

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE OF LAW [204 PA. CODE CH. 71]

Amendment of Rule 402 of the Pennsylvania Bar Admission Rules; No. 363 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 30th day of March, 2005, Rule 402 of the Pennsylvania Bar Admission Rules is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Pennsylvania Rule of Judicial Administration No. 103 or otherwise, the immediate amendment of Pa.B.A.R. 402 is hereby found to be required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and shall be effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE OF LAW CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter D. MISCELLANEOUS PROVISIONS

Rule 402. Confidentiality.

(a) **General Rule.** Except as otherwise prescribed in these rules, the actions and records of the Board are **confidential** and shall not be **disclosed** or open to inspection by the public.

(b) **Permitted Disclosure.** The Board may, however [,]:

(1) publish a list of the names of applicants who successfully completed the bar examination administered by the Board [and may];

[(1)] (2) upon request from the dean of a law school, furnish the law school with the names of applicants from the law school who did not successfully complete the bar examination, provided the law school has agreed to only use such information internally within the law school and not to disclose the names of students who failed the bar examination to any person or organization outside of the law school [, and];

[(2)] (3) upon written request from a state or county bar association located within this commonwealth, furnish such bar association with the names and addresses of those applicants who have successfully completed the bar examination administered by the [board] Board and who have not objected to the release of such information, provided the bar association has agreed to only use such information for purposes of offering applicants membership in and services provided by or through the bar association [.];

(4) release information with respect to an applicant upon a written request from a bar admission authority in another jurisdiction, provided the admission authority agrees to use the information only for bar admission purposes and has a rule or policy that guarantees the confidentiality of bar admission materials and records to the same extent required by this rule;

(5) release information with respect to an applicant upon a written request from the Disciplinary Board of this Commonwealth or from a lawyer disciplinary authority in another jurisdiction, provided the disciplinary authority agrees to use the information only for attorney disciplinary matters and has a rule or policy that guarantees the confidentiality of its disciplinary materials and records to the same extent required by this rule;

(6) release information with respect to an applicant when necessary in defending litigation brought against the Court, the Board, its members or staff arising out of or related to the bar admission process;

(7) release a copy of the bar admission application submitted by an applicant upon receipt of a properly executed written authorization and release from the applicant;

(8) release information with respect to an applicant pursuant to a court order;

(9) release to the National Conference of Bar Examiners, the name and the date of birth of individuals who have applied to take the bar examination or be admitted to the bar of this Commonwealth; and

(10) publish the contents of responses submitted to a question on the bar examination by an applicant as a representative sample of a good answer, provided the identity of the applicant is not disclosed.

(c) **Limitation.** Nothing set forth in this rule shall prohibit the Board from refusing to provide information relating to an applicant, when the writer or provider of the information has requested that the information be kept confidential or when the Board deems it imprudent to disclose such information.

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[Pa.B. Doc. No. 05-691. Filed for public inspection April 15, 2005, 9:00 a.m.]

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Pennsylvania Rule of Disciplinary Enforcement 209; No. 40 Disciplinary Doc. No. 1

Order

Per Curiam:

And Now, this 1st day of April, 2005, it is ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that:

1. Rule 209 of the Pennsylvania Rules of Disciplinary Enforcement is amended as set forth in Annex A.

2. This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. To the extent that publication of a notice of proposed rulemaking would otherwise be required with respect to the amendments adopted by this Order, such publication is hereby found to be unnecessary because the immediate adoption of this Order is required in the interests of justice.

3. The amendments to the Pennsylvania Rules of Disciplinary Enforcement shall take effect upon publication of this Order in the *Pennsylvania Bulletin*.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 209. Immunity.

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(b) Complaints against members of the Board involving alleged violations of the Disciplinary Rules **or these rules** shall be [submitted directly to the Supreme Court] handled in the same manner as other complaints, except that if action is required by the Board the Secretary shall notify the Supreme Court which shall appoint an Ad Hoc Disciplinary Board comprised of five former members of the Board who shall discharge the functions of the Board and have all the powers of the Board with respect to that one matter only.

(c) Complaints against Disciplinary Counsel involving alleged violations of the Disciplinary Rules **or these rules** shall be submitted directly to the Board and assigned to a reviewing member of the Board for disposition.

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[Pa.B. Doc. No. 05-692. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. I]

Order Adopting Revision of Comment to Rule of Evidence 104; No. 362 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 29th day of March, 2005, upon the recommendation of the Committee on Rules of Evidence, this

proposal having been published before adoption at 34 Pa.B. 2689 (May 22, 2004) 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 the revision of comment is hereby amended as set forth in Annex A.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. 103(b), and shall be effective May 2, 2005.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 104. Preliminary Questions.

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Comment

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The second sentence of paragraph 104(c) is identical to the second sentence of F.R.E. 104(c). Paragraph 104(c) [indicates] says that hearings on other preliminary matters, both criminal and civil, shall be conducted outside the jury's presence when required by the interests of justice. Certainly, the court should conduct [the] a hearing outside the presence of the jury when the court believes that it is necessary to prevent the jury from hearing prejudicial information. [The right of an accused to have his or her testimony on a preliminary matter taken outside the presence of the jury does not appear to have been discussed in Pennsylvania law.]

In *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998), a case involving child witnesses, the Supreme Court created a per se error rule requiring competency hearings to be conducted outside the presence of the jury. In *Commonwealth v. Delbridge*, 855 A.2d 27 (Pa. 2003), the Supreme Court held that a competency hearing is the appropriate way to explore an allegation that the testimony of a child has been "impaired" or "tainted" by suggestive interview techniques, and that the burden is on a party alleging testimonial incompetency by reason of taint to prove it by clear and convincing evidence.

The right of an accused to have his or her testimony on a preliminary matter taken outside the presence of the jury, a right that the rule expressly recognizes, does not appear to have been discussed in prior Pennsylvania case law.

FINAL REPORT REVISING

**Revising Comment
Pa.R.E. 104**

COMMENT CHANGES

Some significant changes have occurred in the conduct of child competency hearings. The Comment of Pa.R.E. 104 has been revised to alert the Bench and Bar to these developments. In *Commonwealth v. Washington*, 722 A.2d 643 (Pa. 1998), the Supreme Court created a rule requiring that the competency hearing of a child witness be conducted outside the presence of the jury.

In *Commonwealth v. Delbridge*, 855 A.2d 27 (Pa. 2003), the Supreme Court held that a competency hearing is the appropriate way to explore allegations that the testimony of the child has been "impaired" or "tainted" by suggestive

interview techniques. In such a hearing, the burden is on a party alleging testimonial incompetency by reason of taint to prove it by clear and convincing evidence.

[Pa.B. Doc. No. 05-693. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 2, 4 AND 5]

Order Approving the Revision of the Comments to Rules 100, 200, 400, 430, 431, 455, 456, 520, and 565; No. 317 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the April 1, 2005 revisions to the Comments to Rules of Criminal Procedure 100, 200, 400, 430, 431, 455, 456, 520, and 565. These changes conform the Criminal Rules with the Rules of Juvenile Court Procedure and clarify the interplay between the two sets of rules. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 1st day of April, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice and efficient administration, 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 the revision of the Comments to Rules of Criminal Procedure 100, 200, 400, 430, 431, 455, 456, 520, and 565 are approved in the following form.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

Rule 100. Scope of Rules.

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Comment

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These rules apply to proceedings involving juveniles only to the extent that the Juvenile Act does not vest jurisdiction in the Juvenile Court, and as provided in the **Rules of Juvenile Court Procedure**. See, e.g., Juvenile Act [§§ 6302—6303, 6355], 42 Pa.C.S. §§ 6302—6303, 6355 [(1982)]; Vehicle Code, 75 Pa.C.S. § 6303 [(1977)], and **Rules of Juvenile Court Procedure 105 (Search Warrants), 395 (Procedure to Initiate Criminal Information), and 396 (Bail)**.

Official Note: Prior rule suspended effective May 1, 1970. Present Rule 1 adopted January 31, 1970, effective May 1, 1970; amended April 26, 1972, effective immediately; amended June 28, 1974, effective July 1, 1974;

amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 100 and amended March 1, 2000, effective April 1, 2001; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 200. Who May Issue.

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Comment

This rule formally authorizes [**district justices**] **magisterial district judges**, Philadelphia bail commissioners, and judges of the Municipal, Common Pleas, Commonwealth, Superior, and Supreme Courts to issue search warrants. This is not a departure from existing practice. See, e.g., Sections 1123(a)(5) and 1515(a)(4) of the Judicial Code, 42 Pa.C.S. §§ 1123(a)(5), 1515(a)(4). **See also the Rules of Juvenile Court Procedure, Rule 105 (Search Warrants)**. Any judicial officer who is authorized to issue a search warrant and who issues a warrant is considered an "issuing authority" for purposes of this rule. The authority of a [**district justice**] **magisterial district judge** to issue a search warrant outside of the magisterial district but within the judicial district is recognized in *Commonwealth v. Ryan*, 400 A.2d 1264 (Pa. 1979).

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Official Note: Prior Rules 2000 and 2001 were suspended by former Rule 323, effective February 3, 1969. Present Rule 2001 adopted March 28, 1973, effective 60 days hence; amended July 1, 1980, effective August 1, 1980; Comment revised September 3, 1993, effective January 1, 1994; renumbered Rule 200 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART A. Instituting Proceedings

Rule 400. Means of Instituting Proceedings In Summary Cases.

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Comment

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Summary cases are cases in which all the offenses charged are either summary offenses, as defined in the Crimes Code, 18 Pa.C.S. § 106(c), or violations of ordinances for which imprisonment may be imposed upon conviction or upon failure to pay a fine or penalty. See Rule 103. Criminal proceedings in summary cases are to be brought under this chapter of the rules. If one or more of the offenses charged is a misdemeanor, felony, or murder, the case is a court case (see Rule 103) and proceeds under Chapter 5 of the rules. Any summary offenses in such a case, if known at the time, must be charged in the same complaint as the higher offenses and must be disposed of as part of the court case. See Crimes Code § 110, 18 Pa.C.S. § 110, and *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974). But see *Commonwealth v. Beatty*, 455 A.2d 1194 (Pa. 1983); *Commonwealth v. Taylor*, 522 A.2d 37 (Pa. 1987); and *Commonwealth v. Kresge*, 464 A.2d 384 (Pa. Super. Ct. 1983) (no Section 110 violation when separate prosecutions involve offenses "not within the jurisdiction of a single court"). See also *Commonwealth v. Geyer*, 687 A.2d 815 (Pa. 1996) (Section 110 applies to separate prosecution of two summary offenses within the jurisdiction of a single court).

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The Rules of Criminal Procedure generally do not apply to juvenile proceedings [, but these rules]. But see the Rules of Juvenile Court Procedure 105 (Search Warrants) and 396 (Bail). The Criminal Rules do apply to proceedings in summary cases involving defendants under 18 years of age to the extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act, 42 Pa.C.S. §§ 6302, 6303, and 6326, Vehicle Code, 75 Pa.C.S. § 6303. See also 42 Pa.C.S. §§ 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

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Official Note: Previous Rule 51 adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001; Comment revised February 6, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court

Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Arrest Warrant.

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Comment

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If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (D) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to **the Rules of Juvenile Court Procedure and the Juvenile Act** instead of these rules.

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Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Rule 431. Procedure When Defendant Arrested With Warrant.

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Comment

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In cases in which a defendant who is under 18 years of age has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. See the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302. Following the certification, the case is to proceed pursuant to **the Rules of Juvenile Court Procedure and the Juvenile Act** instead of these rules.

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Official Note: Rule 76 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates

extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 15, 2005).

PART E. General Procedures in Summary Cases

Rule 455. Trial in Defendant's Absence.

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Comment

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If the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to **the Rules of Juvenile Court Procedure and the Juvenile Act** instead of these rules.

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Official Note: Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Rule 456. Default Procedures: Restitution, Fines, and Costs.

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Comment

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If the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and the defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to **the Rules of Juvenile Court Procedure and the Juvenile Act** instead of these rules.

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Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C. Bail

Rule 520. Bail Before Verdict.

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Comment

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See Pa.R.J.C.P. 396, which provides that, at the conclusion of a transfer hearing, the juvenile court judge is to determine bail pursuant to these bail rules for a juvenile whose case is ordered transferred to criminal proceedings.

See *Commonwealth v. Truesdale*, 296 A.2d 829 (Pa. 1972), concerning the bail authority's discretion to refuse bail under paragraph (A).

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Official Note: Former Rule 4001 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4002; amended January 28, 1983, effective July 1, 1983; Comment revised September 23, 1985, effective January 1, 1986; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 520. Present Rule 4001 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; Comment revised September 3, 1999, effective immediately; renumbered Rule 520 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

PART E. Informations

Rule 565. Presentation of Information Without Preliminary Hearing.

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Comment

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Under the Rules of Juvenile Court Procedure and 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 **Rules of Juvenile Court Procedure 394 and 395** and 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.

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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; **Comment revised April 1, 2005, effective October 1, 2005.**

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

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Final Report explaining the April 1, 2005 Comment revision concerning Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

FINAL REPORT¹

Revisions of the Comments to Pa.Rs.Crim.P. 100, 200, 400, 430, 431, 455, 456, 520, and 565

Changes Necessitated by the New Rules of Juvenile Court Procedure

On April 1, 2005, effective October 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revisions of the Comments to Pa.Rs.Crim.P. 100, 200, 400, 430, 431, 455, 456, 520, and 565.

Introduction

On April 1, 2005, the Court adopted the new Juvenile Court Procedural Rules ("Juvenile Rules"). Included in these new rules are Juvenile Rules 105 (Search Warrants) and 396 (Bail) that defer to the procedures in the Rules of

Criminal Procedure ("Criminal Rules") for search warrant procedures in all juvenile cases and for bail procedures in cases in which a transfer has been ordered. In addition, Juvenile Rule 395 (Procedure to Initiate Criminal Information) includes a cross-reference to the Criminal Rules in general and to Criminal Rule 565 specifically for the procedures following a transfer from Juvenile Court. In view of these new Juvenile Rules, the Committee concluded some minor correlative changes to the Criminal Rules are necessary to conform the Criminal Rules with the Juvenile Rules, clarify the interplay between the two sets of rules, and alert the bench and bar to the two specific "deferrals" to the Criminal Rules and to the cross-reference to the Criminal Rules.

Discussion

The Comments to both Criminal Rule 100 (Scope of Rules) and Criminal Rule 400 (Means of Instituting Proceedings in Summary Cases) currently include provisions that explain that the Criminal Rules only apply to proceedings involving juveniles to the extent that the Juvenile Act does not vest jurisdiction in the Juvenile Court.² With the adoption of the new Juvenile Rules, the Criminal Rules have been made applicable to search warrants in juvenile matters, Juvenile Rule 105, and to the setting of bail at the conclusion of a transfer hearing when transfer to criminal proceedings is ordered, Juvenile Rule 396. To accommodate this expansion, the Comments to Criminal Rules 100 and 400 have been revised to include references to Juvenile Rules 105 and 396. In addition, the Comments to Criminal Rules 200 (Who May Issue) and 520 (Bail Before Verdict) have been revised by the addition of cross-references to Juvenile Rules 105 and 396 respectively. These cross-references are important as additional flags to alert the bench and bar to the application of the Criminal Rules concerning search warrants and bail to proceedings under the Juvenile Rules.

Similarly, the Comment to Criminal Rule 565 (Presentation of Information without Preliminary Hearing) has been revised. Prior to this revision, the second paragraph of the Criminal Rule 565 Comment explained, *inter alia*, that the procedures for a transfer hearing under Section 6355 of the Juvenile Act, 42 Pa.C.S. § 6355, serve the same purpose as the preliminary hearing. New Juvenile Rule 394 (Transfer Hearing), which incorporates much of Section 6355, provides procedures comparable to the preliminary hearing. In addition, the Juvenile Rule 395 Comment makes specific reference to Criminal Rule 565 concerning bypassing the preliminary hearing in these cases when filing an information. The revision of the Criminal Rule 565 Comment adding a cross-reference to the Juvenile Rules to the existing cross-reference to the Juvenile Act makes it clear that both the Rules of Juvenile Court Procedure and the Juvenile Act provide the basis for the preliminary hearing bypass process in the Criminal Rules in transfer cases.

Finally, prior to these 2005 changes, the Comments to Rules 430 (Issuance of Arrest Warrant), 431 (Procedure When Defendant Arrested With Warrant), 455 (Trial in Defendant's Absence), 456 (Default Procedures: Restitution, Fines, and Costs) included the explanation that when a summary case involves a juvenile who has failed to comply with a sentence, the issuing authority is to certify the case to the Juvenile Court and the case is to "proceed pursuant to the Juvenile Act instead of these rules." These references to the Juvenile Act have been

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 These proceedings are summary case proceedings and the specific court case proceedings exempted by the Juvenile Act from the definition of "juvenile act," as well as any cases ordered transferred to criminal court.

revised to include a reference to the new Juvenile Rules, since the Juvenile Rules provide the procedures in Juvenile Court.

[Pa.B. Doc. No. 05-694. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1—6 AND 8]

Order Approving the Rules of Juvenile Court Procedure; No. 366 Superior Court Rules; Doc. No. 1

The Supreme Court of Pennsylvania has adopted the Rules of Juvenile Court Procedure. The Rules will secure uniformity and simplicity in procedure throughout juvenile courts in this Commonwealth.

The following explanatory Report highlights the history of the Committee, the process of rule-drafting, and the Committee's considerations in formulating the Rules of Juvenile Court Procedure. Please note that the Committee's 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 Explanatory Report.

