

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

### Proposed Amendments to Pa.R.Crim.P. 107

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 107 (Contents of Subpoena) to clarify the procedures for issuance of subpoenas by the judges of the courts of common pleas, the Philadelphia Municipal Court, and the minor judiciary. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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 explanatory Reports.

The text of the proposed amendments precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel  
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no later than Friday, April 8, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,  
*Chair*

### 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 107. Issuance of Subpoena; Contents of Subpoena.

##### (A) Court of Common Pleas

(1) Upon the request of a party, the clerk of courts shall issue a subpoena. The subpoena shall be signed and under the seal of the court, but otherwise blank. The party requesting the subpoena shall fill in the contents of the subpoena required in paragraph (C) before the subpoena is served.

(2) The subpoena shall be served in the same manner as notices are served on parties pursuant to Rule 576(B)(2).

##### (B) Minor Judiciary

(1) Upon the request of an attorney for the Commonwealth or the attorney for the defendant, the issuing authority shall issue a subpoena. The subpoena shall be signed and under the seal of the issuing authority, but otherwise blank. The attorney requesting the subpoena shall fill in the contents of the subpoena required in paragraph (C) before the subpoena is served.

(2) Upon the request of a defendant proceeding pro se, a law enforcement officer, or a private criminal complainant, the issuing authority may issue a subpoena.

(a) The individual requesting the subpoena shall provide the issuing authority with the information required in paragraph (C).

(b) If the subpoena is to be issued, the issuing authority shall fill in the information provided.

(c) The subpoena shall be signed and under the seal of the issuing authority.

(3) The subpoena shall be served in the same manner as a subpoena in a civil matter pursuant to Pa. R.C.P.D.J. No. 214(C) (Subpoena; Issuance; Service).

##### (C) Contents of Subpoena

A subpoena in a criminal case shall:

(1) order the witness named to appear before the court or issuing authority at the date, time, and place specified, and to bring any items identified or described [ The subpoena shall also ];

(2) state on whose behalf the witness is being ordered to testify; and

(3) state the identity, address, and phone number of the attorney, if any, who applied for the subpoena.

##### Comment

[ The form of subpoena was deleted in 1985 because it is no longer necessary to control the specific form of subpoena by rule. ]

The subpoenas issued by the judges of the Philadelphia Municipal Court should be issued pursuant to paragraph (A).

It is intended that the subpoena [ shall ] will be used not only for [ trial ] summary trials or trials in the courts of common pleas and the Philadelphia Municipal Court, but also for any other stage of the proceedings before the minor judiciary, Philadelphia Municipal Court, or common pleas court when a subpoena is issuable, including preliminary hearings, hearings in connection with pretrial and post-trial motions, etc.

When the subpoena is for the production of documents, records, or things, these should be specified.

When issuing a subpoena pursuant to paragraph (B)(2), the issuing authority may limit the scope of the subpoena to persons, documents, or things that are relevant to the cause of action before the issuing authority.

**All subpoenas must be signed by a judge of the court issuing the subpoena. The signature may be in any of the forms of signature authorized in the Rule 103 definition of signature.**

**See 42 Pa.C.S. § 1725.1 concerning costs to be charged by the minor judiciary.**

**Official Note:** Previous Rule 9016 adopted January 28, 1983, effective July 1, 1983; rescinded November 9, 1984, effective January 2, 1985. Present Rule 9016 adopted November 9, 1984, effective January 2, 1985; renumbered Rule 107 and amended March 1, 2000, effective April 1, 2001; **amended** , **2005, effective** , **2005.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed changes concerning issuance of subpoenas published at 35 Pa.B. 1557 (March 5, 2005).**

## REPORT

### *Proposed Amendments to Pa.R.Crim.P. 107*

#### **Procedures for Issuance and Service of Subpoena**

The changes to Rule of Criminal Procedure 107 being proposed by the Criminal Procedural Rules Committee were developed at the request of the Supreme Court. In correspondence from Chief Justice Cappy, the Committee was instructed to work in conjunction with the Minor Court Procedural Rules Committee to "study the question of whether District Justices may issue subpoenas in blank."<sup>1</sup> To accomplish this directive, a joint subcommittee of the Minor Court Rules Committee and Criminal Rules Committee was formed to assist the two Committees in addressing the issue of blank subpoenas. The Joint Subcommittee's recommendations have been approved for publication by both Committees.

#### *I. Background*

The Joint Subcommittee reviewed the Rules of Criminal Procedure (Criminal Rules), the Rules of Civil Procedure (Civil Rules), and the Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges (MDJ Rules). The only Criminal Rule that addresses subpoenas is Rule 107 (Contents of Subpoena). Rule 107 only sets forth the mandatory contents of a subpoena, and provides no guidance concerning the issuance of subpoenas in blank. Paragraph (a) of Civil Rule 234.2 (Subpoena. Issuance. Service. Compliance. Fees. Prisoners) provides that the prothonotary issue a subpoena in blank when requested by a party.<sup>2</sup> MDJ Rules 213 (Subpoena to Attend and Testify) and 214 (Subpoena; Issuance; Service) specify the information to be contained in the subpoena, including the name and service address of the person being subpoenaed; the date, time, and place at which the person is to appear; and a description of any documents or things the person is to produce. This information must be contained in the subpoena at the time of issuance. The official Note to Rule 214 specifically provides that magisterial district judges may not issue subpoenas in blank. The Joint Subcommittee also looked at the statutory provisions addressing subpoenas<sup>3</sup> and the case law, but did not find any provisions concerning the issue of blank subpoenas.

