be amended to make it clear that the Rule 114 service provisions do not apply to service of the notice of the preliminary hearing.

2. *Notice of Consequences of Failing to Appear for Preliminary Hearing: Rule 540 (Preliminary Arraignment)*

With the development of this proposal and the significant consequences that will result for failing to appear without cause at the preliminary hearing, the Committee agreed it is imperative that the rules require some form of notice to the defendant of the consequences of his or her failure to appear for the preliminary hearing. Accordingly, Rule 540(F)(2)(b) has been added, requiring the following information be given to the defendant:

> failure to appear without cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and the issuance of a warrant of arrest.

3. *Notice of Continuance: Rule 542(D) (Preliminary Hearing; Continuances)*

Another notice issue arises when a preliminary hearing is continued. Under present Rule 542(E), there is no provision for notice of the new date and time set for the preliminary hearing to be given to the parties, a procedural gap the Committee agreed should be filled. To accomplish this, Rule 542(D)(2) has been added requiring the issuing authority to give written notice of the new date and time to the defendant, defendant's attorney of record, if any, and to the attorney for the Commonwealth. Under the new provisions, service on the defendant may be accomplished either in person or by both first class mail and certified mail, return receipt requested. See paragraph (D)(2)(b). Paragraph (D)(2)(c) provides for service on the defendant's attorney and on the attorney for the Commonwealth either by personal delivery or by leaving a copy for or mailing a copy to the attorney at the attorney's office.

The Rule 542 Comment ties this rule with the Rule 511(B) service requirements, and explains that, when the notice of the continuance is mailed to the defendant, proof of service by mail must include (1) a return receipt signed by the defendant, or (2) if the certified mail is returned for whatever reason, the returned notice with the notation that the certified mail was undelivered and evidence that the first class mailing of the summons was not returned to the issuing authority within fifteen days after mailing.

C. *Other Correlative and "Housekeeping" Amendments*

1. *Rule 103 (Definitions)*

During our discussions about the rules in this proposal, the Committee considered whether there is a need to more clearly distinguish between the preliminary arraignment and the arraignment. The Committee noted the term "arraignment" seems to be used interchangeably for both the preliminary arraignment before the issuing authority and the arraignment in the court of common pleas, and that this tends to create confusion. Rule 103 has been amended with the inclusion of definitions of "preliminary arraignment" and "arraignment." In addition, the Rule 571 Comment has been revised by deleting "formal" before arraignment and emphasizing the purpose of the arraignment.

2. *Rule 509 (Use of Summons or Warrant of Arrest in Court Cases)*

The Comment to Rule 509 (General Rule: Use of Summons or Warrant of Arrest in Court Cases) has been revised by the addition of a provision clarifying that before a warrant may be issued when a summons has been returned undelivered, the summons must have been served as provided in Rule 511(A), and both the first class and certified mail must have been returned undelivered.

3. *Rule 512 (Procedure in Court Cases Following Issuance of Summons)*

Rule 512 has been amended in two ways: (1) "on the date and" has been added before "at the time" and (2) a cross-reference to Rule 543(D) has been added. Some minor "housekeeping" changes also were made.

4. *Rule 547 (Return of Transcript and Original Papers)*

A few "housekeeping" changes to Rule 547 and the Comment have been made to draw attention to the fact that there are rules, other than Rules 135 and 543, that require that certain information be included in the transcript to make a record of the proceedings before the district justice.

5. *Rules 560 (Information: Filing, Contents, Function) and 565 (Presentation of Information without Preliminary Hearing)*

In developing the new preliminary hearing waiver procedures, the members expressed concern that the application of Rules 560 and 565 to the new procedure for proceeding with the preliminary hearing in the defendant's absence might be confusing. Agreeing a purpose of the new FTA procedure is that a case that is bound over following a preliminary hearing in a defendant's absence is to be treated in the same manner as any other case that is bound over for court, the Committee concluded the Comments to Rules 560 and 565 should be revised. The Comments now include a brief explanation that the attorney for the Commonwealth should prepare the information and proceed in the same manner with these cases as with any other case that is held for court.