The Juvenile Court Procedural Rules Committee has prepared an Explanatory Report explaining the adoption and promulgation of the Rules of Juvenile Court Procedure. The Explanatory Report follows the Court's Order.

Order

Per Curiam:

Now, this 1st day of April, 2005, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published before adoption at 33 Pa.B. 1581 (March 29, 2003), and a Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective October 1, 2005, with the exception of Chapter 1, Part D, Rules 185, 187, 190, 191, and 192, which shall be effective April 1, 2006.

EXPLANATORY REPORT

History of the Committee

The amendments to the Juvenile Act, 42 Pa.C.S. § 6301, et seq., passed during the 1995 Special Session on Crime and subsequent legislation changed the purpose of the juvenile court. The juvenile court as a result must balance: 1) the needs of the victim, 2) community safety and protection, and 3) the accountability of the juvenile. Because the Juvenile Act now provides for the "automatic" transfer to adult court for prosecution for serious offenses, open proceedings in juvenile court, the extension of juvenile pre-adjudicatory detention, and the Victim's Bill of Rights has been extended to juvenile proceedings, there was an imperative need for the creation and ongoing review of statewide rules of procedure to establish uniformity throughout the Commonwealth.

In response to these statutory changes and specifically the resulting need for procedural rules, the Supreme Court initiated the Juvenile Court Procedural Rules Project in 1998 to undertake a close analysis of national standards, statutory and case law, and local practice.

On the basis of the work completed by the Project and the need to begin the detailed and specialized work of drafting the necessary procedural rules, the Supreme Court of Pennsylvania established the Juvenile Court Procedural Rules Committee (hereinafter "Committee") on January 22, 2001. This nine-member advisory Committee to the Court, drawn from members of the bench and bar across Pennsylvania, was charged with the responsibility for conducting a formal review of procedural practice in juvenile court and with developing a comprehensive set of statewide rules for the Court's consideration.¹

On March 29, 2003, the Committee published its proposed recommendation for public comment.² After receiving comment, the Committee met to discuss the comments and issues raised. The Committee then revised its recommendation that it subsequently sent to the Court.

The following rules were adopted by the Supreme Court of Pennsylvania on April 1, 2005. The Rules will be effective October 1, 2005 with the exception of the Masters' Rules, Chapter One, Part D (Rules 185—192) which will be effective April 1, 2006.

Process of Rule-Drafting

The Committee surveyed local practices across this Commonwealth by speaking with judges, masters, law enforcement officials, juvenile probation officers, court administrators, district attorneys, public defenders, and private defense attorneys in every judicial district. The Committee also examined case law, the Juvenile Act, 42 Pa.C.S. § 6301, et seq., the Pennsylvania Rules of Criminal Procedure, the Juvenile Court Judges' Commission Juvenile Court Standards, and many other sources.

After examining these sources and local practices, the Committee debated and discussed every issue with great detail and thought. As a result of our discussions, the Committee has established a set of procedural rules that: 1) simplifies practice and procedure, 2) provides uniformity, and 3) reflects current practices of the majority of the judicial districts. These uniform rules will enable the statewide practice of law and create fairness in administration and disposition of juveniles.

The new rules also will create uniformity in terminology, which will additionally facilitate the statewide practice of law. For example, we have used the term "written allegation" to describe the document that is completed by a law enforcement officer when an act of delinquency is committed.³ When juvenile courts are automated, common language will be even more important.

The Rules Generally

The Committee has presented the rules in an order that tracks the juvenile system from beginning to end. Chapter One sets forth the general provisions and the provisions related to the business of the courts that apply throughout the juvenile court process. Chapter Two deals with the commencement of proceedings and the proce-

¹ The Court's responsibility for prescribing general rules governing practice and procedure, and the conduct of all courts and magisterial district judges is derived from PA. CONST. art. V § 10(c) and the Judicial Code, 42 Pa.C.S. § 1722.

² 33 Pa.B. 1581 (March 29, 2003).

³ This document has been commonly labeled "probable cause affidavit," "complaint," "police papers," "charge form," or "allegation of delinquency" and is already submitted in most judicial districts.

dures when a juvenile is arrested and detained in a detention facility. Chapter Three provides for the procedures on venue and jurisdiction, intake and informal adjustment, the filing of a petition, discovery, motions, summons and notices, consent decree, preservation of testimony and evidence, and transfer for criminal prosecution. Chapter Four sets forth the adjudicatory hearing procedures. Chapter Five provides for the procedures for the dispositional hearing. Finally, post-dispositional procedures, including modifications, reviews, and appeals are provided for in Chapter Six.

In these rules, the Committee has proposed several terms of general application. We use the term "juvenile" to describe a child in the juvenile court delinquency process. The Committee considered "child," "minor," "delinquent," and "juvenile" as appropriate terms. After careful thought and consideration, the Committee chose "juvenile," reasoning the intent is not to presume the person to be a delinquent or an innocent child, so the least controversial term is "juvenile." In fact, the name of the court is "juvenile court" and the probation officers are called "juvenile probation officers."

The Committee uses the term "attorney for the Commonwealth" instead of district attorney because occasionally, the Attorney General's office is involved in delinquency cases. When the Committee is referring to the elected District Attorney, we use the term "District Attorney," and when referring to the District Attorney's staff or the Attorney General's staff, we use the term "attorney for the Commonwealth."

The Committee uses the term "guardian" throughout the rules to describe "parent," "guardian," "custodian," "foster parent," "temporary guardian," or any other person having custody of the juvenile to simplify what we call the many individuals who serve as this interested adult.

Finally, there are some additional procedural areas the Committee believes may necessitate statewide procedural rules. We have reserved consideration of these areas for later discussion, and possible adoption and promulgation by the Supreme Court. Rules that may be developed at a later date include, for example, Rule 129 (Open Proceedings), Rule 384 (DNA Testing), Rule 520 (Transfer of Disposition and Supervision of Juvenile to Another State), Rule 521 (Disposition and Supervision of a Juvenile Received from Another State), Rule 616 (Post-Dispositional Procedures; Appeals), and Rule 617 (Release of Juvenile Pending Appeal).

The following discussion explains the rationale of the Committee when drafting the Rules, but does not discuss every rule because those rules not discussed have evident meaning or are explained sufficiently in the Comments.

CHAPTER ONE

The general provisions are Rules 100—105. Business of courts is covered in Part A, Rules 120—135. Part B addresses counsel, Rules 150—152. Records are covered in Part C, Rules 160—172. Part D addresses masters in Rules 185—192.

General Provisions

Rule 105—Search Warrants

After careful thought and consideration, the Committee concluded that police officers should follow the same procedure for obtaining and executing search warrants whether the person or place being searched relates to a case that may involve an adult or juvenile offender. To simplify this procedure and keep the standards uniform, and because law enforcement officers are familiar with

these procedures, the Committee has deferred to the Pennsylvania Rules of Criminal Procedure for the search warrant procedures.

Part A—Business of Courts

Rule 121—Local Rules

Rule 121 requires all local rules be vacated on October 1, 2005, the time this rule becomes effective, so the Court and Committee are able to regulate and monitor local rules to ensure the local rules are in compliance with the Pennsylvania Rules of Juvenile Court Procedure (Pa.R.J.C.P.), and to ensure that local practices do not inhibit the statewide practice of law. This does not mean all local rules have to be redrafted in their entirety. After reviewing their local rules for consistency and conformity with the new statewide rules, each judicial district may only need to repromulgate their rules after rekeying the rule numbers. See paragraph (B) & (C)(2) and Comment.

Paragraph (D) requires the adopting court to comply with provisions (1)—(5). Under paragraph (D)(4), the court is to file a copy with the Juvenile Court Procedural Rules Committee. The Committee's mailing address is: Juvenile Court Procedural Rules Committee, Supreme Court of Pennsylvania, 5035 Ritter Road, Suite 700, Mechanicsburg, PA 17055. The insertion of RE: Local Rules would be helpful to the Committee when sorting.

Rule 122—Continuances

The Committee discussed what happens with a summons when a case is continued, and concluded the summons does not have to be reissued if the party is notified of the date, place, and time of the rescheduled hearing. See paragraph (B) and Comment.

Rule 123—Subpoenas

This rule provides for the contents of the subpoena, service of the subpoena, duration of the subpoena and bench warrants. If the court does issue a bench warrant, a contempt hearing should be the next hearing.

A subpoena may be served via first class mail; however, this mailing alone is not prima facie evidence of service of the subpoena. A new subpoena should be sent via registered or certified mail, or in-person delivery.

Rule 124—Summons and Notice

Rule 800 suspends 42 Pa.C.S. § 6335(c) to the extent that it is inconsistent with this rule, which provides that a summoned person shall fail to appear for a hearing and the court finds sufficient notice was given to issue a bench warrant. It is not sufficient to find the juvenile may abscond or may not attend or be brought to a hearing. Detaining a juvenile is restrictive of the juvenile's liberty and it can not be done on conjecture and hearsay.

Rule 126—Defects in Form, Content, or Procedure

A case shall not be dismissed because of a defect. The defect shall be raised prior to the adjudicatory hearing and it may not be prejudicial to the rights of the juvenile. A written allegation or petition may be amended to cure a defect. See Rule 334 for amendment of the petition. A new written allegation or new petition may be filed or process may be reissued to alleviate any defects. See Rule 336.

Rule 127—Recording and Transcribing Juvenile Court Proceedings

The Committee felt it was extremely important to ensure all proceedings are properly recorded, including those proceedings by masters. Some form of record or transcript is necessary to permit meaningful consider-

ation of claims of error and effective appellate review. See, e.g., Pa.R.A.P. Rules 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). At a minimum, there should be a tape recording of the proceeding that can be transcribed, although a court stenographer is the preferred method of recording a proceeding.

Rule 128—Proceedings in Absentia

The issue of whether a juvenile may be adjudicated in absentia generated a great deal of debate. Our surveys of the judicial districts revealed that in most cases, the juvenile is present for the proceedings. There are a few instances in which the juvenile would not be present, such as, fleeing from the courtroom to avoid prosecution. The Committee agreed that there may be times when it is appropriate to adjudicate a juvenile in absentia, but was concerned that, by providing for this, any time a juvenile did not appear at a hearing, the juvenile could be adjudicated in absentia. To safeguard against this possibility, the rule makes it clear that in absentia adjudications may only be conducted in those few cases where the juvenile willfully fails to appear or absconds. The rule also provides for the in absentia adjudication only in the discretion of the juvenile court judge, and that the judge can choose never to adjudicate a juvenile in his or her absence.

Rule 131—Guardian's Presence

Rule 131 provides that the guardian may accompany the juvenile to any proceeding. This rule also permits a guardian's presence to be ordered when the guardian does not accompany the juvenile to the hearing. Under the Juvenile Act, in addition to ordering the guardian's presence, the court may order the guardian to participate in the treatment, supervision, or rehabilitation of the juvenile, including, but not limited to, community service, restitution, counseling, treatment, and education programs. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

Rule 132—Victim's Presence

Section 6336(d) of the Juvenile Act provides for "parties, their counsel, witnesses, the victim and counsel for the victim, other persons accompanying a party or a victim for his or her assistance, and any other person as the court finds have a proper interest in the proceeding." 42 Pa.C.S. § 6336(d). The Victim's Bill of Rights, 18 P.S. § 11.201, provides that victims of crime have the right to be accompanied to all juvenile proceedings by a family member, a victim advocate or other person providing assistance or support. Reading these statutes together, the Committee concluded that the court is to determine who is present for the victim's assistance and who has a proper interest. The court should limit the number of persons attending to those that are there specifically for support.

Part B—Counsel

Rule 150—Attorney—Appearances And Withdrawals

This rule addresses how appearances and withdrawals are entered. The Committee discussed at length the issue of duration of counsel.

From its surveys, the Committee learned that, in some counties, a juvenile does not have an attorney at the dispositional review hearing or the review is continued because counsel is not present.

In re A.M., 766 A.2d 1263 (Pa. Super. Ct. 2001), *In re Gault*, 387 U.S. 1 (1967), and 42 Pa.C.S. § 6337 provide for the right to counsel at any and all delinquency

proceedings. A dispositional review hearing is a delinquency proceeding and the juvenile has the right to counsel at such proceedings. The practice in a minority of counties of not having counsel present is in violation of statutory and case law.

The Committee discussed these divergent practices of no counsel at dispositional review hearings and concluded the interests of the juvenile are better served if the same attorney stays in the case through the dispositional reviews because counsel would be familiar with the juvenile and the history of the case.

In juvenile proceedings, a juvenile is sent to a placement facility with no specific time limits except to finish the program. There are different types of facilities and different expected times of normal completion of a specific type of program. For example, one residential facility program may take a juvenile who is doing well about a year to complete. In that same residential facility, a juvenile who is misbehaving or not performing, may take four years to complete the program. A dispositional review hearing tracks the juvenile performance in the placement and the court makes a decision at that hearing to keep the juvenile in the facility, transfer the juvenile to another placement or send the juvenile home. There are so many variables in this decision and restrictions of a juvenile's liberties that it is absolutely essential for juveniles to be represented at these hearings. When a juvenile is removed from the home, these hearings are required to be held every six months. See Rule 610 (Dispositional and Commitment Review).

Because attorneys are failing to show for such an important hearing, this rule provides a mechanism to put the onus on the attorney to withdraw. It additionally puts the court on notice when withdrawal of counsel is requested. If there is no withdrawal, the attorney is expected to be present for the hearing. The Comment provides that the court may need to appoint counsel if there has been a withdrawal. If the juvenile has not had a dispositional hearing or is in placement, the court will appoint new counsel. If the juvenile is on probation, the court may wait to appoint counsel if and until the juvenile violates probation.

Rule 151—Assignment of Counsel

The Committee discussed in detail whether every juvenile is in fact indigent. Local practices varied across the Commonwealth with a majority of judicial districts assigning counsel in every case. The phrase "without financial resources or otherwise unable to employ counsel" used in this rule covers every juvenile that needs counsel. The Committee understands that in some situations, the guardian and the juvenile would have a conflict of interest, and the guardian should not be relied upon to employ counsel in those situations, or the guardian has not obtained an attorney for the juvenile. If a juvenile needs counsel, the court must assign counsel.

The Public Defender Act was suspended in this rule to anticipate conflict of interest cases or other instances where the Public Defender could not represent the juvenile. For example, if there are two juvenile conspirators who have a conflict of interest, the Public Defender may only represent one juvenile and conflict counsel must be appointed for the other juvenile.

This rule provides that the court is to assign counsel. If the Public Defender decides in a county that it will not represent a juvenile, the court may still assign "private" counsel for the juvenile. This rule does not say that the juvenile is entitled to a Public Defender. As a practical

matter, the county may choose to have all juveniles represented by the Public Defender's Office because it is more cost effective than private counsel.

Rule 152—Waiver of Counsel

From our survey of local practices, we found that in most cases, the juvenile has counsel present although waiver of counsel is permitted. The Committee debated whether waiver of counsel should be permitted. The Committee is concerned about the juvenile's comprehension of the consequences of waiving the right to counsel so an extensive colloquy was built into the Comment. In order for the juvenile to waive the right to counsel knowingly, intelligently, and voluntarily, the court is to look at several factors when conducting this colloquy.

The Committee debated whether an age restriction was appropriate. After discussion, we felt that this was a factor that could not be evenly weighed for every juvenile, but have included it as one factor the court should consider because the court is in the best position to determine what is appropriate in each case with a specific juvenile.

This rule does not mandate the appointment of stand-by counsel, because, in most cases, the court will appoint stand-by counsel when it is appropriate.

Part C—Records

Part (C)(1)—Access to Juvenile Records

Rule 160—Inspection of Juvenile Files/Records

There are two sets of files for every juvenile in the system, the docket file and the probation file. The general public cannot assess either set of files. The docket file is maintained by the clerk of courts with limited filed documents. The probation file records many confidential matters and is maintained by the juvenile probation office. This rule is taken from the Juvenile Act, 42 Pa.C.S. § 6307 and it limits access to both set of files.

In addition to limiting access to these files, the clerk of courts' offices throughout this Commonwealth maintain separate files for juvenile and adults, understanding the confidentiality of juvenile records.

Section 6352.1 of the Juvenile Act allows for treatment records to be released to the court, county agency, or probation upon consent or court order, notwithstanding other provisions of law. This section of the Act authorizes limited access of records to specific parties.

Rule 163—Release of Information to School

Any information received by the school pursuant to this rule shall be kept confidential and used by school officials in the ordinary administration of their duties and school operation. This information shall not be released to the general public or third parties unless the court has entered an order to that effect.

This information shall be kept separately from the juvenile's official school record.

Part (C)(2)—Maintaining Records

Rule 166—Maintaining Records in the Clerk of Courts

This rule provides for the contents and maintenance of records in the clerk of courts' office. Rule 160 governs who may review and copy these records.

Rule 167—Filing and Service of Court Orders and Notices

The Committee tried to anticipate the advances in technology by providing, as one method of service, service

by facsimile transmission or other electronic means, if requested. See paragraph (B)(3).

Part (C)(3)—Expunging or Destroying Records

The Committee considered including provisions on which cases may be expunged but, after extensive discussion, felt 18 Pa.C.S. § 9123 covered this area sufficiently.

Rule 170—Expunging or Destroying Juvenile Court Records

This rule sets forth the minimal contents of a motion to expunge a juvenile record. Although there may be situations when the date of birth is unknown, it is helpful in identifying the individual whose record is sought to be expunged. The motion should contain as much information as possible to help identify the record to be expunged. If the police department, probation office, or another agency does not have the proper information, the record sought to be expunged may not actually be expunged for lack of sufficient identifying information.