<sup>1</sup> See the November 12, 2003 Order in *In Re: District Justice Sandra L. Stevanus*, James B. Yelovich, Petitioner, No. 60 WM 2003.

<sup>2</sup> See also Civil Rules 234.1, 234.4, 234.5, and 234.6 for other procedures related to subpoenas in civil cases.

<sup>3</sup> See 42 Pa.C.S. §§ 5904 (Subpoena of Witnesses) and 5905 (Subpoenas).

The Joint Subcommittee discussed at length the pros and cons of the minor judiciary issuing subpoenas in blank, noting that (1) there are no statewide rules establishing pretrial motions practice in proceedings before the magisterial district judges; (2) there is no procedural mechanism to quash a subpoena in a magisterial district court; (3) many individuals who request subpoenas from the magisterial district judges are proceeding pro se; and (4) subpoenas always are issued in blank in the courts of common pleas. In view of these observations and the existing statewide procedures governing subpoenas in civil cases before the minor judiciary and the courts of common pleas, the Joint Subcommittee agreed that subpoenas in criminal cases should be issued in blank when the request for a subpoena is from an attorney. The members also agreed to continue the practice in common pleas court that all subpoenas are issued in blank, but in proceedings before the minor judiciary, when a defendant proceeding pro se, a law enforcement officer, or a private criminal complainant requests a subpoena, the procedures set forth in MDJ Rules 214 and 215 should be applied to criminal cases; the issuing authority should be given discretion whether to issue the subpoena, and the issuing authority must fill in the contents of the subpoena before issuing it to the defendant, law enforcement officer, or private complainant.

#### *II. Discussion of Proposed Rule Changes*

The Committee is proposing the following amendments to Criminal Rule 107. First, to retain the contents provisions and to clearly distinguish the procedures for the issuance of subpoenas by the common pleas court and the minor judiciary, Rule 107 will be divided into three sections: the procedures for issuing subpoenas in common pleas court are set forth in paragraph (A), the procedures for issuing subpoenas by the minor judiciary are set forth in paragraph (B), and the current requirements for the contents of a subpoena are set forth in paragraph (C).

Paragraph (A)(1) requires the clerk of courts to issue a subpoena upon the request of a party. The subpoena is to be signed by a judge and otherwise blank. The requesting party is required to fill in the contents of the subpoena set forth in paragraph (C) before serving the subpoena. Paragraph (A)(2) addresses service of the subpoena by cross-referencing Rule 576(B)(2), which sets forth the methods of service by the parties.

Paragraph (B) (1) requires the issuing authority to issue a subpoena in blank upon the request of an attorney for the Commonwealth or an attorney for the defendant. The remaining procedures in paragraph (B)(1) are the same as the procedures in paragraph (A)(1). When the request for a subpoena is by a defendant proceeding pro se, a law enforcement officer, or a private complainant, the issuing authority is given some discretion in paragraph (B)(2) comparable to the discretion given magisterial district judges in civil cases pursuant to MDJ Rule 214—the requesting individual must provide the information required by paragraph (C) for the contents of the subpoena, and the issuing authority is required to fill in the subpoena with this information. All subpoenas issued by a member of the minor judiciary must be signed by the issuing authority. Paragraph (B)(3) cross-references MDJ Rule 214(C) for the service requirements when a subpoena is issued by a member of the minor judiciary.

Paragraph (C), which sets forth the contents of the subpoena in current Rule 107, has been amended to make

it clear that the contents of the subpoena are the same whether the subpoena is issued pursuant to paragraph (A) or pursuant to paragraph (B).

The Rule 107 Comment has been revised to include an explanation that subpoenas issued by Philadelphia Municipal Court judges are to be issued as provided in paragraph (A). In addition, the Comment emphasizes that the subpoenas must be signed by a judge of the issuing court (common pleas court, Philadelphia Municipal Court, or magisterial district courts), and includes a cross-reference to the Criminal Rule 103 definition of "signature" to make it clear that the subpoena may be signed using any of the forms of signature set forth in Rule 103.

During its discussions of the procedures for issuing subpoenas, the Joint Subcommittee considered imposing a nominal fee for each subpoena issued by the minor judiciary either by rule or Court order to cover the cost of printing and mailing the subpoenas. Research did not uncover any statutory provisions specific to fees for subpoenas that would provide guidance. We did note that in 42 Pa.C.S. § 1725.1 (Costs), paragraph (c) (Unclassified costs or charges) provides:

the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows . . . (5) any other issuance not otherwise provided for in this subsection . . . \$13.50 [this amount is subject to change annually pursuant to subparagraph (f).]