6. *Bail*

Another issue of concern for the Committee related to the interplay between the FTA procedures in Rule 543 (Disposition of Case at Preliminary Hearing), Rule 529 (Modification of Bail Order Prior to Verdict), which prohibits a district justice from modifying bail after bail has been modified by a common pleas judge, and Rule 536 (Procedures upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety), which permits the bail authority to change the conditions of release when a person violates a condition of the bail bond. The Committee questioned whether, in a case in which a common pleas judge has modified bail while the case is pending with the district justice, and subsequently the defendant fails to appear for a preliminary hearing and the district justice issues a warrant, the district justice would be authorized to modify the bail pursuant to Rule 536 when the defendant is arrested on the warrant? After reviewing the Committee's rule history, the members concluded that Rule 529 "trumps" Rule 536: once a common pleas judge modifies bail, only the common pleas judge subsequently may modify bail, even in cases that still are pending before the district justice. In the failure to appear warrant context, once the defendant is apprehended, the decision to change the conditions of bail would have to be made by the common pleas judge, although pursuant to Rule 536(A)(1)(d), the district justice would be authorized to hold the defendant pending this decision.

The Committee noted that, although this scenario will not occur frequently, the issue is one that could create confusion. Accordingly, the Rule 543 Comment has been revised to cross-reference Rules 529 and 536, and the revisions to the Comments to Rules 529 and 536 explain the interplay between the two rules: once bail has been set by a common pleas judge pursuant to Rule 529, as provided in Rule 536(A), only the common pleas judge may change the conditions of release even when the case is pending before a district justice.

D. *Cases in the Philadelphia Municipal Court*

As the Committee worked on the new procedures for handling cases in which the defendant fails to appear for the preliminary hearing, we also considered whether comparable changes should be made in Chapter 10 concerning the procedures in Philadelphia Municipal Court. Although the functioning of the Municipal Court differs in a number of ways from magisterial district courts, the members agreed there is no reason why FTAs for preliminary hearings in Municipal Court should not be handled procedurally in the same manner as FTAs elsewhere in the Commonwealth. Accordingly, Rule 1003 (Procedure in Non-Summary Cases in Municipal Court) has been amended to make it clear the procedures in Municipal Court for both preliminary hearings and cases in which the defendant fails to appear for the preliminary hearing are the same as the procedures in the other judicial districts. A new paragraph (E) has been added that directs that the preliminary hearing in Municipal Court be conducted as provided in Rules 542 and 543.

In reviewing the Municipal Court rules, the Committee noted that the current definition of "Municipal Court case" in Rule 1001 (Disposition of Criminal Cases—Philadelphia Municipal Court), "any misdemeanor under the Crimes Code or other statutory criminal offense for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than five (5) years, including any offense under the Motor Vehicle laws other than a summary offense," appears to limit the scope of Chapter 10. To ensure that there is no confusion about the application of the Chapter 10 rules to not only Municipal Court cases, but also to the preliminary procedures in cases charging felonies, including preliminary arraignments and preliminary hearings, Rules 1000, 1001, and 1003 have been amended by a number of clarifying and conforming changes addressing these issues.

[Pa.B. Doc. No. 04-1683. Filed for public inspection September 10, 2004, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SOMERSET COUNTY

Consolidated Rules of Court; No. 50 Misc. 2004

Adopting Order

Now, this 19th day of August, 2004, it is hereby *Ordered*:

1. Somerset County Orphans' Court Rule 6.3.1, subparagraph (e) (Som.O.C.R. 6.3.1(e)), Notice To Parties In Interest, is amended to read as follows, effective thirty days after publication in the *Pennsylvania Bulletin*:

> (e) The Clerk shall give notice of all accounts filed and of the time and place of the call of the confirmation list. The notice shall be published once a week for two consecutive weeks immediately before the day on which the Accounts, with accompanying Statement Of Proposed Distribution, shall be presented for confirmation, in the legal publication designated by local rule and in one newspaper of general circulation

published within Somerset County, and the Clerk shall also post copies of the confirmation list in the Clerk's office.

2. The Somerset County Court Administrator is directed to:

A. File seven (7) certified copies of this Order and the attached Rule with the Administrative Office of Pennsylvania Courts.

B. Distribute two (2) certified copies of this Order and the following Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the attached Rule with the Pennsylvania Orphans' Court Rules Committee.

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court

EUGENE E. FIKE, II,
President Judge

RULES OF COURT
SOMERSET COUNTY ORPHANS' COURT RULES

Som. O.C.R. 6.3.1. Notice To Parties In Interest.

(a) Notice of the filing and of the date and time for confirmation as required by law and Rule of Court shall be given by certified or registered mail, return receipt requested, at least ten days prior to the confirmation date. In lieu of such notice, a written waiver of notice may be filed for any party. The notice shall state that any party may file objections in writing with the Clerk of the Orphans' Court at any time prior to the date and time fixed for confirmation, and that if no objection is filed, the Account and Statement of Proposed Distribution will be confirmed absolutely.