Part D—Masters

The Rules of Juvenile Court Procedure were adopted on April 1, 2005. The Rules are effective October 1, 2005, except for Chapter One, Part D (Masters), which is effective April 1, 2006. Because some counties will have to change their practice regarding the use of masters for specific classes of cases, this section was given a later effective date.

Rule 185—Appointment to Cases

The Committee expressed concern about allowing masters to practice in the same judicial district where they preside, noting the practice creates a conflict of interest; therefore, this was made a prohibited practice under paragraph (B).

Rule 187—Authority of Master

A major issue for the Committee concerned whether masters should be limited on the types of cases they should hear. After several discussions, eliciting public comment, reviewing case law and the Juvenile Act, reviewing current court practices and reviewing the Juvenile Court Judges' Commission Juvenile Court Standards, the Committee felt that masters should hear only misdemeanors for preliminary, pre-adjudicatory, adjudicatory or dispositional hearings, and that the juvenile court judge should hear the more serious offenses and all felonies. In misdemeanor and felony cases, masters may hear detention hearings, detention review hearings, shelter-care hearings, uncontested dispositional review hearings or uncontested probation revocation hearings.

This Rule restricts the authority of masters. Section 6305 of the Juvenile Act has been suspended to the extent that masters can hear only certain cases or class of cases under this Rule.

The Committee received a significant number of comments from the bench, bar, and public concerning this rule when this rule was published for Comment on March 29, 2003.⁴ Two major underlying concerns from the Comments were the availability of judicial resources and the experience of the masters.

The Committee additionally received Comments asking the Committee to consider further restricting the master's authority.

The Committee took every Comment received into consideration and finally concluded that judges are

⁴ 33 Pa.B. 1581 (March 29, 2003).

elected by the public to hear cases and set forth “judgments.” Masters were introduced to ease the court docket due to a rapidly increasing number of juvenile cases. Masters were not intended to take over the juvenile system or the judges’ primary responsibilities and duties. In a minority of counties, the judges rarely hear juvenile cases and the master sets forth the “judgments” with the judges’ rubber-stamped order. The additional practice in a few counties of masters issuing orders is in violation of these Rules and statutory and case law. The Committee wanted to prohibit the master-run systems and ensure the judges performed the important duties they were elected to do. The Committee wanted to stress the importance of juvenile cases and the very serious consequences of a juvenile adjudication.

Paragraph (C) provides that at every hearing before the master, the juvenile should be informed of the right to a hearing before the judge. We included this provision here because we thought it made more sense to have a general requirement in one rule that applies across the board rather than including similar language in each rule for a specific hearing. See 42 Pa.C.S. § 6305(b).

Rule 191—Master’s Findings and Recommendation to the Judge

Paragraph (B) requires the master to submit a recommendation to the juvenile court judge within one business day, which reflects the majority of local practices across the Commonwealth. This requirement will assist the attorney for the Commonwealth and the juvenile’s attorney if they appeal the master’s decision under Rule 192.

Because the master only submits a recommendation to the judge, the judge must enter a final order. The findings of the master are not final and binding until there is a court order. Under paragraph (C), the judge may: 1) accept the recommendation and enter an order; 2) reject the recommendation and enter an order with a different disposition of the case; 3) send the recommendation back to the master for more specific findings; or 4) schedule a rehearing on the matter.

When a judge rejects a master’s recommendation by modifying a factual determination, a rehearing is to be scheduled. The judge may reject the master’s findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations.

Rule 192—Challenge to Master’s Recommendation

A master’s recommendation is subject to approval of the judge. See *supra* Rules 187, 191. Parties may object to the master’s recommendation and ask for a rehearing. This rule sets forth the procedures on how to challenge a recommendation.

A judge does not have to grant a rehearing. If the judge does grant the rehearing, it needs to be done within seven days to ensure the case is processed through the system in a timely manner and to comply with the time restrictions of these rules.

CHAPTER TWO

Part A, Rule 200 provides for the commencement of proceedings. Arrest Procedures are covered in Part B, Rules 210—221. For written allegation procedures, see Part C, Rules 231—233. Part D provides for pre-adjudicatory detention in Rules 240—243.

Part A—Commencing Proceedings

Rule 200—Commencing Proceedings

Rule 200 provides the methods of commencing proceedings in a case involving a juvenile. This rule deviates

from the Juvenile Act in that the submission of a written allegation commences proceedings instead of the filing of a petition. See 42 Pa.C.S. § 6321(a)(3). The Committee developed this new terminology to clarify that commencing a proceeding does not necessarily imply formal court action; there are several steps in the processing of juvenile cases before a petition is ever filed. Thus, the written allegation procedures reflect what occurs in actual practice whereby a case is processed before a petition is ever filed. Under this rule, once a written allegation has been submitted, the juvenile probation officer must determine if the allegations are within the jurisdiction of the juvenile court and if it is appropriate to schedule an intake conference to determine if the case can be resolved by informal court action, such as, informal adjustment, or if formal court action is necessary by the filing of a petition. See Rules 310—312. Under the Juvenile Act, once a petition is filed, informal adjustment is precluded.

The Juvenile Act provides that the taking into custody is a method for commencing proceedings. See 42 Pa.C.S. § 6321(a)(2.1). The Juvenile Act provides five methods of taking into custody. See 42 Pa.C.S. § 6324. This rule incorporates the commencement of proceedings for taking into custody pursuant to the laws of arrest only. See 42 Pa.C.S. § 6324(2). The other provisions of taking into custody under 42 Pa.C.S. § 6324(1), (3), and (4) provide for the taking into custody of dependent children; therefore were omitted from this rule. The Committee understands that these provisions may also apply to delinquent children; however, the taking into custody for those reasons alone should not commence *delinquency* proceedings.

Proceedings have already been commenced for juveniles who have violated their probation; therefore, Rule 605 provides for detaining juveniles for violations of probation under 42 Pa.C.S. § 6324(5).

In addition, proceedings have already been “commenced” for juveniles under this rule in paragraphs (3), (4), and (5); however, this is the method for commencing those proceedings in juvenile court in delinquency proceedings within a judicial district.

Part B—Arrest Procedures in Delinquency Cases

Rules 210—220

The Committee agreed that the requirements for requesting and executing an arrest warrant in cases involving a juvenile should apply in the same manner as they apply for adults except that the guardian of the juvenile should be notified as to the juvenile’s whereabouts. Additionally, because there is no bail in juvenile cases, the juvenile may be released to the care of a guardian, may come before the juvenile court, or may be sent to a juvenile detention facility.

Rule 210—Arrest Warrants

Our surveys revealed that in some judicial districts, the attorney for the Commonwealth has to approve applications for arrest warrants. This practice is often different from the practice for adult offenders because a minor is involved and the attorney for the Commonwealth wants to ensure the allegations warrant detention in the case. This rule provides that the District Attorney may require applications to be approved by an attorney for the Commonwealth if the District Attorney files a certification with the Court pursuant to Rule 231. The certification shall specify which cases or classes of cases shall be submitted by the police officer to an attorney for the Commonwealth.

Rule 212—Duplicate and Alias Warrants of Arrest

The Committee agreed that the courts could assess costs of the warrant; however, we realized that the juvenile might not have the resources to pay this fee. The court will have to evaluate each case independently, and may consider whether there is a court program to allow the juvenile to earn money, whether the juvenile is employed, whether the guardian should be held responsible, and other similar factors in deciding whether and how much of the costs to access.

*Part C—Written Allegation Procedures**Rule 231—Written Allegations*

Submission of a written allegation is not a new procedure. A written allegation is the document submitted to the juvenile probation office by the law enforcement officer, and in a rare case, by a private citizen, which alleges a juvenile has committed an act of delinquency.

In several counties, the District Attorneys are currently requiring the allegation to be approved by their office. To allow this practice to remain and also to keep law enforcement apprised of this requirement, paragraph (B) requires the District Attorney to file a certification, stating which cases should be submitted to their office for prior approval, with the court of common pleas in their judicial district. All law enforcement officials in the judicial district should be notified of this requirement.

The Committee discussed if the juvenile probation office should receive a copy of the written allegation whether or not it was approved. Because there may be instances when it is necessary for the probation office to know about a case, the Committee agreed that the juvenile probation officer should receive a copy of the written allegation, even when there might not be sufficient grounds for the allegation of delinquency because the act could be a violation of the juvenile's probation. See paragraphs (C) and (D).

Rule 232—Contents of Written Allegation

The Committee found from its surveys that several counties transform their written allegation into the delinquency petition. To help facilitate this common practice, the Committee tracked the requirements of the written allegation closely with the contents of the petition. Compare Rule 232 with Rule 330(C). Two additional requirements are mandated for the petition. See Rule 330 (C)(12)-(13).

Rule 233—Approval of Private Written Allegation

Consistent with the provisions of 42 Pa.C.S. § 6334, the rules allow any person to commence a juvenile proceeding by filing a written allegation; however, pursuant to Rule 330(B) only the attorney for the Commonwealth or the juvenile probation officer may file a petition. The Committee believes that when the person filing a document alleging a juvenile committed a delinquent act is a private citizen, they should follow the same process and proceedings as probation officers and law enforcement officers; private citizens should not be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of this change is not to preclude informal court action in cases submitted by private citizens. The purpose of the Juvenile Act is achieved by providing an avenue for the private citizen to submit a written allegation and appeal a disapproval of the written allegation to the court. If the court overrules the disapproval, the court may order the juvenile probation officer or an attorney for the Commonwealth to

proceed with the case in the same manner as any other case. See Comment to this rule.

*Part D—Pre-Adjudicatory Detention**Rule 240—Detention of Juvenile*

If the juvenile is detained and the attorney for the Commonwealth is seeking transfer of the case to criminal proceedings, the attorney for the Commonwealth must file notice of intent to transfer within the ten-day period as provided for in Rules 391 and 404. See *infra* Rule 391.

Rule 242—Detention Hearing

Rule 242 requires that the petition be filed within twenty-four hours of the detention hearing. Although this is a change from the statutory requirement that a petition be filed within twenty-four hours of the juvenile's detention, the Committee believes this change is vital so that informal adjustment or other informal court action will not be precluded. See Comment to this rule.

Rule 243—Detention Rehearings

The Committee has required that a guardian submit an affidavit alleging he or she was not notified of the hearing. Paragraph (A) is designed to limit the number of rehearings by the court but allow the guardian to be heard if requested.

CHAPTER THREE

Chapter Three addresses the pre-adjudicatory procedures. Part A encompasses venue and inter-county transfer in Rules 300—302. Part B addresses intake and informal adjustment, Rules 310—313. The filing of a petition and pertinent procedures surrounding the petition are included in Part C, Rules 330—336. For procedures following the filing of a petition, see Part D, Rules 340—364, including discovery, motions, filing, service, summons, and notice. Consent decree procedures can be found in Part E, Rules 370—373. Part F, Rules 380—384 includes provisions on preservation of testimony and evidence. Finally, Part G addresses procedures for transfer to criminal prosecution from delinquency proceedings in Rules 390—396.

*Part A—Venue**Rule 300—Venue*

There was substantial debate over this rule and whether a proceeding should be commenced in the juvenile's residential county, rather than only the county where the allegation occurred. The Juvenile Act provides for the commencement of proceedings in the county where the allegation occurred or the juvenile's residential county. See 42 Pa.C.S. § 6321(b). Notwithstanding the statutory provisions, our surveys revealed that in most cases, the proceedings are commenced in the county where the allegation occurred. The Committee ultimately decided to follow the statute, but added a procedure that allows a motion for change of venue if there was a hardship on the juvenile recognizing that the court is in the best position to decide this issue and to be able to look at all the pertinent factors, including hardship.

*Part B—Intake and Informal Adjustment**Rules 310—313*

These rules lay out the informal court process. If a case is informally adjusted, no formal court action is sought and the case is dismissed. If it is determined that formal court action would be in the best interest of the public and the juvenile, a petition should be filed.

Rule 311—Intake Conference

During the surveys and Committee discussions, it was noted that the Victim's Bill of Rights does not give victims the right to participate in an intake proceeding; however, it gives the victims the right to comment on "disposition." If cases are being dismissed, informally adjusted or diverted, the victims should have the opportunity to give their opinion on the "disposition" of the case. To ensure compliance with this provision of the Victim's Bill of Rights, this Rule affords the victim the opportunity to offer prior comment to the disposition of the case if informal adjustment or an alternative resolution of the case is being considered. In addition, this rule provides the attorney for the Commonwealth with notice of the outcome of an intake conference, i.e. informal adjustment. If the attorney for the Commonwealth feels the victim is aggrieved by the decision of the juvenile probation officer, the attorney for the Commonwealth may file a motion for review by the court.

Under paragraph (C), the juvenile probation officer is to notify the attorney for the Commonwealth of the decision resulting from the intake conference. If the decision is to file a petition, the filing of the petition qualifies as notice to the attorney for the Commonwealth. In those judicial districts where the District Attorney requires petitions to be filed by an attorney for the Commonwealth, the juvenile probation officer shall forward the necessary information to the attorney for the Commonwealth for processing of the case.

If the juvenile probation officer is recommending informal court action and the attorney for the Commonwealth disagrees with the decision, the attorney for the Commonwealth is to consult with the juvenile probation officer before any motion requesting review by the court is filed.

Rule 312—Informal Adjustment

Informal adjustment is informal court action and an alternative to filing a petition and proceeding with the case in the court process. A victim is to be afforded the opportunity to offer prior comment before the case is informally adjusted. See supra Rule 311. See also Comment.

*Part C—Petition**Rule 330—Petition: Filing, Contents, Function*

In the majority of judicial districts, the attorney for the Commonwealth or the juvenile probation officer files the petition. After extensive discussion, the Committee agreed to follow these local practices to the extent that the District Attorney of each county may choose to have the petition filed by an attorney for the Commonwealth by filing a certification with the court of common pleas.

A private citizen may not file a delinquency petition. A petition shall be filed by the attorney for the Commonwealth or the juvenile probation officer. A private citizen may initiate proceedings by the filing of a written allegation. For further discussion, see supra Rule 233.

The filing of a petition represents that the case is inappropriate for informal adjustment or other diversionary programs. See paragraph (B) and Comment.

Paragraphs two, three, twelve and thirteen incorporate the provisions of Section 6334 of the Juvenile Act. Paragraphs four through eight set forth the allegations of delinquency with particularity, including names of conspirators. In addition to the Juvenile Act, compliance with due process standards requires that the petition set forth the allegation with particularity. *In re Gault*, 387 U. S. 1

(1967). Paragraphs one, ten and eleven are essential because the petition is the official charging document and must be signed. Paragraph nine encompasses the statutory requirement that the law enforcement officer or the attorney for the Commonwealth note that laboratory services have been requested. 42 Pa.C.S. § 1725.3 This rule closely tracks the contents of the written allegation. See supra Rule 232.

Rule 332—Multiple Offenses in Petition

This rule provides for the allowance of one petition for multiple offenses if each offense is set forth with clarity that ensures the juvenile is aware of the offenses alleged. This reflects the current practice in a majority of the counties.

Rule 334—Amendment of Petition

Amendments to a petition may be made if they do not allege a different set of events or offenses, which may implicate double jeopardy issues. This rule allows the Commonwealth to make amendments if they have failed to cross their t's and dot their i's. This is important in juvenile cases because non-attorneys, juvenile probation officers, file most of the petitions in juvenile court.

*Part D—Procedures Following Filing of Petition**Rule 340—Pre-Adjudicatory Discovery and Inspection*

This rule emphasizes that the discovery process should be informal. Each party should disclose the necessary information to the opposing party without the need of filing a formal motion. Only when there is a general dispute as to discovery, should a motion to compel discovery be made.

Rules 344—Motions and Answers

Rule 344 provides for motions and answers to be made either orally or in writing. Because of the time constraints in juvenile court, several motions may be oral. However, if time allows, written motions are preferable.

Rule 352—Separate Adjudicatory Hearings for Offenses or Juveniles

A hearing may be bifurcated if a juvenile is prejudiced.

Rule 353—Motion for Return of Property

This rule provides the procedures for a hearing on a motion for return of property. As noted by the Committee's Comment, nothing prohibits a more appropriate court from hearing this motion. As revealed in our surveys, a few counties have a designated motions' court that hears these types of motions. For judicial economy, a juvenile court judge may incorporate this hearing into another hearing before the court, such as, the dispositional hearing.

*Part E—Consent Decree**Rule 370—Consent Decree*

The Committee discussed whether there should be rule procedures mandating requirements for consent decrees. We looked at whether the juvenile was a first time offender, whether specific charges would be prohibited from a consent decree disposition, whether the juvenile had to accept responsibility for the delinquent acts alleged, and some other minor issues. Ultimately, the Committee decided that the juvenile court is in the best position to look at each case independently and to decide if the case is appropriate for consent decree.

The Committee noted that if a juvenile violates the conditions of the consent decree, double jeopardy does not attach and bar subsequent prosecution. See *Common-*

wealth v. Szebin, 785 A.2d 103 (Pa. Super. Ct. 2001). This is explained in the Comment.

Part F—Preservation of Testimony and Evidence

Rules 380—384

These rules provide for preservation of testimony and evidence. Masters may preside over these cases if they involve only misdemeanors. See Rule 187.