We reasoned that issuing a subpoena could be interpreted as coming within the scope of subparagraph (c)(5), and if the cost is assessed, the number of frivolous subpoenas would be reduced. Accordingly, as a guide to the members of the bench and bar, a reference to this statutory provision has been added to the Comment.

[Pa.B. Doc. No. 05-411. Filed for public inspection March 4, 2005, 9:00 a.m.]

[234 PA. CODE CH. 5]

Proposed Amendments to Pa.Rs.Crim.P. 514 and 517

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 514 (Duplicate and Alias Warrants) and 517 (Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance). These rule changes eliminate the term "alias warrants" from the rules as archaic, and replace the term in Rule 514 with a provision for the reissuance of a warrant and in Rule 517 with a provision for the issuance of a bench warrant. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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 explanatory Reports.

The text of the proposed rule changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

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no later than Wednesday, April 6, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,  
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE  
CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(3). Arrest Procedures in Court Cases

(a) Arrest Warrants

Rule 514. Duplicate and [ Alias ] Reissued Warrants of Arrest.

\* \* \* \* \*

(B) After service and execution of an original or duplicate warrant, [ an alias warrant may be issued ] the issuing authority may reissue the warrant if the purpose for which the original or duplicate has been issued has not been accomplished.

Comment

\* \* \* \* \*

This rule originally used the term "alias warrant" to describe the reissuance of a warrant that has been served and executed but has not accomplished its original purpose. The term "alias warrant" is archaic and its meaning obscure, leading to potential confusion. With the 2005 amendments, the terminology of the rule has been simplified by deleting "alias warrant" and replacing it with "reissue," thereby retaining the underlying practice previously described by the term "alias warrant."

Official Note: Original Rule 113 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 113 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 121 September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 514 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended , 2005, effective , 2005.

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the \_\_\_\_\_, 2005 amendments eliminating "alias warrant" published with the Court's Order at 34 Pa.B. 1559 (March 5, 2005).

Rule 517. Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance.

\* \* \* \* \*

(E) When a defendant who has posted bail and been released from custody before preliminary arraignment thereafter fails to appear at the time fixed, the proper issuing authority in the judicial district where the warrant was issued shall forthwith cause the bail to be

forfeited according to law, and issue [ **an alias warrant of arrest** ] **issue a bench warrant**. If the defendant is thereafter arrested outside the judicial district where the [ **alias** ] **bench** warrant was issued, the defendant shall not be entitled to post bail in the judicial district where arrested, but shall be taken as soon as practicable to the judicial district where the [ **alias** ] **bench** warrant was issued for preliminary arraignment by the proper issuing authority.

\* \* \* \* \*  
**Comment**  
 \* \* \* \* \*

**Paragraph (E) originally used the term “alias warrant” to describe the type of warrant issued when a defendant is arrested outside the judicial district of issuance, is released on bond by a magisterial district judge in the judicial district of arrest conditioned on the defendant’s appearance at a preliminary arraignment in the judicial district of issuance, and then fails to appear. Because the term “alias warrant” is an archaic term that refers to the reissuance of a warrant when the original purpose of the warrant has not been achieved, and the warrant issued in paragraph (E) is issued for the failure to appear as contemplated by Rule 536(A)(1)(b), paragraph (E) was amended in 2005 by changing the terminology to “bench warrant.”**

**Official Note:** Original Rule 117 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 117 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 123 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; renumbered Rule 124 and amended August 9, 1994, effective January 1, 1995; amended December 27, 1994, effective April 1, 1995; renumbered Rule 517 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; **amended** , **2005**, **effective** , **2005**.

*Committee Explanatory Reports:*

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**Report explaining the \_\_\_\_\_, 2005 amendments eliminating the use of the term “alias warrant” published with the Court’s Order at 34 Pa.B. 1559 (March 5, 2005).**

**REPORT**

**Proposed Amendments to Pa.Rs.Crim.P. 514 and 517**

**Duplicate and Alias Warrants of Arrest**

The Criminal Procedural Rules Committee is considering recommending the elimination of the term “alias warrants” from Rules 514 (Duplicate and Alias Warrants) and 517 (Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance).

The term “alias” when used as an adjective to describe issued process such as a warrant, summons or writ, generally indicates process that is issued again after the first instrument has not been effective or resulted in action. This particular meaning is derived from the Latin phrase sicut alias praecipimus meaning “as we previously commanded.” Specifically in Rule 514, “alias warrant” describes the situation in which a duplicate of a warrant is issued after the original warrant is served and executed but has failed to achieve its original purpose.

The use of “alias warrant” in Rule 514 has not changed since the Court originally adopted the rule in 1964. From our research into the term, the Committee concluded the term is archaic and has fallen out of usage. The members also noted from their experience that the use of “alias warrant” in the rules is a source of confusion for members of the bench and bar. In view of these observations, the Committee evaluated the purpose of Rule 514(B) that provides:

After service and execution of an original or duplicate warrant, an alias warrant may be issued if the purpose for which the original or duplicate has been issued has not been accomplished, and concluded the circumstances contemplated by Rule 514 may be more simply defined as a “reissuance” of the original or duplicate warrant.