(b) In addition to notices otherwise required by law or statute, the surety on the bond of any fiduciary seeking discharge shall be given written notice of the filing of the petition and of the date and time for presentation for Final Decree, by certified or registered mail, return receipt requested, at least ten days prior to the date scheduled for discharge. In lieu of such notice, a written waiver of notice may be filed. The notice shall state that the surety may file objections in writing with the Clerk of the Orphans' Court at any time prior to the time fixed for Final Decree, and that if no objection is filed, a Final Decree shall be made as of course.

(c) Prior to the date for the call of the account for confirmation, the accountant, or counsel, shall file with the Court a return of notice as prescribed in Rule 5.4.1. hereof, in form approved by the Court.

(d) If it shall appear that timely and proper notice has not been given to all parties entitled to notice or that the requisite affidavit of notice has not been filed, or that all costs have not been paid, no order of confirmation or discharge will then be made and in lieu thereof the procedure shall be as follows:

(1) If the irregularity is remedied within twenty (20) days, the Clerk shall represent the matter to the Motions Judge in Chambers for confirmation or discharge order, provided at least ten (10) days have elapsed after notice was given to any party and provided that no objection, exception or answer has been filed meanwhile. If any such objection, exception or answer has been filed, the provisions of Rule 6.4.1.(b) shall apply.

(2) If the irregularity has not been so remedied within twenty (20) days, the time for confirmation or for discharge order shall be as of course extended until the next regular scheduled session for confirmation and discharge, and re-advertisement and re-notification of all parties shall be required, unless the fiduciary makes written application to the Court and obtains special relief for cause shown.

(3) In any case now pending or hereafter arising in which an account, statement of proposed distribution, or discharge petition has been filed but remains unconfirmed for unremedied procedural defect, the Clerk may file a petition with the Court stating the essential facts and requesting issuance of a rule to show cause why an order denying confirmation or dismissing the discharge petition should not be made. A copy of such petition shall be furnished by mail to the fiduciary and his or her counsel, and to each party entitled to receive notice and the case shall be placed on the argument schedule for hearing and argument sec reg.

(e) The Clerk shall give notice of all accounts filed and of the time and place of the call of the confirmation list. The notice shall be published once a week for two consecutive weeks immediately before the day on which the Accounts, with accompanying Statement Of Proposed Distribution, shall be presented for confirmation, in the legal publication designated by local rule and in one newspaper of general circulation published within Somerset County, and the Clerk shall also post copies of the confirmation list in the Clerk's office.

(f) The form of advertisement of Accounts and Statements of Proposed Distribution that have been filed for confirmation by the Court shall be as follows:

NOTICE OF CONFIRMATION OF FIDUCIARIES ACCOUNTS.

To all claimants, beneficiaries, heirs, next-of-kin, and all other parties in interest:

NOTICE is hereby given that the following named fiduciaries of the respective estates designated below have filed their Accounts and Statements of Proposed Distribution in the office of the Register of Wills in and for the County of Somerset, Pennsylvania, and the same will be presented to the Orphans' Court Division, Courtroom No. _____, Somerset County Courthouse, Somerset, Pennsylvania, on _____, the _____ day of _____, 19 _____ at _____ .m., for confirmation. All objections must be filed in writing in the office of the Clerk of Orphans' Court Division, Court of Common Pleas, Somerset, Pennsylvania, prior to the foregoing stated date and time:

ESTATE	FIDUCIARY	ATTORNEY
X	X	X

_____
Clerk of the Orphans' Court

[Pa.B. Doc. No. 04-1684. Filed for public inspection September 10, 2004, 9:00 a.m.]

VENANGO COUNTY

Promulgation of Local Rules 211.1, 211.2, 211.3, 212.1, 212.2 and 212.3; Civ. No. 1090-2004

Order of the Court

And Now, this 25th day of August, 2004, we hereby order that Venango County Local Rules 211.1, 211.2, 211.3, 212.1, 212.3 are adopted. These rules shall be continuously available for public inspection and copying in the office of the prothonotary. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary shall furnish to any person a copy of any local rule. The said local rules shall become effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

By the Court

H. WILLIAM WHITE,
President Judge

Rule 211.1. Argument Court. Praecipe for Argument. When Held.