Part G—Transfer for Criminal Prosecution

Rule 390—Notice of Request for Transfer to Criminal Proceedings

The Committee noted and discussed that the Juvenile Act gives the juvenile the right to request transfer to criminal proceedings. For several reasons, the Committee was apprehensive about letting a fourteen year old make an inappropriate decision that could affect the rest of the juvenile's life. Because of this concern, the Committee explains in the Comment that the court should use caution when a juvenile petitions the court for transfer to criminal proceedings. The court should make an inquiry to determine if the request has been knowingly, intelligently, and voluntarily made.

In most cases, a notice for request of transfer to criminal proceedings should be filed prior to the first scheduled adjudicatory hearing. An exception was created in paragraph (B) to allow a continuance of the first scheduled adjudicatory hearing to further investigate and determine, based on new information or circumstances, whether transfer is appropriate. The filing of the request must occur prior to the commencement of the adjudicatory hearing because jeopardy attaches once the hearing is commenced.

Rule 391—Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing

Local practices revealed that preparing for a transfer hearing can be a lengthy process and should not be handled quickly for the sake of swiftness over the welfare of the public or juvenile. Transfer social studies including psychological reports must be prepared. Taking these points into consideration, the Committee agreed the rule should provide that the juvenile may be detained for ten days and up to or on the tenth day, the attorney for the Commonwealth may file a notice of intent to transfer. The ten days allows the attorney for the Commonwealth to consult with the juvenile probation officer and other pertinent persons regarding transfer of the juvenile. The juvenile should normally have a transfer hearing within ten days of the filing of the notice of intent to transfer. However, the juvenile may be detained for one additional ten-day period if the requirements of paragraph (B)(1) are met. Thus, a juvenile may be detained for up to thirty days for a transfer hearing. If the juvenile requests a continuance under paragraph (B)(2), the juvenile may be detained longer than thirty days in ten-day intervals.

Rule 394—Transfer Hearing

This rule requires a transfer hearing in all cases when a notice of request for transfer is filed.

Under paragraph (A), if the attorney for the Commonwealth does not meet the three-day requirement and the case has to be continued, the continuance would be counted against the Commonwealth.

When the transfer hearing is conducted following the juvenile's request for transfer, the court must make separate findings pursuant to paragraph (B) although the findings may have been conceded by the juvenile when requesting transfer.

Rules 395—396—Procedure to Initiate Criminal Information and Bail

These rules provide that the Rules of Criminal Procedure apply to the transferred juvenile, and set forth the steps necessary to initiate the criminal prosecution.

CHAPTER FOUR

Chapter Four addresses the procedures related to the adjudicatory hearing.

Rule 404—Prompt Adjudicatory Hearing

The Committee discussed whether there should be a time limitation for having a hearing for non-detained juveniles. Our survey found that most juveniles are having hearings within six months. The Committee felt that this practice is reasonable; therefore, set no specific time limitation in the rule, other than a "reasonable time."

Rules 406—409

These rules separate the stages of proceedings heard by the court. These stages may be consolidated into one hearing by the court as long as everyone is clear that the stages are separate and distinct. Rule 406 governs the adjudicatory hearing. Rule 407 provides for admissions. See *infra* Rule 407. After the court has held an adjudicatory hearing or accepted an admission, the court is to rule on the offenses, stating with particularity the gradings and counts of each offense. Once the court has ruled on the offenses or entered its findings, the court is to determine if the juvenile is in need of treatment, supervision or rehabilitation.

Rule 407—Admissions

This rule reflects current local practices. There are procedures in some form in every judicial district that permit the court to allow the juvenile to acknowledge the facts, adjudication, or disposition rather than holding an adjudicatory hearing.

It is important for the court to assess that the juvenile's admission is knowingly, intelligently, and voluntarily made. As stated in the Comment, the court may utilize a written form to ascertain the necessary information. The court then must ask questions on the record to insure the juvenile's understanding of the form and the juvenile's agreement with the statements made.

CHAPTER FIVE

This chapter provides for the procedures of the dispositional proceedings in juvenile court, including the final order of the court. Part A provides for summons and notice in Rule 500. Rules 510—516 are covered in Part B addressing the dispositional hearing, aids in the disposition, and the court order. Part C is reserved for interstate transfer of disposition.

Part B—Dispositional Hearing and Aids

Rule 512—Dispositional Hearing

The "one judge—one juvenile" philosophy that is sweeping our country was discussed by the Committee. We agreed that this is the best-case scenario for all juvenile courts; however, on the practical side of this issue, we felt that this may not be feasible in all the judicial districts. In view of this, the Comment points out that, if and when practicable, the same judge or master should hear all cases involving the same juvenile.

Rule 513—Aids in Disposition

Our survey of local practices revealed that social studies or summaries are being prepared in two-thirds of the

cases. Although the rule leaves the decision whether to have a social study prepared to the discretion of the court, in serious cases, the court should order the preparation of the study.

Rule 515—Dispositional Order

This rule provides the minimal requirements of the dispositional order. It may be necessary to include additional information in the order depending on the type of case or if the court is to receive funding. See Comment.

From the Committee's surveys, we found that the courts' dispositional orders are not always clear concerning restitution. We therefore, included in paragraph (B), specific requirements concerning restitution.

In establishing the appropriate disposition, the court may exercise discretion within the limits of the Juvenile Act. *In re Frey*, 375 A.2d 118 (Pa. Super. Ct. 1977). The Legislature intended to give juvenile courts broad discretion in designing remedies to aid in the reformation of juvenile offenders. *Commonwealth v. Russman*, 378 A.2d 459 (Pa. Super. Ct. 1977). Section 6310 of the Juvenile Act gives the court the power to order the guardians to participate in the disposition of the case for the juvenile through community service, restitution, counseling, treatment and education programs, as well as, other treatments. Paragraph (C) of this rule requires the court to include in its dispositional order any obligation imposed by the court upon the guardian. The guardians should receive a copy of the dispositional order for their obligation. See Rule 516.

CHAPTER SIX

This chapter provides for the post-dispositional procedures, including modifications, reviews, and appeals. Part A, Rule 600 provides for the summons and notice of the commitment review, dispositional review, and probation revocation hearings. Part B provides for modifications of the dispositional order, violation of probation, dispositional and commitment reviews, termination of court supervision, and appeals.

Part B—Modifications, Reviews, and Appeals

Rule 605—Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation

The Committee felt that if a juvenile is detained for modification of the dispositional order or violations of probation, Chapter Two procedures should apply. The Committee's intent is that a hearing should be held within ten days unless the requirements of Rule 240(D) are met. Notice of the detention hearing is to be given to specified persons as provided in Rule 241, the juvenile should be informed of rights under Rule 242(A), the manner of hearing provisions of Rule 242(B) are to be followed, and the court is to find probable cause for modification of the dispositional order or violations of probation and that detention is warranted under Rule 242(C).

Rule 610—Dispositional and Commitment Reviews

With advancement in technology, several judicial districts are now equipped with advanced communication technology. Reviewing cases by this method is widely accepted and has been used often in this Commonwealth. The Committee wanted to allow this technology to be used but ensure that due process of law was afforded to each party. The requirements of paragraph (C) will ensure the juvenile's ability to communicate with counsel as if they were at the same location.

Rule 613—Termination of Court Supervision

The current practice of terminating supervision of the juvenile when restitution, fines, and costs are still outstanding is inconsistent with this rule and the Juvenile Act, 42 Pa.C.S. § 6352. Courts may change *how* they supervise juveniles in these situations but the case must be administratively kept open.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

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Rule 100. Scope of Rules.

A. These rules shall govern delinquency proceedings in all courts. Unless otherwise specifically provided, these rules shall not apply to domestic relations proceedings and dependency proceedings.

B. Each of the courts exercising juvenile jurisdiction, as provided in the Juvenile Act, 42 Pa.C.S. § 6301 et seq., may adopt local rules of procedure in accordance with Rule 121.

Comment

These rules govern proceedings when the Juvenile Act vests jurisdiction in the Juvenile Court. See 42 Pa.C.S. §§ 6321 and 6302. These rules do not govern summary offense proceedings unless: 1) the summary offense(s) was committed with a delinquent act, as defined by 42 Pa.C.S. § 6302, during the same episode or transaction, as provided in 42 Pa.C.S. § 6303(a)(5), and has been properly alleged in a delinquency petition; or 2) a juvenile has failed to comply with a lawful sentence imposed for the summary offense(s), as provided in 42 Pa.C.S. § 6302.

The Rules of Criminal Procedure apply in cases involving juveniles in summary and court cases, as defined by Pa.R.Crim.P. 103, to the extent that the Juvenile Act does not apply to these proceedings. See, e.g., Pa.R.Crim.P. 100 and 400. See also 42 Pa.C.S. §§ 6302 and 6303.

Each judicial district may promulgate local rules that follow the requirements of Rule 121 and Pa.R.J.A. 103.

Official Note: Rule 100 adopted April 1, 2005, effective October 1, 2005.

Rule 101. Purpose and Construction.

A. These rules are intended to provide for the just determination of every delinquency proceeding.

B. These rules establish uniform practice and procedure for courts exercising jurisdiction as provided in the Juvenile Act, 42 Pa.C.S. § 6301 et seq., and shall be construed to secure uniformity and simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

C. These rules shall be interpreted and construed to effectuate the purposes stated in the Juvenile Act, 42 Pa.C.S. § 6301(b).

D. To the extent practicable, these rules shall be construed in consonance with the rules of statutory construction.

Official Note: Rule 101 adopted April 1, 2005, effective October 1, 2005.

Rule 102. Citing the Juvenile Court Procedural Rules.

All juvenile court procedural rules adopted by the Supreme Court of Pennsylvania under the authority of Article V § 10(c) of the Constitution of Pennsylvania, adopted April 23, 1968, shall be known as the Pennsylvania Rules of Juvenile Court Procedure and shall be cited as "Pa.R.J.C.P."

Comment

The authority for rule-making is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution, which states in part, "[t]he Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts ... if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right of the General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with rules prescribed under these provisions."

Official Note: Rule 102 adopted April 1, 2005, effective October 1, 2005.

Rule 105. Search Warrants.

The Pennsylvania Rules of Criminal Procedure, Rules 200 through 211, shall apply to search warrants in juvenile delinquency matters.

Official Note: Rule 105 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 105 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

AFFIANT is any responsible person, capable of taking an oath, who signs, swears to, affirms, or when permitted by these rules, verifies a written allegation and appreciates the nature and quality of that person's act.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law and local practice to maintain the official juvenile court file and docket, without regard to that person's official title.

COURT is the Court of Common Pleas, a court of record, which is assigned to hear juvenile delinquency matters. Court shall include masters when they are permitted to hear cases under these rules. Juvenile Court shall have the same meaning as Court.

DETENTION FACILITY is any facility, privately or publicly owned and operated, designated by the court and approved by the Department of Public Welfare to detain a juvenile temporarily. The term detention facility, when used in these rules, shall include shelter-care.

GUARDIAN is any parent, custodian, or other person who has legal custody of a juvenile, or person designated by the court to be a temporary guardian for purposes of a proceeding.

INTAKE STAFF is any responsible person taking custody of the juvenile on behalf of the court, detention facility, or medical facility.

ISSUING AUTHORITY is any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a Magisterial District Judge.

JUVENILE is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for juvenile delinquency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a juvenile medically or psychologically.

ORDINANCE is a legislative enactment of a political subdivision.

PARTIES are the juvenile and the Commonwealth.

PENAL LAWS include all statutes and embodiments of the common law, which establish, create, or define crimes or offenses, including any ordinances that may provide for placement in a juvenile facility upon a finding of delinquency or upon failure to pay a fine or penalty.

PETITION is a formal document by which an attorney for the Commonwealth or the juvenile probation officer alleges a juvenile to be delinquent.

PETITIONER is an attorney for the Commonwealth or a juvenile probation officer, who signs, swears to, affirms, or verifies and files a petition.

PLACEMENT FACILITY is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive delinquent juveniles as a case disposition. Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of the person's employment.

POLITICAL SUBDIVISION shall mean county, city, township, borough, or incorporated town or village having legislative authority.

PROCEEDING is any stage in the juvenile delinquency process occurring once a written allegation has been submitted.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

WRITTEN ALLEGATION is the document that is completed by a law enforcement officer or other person that is necessary to allege a juvenile has committed an act of delinquency.

Comment

Under the term "court," to determine if masters are permitted to hear cases, see Rule 187.

Neither the definition of "law enforcement officer" nor the definition of "police officer" gives the power of arrest to any person who is not otherwise given that power by law.

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. This document may have been formerly known as a "probable cause affidavit," "complaint," "police paper," "charge form," "allegation of delinquency," or the like. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

For definition of "delinquent act," see 42 Pa.C.S. § 6302.

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005.

Rule 121. Local Rules.

A. For the purpose of this rule, the term, "local rule" shall include every rule, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, adopted or enforced by a court of common pleas to govern juvenile delinquency practice and procedure, which requires a party or party's attorney to do or refrain from doing something.

B. All previously promulgated local rules are hereby vacated, effective October 1, 2005.

C. Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.

1) Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure.

2) Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.

D. A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

1) A local rule shall be in writing.

2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.

3) Two certified copies of the local rule shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4) One certified copy of the local rule shall be filed by the court promulgating the rule with the Juvenile Court Procedural Rules Committee.

5) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.

E. A local rule shall become effective not less than thirty days after the date of publication of the rule in the *Pennsylvania Bulletin*.

F. No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the attorney to comply with the local rule.

G. The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.

Comment

The purpose of this rule is to further the policy of the Supreme Court to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered. It is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation shall not determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied, the matter is a local rule regardless of what it may be called. The provisions of this rule also are intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

Paragraph (B) vacates all current local rules on October 1, 2005, the effective date of this rule. The local rules are to be repromulgated to comply with this rule. This includes rekeying pursuant to paragraph (C)(2) and meeting the appropriate filing requirements under paragraph (D).

To simplify the use of local rules, local juvenile delinquency procedural rules are required to be given numbers that are keyed to the number of the general juvenile delinquency procedural rules to which the local rules correspond. This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general juvenile delinquency procedural rule.

The purpose of paragraph (D) is to emphasize that the adopting authority shall comply with all the provisions of paragraph (D) before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (D)(5) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The Administrative Office of Pennsylvania Courts maintains a web-page containing the text of local rules. That web-page is located at: <http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>.

Although under paragraph (E) a local rule shall not be effective until at least thirty days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The purpose of paragraph (F) is to prevent the dismissal of cases, or the granting or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (F) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (F), the court may impose a sanction for subsequent noncompliance either on the attorney or the juvenile if proceeding pro se, but may not dismiss the case, or grant or deny relief because of non-compliance.

Official Note: Rule 121 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 121 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 122. Continuances.

A. *Generally.* In the interests of justice, the court may grant a continuance on its own motion or the motion of either party. On the record, the court shall identify the moving party and state its reasons for granting or denying the continuance.

B. *Notice and rescheduling.* If a continuance is granted, all persons summoned to appear shall be notified of the date, place, and time of the rescheduled hearing.

Comment

A party seeking a continuance should notify the court and opposing counsel as soon as possible. Whenever possible, given the time constraints, notice should be written.

Under paragraph (B), if a person is summoned to appear and the case is continued, the party is presumed to be under the scope of the original summons and a new summons is not necessary.

See Rule 344 and 345 for motion procedures.

Official Note: Rule 122 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 122 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 123. Subpoenas.

A. *Contents.* A subpoena in a delinquency case shall:

- 1) order the witness named to appear before the court at the date, time, and place specified;
- 2) order the witness to bring any items identified or described;
- 3) state on whose behalf the witness is being ordered to testify; and
- 4) state the identity, address, and phone number of the person who applied for the subpoena.

B. *Service.*

1) *Method of Service.* A subpoena shall be served upon a witness by:

- a) in-person delivery;
- b) registered or certified mail, return receipt requested, or
- c) by first class mail.

2) *Proof of Service.* The following shall be prima facie evidence of service of the subpoena:

- a) A completed return receipt;
- b) Hand signed receipt of personal delivery; or
- c) Affidavit of in-person delivery signed by a process server.

C. *Duration.* A subpoena shall remain in force until the end of a proceeding.

D. *Bench Warrant.* If any subpoenaed person fails to appear for the hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

Comment

For power to compel attendance, see 42 Pa.C.S. § 6333. Nothing in this rule prohibits the court from holding a contempt hearing. See *In re Crawford*, 519 A.2d 978 (Pa. Super. Ct. 1987) for punishing juveniles for contempt.

Official Note: Rule 123 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 123 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 124. Summons and Notice.

- A) *Requirements of the summons.* The summons shall:
- 1) be in writing;
 - 2) set forth the date, time, and place of the hearing;
 - 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile cannot afford counsel, the right to assigned counsel; and
 - 4) give a warning stating that the failure to appear for the hearing may result in arrest.
- B) *Method of Service.* Summons or notice shall be served:
- 1) in-person; or
 - 2) by first-class mail.
- C) *Bench Warrant.* If any summoned person fails to appear for the hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

Comment

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (C), the court is to find a summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention. The normal rules of procedure in these rules are to be followed if a juvenile is detained. See Chapter Two, Part D.

Official Note: Rule 124 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 124 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 125. Habeas Corpus.

A. The petition for writ of habeas corpus challenging the legality of the juvenile's detention or placement shall be filed with the clerk of courts of the judicial district in which the order directing the juvenile's detention or placement was entered.

B. The clerk of courts shall forward the petition immediately to the presiding juvenile court judge for review and shall identify the petition as time sensitive.

Comment

See Rules 344 and 345 for motion procedures.

See *In re Crouse*, 4 Whart. 9 (Pa. 1839).