Accordingly, the Committee is proposing that Rule 514(B) be amended by deleting the term “alias warrant.” Instead, in those circumstances in which a warrant has been served or executed but the purpose of the warrant has not been accomplished, the rule would provide that the court may reissue the original warrant. The proposed amendment does not contemplate the need to file a new affidavit in such circumstances.

“Alias warrant” is used differently in Rule 517 than in Rule 514. Rule 517 describes the procedures for arrest warrants that are executed outside of the judicial district of issuance. The rule provides for an apprehended defendant to be brought before an issuing authority in the judicial district of arrest for the purpose of posting bail. The term “alias warrant” in Rule 517(E) describes the type of warrant that is issued when a defendant, subsequent to release on bail, fails to appear for preliminary arraignment in the judicial district of issuance.

Unlike the definition of “alias warrant” gleaned from historical references and provided in Rule 514, the original warrant in a Rule 517 context has been served and executed and the purpose for which the warrant originally had been issued was accomplished with the arrest of the defendant and the defendant’s appearance before an issuing authority. Rule 517 contemplates that a preliminary arraignment will be scheduled and that the release on bail at the initial appearance is conditioned on the defendant’s appearance. It is the failure to appear at the preliminary arraignment that triggers the issuance of the warrant. This situation is more akin to the issuance of a new warrant under Rule 536(A)(1)(b) for failure to appear.

The Committee reviewed the Rule 517 history and found that the use of the term “alias warrant” in Rule 517(E) has not changed since the rule’s inception in 1964. We did not uncover any reason for the use of this term in the context contemplated by Rule 517. In view of our research into both Rules 514 and 517, the Committee agreed Rule 517(E) should be amended by the deletion of the term “alias warrant,” and that “bench warrant” as described in Rule 536(A)(1)(b) should be used in place of “alias warrant.” This is a more accurate description and avoids the use of an archaic and obscure terminology.

The reasons for replacement of the term would be elaborated in the Comments to both Rules 514 and 517.

[Pa.B. Doc. No. 05-412. Filed for public inspection March 4, 2005, 9:00 a.m.]

# Title 246—MINOR COURT CIVIL RULES

## PART I. GENERAL

[246 PA. CODE CH. 200]

### Proposed Amendments to Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges<sup>1</sup> to provide, in certain circumstances, for the issuance of subpoenas in blank. The Committee has not submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Official Notes to the rules. The Supreme Court does not adopt the Committee's Official Notes or the contents of the explanatory reports.

The text of the proposed changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

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no later than Monday, May 2, 2005.

By the Minor Court Rules Committee

THOMAS E. MARTIN, Jr.,  
Chair

#### Annex A

### TITLE 246. MINOR COURT CIVIL RULES

#### PART I. GENERAL

#### CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

#### Rule 214. Subpoena; Issuance; Service.

A. [ District justices ] Magisterial District Judges may issue subpoenas throughout the Commonwealth.

B. (1) Upon the request of the attorney of record for a party, the magisterial district judge shall issue a subpoena.

(a) The subpoena shall be signed and under the seal of the magisterial district judge, but otherwise blank.

(b) The attorney requesting the subpoena shall fill in the contents of the subpoena required in subparagraph (3) before the subpoena is served.

<sup>1</sup> The title "district justice" was replaced by "magisterial district judge" effective January 29, 2005, in accordance with Act 207 of 2004 and Supreme Court of Pennsylvania Order No. 269, Judicial Administration Docket No. 1 (January 6, 2005).

(2) Upon the request of a party proceeding pro se, the [ district justice ] magisterial district judge may issue a subpoena [ signed and under the seal of the district justice. The district justice shall specify in the subpoena the name and address for service of the person subpoenaed; the date, time, and place at which the person is to appear; and a description of the documents or things that the person is to produce, if any ].

(a) The party requesting the subpoena shall provide the magisterial district judge with the information required in subparagraph (3).

(b) If the subpoena is to be issued, the magisterial district judge shall fill in the information provided.

(c) The subpoena shall be signed and under the seal of the magisterial district judge.

(3) A subpoena shall specify:

(a) The name and address for service of the person being subpoenaed.

(b) The name of the party on whose behalf the person is being ordered to testify.

(c) The name, address, and telephone number of the attorney, if any, who applied for the subpoena.

(d) The date, time, and place at which the person is to appear.

(e) A description of the documents or things that the person is to produce, if any.

\* \* \* \* \*

**Official Note:** See Rule 202 for definition of "subpoena." Compare Pa.R.C.P. Nos. 234.2 and 402(a) and Pa.R.Crim.P. 107.

[ The district justice ] When issuing a subpoena pursuant to subparagraph B(2) the magisterial district judge has discretion to limit the scope of [ subpoenas ] the subpoena to persons, documents, or things that are relevant to the cause of action before the [ district justice ] magisterial district judge.