(a) Whenever a matter at issue involves a question of law only and no evidentiary hearing is required for determination thereof, any party or counsel desiring to submit such matter to the court may file a praecipe for argument.

(b) Argument Court shall be held on the dates scheduled on the court calendar, which is approximately once a month, or as otherwise ordered by the court.

(c) Cases for argument shall be placed on the argument docket at least thirty (30) days prior to argument court.

Rule 211.2. Argument Court. Filing and Content of Briefs.

(a) The moving party shall file a brief with the Prothonotary, which shall be docketed, simultaneously with the filing of the praecipe for argument. If the moving party has not filed a praecipe for argument, the brief of the moving party shall be due fourteen (14) days after any of the responding parties have filed a praecipe for argument.

(b) A responding party's reply brief shall be filed with the Prothonotary and docketed within seven (7) days of the filing of the moving party's brief.

(c) All briefs must include:

(1) A procedural summary, which includes an analysis as to why the issue is before the court;

(2) A synopsis of the relevant facts with reference to where they appear in the record;

(3) A statement of questions involved;

(4) A summary of pertinent law; and

(5) An analysis of the party's position.

Rule 211.3. Argument Court. Failure to File a Brief. Late Briefs.

(a) If the moving party has failed to file a brief or where the motion does not raise complex legal and/or factual issues, the moving party has failed to include a statement of applicable authority in the body of the motion, the motion shall, in the discretion of the judge, be dismissed or not considered.

(b) If any party's brief is not timely filed, the court will sanction, which shall include:

(1) The party being barred from oral argument; and

(2) Such other sanctions as the court deems appropriate.

Rule 212.1. Civil Actions to be Tried by Jury. Listing for Trial. Time for Filing Pre-Trial Statement.

(a) The parties can list a case for trial by filing a praecipe with the Prothonotary. A case may be placed on the trial list after it is at issue and there are no unresolved motions before the court.

(b) The court calendar shall list civil pre-trial conference days. All cases listed for trial shall be scheduled for the next pre-trial conference day. The court calendar shall also recite when the argument list and trial list closes.

(c) Pre-trial statements shall be filed no later than seven (7) days before the pre-trial conference.

Rule 212.2. Civil Actions to be Tried by Jury. Pre-Trial Statement. Content.

(a) In addition to the requirements of Pa.R.C.P. 212.2, a pre-trial statement shall contain:

(1) A statement of the status of discovery, which shall include whether any further discovery is required and a proposed schedule for completing discovery;

(2) A statement of the status of the scheduling of an independent medical examination;

(3) A statement of the status of any depositions for use at trial;

(4) A statement of novel questions of law, including whether any motions in limine will be filed; and

(5) A statement of damages with a detailed analysis of the claim, including the manner of calculating damages.

Rule 212.3. Pre-Trial Conference.

(a) Trial counsel must be present at the pre-trial conference unless:

(1) Trial counsel is at trial in another court; or

(2) Trial counsel otherwise has the court's permission and substitute counsel attends (in all cases, substitute counsel will be thoroughly familiar with the case and prepared to discuss and resolve all outstanding issues).

(b) The parties are not required to appear at the pre-trial conference but may appear. At the very least, the parties must be available by telephone. If the parties are not present, counsel shall be fully vested with settlement authority. Where settlement authority is coming from an insurance company, a company representative with settlement authority shall attend or be available by telephone.

(c) The court shall establish a trial date, taking into consideration the requests of all parties and their counsel. Once the trial date is set at the pre-trial conference, it shall be firm.

(d) The court shall discuss trial alternatives such as a summary trial. This court intends to use a summary trial for any jury trial that is expected to last more than three (3) days.

(e) The court shall determine whether to regulate further discovery.

(f) In jury trials, the court shall discuss settlement. In non-jury trials, the court shall discuss settlement only with the consent of all parties.

(g) The court shall dictate an order in the presence of counsel that:

(1) Memorializes all material matters discussed at the conference;

(2) Schedules trial;

(3) Addresses further discovery;

(4) Discusses pending trial depositions;

(5) Addresses motions in limine;

(6) Addresses voir dire questions;

(7) Places responsibility for the preparation and delivery of verdict slips, proposed findings, trial briefs, and requested points for charge; and

(8) Directs counsel to have all exhibits pre-marked—plaintiffs/numbers, defendants/letters—and available for inspection at jury selection.

[Pa.B. Doc. No. 04-1685. Filed for public inspection September 10, 2004, 9:00 a.m.]