Official Note: Rule 125 adopted April 1, 2005, effective October 1, 2005.

Rule 126. Defects in Form, Content, or Procedure.

A juvenile shall not be discharged, nor shall a case be dismissed, because of a defect in the form or content of the petition, written allegation, or warrant, or a defect in the procedures of these rules, unless the juvenile raises the defect prior to the commencement of the adjudicatory hearing, and the defect is prejudicial to the rights of the juvenile.

Comment

Nothing in this rule prevents the amendment of a written allegation or petition or the filing of a new written allegation, a new petition, or the reissuance of process.

See Rule 334 for amendment of a petition.

Official Note: Rule 126 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 126 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 127. Recording and Transcribing Juvenile Court Proceedings.

A. *Recording.* There shall be a recording of all juvenile delinquency proceedings, including proceedings conducted by masters, except as provided in Rule 242(B)(2).

B. *Transcribing.* Upon the motion of any party, upon its own motion, or as required by law, the court shall order the record to be transcribed.

C. *Modifying.* At any time before an appeal is taken, the court may correct or modify the record in the same manner as is provided by Rule 1926 of the Pennsylvania Rules of Appellate Procedure.

Comment

Some form of record or transcript is necessary to permit meaningful consideration of claims of error and effective appellate review. See, e.g., Pa.R.A.P. 1922, 1923, 1924; *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978); *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978). No substantive change in law is intended by this rule; rather it is intended to provide a mechanism to ensure appropriate recording and transcribing of court proceedings. Under Rule 800, 42 Pa.C.S. § 6336(c) was suspended only to the extent that proceedings are to be recorded, except as provided in Rule 242(B)(2). Full minutes are not recordings. This change was to effectuate effective appellate review.

The rule is intended to apply to all juvenile delinquency proceedings and to ensure all proceedings are recorded, including proceedings before masters, with the exception of detention hearings.

Paragraph (B) of the rule is intended to authorize courts to require transcription of only such portions of the record, if any, as are needed to review claims of error.

Paragraph (C) provides a method for correcting and modifying transcripts before an appeal is taken by incorporating Pa.R.A.P. 1926, which otherwise applies only after an appeal has been taken. It is intended that the same standards and procedures apply both before and after appeal.

Official Note: Rule 127 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 127 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 128. Proceedings in Absentia.

The court may proceed with a hearing in the absence of the juvenile if the court finds that the juvenile was properly subpoenaed or summoned to appear and has willfully failed to attend, and the juvenile's attorney is present.

Comment

The court has discretion whether to proceed if the court finds that the juvenile received proper notice of the hearing and has willfully failed to appear. Requiring the

juvenile's attorney to be present protects the juvenile's interest if the proceeding is conducted in the juvenile's absence.

Cf. Commonwealth v. Ford, 650 A.2d 433 (Pa. 1994); *Commonwealth v. Sullens*, 619 A.2d 1349 (Pa. 1992).

Official Note: Rule 128 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 128 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 129. Open Proceedings (Reserved).

Rule 130. Public Discussion by Court Personnel of Pending Matters.

All court personnel including, among others, juvenile probation officers, court clerks, bailiffs, tipstiffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending juvenile case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

Official Note: Rule 130 adopted April 1, 2005, effective October 1, 2005.

Rule 131. Guardian's Presence.

The court may, when the court determines that it is in the best interest of the juvenile, order a guardian of a juvenile to be present at and to bring the juvenile to any proceeding. The court shall insure timely notice of the proceeding to the guardian.

Comment

Nothing in these rules gives the guardian legal standing in the matter being heard by the court or creates a right of a juvenile to have his or her guardian present. See 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

Official Note: Rule 131 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 131 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 132. Victim's Presence.

The victim, counsel for the victim, and other persons accompanying a victim for his or her assistance shall be permitted to attend the proceedings, except as provided in Rule 311.

Comment

See 42 Pa.C.S. § 6336(d) and 18 P.S. § 11.201 et seq.

The court has discretion to maintain confidentiality of mental health, medical, or juvenile institutional documents or juvenile probation reports. See 42 Pa.C.S. § 6336(f).

Official Note: Rule 132 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 132 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 135. Captions.

All court documents and orders shall contain a caption that includes the following:

- 1) "In the interest of (the juvenile's name);"
- 2) the juvenile's case docket number; and
- 3) the name of the court.

Official Note: Rule 135 adopted April 1, 2005, effective October 1, 2005.

PART B. COUNSEL

Rule 150. Attorneys—Appearances and Withdrawals.

A. Appearances.

1) Counsel for the juvenile shall file an entry of appearance with the clerk of courts promptly after being retained, and serve a copy on the attorney for the Commonwealth and the juvenile probation office.

a) If a firm name is entered, the name of the individual lawyer who is designated as being responsible for the conduct of the case shall be entered.

b) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.

2) When counsel is appointed pursuant to Rule 151 (Assignment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.

B. Duration. Once an appearance is entered or the court assigns counsel, counsel shall represent the juvenile until final judgment, including any proceeding upon direct appeal and dispositional review, unless permitted to withdraw pursuant to paragraph (C).

C. Withdrawals.

1) Upon motion, counsel shall be permitted to withdraw only:

a) by order of the court for good cause shown; or

b) if new counsel has entered an appearance in accordance with paragraph (A).

2) A motion to withdraw shall be:

a) filed with the clerk of courts, and a copy concurrently served on the attorney for the Commonwealth and the juvenile; or

b) made orally on the record in open court in the presence of the juvenile.

Comment

Under paragraph (C), withdrawal is presumed when a court's jurisdiction is terminated because the juvenile reaches the age of twenty-one. See 42 Pa.C.S. §§ 6302, 6352.

Under paragraph (C)(1)(a), a court can terminate an attorney's representation if there is good cause shown. The court should allow an attorney to withdraw from a case for good cause if the standards for termination of representation are met, as provided for in Pa.R.P.C. 1.16.

Under paragraph (C)(1)(b), because the attorney for the Commonwealth and the juvenile probation officer will be

on notice of the identity of the new attorney, they should comply with the discovery requirements of Rule 340.

Under paragraph (C)(2), counsel is to file a motion to withdraw in all cases. Counsel's obligation to represent the juvenile, whether as retained or appointed counsel, remains until leave to withdraw is granted by the court. See, e.g., *Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. Ct. 2002). The court is to make a determination of the status of the case before permitting counsel to withdraw. Although there are many factors considered by the court in determining whether there is good cause to permit the withdrawal of counsel, when granting leave, the court should determine if new counsel needs to be appointed, and that the change in attorneys will not delay the proceedings or prejudice the juvenile, particularly concerning time limits.

See also Rule 613 for termination of court supervision.

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 et seq., was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed for juveniles when there is a conflict of interest. See Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 150 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 150 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 151. Assignment of Counsel.

A. *General.* If counsel does not enter an appearance for the juvenile, the court shall inform the juvenile of the right to counsel prior to any proceeding. In any case, the court shall assign counsel for the juvenile if the juvenile is without financial resources or otherwise unable to employ counsel.

B. *Time.*

1) If the juvenile is detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the detention hearing.

2) If the juvenile is not detained and is without counsel and the requirements of paragraph (A) are met, the court shall assign counsel prior to the adjudicatory hearing.

Comment

Counsel may be present at an intake hearing or participate in the decision to place the juvenile on informal adjustment with the probation office.

See also 42 Pa.C.S. § 6337 and *In re A.M.*, 766 A.2d 1263 (Pa. Super. Ct. 2001).

Under Rule 800, the Public Defender Act, 16 P.S. § 9960.1 et seq., was suspended only to the extent that the Public Defender Act conflicts with this rule and that separate counsel is to be appointed to juveniles when there is a conflict of interest. See Pa.R.P.C. Rules 1.7 and 1.9.

Official Note: Rule 151 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 151 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 152. Waiver of Counsel.

A. *Waiver requirements.* A juvenile may not waive the right to counsel unless:

1) the waiver is knowingly, intelligently, and voluntarily made; and

2) the court conducts a colloquy with the juvenile on the record.

B. *Stand-by counsel.* The court may assign stand-by counsel if the juvenile waives counsel at any proceeding or stage of a proceeding.

C. *Notice and revocation of waiver.* If a juvenile waives counsel for any proceeding, the waiver only applies to that proceeding, and the juvenile may revoke the waiver of counsel at any time. At any subsequent proceeding, the juvenile shall be informed of the right to counsel.

Comment

It is recommended that, at a minimum, the court ask questions to elicit the following information in determining a knowing, intelligent, and voluntary waiver of counsel:

1) Whether the juvenile understands the right to be represented by counsel;

2) Whether the juvenile understands the nature of the allegations and the elements of each of those allegations;

3) Whether the juvenile is aware of the dispositions, community service, or fines that may be imposed by the court;

4) Whether the juvenile understands that if he or she waives the right to counsel, he or she will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;

5) Whether the juvenile understands that there are possible defenses to these allegations that counsel might be aware of, and if these defenses are not raised at the adjudicatory hearing, they may be lost permanently;

6) Whether the juvenile understands that, in addition to defenses, the juvenile has many rights that, if not timely asserted, may be lost permanently; and if errors occur and are not timely objected to, or otherwise timely raised by the juvenile, these errors may be lost permanently;

7) Whether the juvenile knows the whereabouts of absent guardians and if they understand they should be present; and

8) Whether the juvenile has had the opportunity to consult with his or her guardian about this decision.

This rule is not meant to preclude the guardian's presence at any hearing. As provided in Rule 131 and the Juvenile Act, 42 Pa.C.S. §§ 6310, 6335(b), and 6336.1, the court can order the guardian's presence if the court determines that it is in the best interests of the juvenile. When conducting the colloquy, the court should also keep in mind the age, maturity, intelligence, and mental condition of the juvenile, as well as, the experience of the juvenile, the juvenile's ability to comprehend, the guardian's presence and consent, and the juvenile's prior record.

This rule requires the juvenile to waive the right to counsel. A guardian may not waive the juvenile's right to counsel. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6337 only to the extent that the right to waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile.

Official Note: Rule 152 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 152 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 160. Inspection of Juvenile File/Records.

All files and records of the court in a proceeding, including the juvenile court file as provided in Rule 166, are open to inspection only by:

- 1) the judges, masters, juvenile probation officers, and staff of the court;
- 2) the attorney for the Commonwealth, the juvenile's attorney, and the juvenile, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information, except in the discretion of the court;
- 3) a public or private agency or institution providing supervision or having custody of the juvenile under order of the court;
- 4) a court and its probation officers and other officials or staff and the attorney for the defendant for use in preparing a pre-sentence report in a criminal case in which the defendant is convicted and the defendant previously was adjudicated delinquent;
- 5) a judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions, orders resulting from dispositional review hearings, and histories of bench warrants and escapes;
- 6) the Administrative Office of Pennsylvania Courts;
- 7) officials of the Department of Corrections or a state correctional institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except in the discretion of the court;
- 8) a parole board, court or county probation official in considering an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except in the discretion of the court;
- 9) the judges, juvenile probation officers, and staff of courts of other jurisdictions when necessary for the discharge of their official duties; and
- 10) with leave of court, any other person, agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

Comment

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile's file and 42 Pa.C.S. § 6352.1 for disclosure of treatment records.

This rule is meant to include the contents of the juvenile court file as described in Rule 166 and the contents of the juvenile probation records or reports.

Juvenile probation records or reports, include, but are not limited to, social summaries, psychological and psychiatric evaluations, personal histories, school records and reports, mental health histories and reports, drug and alcohol evaluations, and placement facility records and reports.

Official Note: Rule 160 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 160 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 163. Release of Information to School.

A. Generally. Upon finding a juvenile to be a delinquent, the court shall, through the juvenile probation office, provide the following information to the building principal or his or her designee of any public, private, or parochial school in which the juvenile is enrolled:

- 1) name and address of the juvenile;
- 2) the delinquent act or acts that the juvenile was found to have committed;
- 3) a brief description of the delinquent act or acts; and
- 4) the disposition of the case.

B. Additional information.

1) If the juvenile is adjudicated delinquent of a felony offense, the court, through the juvenile probation office, shall provide to the building principal or his or her designee relevant information regarding the juvenile contained in the juvenile probation or treatment reports pertaining to the adjudication, prior delinquent history, and the supervision plan of the juvenile.

2) The court or the juvenile probation office shall have the authority to share any additional information regarding the juvenile under its jurisdiction with the building principal or his or her designee as deemed necessary to protect public safety or to enable appropriate treatment, supervision, or rehabilitation of the juvenile.

C. Transfers to other schools. Any information provided to and maintained by the building principal or his or her designee under this rule shall be transferred to the building principal or his or her designee of any public, private, or parochial school to which the juvenile transfers enrollment.

D. Maintained separately. Any information provided to the building principal or his or her designee under this rule shall be maintained separately from the juvenile's official school record.

Comment

The delinquency information in the school record is to be used only by school officials and is not to be released to the general public or third parties unless ordered by the court.

For further dissemination and usage in school, see 42 Pa.C.S. § 6341(b.1).

Official Note: Rule 163 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 163 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART C(2). MAINTAINING RECORDS**Rule 165. Design of Forms.**

The Court Administrator of Pennsylvania, in consultation with the Juvenile Court Procedural Rules Committee, shall design and publish forms necessary to implement these rules.

Comment

The purpose of the unified judicial system can be further achieved by creating uniform forms to implement a particular rule.

Official Note: Rule 165 adopted April 1, 2005, effective October 1, 2005.

Rule 166. Maintaining Records in the Clerk of Courts.

A. *Generally.* The juvenile court file shall contain all original records, papers, and orders filed, copies of all court notices, and docket entries. These records shall be maintained by the clerk of courts and shall not be taken from the custody of the clerk of courts without order of the court.

B. *Docket entries.* The clerk of courts shall maintain a list of docket entries: a chronological list, in electronic or written form, of documents and entries in the juvenile court file and of all proceedings in the case. The clerk of courts shall make docket entries at the time the information is made known to the clerk.

C. *Contents of docket entries.* The docket entries shall include, at a minimum, the following information:

- 1) the juvenile's name, last known address, date of birth, if known;
- 2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance(s), and the date of any withdrawal of appearance(s);
- 3) notations concerning all papers filed with the clerk, including all court notices, appearances, admissions, motions, orders, findings and adjudications, and dispositions, briefly showing the nature and title, if any, of each paper filed, writ issued, and motion made, and the substance of each order or disposition of the court and of the returns showing execution of process;
- 4) notations concerning motions made orally or orders issued orally in the courtroom when directed by the court;
- 5) a notation of every judicial proceeding, continuance, and disposition;
- 6) the location of exhibits made part of the record during the proceedings; and
- 7) a) the date of receipt in the clerk's office of the order or court notice;
b) the date appearing on the order or court notice; and
c) the date and manner of service of the order or court notice; and
- 8) all other information required by Rule 345.

Comment

This rule sets forth the mandatory contents of the list of docket entries and the juvenile court file. This is not intended to be an exhaustive list of what is required to be recorded in the docket entries. The judicial districts may require additional information to be recorded in a case or in all cases.

The list of docket entries is a running record of all information related to any action in a juvenile case in the court of common pleas of the clerk's county, such as dates of filings, of orders, and of court proceedings, including hearings conducted by masters. Nothing in this rule is intended to preclude the use of automated or other electronic means for time stamping or making docket entries.

This rule applies to all proceedings in the court of common pleas, including hearings conducted by masters, at any stage of the delinquency case.

This rule is not intended to include items contained in the juvenile probation records or reports. See Rule 160 (Inspection of Juvenile File/Records) and its Comment for items contained in juvenile probation records or reports.

The practice in some counties of creating the list of docket entries only if an appeal is taken is inconsistent with this rule.

The requirement of paragraph (C)(2) that all attorneys and their addresses be recorded makes certain there is a record of all attorneys who have appeared for any juvenile in the case. The requirement also ensures that attorneys are served as required by Rules 167 and 345. See also Rule 345(C) concerning certificates of service. In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required by paragraph (C)(2) is to include the facsimile number or electronic address. Paragraph (C)(4) recognizes that occasionally disposition of oral motions presented in open court should be reflected in the docket, such as motions and orders related to omnibus motions as provided in Rule 346.

Official Note: Rule 166 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 166 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 167. Filings and Service of Court Orders and Notices.*A. Filings.*

1) All orders and court notices shall be transmitted promptly to the clerk of courts for filing. Upon receipt by the clerk of courts, the order or court notice shall be time stamped promptly with the date of receipt.

2) All orders and court notices shall be filed in the juvenile court file.

B. Service.

1) A copy of any order or court notice shall be served promptly on each party's attorney, and the juvenile, if unrepresented.

2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or court administrator.

3) *Methods of service.* Service shall be:

a) in writing by:

i) personal delivery to the party's attorney, and if unrepresented, the juvenile;

ii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;

iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box;

iv) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement;

v) sending a copy by facsimile transmission or other electronic means if the party's attorney, and if unrepresented, the juvenile has filed written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or

vi) delivery to the party's attorney, and if unrepresented, the juvenile by carrier service; or

b) orally in open court on the record.

C. *Unified Practice.* Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a person to file or serve orders or court notices.

Comment

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the juvenile's presence.

A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(v). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization is to be filed in each case by the juvenile, if unrepresented, or by the attorney who wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping.

Official Note: Rule 167 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 167 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART C(3). EXPUNGING OR DESTROYING RECORDS

Rule 170. Expunging or Destroying Juvenile Court Records.