[ District justices may not issue subpoenas in blank. ] See 42 Pa.C.S. § 1725.1 concerning costs to be charged by magisterial district courts.

#### REPORT

#### Proposed Amendments to Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

#### Issuance of Blank Subpoenas

##### I. Background

The Minor Court Rules Committee (the Committee) undertook a review of the rules relating to subpoenas, and specifically the issue of whether magisterial district judges may issue subpoenas in blank, at the direction of the Supreme Court of Pennsylvania. In *In Re: District Justice Sandra L. Stevanus*, No. 60 WM 2003, the Supreme Court was asked to issue a writ of mandamus directing Judge Stevanus to issue blank subpoenas to a defense attorney in a criminal case that was pending in her court. Judge Stevanus refused to issue the blank subpoenas, contending that the party requesting a subpoena must provide the magisterial district court with the information needed to complete the subpoena before the subpoena is issued. In its November 12, 2003 order

denying the petition for writ of mandamus, the Supreme Court ordered that “[t]he Criminal Rules Committee, in consultation with the Minor Rules Committee, is hereby directed to study the question of whether District Justices may issue subpoenas in blank.”

Upon review of the relevant issues and authorities, and after consultation with the Criminal Procedural Rules Committee (CPRC), the Committee is proposing that Rule 214 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges be amended to expressly allow, in certain circumstances described below, the issuance of subpoenas in blank.<sup>1</sup>

## II. Discussion

Initially, the Committee had taken the position that magisterial district judges should not issue subpoenas in blank, at least in magisterial district court civil and landlord and tenant proceedings. The Committee noted that Pa. R.C.P.M.D.J. Nos. 213 and 214 were adopted by the Supreme Court September 3, 2003, effective January 1, 2004.<sup>2</sup> New Rule 214 specifies what information must be contained in the subpoena, including the name and service address of the person being subpoenaed; the date, time, and place at which the person is to appear; and a description of any documents or things the person is to produce. This procedure differs from the usual practice in the courts of common pleas in that the specified information must be contained in the subpoena at the time of issuance. To further reinforce this, the Official Note to Rule 214 makes clear that “[m]agisterial district judges may not issue subpoenas in blank.”<sup>3</sup> In drafting Rule 214, the Committee had thought it inadvisable that magisterial district judges issue subpoenas in blank because there is no pretrial motions practice in magisterial district court civil proceedings, and in particular, no procedural mechanism to quash a subpoena. Therefore, the Committee thought it important that, at the time of issuance, the magisterial district judge have “discretion to limit the scope of subpoenas to persons, documents, or things that are relevant to the cause of action before the magisterial district judge.”<sup>4</sup> The Committee’s concerns centered around potential abuses if pro se parties are permitted to prepare and issue subpoenas without the court having any knowledge of who or what is being subpoenaed. For example, there were concerns that pro se parties may attempt to subpoena persons or things that are totally irrelevant to the proceedings, or may request such a large number of documents so as to make compliance with the subpoena extremely burdensome.

The CPRC pointed out that in most criminal cases the concern about abuses by pro se litigants is less of an issue because there is a representative of the Commonwealth involved, and these individuals are less likely to abuse the subpoena process. For this and other reasons, the CPRC did not share the Committee’s concerns about blank subpoenas. Recognizing that the two committees had somewhat different positions on this issue, the two committees formed a joint subcommittee to address the Supreme Court’s directive.

When the joint subcommittee met, it became clear that the concerns about blank subpoenas in both civil and criminal cases centered almost exclusively around cases

where no attorney is involved. After considerable discussion, the joint subcommittee agreed to a compromise proposal that would require a magisterial district judge to issue a blank subpoena when requested by an attorney. In cases in which a pro se party or a law enforcement officer requests a subpoena, however, the magisterial district judge will retain discretion whether to issue the subpoena, and the judge will fill in the contents of the subpoena before issuing it to the requesting party.

The joint subcommittee and the full Committee believe this proposal will adequately safeguard against abuses in the subpoena process, and will give attorneys flexibility to issue subpoenas on behalf of their clients in a manner that is consistent with practice in the courts of common pleas.

## III. Proposed Rule Changes

To implement the solution discussed above, the Committee is proposing that Pa. R.C.P.M.D.J. No. 214 be amended to establish different procedures when a subpoena is requested by an attorney on behalf of a party, and when a subpoena is requested by a pro se party. Specifically, Rule 214B would be divided into three subparagraphs. Subparagraph B(1) would require the magisterial district judge to issue a blank subpoena when requested by the attorney of record for a party, and would make clear that the attorney is to fill in the contents of the subpoena before service. Subparagraph B(2) would provide the procedure for issuing a subpoena to a pro se party. This provision would give the magisterial district judge discretion to issue the subpoena, and would require the court to fill in the contents of the subpoena before issuance. Subparagraph B(3) would list the required contents of all subpoenas. Subdivisions A and C would not be amended under this proposal.

[Pa.B. Doc. No. 05-413. Filed for public inspection March 4, 2005, 9:00 a.m.]