A. *Motion.* Juvenile records may be expunged upon motion.

B. *Contents of Motion.* A motion, which shall take the form of a proposed court order, shall contain the following information:

- 1) The name of the juvenile;
- 2) the date of birth of the juvenile, if known;
- 3) the juvenile's case docket number, if any;
- 4) the allegations to which the order pertains;
- 5) the law enforcement agency that initiated the allegations;
- 6) the reference number of the police report or written allegation to be expunged or destroyed;

7) the date of arrest;

8) the disposition of the written allegation or petition;

9) the reasons and statutory authority for expunging or destroying the document; and

10) the agencies upon which certified copies of the court order shall be served.

C. *Service of Motion.* In addition to the service required by Rule 345, the movant shall serve the motion on the chief juvenile probation officer.

D. *Answer.* The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.

E. *Hearing.* Unless the attorney for the Commonwealth consents to expunging the records, the court shall schedule and conduct a hearing, and thereafter grant or deny the motion.

Comment

See 18 Pa.C.S. § 9123 for records that may be expunged and 42 Pa.C.S. § 6341(a) for destruction of fingerprints and photographs.

Under paragraph (B)(6), any number assigned to police papers helpful in tracking the police report or written allegation that would assist the law enforcement agency in expunging or destroying the document is to be listed. A reference number could be an offense tracking number, district control number, crime control number, incident number, Philadelphia identification number, or another number assigned by the law enforcement agency to track the document.

Official Note: Rule 170 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 170 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 172. Order to Expunge or Destroy.

A. *Contents.* Any order to expunge or destroy the juvenile court file, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

- 1) All items contained in Rule 170(B);
- 2) the printed name and signature of the judge issuing the order; and
- 3) the date of the court order.

B. *Service.* In addition to the service required by Rule 167, the clerk of courts shall serve certified copies of the order on the chief juvenile probation officer and any other person or agency as directed by the court.

Official Note: Rule 172 adopted April 1, 2005, effective October 1, 2005.

PART D. MASTERS

Rule 185. Appointment to Cases.

A. *Appointment.* If necessary to assist the juvenile court judge, the president judge or his or her designee may appoint masters to hear designated juvenile delinquency matters.

B. *Prohibited practice.* Masters shall not engage in practice before the juvenile court in the same judicial district where they preside over juvenile matters.

Official Note: Rule 185 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 185 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 187. Authority of Master.

A. *Cases to be heard by Master.* A master shall have the authority to preside over only the following:

- 1) detention hearings, detention review hearings, or shelter-care hearings;
- 2) discovery, pre-adjudicatory, or preliminary proceedings for misdemeanors;
- 3) any hearing in which the petition alleges only misdemeanors; and
- 4) uncontested dispositional review hearings and uncontested probation revocation hearings.

B. *No authority.* A master shall not have the authority to:

- 1) conduct transfer hearings pursuant to Rule 394;
- 2) issue warrants; and
- 3) hear requests for writs of habeas corpus.

C. *Right to hearing before judge.* Prior to the commencement of any proceeding, the master shall inform the juvenile, the juvenile's guardian(s), if present, the juvenile's attorney, and the attorney for the Commonwealth that the juvenile and the Commonwealth have a right to have the matter heard by a judge. If the juvenile or the Commonwealth objects to having the matter heard by the master, the case shall proceed before the judge.

Comment

A master's authority is limited under paragraph (A) to specifically those types of cases provided. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6305(b) only to the extent that masters may not hear all classes of cases.

Under paragraph (B)(2), nothing is intended to limit the master's ability, in a proper case before the master, to recommend to the court that a warrant be issued. This includes arrest, bench, and search warrants.

Concerning the provisions of paragraph (C), see 42 Pa.C.S. § 6305(b).

See Rule 127 for recording of proceedings before a master.

Official Note: Rule 187 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 187 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 190. Admissions Before Master.

A. *Types of cases.* A master may accept an admission to any misdemeanor.

B. *Requirements.* The admission requirements of Rule 407 shall be followed.

Official Note: Rule 190 adopted April 1, 2005, effective April 1, 2006.

Rule 191. Master's Findings and Recommendation to the Judge.

A. *Announcement of Findings and Recommendation.* At the conclusion of the hearing, the master shall announce in open court on the record, the master's findings and recommendation to the judge.

B. *Submission of Papers and Contents of Recommendation.* Within one business day, the master shall submit a summary of the recommendation to the juvenile court judge. If requested, a copy of the summary shall be given to the juvenile's attorney, the juvenile, if unrepresented, the attorney for the Commonwealth, and the juvenile probation officer. The summary shall specifically state a recommendation to the judge.

C. *Judicial Action.* The judge shall by order:

- 1) accept the recommendation;
- 2) reject the recommendation and issue an order with a different disposition;
- 3) send the recommendation back to the master for more specific findings; or
- 4) schedule a rehearing under Rule 192 within seven days.

Comment

The juvenile court may promulgate a form for masters to use. The summary of the recommendation may take the form of a court order to be adopted by the court.

If a party contests the master's decision, the copy of the summary may be used as an attachment in a motion for a rehearing in front of the judge.

The master's decision is subject to approval of the judge. When the judge, in rejecting the master's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the master's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. See *In re Perry*, 459 A.2d 789 (Pa. Super. Ct. 1983). The juvenile waives the right to complain of double jeopardy if the Commonwealth requests a rehearing before the judge. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. Ct. 1980).

Nothing in this rule prohibits the court from modifying conclusions of law made by the master.

Official Note: Rule 191 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 191 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 192. Challenge to Master's Recommendation.

A. *Time limitation.* A party may challenge the master's recommendation by filing a motion with the clerk of courts within three days of receipt of the recommendation. The motion shall request a rehearing by the judge and aver reasons for the challenge.

B. *Rehearing.* The judge shall act on the challenge within seven days of the date of the motion. The detention status of the juvenile will remain the same pending the rehearing unless otherwise ordered by the judge.

Comment

Under paragraph (A), the petition for a rehearing may be oral or written.

Under paragraph (B), the judge does not have to grant a rehearing. A judge may deny the request based on the petition. If the judge does grant a hearing, it should be held within seven days of the date of the challenge.

The juvenile waives the right to complain of double jeopardy if the Commonwealth requests a rehearing before the judge. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. Ct. 1980).

Official Note: Rule 192 adopted April 1, 2005, effective April 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 192 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

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PART A. COMMENCING PROCEEDINGS

Rule 200. Commencing Proceedings.

Juvenile delinquency proceedings within a judicial district shall be commenced by:

- 1) submitting a written allegation pursuant to Rule 231;
- 2) an arrest without a warrant:
 - a) when the offense is a felony or misdemeanor committed in the presence of the police officer making the arrest; or
 - b) upon probable cause when the offense is a felony; or
 - c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute;
- 3) transfer of a case from a criminal proceeding pursuant to 42 Pa.C.S. § 6322;
- 4) the court accepting jurisdiction of a resident juvenile from another state; or
- 5) the court accepting supervision of juvenile pursuant to another state's order.

Comment

Paragraph (1) allows for commencing delinquency proceedings by submitting a written allegation. This procedure departs from the Juvenile Act, which provides that the filing of a petition commences a proceeding. Rule 800 suspends 42 Pa.C.S. § 6321 only to the extent that it is inconsistent with the procedures of this rule. Petitions filed by any person circumvent the juvenile probation's office ability to divert the case through informal adjustment as provided in 42 Pa.C.S. § 6323. Probation officers may "receive and examine complaints and charges of delinquency . . . of a child for the purpose of considering the commencement of proceedings." 42 Pa.C.S. § 6304(a)(2).

See Rule 231 for procedures on submitting a written allegation.

For the definition of a "written allegation," see Rule 120.

The Juvenile Act provides that "a child may be taken into custody . . . pursuant to the laws of arrest." 42 Pa.C.S. § 6324. Paragraph (2) states the laws of arrest without a warrant in Pennsylvania. See Pa.R.Crim.P. 502.

Paragraph (4) encompasses a juvenile who lives in Pennsylvania and commits a crime in another state and that state wants Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

Paragraph (5) encompasses a juvenile who lives outside of Pennsylvania, committed a crime outside of Pennsylvania, is moving to Pennsylvania, and the other jurisdiction would like Pennsylvania to accept the disposition of the juvenile and supervise the juvenile.

For procedures for when the juvenile is alleged to have violated probation, see Rule 612.

For inter-county transfer of juveniles, see Rule 302.

See § 6321(a) of the Juvenile Act for commencement of proceedings under the Juvenile Act. 42 Pa.C.S. § 6321(a).

Official Note: Rule 200 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 200 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART B. ARREST PROCEDURES IN DELINQUENCY CASES

(a) Arrest Warrants

Rule 210. Arrest Warrants.

A. Application. An application for an arrest warrant shall be made by filing a written allegation supported by a probable cause affidavit with the president judge or any issuing authority designated by the president judge of each judicial district. The president judge shall ensure twenty-four hour availability of a designated issuing authority.

B. Approval of Commonwealth. When a certification is filed by the District Attorney pursuant to Rule 231, no application for an arrest warrant shall be submitted to the issuing authority unless an attorney for the Commonwealth has approved the application.

C. Arrest procedures. When a juvenile is arrested pursuant to a warrant, the case shall proceed in the same manner as a warrantless arrest in accordance with Rule 220.

Comment

For the contents of a written allegation, see Rule 232. For the requirements of the issuance of an arrest warrant, see Rule 211.

Under paragraph (A), the president judge of each judicial district may designate a juvenile court judge, another common pleas judge, or other issuing authorities to receive applications for arrest warrants. The president judge also is to designate an issuing authority to receive applications after normal business hours and on holidays. For the definition of "issuing authority," see Rule 120.

To implement the procedures of paragraph (A), Rule 800 suspends 42 Pa.C.S. § 6303(b) only to the extent that Magisterial District Judges may detain a juvenile for the limited purposes of this rule if the Magisterial District Judge is so designated by the president judge of the judicial district to receive arrest warrant applications.

Official Note: Rule 210 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 210 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 211. Requirements for Issuance.

A. *Probable Cause.* No arrest warrants shall be issued but upon probable cause, supported by one or more affidavits sworn to before the issuing authority. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

B. *Evidence.* At any proceeding on a motion challenging an arrest warrant, no evidence shall be admissible to establish probable cause for the arrest warrant, other than the affidavits provided for in paragraph (A).

Comment

This rule does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to the issuance of a warrant. All affidavits in support of an application for an arrest warrant should be sworn to before the issuing authority prior to the issuance of the warrant.

This rule carries over to the arrest warrant, the requirement that the evidence presented to the issuing authority be reduced to writing and sworn to, and that only the writing is subsequently admissible to establish that there was probable cause. In these respects, the procedure is similar to that applicable to search warrants. See Pa.R.Crim.P. 203.

For a discussion of the requirements of probable cause for the issuance of an arrest warrant, see *Commonwealth v. Flowers*, 369 A.2d 362 (Pa. Super. Ct. 1976).

The affidavit requirements of this rule are not intended to apply when an arrest warrant is to be issued for noncompliance with a citation, with a summons, or with a court order.

Official Note: Rule 211 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter two, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 212. Duplicate and Alias Warrants of Arrest.

A. *Duplicates.* When a warrant of arrest has been issued and it appears necessary or desirable to issue duplicates for execution, the issuing authority may issue any number of duplicates. Each duplicate shall have the same force and effect as the original. Costs may be assessed only for one such warrant and only one service fee may be charged.

B. *Alias.* 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.

Official Note: Rule 212 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 212 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 213. Execution of Arrest Warrant.

A. A warrant of arrest may be executed at any place within the Commonwealth.

B. A police officer shall execute a warrant of arrest.

Comment

For the definition of "police officer," see Rule 120.

Official Note: Rule 213 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter two, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

(b) Arrests Without Warrant**Rule 220. Procedure in Cases Commenced by Arrest Without Warrant.**

A. The person arresting a juvenile shall promptly:

- 1) notify the juvenile's guardian of:
 - a) the arrest of the juvenile;
 - b) the reason for the arrest; and
 - c) the juvenile's whereabouts; and
- 2) either:

a) release the juvenile to his or her guardian upon the guardian's promise to bring the juvenile before the court when requested by the court, unless detention of the juvenile is warranted; or

b) deliver the juvenile before the court or to a detention facility designated by the court; or

c) deliver the juvenile to a medical facility if the juvenile is believed to be suffering from a physical condition or illness that requires prompt treatment.

B. In all cases, the person arresting the juvenile promptly shall submit the written allegation, as required by Rule 231(A)(2).

Comment

The juvenile probation officer can accept juveniles for the court as described in paragraph (A)(2)(b).

The release of the juvenile does not eliminate the requirement of submission of a written allegation. For the general procedures governing written allegations, see Chapter Two, Part (C).

See 42 Pa.C.S. § 6326.

Official Note: Rule 220 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter two, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 221. Temporary Detention in Police Lock-Up.

A. *Secure detention.* A juvenile under arrest may be held securely in a police lock-up or other facility that houses an adult lock-up only under the following conditions:

1) the secure holding shall only be for the purpose of identification, investigation, processing, releasing or transferring the juvenile to a guardian, juvenile court, or detention facility;

2) the secure holding shall be limited to the minimum time necessary to complete the procedures listed in paragraph (A)(1), but in no case may such holding exceed six hours; and

3) if so held, the juvenile shall be separated by sight and sound from incarcerated adult offenders and shall be under the continuous visual supervision of law enforcement officials or facility staff.

A juvenile shall be deemed to be held securely only when physically detained, confined in a locked room or cell, or when secured to a cuffing rail or other stationary object within the facility.

B. *Non-secure detention.* Notwithstanding other provisions of law, a juvenile may be held in non-secure custody in a building or facility that houses an adult lock-up only under the following conditions:

1) the area where the juvenile is held is an unlocked multi-purpose area that is not designated or used as a secure detention area or is not part of a secure detention area; or, if the area is a secure booking or similar area, it is used only for processing purposes;

2) the juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;

3) the area is limited to providing non-secure custody only long enough for the purposes of identification, investigation, processing or release to guardians or for arranging transfer to another agency or appropriate facility; and

4) the juvenile shall be under continuous visual supervision by a law enforcement officer or other facility staff during the period of non-secure custody.

Comment

This rule reflects certain provisions of § 6326 of the Juvenile Act. 42 Pa.C.S. § 6326.

Official Note: Rule 221 adopted April 1, 2005, effective October 1, 2005.

PART C. WRITTEN ALLEGATION PROCEDURES

Rule 231. Written Allegation.

A. *Submission.* In every delinquency case, the law enforcement officer shall submit a written allegation to the juvenile probation office.

1) *Juvenile not under arrest.* When a juvenile is not under arrest, a written allegation shall be submitted to the juvenile probation office and a copy shall be forwarded to the attorney for the Commonwealth unless the

District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).

2) *Juvenile under arrest.* When a juvenile is under arrest, a written allegation shall be submitted promptly to the court or detention facility, and copies shall be immediately forwarded to the juvenile probation office and the attorney for the Commonwealth unless the District Attorney elects to require initial receipt and approval of the written allegation under paragraph (B).

B. *Approval by the District Attorney.* The District Attorney of any county may require initial receipt and approval of written allegations by an attorney for the Commonwealth before a delinquency proceeding is commenced.

1) *Certification.* If the District Attorney elects to require initial receipt and approval of written allegations in his or her county, the District Attorney shall file a certification with the court of common pleas. The certification shall specifically state the classes, grading, or types of cases that the police officer shall submit to the attorney for the Commonwealth.

2) *Timeliness.* All written allegations shall be approved or disapproved without unreasonable delay. An attorney for the Commonwealth shall be available at all times for this purpose unless the District Attorney has specified otherwise in the certification pursuant to (B)(1).

C. *Procedures Following the Attorney for the Commonwealth's Approval.*

1) *Juvenile not under arrest.* If a juvenile is not under arrest and an attorney for the Commonwealth approves the written allegation, notice of the approval and a copy of the written allegation shall be forwarded immediately to the juvenile probation office.

2) *Juvenile under arrest.* If a juvenile is under arrest, the written allegation shall be submitted to the attorney for the Commonwealth and approved prior to taking the juvenile to a detention facility. If the written allegation is approved, it shall be submitted promptly to the court or detention facility. A copy of the notice of the approval and the written allegation shall be forwarded to the juvenile probation office.

D. *Attorney for the Commonwealth's Disapproval.* If the written allegation has been disapproved for prosecution, it shall nevertheless be transmitted to the juvenile probation office with notice of the disapproval. If the juvenile is in custody, the juvenile shall be released immediately unless there are other grounds for the juvenile's detention.

Comment

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

See Rules 210 (Arrest Warrants) and 220 (Procedures in Cases Commenced by Arrest Without Warrant) for the procedures on submitting written allegations for arrests.

Under paragraphs (A)(2) and (C)(2), the police officer is to submit the written allegation promptly to the intake staff at the court or the detention facility.

As used in this rule, "District Attorney" is the District Attorney of each county. This rule gives the District Attorney of each county the option of requiring that written allegations and/or arrest warrant affidavits filed in that county by police officers have the prior approval of an attorney for the Commonwealth. Under the rule, the District Attorney may elect to require prior approval of written allegation, or arrest warrant affidavits (see Rule 210), or both. In addition, the District Attorney is given the authority to define which offenses or grades of offenses will require such prior approval. For example, the District Attorney may specify that prior approval will be required only if a felony is alleged, or that prior approval will be required for all cases.