# Title 25—LOCAL COURT RULES

## FRANKLIN AND FULTON COUNTIES

[Correction]

### Promulgation of Local Civil Action Rules 39-51, 206.1, 206.4, 208, 208.2, 208.4, 210, 1028(c), 1034(a) and 1035.2(a)

Errors occurred in the document adopting Rules 1034(a) and 1035.2(a) which appeared at 35 Pa.B. 1334, 1339—1341 (February 19, 2005).

The correct version of these rules is as follows:

### **Rule 1034(a). Motions for Judgment on the Pleadings; Disposition.**

1. (i.) *Argument Court Calendar.* Unless contradicted by other provisions of the rules, Motions for Judgment on the Pleadings shall follow the procedures set forth in Local Rule 206.4(c) and shall be disposed of as set forth in this rule. Except as otherwise provided by the Court, Arguments in the Franklin County Branch shall be held on the first Thursday of each month excluding August, except when that Thursday is a legal holiday, in which case the Argument shall be held on the next business day,

<sup>1</sup> This proposal is being published for public comment in conjunction with a proposal from the CPRC to make similar amendments to the Rules of Criminal Procedure.

<sup>2</sup> Recommendation No. 4 Minor Court Rules 2003, approved by Supreme Court of Pennsylvania Order No. 204, Magisterial Docket No. 1 (September 3, 2003), published along with the Committee’s explanatory Final Report at 33 Pa.B. 4663 (September 20, 2003).

<sup>3</sup> Pa. R.C.P.M.D.J. No. 214, Official Note. The Supreme Court of Pennsylvania does not adopt the contents of the Committee’s Official Notes to the rules.

<sup>4</sup> Id.

and in the Fulton County Branch Arguments shall be held on days as established by the annual Court calendar.

(ii.) *Listing and Briefing Cases.* Causes for Argument shall be listed in the Prothonotary's office in a docket to be provided for that purpose. Any party may list a cause by the filing of a Praeceptum directing the Prothonotary to list the cause for oral argument. The Praeceptum shall be accompanied by a Cover Sheet substantially in the form set forth in Exhibit A, attached.

A. *Responsibility of Party Requesting Relief.*

1. Within twenty (20) days of the placing of any matter on the list for argument, the party requesting relief shall file an original and one copy of a supporting brief together with any supporting documents.

2. The party requesting relief shall serve copies of its brief on all opposing parties together with a notice to file a responsive brief within twenty (20) days of service, and shall file proof of service of the notice.

3. Upon the failure of the party requesting relief to timely file and serve its brief, the Court may, sua sponte or upon petition of the opposing party, order the matter stricken from the argument list.

4. Rebuttal briefs may be filed only with the permission of the Court.

B. *Responsibility of the Opposing Party.*

1. Any party in opposition to the matter shall file an original and one copy of its responsive brief within twenty (20) days of service of the party requesting relief's brief. Concurrently, the opposing party shall serve copies of its brief on the party requesting relief and any other opposing parties.

2. If an opposing party fails to file and serve its brief within the time period required, the Court may consider such failure to be a waiver of opposition and shall sua sponte, or upon petition of the party requesting relief, either [a] grant the relief requested, so long as such action does not result in dismissal of the case; or [b] exclude the opposing party from oral argument.

C. *Scheduling Oral Argument.*

1. Any party may schedule a case for argument on the next scheduled argument court date by the filing of a

praeceptum with the Prothonotary on or before the Thursday which is four weeks preceding the day for argument, and further provided that the praepice scheduling the case for argument or submission certifies that all briefs have been filed or that the opposition brief has not been timely filed.

2. Any party scheduling a case for argument or submission shall give written notice thereof to all other parties within two (2) days, and shall certify such notice on the record. Failure to give such notice may be grounds for striking the case from the list.

(iii.) *Listing By Agreement.* The parties may agree in writing to add a cause to the Argument List at any time so long as service of briefs may be made in accordance with the time requirements of Section (ii.), supra. The Court may order a cause listed for Argument at the next scheduled Argument Court or on such other day as it may direct, and in that event, it may regulate the time for service of briefs.

(iv.) *Fact Determination.* When the ascertainment of facts is necessary for the proper disposition of a cause listed for Argument, such facts may be determined by deposition or as otherwise provided in the Pennsylvania Rules of Civil Procedure.

(v.) *Oral Argument.* The person seeking the Order applied for shall argue first, and may also argue in reply, if permitted by the Court, but such reply shall be limited to answering Arguments advanced by the respondent. In causes where there is more than one respondent, the order of Argument by the respondents shall be as directed by the Court.

(vi.) *Briefs.* Briefs shall conform to the requirements of 39th Jud. Dist. R.C.P. 210.

(vii.) *Disposition By Briefs Alone or Upon Oral Argument.* Oral argument may be dispensed with provided that there is agreement of the parties and approval of the Court. The Court reserves the right to require oral argument in any case.

(viii.) *Striking Cases From the List.* Cases may be continued or stricken from the argument list only pursuant to order of court. A party may request such an order of court by petition setting forth the basis for the request. Such petition must include certification regarding concurrence or non-concurrence of all other parties.