Under paragraph (B), the District Attorney decides whether an attorney for the Commonwealth receives initial receipt and approval of written allegations. Once the District Attorney has filed a certification with the court under paragraph (B)(1), any attorney for the Commonwealth may receive and approve written allegations as specified in the certification by the District Attorney. This procedure creates a new option for the District Attorney to decide if written allegations need to be approved by an attorney for the Commonwealth. To implement this procedure, Rule 800 suspends 42 Pa.C.S. § 6304, only to the extent that probation officers may have to seek approval of any attorney for the Commonwealth.

Under paragraph (D), a juvenile should be released from custody unless there are other legally sufficient bases for detaining the juvenile, such as, violation of probation or other pending allegations.

Official Note: Rule 231 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 231 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 232. Contents of Written Allegation.

Every written allegation shall contain:

- 1) the name of the person making the allegations;
- 2) the name, date of birth, and address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that:
 - a) it is in the best interest of the juvenile and the public that the proceedings be brought; and
 - b) the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed; provided, however:
 - a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
 - b) if the date or day of the week is an essential element of the offense alleged, such date or day shall be specifically set forth;
- 5) the place where the offense is alleged to have been committed;

6) a) i) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and

ii) the official or customary citation of the statute and section, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation; or

b) a certification that the juvenile has not complied with the sentence imposed for a conviction of a summary offense;

7) the name and age of any conspirators, if known;

8) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;

9) a notation if criminal laboratory services are requested in the case;

10) a verification by the person making the allegation that the facts set forth in the written allegation are true and correct to the person's personal knowledge, information, or belief, and that any false statement made is subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

11) the signature of the person making the allegation and the date of execution of the written allegation.

Comment

This rule sets forth the required contents of all written allegations whether the person making the allegation is a law enforcement officer, a police officer, or a private citizen.

Official Note: Rule 232 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 232 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 233. Approval of Private Written Allegations.

A. *Submission of written allegation.* When the person making the allegation is not a law enforcement officer, the written allegation shall be submitted to the juvenile probation officer for approval, unless the District Attorney has elected to require initial receipt and approval under Rule 231(B). The juvenile probation officer or the attorney for the Commonwealth shall approve or disapprove the written allegation without unreasonable delay.

B. *Requirements.*

1) *Approval.* If the private written allegation is approved, the case shall proceed as any other written allegation under Rule 231(C) and (D).

2) *Disapproval.* If the written allegation is disapproved, the attorney for the Commonwealth or the juvenile probation officer shall state the reasons on the written allegation form and return it to the person making the allegation. The person making the allegation may file a motion for review of the disapproval by the court.

Comment

For the contents of a written allegation, see Rule 231.

In all cases where the affiant is not a law enforcement officer, the written allegation should be submitted for approval or disapproval by the juvenile probation officer or the attorney for the Commonwealth. Once the allega-

tion is approved, the case should proceed as any other written allegation would proceed. See Rule 231.

When the person filing a document alleging a juvenile committed a delinquent act is a private citizen, he or she should follow the same process and proceedings as probation officers and law enforcement officers. Private citizens are not to be afforded additional rights when it comes to adjudicating a juvenile delinquent. The purpose of the Juvenile Act, 42 Pa.C.S. § 6334, is achieved by providing an avenue for the private citizen to commence a delinquency proceeding by submitting a written allegation. If the written allegation is disapproved, the private citizen has the right to challenge the decision by motion to the court of common pleas. If the court of common pleas overturns the decision of the attorney for the Commonwealth or the juvenile probation officer, the court should direct the attorney for the Commonwealth or the juvenile probation officer to approve the written allegation and proceed with the case in the same manner as any other case. This procedure ensures informal action is not precluded, such as, informal adjustment. Once a petition is filed, informal adjustment is not allowed. See Comment to Rule 312. In addition, Rule 800 suspends 42 Pa.C.S. § 6334 only to the extent that a private citizen may not submit a petition.

For motions and service, see Rules 344 and 345.

Official Note: Rule 233 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 233 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART D. PRE-ADJUDICATORY DETENTION

Rule 240. Detention of Juvenile.

A. *Detention requirements.* If a juvenile is brought before the court or delivered to a detention facility designated by the court, the juvenile probation officer immediately shall:

- 1) examine the written allegation;
- 2) make an investigation, which may include an intake conference with the juvenile, the juvenile's attorney, guardian, or other interested and informed adult; and
- 3) release the juvenile, unless it appears that the juvenile's detention is warranted.

B. *Filing of petition.* The release of the juvenile shall not prevent the subsequent filing of a petition.

C. *Prompt hearing.* If the juvenile is not released, a detention hearing shall be held no later than seventy-two hours after the juvenile is placed in detention.

D. *Time restrictions.* Except as provided in paragraphs (D)(1) and (D)(2), if the adjudicatory hearing is not held or notice of request for transfer is not submitted within the ten-day period as specified in Rules 391 and 404, the juvenile shall be released.

1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines that:

- a) evidence material to the case is unavailable;
- b) due diligence to obtain such evidence has been exercised;
- c) there are reasonable grounds to believe that such evidence will be available at a later date; and

d) the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

- a) delay caused by the unavailability of the juvenile or the juvenile's attorney;
- b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or
- c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

Comment

If a juvenile is detained, the guardian should be notified immediately. See Rules 220 (Procedures in Cases Commenced by Arrest Without Warrant) and 313(B) (Taking into Custody from Intake) for notification of the guardian.

Under paragraph (D)(2), if the juvenile causes delay, the juvenile may continue to be held in detention. The additional period of detention should not exceed ten days. The court may continue such detention for successive ten-day intervals if the juvenile caused the delay. The time restrictions of paragraph (D) apply to a juvenile who is placed in detention, even if previously released.

For time restrictions on detention for juveniles scheduled for a transfer hearing to criminal proceedings, see Rule 391.

For statutory provisions on detention, see 42 Pa.C.S. §§ 6325, 6331, 6335. For the Juvenile Court Judges Commission's Detention Standards, see 37 Pa. Code § 200.101 et seq. (2003).

Official Note: Rule 240 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 240 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 241. Notice of Detention Hearing.

Notice of the detention hearing, including date, time, place, and purpose, shall be given to:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation officer;
- 5) the attorney for the Commonwealth; and
- 6) any other appropriate persons.

Comment

Notice should be as timely as possible. Because there is a seventy-two hour time restriction, notice may be oral. Every possible attempt should be made to notify all interested persons.

If a guardian has not been notified, a rehearing is to be ordered under Rule 243 upon submission of an affidavit by the guardian.

Official Note: Rule 241 adopted April 1, 2005, effective October 1, 2005.

Rule 242. Detention Hearing.

A. *Informing juvenile of rights.* Upon commencement of the hearing, the court shall:

- 1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;
- 2) inform the juvenile of the right to counsel and to assigned counsel; and
- 3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

- a) cross-examine witnesses offered against the juvenile; and
- b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

C. *Findings.* The court shall determine whether:

- 1) there is probable cause that a delinquent act was committed by the juvenile; and
- 2) detention of the juvenile is warranted.

D. *Filing of petition.* If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. See 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. See Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the

juvenile. See Rule 363 for time of service. See Rule 331 for service of the petition. See Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 242 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 243. Detention Rehearings.

A. *Mandatory Rehearing.* If the guardian submits an affidavit to the juvenile probation officer alleging that the guardian was not notified of the detention hearing and that the guardian did not appear or waive appearance at the detention hearing, a rehearing shall be held within seventy-two hours of the submission of the affidavit.

B. *Discretionary Rehearing.* The court may grant a rehearing upon request of the juvenile's attorney, the juvenile, if unrepresented, or the attorney for the Commonwealth, or on its own motion.

C. *Forum.* The judge, who heard the original detention hearing or adopted the findings of the master, shall hold the rehearing, unless the judge assigns the case to a master.

Comment

See 42 Pa.C.S. § 6332(b).

Under paragraph (A), upon receiving an affidavit, the juvenile probation officer is to schedule a rehearing, forward the affidavit to the proper person to schedule a rehearing, or submit the affidavit to the court for rescheduling.

Under paragraph (C), only a judge may hold a rehearing, unless the judge orders a master to hear the case.

Official Note: Rule 243 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 243 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES**PART A. VENUE**

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PART A. VENUE**Rule 300. Venue.**

A. *Generally.* A delinquency proceeding shall be commenced in:

- 1) the county in which the delinquent act was allegedly committed; or
- 2) the juvenile's county of residence.

B. *Change of venue.* The juvenile may file a motion for change of venue if there is substantial prejudice to the juvenile. The court shall decide the motion.

Official Note: Rule 300 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 300 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 302. Inter-County Transfer.

A. *Adjudication of Delinquency.* When the court proceeds to an adjudicatory hearing for non-resident juveniles, it shall hear evidence on the petition pursuant to Rule 406 or accept an admission pursuant to Rule 407 and shall rule on the offenses in accordance with Rule 408. The court may transfer the case to the juvenile's county of residence for a hearing to determine if the juvenile is in need of treatment, rehabilitation, or supervision pursuant to Rule 409 and if the court finds the juvenile to be in need of treatment, rehabilitation, or supervision, the receiving court shall proceed under Chapter Five.

B. Courtesy Supervision.

1) The court may transfer supervision of the juvenile to the juvenile's county of residence after:

- a) a consent decree is entered; or
- b) a dispositional order is entered; and

2) The county providing courtesy supervision may, with cause, withdraw supervision at any time and return the matter for further action to the county which entered the dispositional order.

C. *Transmission of juvenile court file.* If the case is transferred under paragraph (A) or (B), the transferring court shall order transfer of certified copies of all documents, reports, and summaries in the juvenile's court file.

Comment

The purpose of allowing transfer of disposition and supervision of the juvenile to the juvenile's county of residence is to allow probation to supervise the juvenile closely. Supervision is difficult if the juvenile lives in another county.

Under paragraph (B), this rule also may apply if the juvenile moves to a different county in this Commonwealth at some stage in the proceedings.

When the case is being transferred under paragraph (A), the transferring court should enter a finding of the amount of restitution owed and to whom it should be paid, if ordered. A restitution order should be included in the dispositional order, if applicable, under paragraph (B).

Official Note: Rule 302 adopted April 1, 2005, effective October 1, 2005.

PART B. INTAKE AND INFORMAL ADJUSTMENT**Rule 310. Pre-Intake Duties, Scheduling, and Notice.**

A. *Juvenile probation officer duties.* After a written allegation is submitted, the juvenile probation officer shall gather pertinent information to determine whether:

- 1) the allegations are within the jurisdiction of the juvenile court; and
- 2) it is appropriate to schedule an intake conference.

B. *Scheduling.* Intake conferences shall be scheduled within a reasonable time after submission of the written allegation.

C. *Notice.* The juvenile probation officer shall make all reasonable efforts to provide actual notice of the intake conference to the juvenile and the juvenile's guardian.

Comment

If the juvenile probation officer has exhausted all methods of communication with the juvenile's guardian, the juvenile probation officer may proceed with the intake conference without the presence of the guardian. If the juvenile is detained at the intake conference without the presence of a guardian, the juvenile probation officer is to notify the guardian of the detention of the juvenile immediately. See Rule 313(B).

Official Note: Rule 310 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter three, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 311. Intake Conference.

A. The juvenile probation officer may conduct an intake conference to determine what further action, if any, should be taken.

B. Before proceeding with an intake conference, the juvenile probation officer shall:

1) provide a copy of the written allegation to the juvenile, the juvenile's guardian, if present, and the juvenile's attorney, if present; and

2) inform the juvenile and the juvenile's guardian, if present, of the juvenile's rights; and

3) afford the victim the opportunity to offer prior comment on the disposition of the case if informal adjustment or an alternative resolution of the case is being considered.

C. The juvenile probation officer shall provide the attorney for the Commonwealth with notice of the decision resulting from the intake conference. Within a reasonable time of receiving the notice, the attorney for the Commonwealth may file a motion requesting review by the court of the juvenile probation officer's action. The court shall conduct a hearing on the motion.

Comment

Under paragraph (A), in making a decision, the juvenile probation officer should balance the interests of the victim and protection of the community, imposition of accountability on the juvenile for offenses committed, and the development of competencies for the juvenile. See 42 Pa.C.S. § 6301. The juvenile probation officer should consult with the victim, the attorney for the Commonwealth, the juvenile, the juvenile's attorney, if present, and the juvenile's guardian to determine how the case should be handled. See Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

For the statutory protections concerning statements made by the juvenile, see 42 Pa.C.S. § 6323(e).

Under paragraph (C), it is anticipated that the attorney for the Commonwealth should consult with the juvenile probation officer before any court action.

Nothing in these rules is intended to confer a right upon any person, not already afforded by law, to attend an intake conference.

Official Note: Rule 311 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 311 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 312. Informal Adjustment.

A. *Participation.* At any time prior to the filing of a petition, the juvenile probation officer may informally adjust the allegation(s) if it appears:

1) an adjudication would not be in the best interest of the public and the juvenile;

2) the juvenile and the juvenile's guardian consent to informal adjustment with knowledge that consent is not obligatory; and

3) the admitted facts bring the case within the jurisdiction of the court.

B. Completion.

1) If the juvenile successfully completes the informal adjustment, the case shall be dismissed and prosecution is barred.

2) If the juvenile does not successfully complete the informal adjustment, a petition shall be filed.

Comment

Informal adjustments may not occur after the filing of a petition. *Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000). See 42 Pa.C.S. § 6323(a).

The juvenile probation officer or other agencies may give "counsel and advice" as to the informal adjustment. See 42 Pa.C.S. § 6323(b). "Counsel and advice" may include referral to a social service agency or other conditions as agreed to by the juvenile probation officer and the juvenile.

A juvenile's participation in an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months. See 42 Pa.C.S. § 6323(c). Any incriminating statements made by the juvenile to the juvenile probation officer and in the discussions or conferences incident thereto are not to be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act. See 42 Pa.C.S. § 6323(e).

Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim an opportunity to comment. In addition, the victim is to be notified of the final outcome of the hearing. See Victim's Bill of Rights, 18 P.S. § 11.201 et seq.

If a petition is filed because the juvenile has not successfully completed the requirements of an informal adjustment, the procedures of Rule 330 are to be followed.

Official Note: Rule 312 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 312 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 313. Detention from Intake.

A. *Detention.* If it is determined at an intake conference that a juvenile should be detained, the matter shall proceed pursuant to Rule 240.

B. *Notice to Guardian.* If a guardian is not present at the intake conference, the juvenile probation officer immediately shall notify the guardian of the juvenile's detention.

Comment

The provision concerning notification of a guardian in Rule 220 is to be followed.

Official Note: Rule 313 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter three, Part B published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART C. PETITION**Rule 330. Petition: Filing, Contents, Function.**

A. *Certification.* The District Attorney of any county may require that an attorney for the Commonwealth shall file all petitions. If the District Attorney elects to

require an attorney for the Commonwealth to file the petition, the District Attorney shall file a certification with the court of common pleas. The certification shall:

1) state that an attorney for the Commonwealth shall file petitions; and

2) specify any limitations on the filing or classes of petitions.

B. *Filings*. In every delinquency proceeding, the attorney for the Commonwealth or the juvenile probation officer shall file a petition with the clerk of courts if it has been determined that informal adjustment or another diversionary program is inappropriate.

C. *Petition contents*. Every petition shall set forth plainly:

- 1) the name of the petitioner;
- 2) the name, date of birth, and address, if known, of the juvenile, or if unknown, a description of the juvenile;
- 3) a statement that:
 - a) it is in the best interest of the juvenile and the public that the proceedings be brought; and
 - b) the juvenile is in need of treatment, supervision, or rehabilitation;
- 4) the date when the offense is alleged to have been committed; provided, however:
 - a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
 - b) if the date or day of the week is an essential element of the offense alleged, such date or day shall be specifically set forth;
- 5) the place where the offense is alleged to have been committed;
- 6) a) i) a summary of the facts sufficient to advise the juvenile of the nature of the offense alleged; and
 - ii) the official or customary citation of the statute and section, or other provision of law which the juvenile is alleged to have violated, but an error in such citation shall not affect the validity or sufficiency of the written allegation; or
- b) a certification that the juvenile has not complied with the sentence imposed for a conviction of a summary offense.
- 7) the name and age of any conspirators, if known;
- 8) a statement that the acts were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- 9) a notation if criminal laboratory services are requested in the case;
- 10) a verification by the petitioner that the facts set forth in the petition are true and correct to the petitioner's personal knowledge, information, or belief, and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;
- 11) the signature of the petitioner and the date of the execution of the petition;
- 12) the whereabouts of the juvenile and if taken into custody, the date and time thereof; and

13) the name and address of the juvenile's guardian, or if unknown, the name and address of the nearest adult relative.

Comment

Under paragraph (A), the District Attorney may file a certification with the court of common pleas stating that only an attorney for the Commonwealth may file a petition. If a certification has not been filed, then an attorney for the Commonwealth or a juvenile probation officer may file a petition.

A private citizen has the right to file a written allegation, not a petition. The written allegation commences the proceedings in the juvenile system. See Rule 200. The case should progress in the same manner as any other case in the juvenile system. If the written allegation is disapproved, the private citizen may file a motion challenging the disapproval with the court of common pleas. See Comment to Rule 233.

Informal adjustment or other diversionary programs should be considered before a petition is filed. Once a petition is filed, informal adjustment is not permitted. See *Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000).

Petitions should be filed without unreasonable delay. See *Commonwealth v. Dallenbach*, 729 A.2d 1218 (Pa. Super. Ct. 1999).

The contents of a petition are the same as a written allegation except for the additional requirements in paragraphs (C)(12) and (13).