Case Name: _____
Docket No.: _____

**Cover Sheet, Oral Argument on Motions for Judgment on the Pleadings  
Local Rule 1034(a)**

(one copy to be filed by listing party; to be completed by Prothonotary, and transmitted along with the Briefs to the assigned Judge)

	<i>Date Filed</i>	<i>Rule Reference</i>
<b>Listing and Briefing of Cases</b>		
1. Any party files Praecipe to list cause for argument	_____	1034(a)(ii.)
2. Party requesting relief files two copies of brief [not later than twenty (20) days after listing matter for argument]	_____	034(a)(ii.)(A)(1)
3. Responding party files two copies of brief [not later than twenty (20) days after service of brief of party requesting relief]	_____	034(a)(ii.)(B)(1)
<b>Scheduling Oral Argument</b>		
4. Party requesting relief or Responding party may file a Praecipe to schedule the case for oral argument [not later than Thursday which is four weeks preceding the date for oral argument]	_____	034(a)(ii.)(C)(1)
Prothonotary shall check one:		
* all briefs have been filed		
* opposition brief has not been timely filed		
5. Party scheduling case for oral argument certifies having given notice to other parties that matter has been scheduled for oral argument [not later than two (2) days after filing praecipe to schedule the case for oral argument]	_____	1034(a)(ii.)(C)(2)
Argument has been scheduled to be held on: _____		

**Exhibit A to Local Rule 1034(a)**

(Revised 01-2005)



**Rule 1035.2(a). Motions for Summary Judgment; Disposition.**

(i.) *Argument Court Calendar.* Unless contradicted by other provisions of the rules, Motions for Summary Judgment shall follow the procedures set forth in Local Rule 206.4(c) and shall be disposed of as set forth in this rule. Except as otherwise provided by the Court, Arguments in the Franklin County Branch shall be held on the first Thursday of each month excluding August, except when that Thursday is a legal holiday, in which case the Argument shall be held on the next business day, and in the Fulton County Branch Arguments shall be held on days as established by the annual Court calendar.

(ii.) *Listing and Briefing Cases.* Summary judgment motions may be set down for disposition only after expiration of the thirty (30) days authorized by Pa.R.C.P. 1035.3(a) for the filing of a response to the motion. Causes for Argument shall be listed in the Prothonotary's office in a docket to be provided for that purpose. Any party may list a cause by the filing of a Praecept directing the Prothonotary to list the cause for oral argument. The Praecept shall be accompanied by a Cover Sheet substantially in the form set forth in Exhibit A, attached.

**A. Responsibility of Moving Party.**

1. Within twenty (20) days of the placing of any matter on the list for argument, the party requesting relief shall file an original and one copy of a supporting brief together with any affidavits, depositions, transcripts and other support supporting documents.

2. The party requesting relief shall serve copies of its brief on all opposing parties together with a notice to file a responsive brief within twenty (20) days of service, and shall file proof of service of the notice.

3. Upon the failure of the party requesting relief to timely file and serve its brief, the Court may, sua sponte or upon petition of the opposing party, order the matter stricken from the argument list.

4. Rebuttal briefs may be filed only with the permission of the Court.

**B. Responsibility of the Opposing Party.**

1. Any party in opposition to the matter shall file an original and one copy of its responsive brief within twenty (20) days of service of the party requesting relief's brief. Concurrently, the opposing party shall serve copies of its brief on the moving party and any other opposing parties.

2. If an opposing party fails to file and serve its brief within the time period required, the Court may consider such failure to be a waiver of opposition and shall sua

sponte, or upon petition of the party requesting relief, either [a] grant the relief requested, so long as such action does not result in dismissal of the case; or [b] exclude the opposing party from oral argument.

**C. Scheduling Oral Argument.**

1. Any party may schedule a case for argument on the next scheduled argument court date by the filing of a praecipe with the Prothonotary on or before the Thursday which is four weeks preceding the day for argument, and further provided that the praecipe scheduling the case for argument or submission certifies that all briefs have been filed or that the opposition brief has not been timely filed.

2. Any party scheduling a case for argument or submission shall give written notice thereof to all other parties within two (2) days, and shall certify such notice on the record. Failure to give such notice may be grounds for striking the case from the list.

(iii.) *Listing By Agreement.* The parties may agree in writing to add a cause to the Argument List at any time so long as service of briefs may be made in accordance with the time requirements of Section (ii.), supra. The Court may order a cause listed for Argument at the next scheduled Argument Court or on such other day as it may direct, and in that event, it may regulate the time for service of briefs.

(iv.) *Fact Determination.* When the ascertainment of facts is necessary for the proper disposition of a cause listed for Argument, such facts may be determined by deposition or as otherwise provided in the Pennsylvania Rules of Civil Procedure.

(v.) *Oral Argument.* The person seeking the Order applied for shall argue first, and may also argue in reply, if permitted by the Court, but such reply shall be limited to answering Arguments advanced by the respondent. In causes where there is more than one respondent, the order of Argument by the respondents shall be as directed by the Court.

(vi.) *Briefs.* Briefs shall conform to the requirements of 39th Jud. Dist. R.C.P. 210.

(vii.) *Disposition By Briefs Alone or Upon Oral Argument.* Oral argument may be dispensed with provided that there is agreement of the parties and approval of the Court. The Court reserves the right to require oral argument in any case.

(viii.) *Striking Cases From the List.* Cases may be continued or stricken from the argument list only pursuant to order of court. A party may request such an order of court by petition setting forth the basis for the request. Such petition must include certification regarding concurrence or non-concurrence of all other parties.

Case Name: _____
Docket No.: _____

**Cover Sheet, Oral Argument on Summary Judgment Motions  
Local Rule 1035.2(a)**

(one copy to be filed by listing party; to be completed by Prothonotary, and transmitted along with the Briefs to the assigned Judge)

	<i>Date Filed</i>	<i>Rule Reference</i>
<b>Listing and Briefing of Cases</b>		
1. Any party files Praecipe to list cause for argument	_____	1035.2(a)(ii.)
2. Party requesting relief files two copies of brief [not later than twenty (20) days after listing matter for argument]	_____	1035.2(a)(ii.)(A)(1)
3. Responding party files two copies of brief [not later than twenty (20) days after service of brief of party requesting relief]	_____	1035.2(a)(ii.)(B)(1)
<b>Scheduling Oral Argument</b>		
4. Party requesting relief or Responding party may file a Praecipe to schedule the case for oral argument [not later than Thursday which is four weeks preceding the date for oral argument]	_____	1035.2(a)(ii.)(C)(1)
Prothonotary shall check one:		
* all briefs have been filed		
* opposition brief has not been timely filed		
5. Party scheduling case for oral argument certifies having given notice to other parties that matter has been scheduled for oral argument [not later than two (2) days after filing praecipe to schedule the case for oral argument]	_____	1035.2(a)(ii.)(C)(2)
Argument has been scheduled to be held on: _____		

**Exhibit A to Local Rule 1035.2(a)**

(Revised 01-2005)

[Pa.B. Doc. No. 05-317. Filed for public inspection February 18, 2005, 9:00 a.m.]

\_\_\_\_\_

**NORTHUMBERLAND COUNTY****Amendments to Local Rules of Civil Procedure;  
Misc. Doc. No. CV-86-1958****Order**

*And Now*, this 16th day of February, 2005, it is hereby *Ordered* that the following Northumberland County Local Rules of Civil Procedure are hereby *Rescinded*:

Rule NCV-206 and Rule NCV-209

The aforesaid Rules are deleted effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further *Ordered* that the Court Administrator shall file seven (7) certified copies hereof with the Administrative Office of Pennsylvania Courts, two (2) copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Rules Committee and one (1) copy to the *Northumberland County Legal Journal* for publication in the *Northumberland County Legal Journal*.

It is further *Ordered* that this amendment shall be kept continuously available for public inspection and copying in the Prothonotary's office.

*By the Court*

ROBERT B. SACAVAGE,  
*President Judge*

[Pa.B. Doc. No. 05-414. Filed for public inspection March 4, 2005, 9:00 a.m.]

**SOMERSET COUNTY****Consolidated Rules of Court; No. 15 Misc. 2005****Adopting Order**

*Now*, this 4th day of February, 2005, it is hereby *Ordered*:

1. Somerset County Rule of Criminal Procedure 530 (Som.R.Crim.P. 530), Designation Of Bail Agency, copy of which follows, is adopted, effective 30 days after publication in the *Pennsylvania Bulletin*.

2. The Somerset County Court Administrator is directed to:

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

B. Distribute two (2) certified copies of this Order and the following Rule, along with a diskette or CD, to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the following Rule with the Pennsylvania Criminal Procedural 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*

**Som. R.Crim.P. 530. Designation of Bail Agency.**

A. The Court hereby designates and appoints the Somerset County Adult Probation Department to have the duties and powers of a bail agency for the 16th Judicial District, as provided for in Pa.R.Crim.P. 530.

B. The bail agency shall have all of the duties and powers specified in Pa.R.Crim.P. 530, including the authority to supervise persons released on bail pursuant to conditions established by the bail agency and approved by the Court and the authority to detain defendants and to commit to jail for violation of bail conditions, subject to prompt prosecution of bail revocation proceedings before the bail authority.

[Pa.B. Doc. No. 05-415. Filed for public inspection March 4, 2005, 9:00 a.m.]

**SUPREME COURT****Accreditation of the National Elder Law Foundation as a Certifying Organization; No. 38 Disciplinary Rules; Doc. No. 1****Order**

*Per Curiam*:

*And Now*, this 26th day of January, 2005, upon consideration of the recommendation of the Pennsylvania Bar Association Review and Certifying Board, the National Elder Law Foundation is hereby accredited as a certifying organization in the area of elder law for a period of five calendar years.

[Pa.B. Doc. No. 05-416. Filed for public inspection March 4, 2005, 9:00 a.m.]