Official Note: Rule 330 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 330 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 331. Service of Petition.

A. *Copy*. Upon the filing of a petition, a copy of the petition shall be served promptly upon the juvenile, the juvenile's guardian, the juvenile's attorney, the attorney for the Commonwealth, and the juvenile probation officer.

B. *Service to juvenile and guardian*. The service of the petition to the juvenile and the juvenile's guardian shall be by first-class mail or delivered in-person.

C. *Service to attorneys and juvenile probation officer*. The service of the petition to the juvenile's attorney, attorney for the Commonwealth, and juvenile probation officer shall be by first-class mail or delivered in-person unless all individuals otherwise agree upon an alternative method.

Comment

The purpose of paragraph (A) is to insure the juvenile and the juvenile's attorney have notice of the allegations to prepare the case adequately. If the juvenile is detained, service is to follow immediately after the filing of the petition. See Rule 242(D) for the twenty-four hour filing requirement.

Alternative methods of service that may be utilized under paragraph (C) could be electronic transmission, facsimile, county agency inter-office mail, and other similar methods.

Official Note: Rule 331 adopted April 1, 2005, effective October 1, 2005.

Rule 332. Multiple Offenses in Petition.

A. *Different incidents.* When more than one offense is alleged to have been committed within a judicial district by a juvenile arising from different delinquent episodes, one petition may be filed. However, each incident shall be described separately in conformity with the requirements of Rule 330(C)(4)–(6).

B. *Same incidents.* When more than one offense is alleged to have been committed within a judicial district by a juvenile arising from the same delinquent episode, a single petition shall be filed.

Comment

The purpose of paragraph (A) is to permit one petition for multiple offenses arising from different delinquent episodes. The offenses are to be stated with particularity to inform the juvenile of the allegations. See Rule 330(C)(4) through (6) for specific requirements.

Under paragraph (B), a single petition is to be submitted for offenses arising from the same delinquent episode.

Official Note: Rule 332 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 332 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 333. Separate Petitions.

When more than one juvenile is alleged to have participated in the commission of an offense, a separate petition for each juvenile shall be filed.

Comment

If there are conspirators to any of the alleged offenses, the names and ages, if known, of all conspirators are to be referenced in the petition. See Rule 330(C)(7).

Hearings on the petitions may be consolidated for such further action as may be required by Rule 351.

Official Note: Rule 333 adopted April 1, 2005, effective October 1, 2005.

Rule 334. Amendment of Petition.A. *Amendment.*

1) The court shall allow a petition to be amended when there is a defect in:

- a) form;
- b) the description of the offense;
- c) the description of any person or property; or
- d) the date alleged.

2) The court shall not allow a petition to be amended if the petition alleges a different set of events or offenses, where the elements or defenses are materially different from the elements or defenses to the offense originally petitioned.

B. *Continuance.* Upon amendment, the court may:

- 1) grant a continuance of the adjudicatory hearing; or
- 2) order other relief as is necessary in the interests of justice.

Comment

For continuances, see Rule 122.

Official Note: Rule 334 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 334 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 335. Withdrawal of Petition.

The attorney for the Commonwealth may withdraw the petition. The withdrawal shall be filed with the clerk of courts.

Comment

See Rule 345 for the procedures on filings and service.

Official Note: Rule 335 adopted April 1, 2005, effective October 1, 2005.

Rule 336. Re-Filing of the Petition After Withdrawal or Dismissal.

A. *Re-filing.* The attorney for the Commonwealth may re-file a petition after the petition has been withdrawn pursuant to Rule 335 or dismissed by the court.

B. Motion for dismissal. The court may entertain a motion by the juvenile to dismiss the re-filed petition.

Comment

A juvenile may be rearrested after the allegations have been dismissed prior to jeopardy attaching if the statute of limitations has not expired. *Cf. Commonwealth v. Revtai*, 532 A.2d 1 (Pa. 1987). The petition should be dismissed upon a finding that the attorney for the Commonwealth acted to harass the juvenile, the offenses are beyond the statute of limitations, or there is some other prejudice to the juvenile. See *Commonwealth v. Chermansky*, 552 A.2d 1128 (Pa. Super. Ct. 1989). See also *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997).

If a petition is re-filed, the procedures of Rule 330 are to be followed. It may be necessary to have a detention hearing under the procedures of Rule 240(C).

Official Note: Rule 336 adopted April 1, 2005, effective October 1, 2005.

PART D. PROCEDURES FOLLOWING FILING OF PETITION**Rule 340. Pre-Adjudicatory Discovery and Inspection.**

A. *Informal.* Before either party can seek any disclosure or discovery under these rules, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party that the other party has refused to disclose, the demanding party may make an appropriate motion to the court. Such motion shall be made as soon as possible prior to the adjudicatory hearing. In such motion, the party shall state that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this rule shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

B. *Mandatory disclosure by the Commonwealth.* In all cases, on request by the juvenile's attorney or the juvenile, if unrepresented, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the juvenile's attorney or the juvenile, if unrepresented, all of the following

requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the juvenile's attorney or the juvenile, if unrepresented, to inspect and copy or photograph such items.

1) Any evidence favorable to the juvenile that is material either to adjudication or to disposition, and is within the possession or control of the attorney for the Commonwealth;

2) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;

3) the circumstances and results of any identification of the juvenile by voice, photograph, or in-person identification;

4) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the juvenile that are within the possession or control of the attorney for the Commonwealth;

5) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; and

6) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

C. Discretionary. Upon motion of the attorney for the Commonwealth, the juvenile's attorney, or the juvenile, if unrepresented, for pre-adjudicatory discovery, the court may order, subject to the juvenile's right against self-incrimination, any discovery upon a showing that the evidence is material to the preparation of the case and that the request is reasonable.

D. Continuing Duty to Disclose. If, prior to or during the adjudicatory hearing, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party promptly shall notify the opposing party or the court of the additional evidence, material, or witness.

E. Remedy. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the juvenile, or it may enter such other order as it deems just under the circumstances.

F. Protective orders. Upon a sufficient showing, the court may, at any time, order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court. If the court enters an order granting relief, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

G. Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions,

theories, or conclusions of the attorney for the Commonwealth or the juvenile's attorney, or members of their legal staffs.

Comment

The purpose of paragraph (A) is to encourage an informal discovery process. Only when the informal process fails and there is a general dispute as to discovery, should a motion to compel discovery be made. Motions may be oral or written, see Rule 344.

For provisions under paragraph (B)(2), see *Commonwealth v. Burke*, 781 A.2d 1136 (Pa. 2001).

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P. S. § 5720 as being inconsistent with this Rule only insofar as the section may delay disclosure to the juvenile seeking discovery under paragraph (B)(6).

Under paragraph (C), the following are examples of evidence that may be material to the preparation of the case: 1) the names and contact information of eyewitnesses; 2) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses; 3) all written and recorded statements, and substantially verbatim oral statements, made by the juvenile, and by conspirators or accomplices, whether such individuals have been charged or not; and 4) any other evidence specifically identified, provided the requesting party can additionally establish that its disclosure would be in the interests of justice, including any information concerning any person involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the person in connection with his or her involvement in the case.

Any evidence or material requested cannot interfere with the juvenile's right against self-incrimination.

Under paragraph (C), the court has discretion, upon motion, to order an expert who is expected to testify at the adjudicatory hearing to prepare a report. However, these provisions are not intended to require a prepared report in every case. The court should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

Whenever the rule makes reference to the term "identification," or "in-person identification," it is understood that such terms are intended to refer to all forms of identifying a juvenile by means of the juvenile's person being in some way exhibited to a witness for the purpose of an identification: e.g., a line-up, stand-up, show-up, one-on-one confrontation, one-way mirror, etc. The purpose of this provision is to make possible the assertion of a rational basis for a claim of improper identification based upon *Stovall v. Denno*, 388 U. S. 293 (1967) and *United States v. Wade*, 388 U. S. 218 (1967).

This rule is not intended to affect the admissibility of evidence that is discoverable under this rule or evidence that is the fruits of discovery, nor the standing of the juvenile to seek suppression of such evidence.

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the juvenile, as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon the Commonwealth any right of appeal not presently afforded by law.

It should also be noted that as to material which is discretionary with the court, or which is not enumerated in the rule, if such information contains exculpatory evidence as would come under the *Brady* rule, it is to be disclosed. Nothing in this rule is intended to limit in any way disclosure of evidence constitutionally required to be disclosed.

In addition to information requested under this rule, an attorney has the right to inspect all court records and files, including probation records and reports. See Rule 160.

Official Note: Rule 340 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 340 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 341. Notice of Alibi Defense.

A. *Notice by the juvenile's attorney or juvenile, if unrepresented.* A juvenile who intends to offer the defense of alibi at the adjudicatory hearing shall, at least two days prior to the adjudicatory hearing, give the attorney for the Commonwealth notice of the intention to claim such defense. Such notice shall include specific information as to the place or places where the juvenile claims to have been at the time of the alleged offense and the names and contact information of witnesses whom the juvenile intends to call in support of such claim.

B. *Failure to Give Notice.* If the juvenile fails to give notice of an alibi defense as required by this rule, or omits any witness from such notice, the court at the adjudicatory hearing may exclude the testimony of any omitted witness, or may exclude entirely any evidence offered by the juvenile for the purpose of proving the defense, except testimony by the juvenile, or may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

C. *Impeachment.* A juvenile may testify concerning an alibi notwithstanding that the juvenile has not given notice, but if the juvenile has given notice and testifies concerning his or her presence at the time of the offense at a place or time different from that given in the notice, the juvenile may be cross-examined concerning such notice.

D. *Disclosure of Reciprocal Witnesses.* Prior to the adjudicatory hearing, the attorney for the Commonwealth shall disclose to the juvenile's attorney or the juvenile, if unrepresented, the names and contact information, that have not been previously disclosed, of all persons the Commonwealth intends to call as witnesses to disprove or discredit the juvenile's claim of alibi.

E. *Failure to Supply Reciprocal Notice.* If the attorney for the Commonwealth fails to disclose a list of its witnesses as required by this rule, or omits any witness, the court at the adjudicatory hearing may exclude the testimony of any omitted witness, or may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi, or may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

Official Note: Rule 341 adopted April 1, 2005, effective October 1, 2005.

PART D(1). MOTION PROCEDURES

Rule 344. Motions and Answers.

A. *Generally.* All motions and answers shall be made orally on the record or in writing. An answer to a motion is not required unless ordered by the court or otherwise provided in these rules. Failure to answer shall not constitute an admission of the well-pleaded facts alleged in the motion.

B. *Represented juvenile.* If counsel represents a juvenile, the attorney shall make or file all motions and answers.

C. *Requirements for motions.* All motions shall comply with the following requirements:

1) The person making the motion shall sign a written motion. The signature shall constitute a certification that the motion is made in good faith. An oral motion shall be made on the record and the oral motion shall constitute a certification that the motion is made in good faith.

2) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

3) If the motion sets forth facts that do not already appear of record in the case, a verification shall be included or an oral statement shall be given that the facts set forth in the motion are true and correct to the movant's personal knowledge, information, or belief.

4) If the motion is written, a certificate of service as required by Rule 345(C) shall be included.

D. *Requirements for answers.* All answers, including those that are required either by court order or otherwise required by these rules, shall comply with the following requirements:

1) The person making the answer shall sign the answer or shall reply to the motion on the record. The signature or oral answer on the record shall constitute a certification that the answer is being made in good faith.

2) The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

3) If the answer sets forth facts that do not already appear of record in the case, a verification shall be included or an oral answer shall include a statement that the facts set forth in the answer are true and correct to the respondent's personal knowledge, information, or belief.

4) If the answer is written, a certificate of service as required by Rule 345(C) shall be included.

E. *Alternative relief.* Any motion may request such alternative relief as may be appropriate.

F. *Waiver of relief.* The failure, in any motion, to state a type of relief or order, or a ground, shall constitute a waiver of such relief, order, or ground.

Comment

Under paragraph (A), oral motions and answers are permitted because of the emphasis on prompt disposition in Juvenile Court. Answers to written motions may be made orally if the answer complies with the requirements of this rule.

Under paragraphs (C)(4) and (D)(4), a certificate of service is required for all written motions and answers. See Rule 345(B) for service of documents and Rule 345(C) for certificates of service.

Official Note: Rule 344 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 344 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 345. Filing and Service.

A. *Filings.*

1) *Generally.* Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

2) *Clerk of courts' duties.* Except as provided in paragraph (A)(3), the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

3) *Filings by represented juveniles.* In any case in which a juvenile is represented by an attorney, if the juvenile submits for filing a written motion, notice, or document that has not been signed by the juvenile's attorney, the clerk of courts shall not file the motion, notice, or document in the juvenile court file or make a docket entry, but shall forward it promptly to the juvenile's attorney.

4) *Method of filing.* Filing may be accomplished by:

- a) personal delivery to the clerk of courts; or
- b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

B. *Service.*

1) *Generally.* The party filing the document shall serve the other party concurrently with the filing.

2) *Method of service to parties.* Service on the parties shall be by:

- a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or
- b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or
- c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or
- d) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement.

C. *Proof of service.* All documents that are filed and served pursuant to this rule shall include a certificate of service.

Comment

See Rule 166 for maintaining records in the clerk of courts.

Under paragraph (A)(2), the court is to designate a court official to process motions and other matters for appropriate scheduling and disposition.

Under paragraph (B), the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the juvenile, if unrepresented, by the clerk of courts as provided in Rule 167.

For service of petitions, see Rule 331.

Official Note: Rule 345 adopted April 1, 2005, effective October 1, 2005.

Rule 346. Omnibus Motion for Relief.

Unless otherwise required in the interests of justice, all pre-adjudicatory requests for relief shall be included in one omnibus motion filed prior to the adjudicatory hearing.

Comment

Types of relief appropriate for the omnibus motion include the following requests:

- (1) for continuance;
- (2) for separate or joint adjudicatory hearings;
- (3) for suppression of evidence;
- (4) for psychiatric examination;
- (5) to dismiss a petition;
- (6) to disqualify a judge;
- (7) for appointment of investigator; and
- (8) for pre-adjudicatory hearing conference.

The omnibus motion rule is not intended to limit other types of motions, oral or written, made pre-adjudication or during the adjudicatory hearing, including those traditionally called motions in limine, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

For instances when the court is to recuse itself, see Code of Judicial Conduct. Recusal is necessary when there is bias, prejudice, improper influence, or appearance of impropriety. *Commonwealth v. Benchoff*, 700 A.2d 1289 (Pa. Super. Ct. 1997).

Official Note: Rule 346 adopted April 1, 2005, effective October 1, 2005.

Rule 347. Time for Omnibus Motion and Service.

A. *Time.* An omnibus motion shall be made as soon as practical but can be made at any time prior to the calling of the first witness at the adjudicatory hearing.

B. *Service.* If the omnibus motion is written, copies shall be served in accordance with Rule 345.

Comment

For general requirements concerning the filing and service of motions and answers, see Rule 345.

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P.S. § 5720 as being inconsistent with this Rule only insofar as the time frame for making a motion to suppress is concerned.

Official Note: Rule 347 adopted April 1, 2005, effective October 1, 2005.

Rule 348. Disposition of Omnibus Motions.

Unless otherwise provided in these rules, all omnibus motions shall be determined before the adjudicatory

hearing. If necessary for the determination of the omnibus motion, the court may postpone the adjudicatory hearing.

Official Note: Rule 348 adopted April 1, 2005, effective October 1, 2005.

Rule 350. Suppression of Evidence.

A. *Motion by attorney or juvenile, if unrepresented.* The juvenile's attorney or the juvenile, if unrepresented, may make a motion to the court to suppress evidence. The motion shall state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the supporting facts and events.

B. *Timeliness.* Unless the opportunity did not previously exist, or the interests of justice otherwise require, a motion to suppress shall be contained in the omnibus motion set forth in Rule 346. If a timely motion is not made, the issue of suppression of such evidence shall be deemed to be waived.

C. *Findings.* At the conclusion of the hearing, the court shall enter on the record a statement of findings of fact and conclusions of law as to whether the evidence was obtained in violation of the juvenile's rights, or in violation of these rules or any statute, and shall make an order granting or denying the relief sought.

D. *Decision final and binding.* If the court determines that the evidence shall not be suppressed, such determination shall be final, conclusive, and binding at the adjudicatory hearing, except upon a showing of evidence that was unavailable, but nothing in this rule shall prevent a juvenile from opposing such evidence at the adjudicatory hearing upon any ground except its suppressibility.

Comment

This rule is designed to provide one single procedure for the suppression of evidence alleged to have been obtained in violation of the juvenile's rights. This rule extends its coverage to specific provisions in violation of the fourth, fifth, and sixth amendments of the Constitution of the United States and Article I, §§ 8 & 9 of the Pennsylvania Constitution. *In re R.H.*, 791 A.2d 331 (Pa. 2002), *Commonwealth v. Scott*, 369 A.2d 809 (Pa. Super. Ct. 1976); *In re Cowell*, 364 A.2d 718 (Pa. Super. Ct. 1976). See *In re Gault*, 387 U.S. 1 (1967).

In all cases, the burden of production is upon the Commonwealth. See *In re Betrand*, 303 A.2d 486 (Pa. 1973); *In re Stoutzenberger*, 344 A.2d 668 (Pa. Super. Ct. 1975), citing *Commonwealth ex rel. Butler v. Rundle*, 239 A.2d 426 (Pa. 1968).

Under paragraph (B), if a motion to suppress is not timely made, it is deemed waived. *In re Cox*, 402 A.2d 534 (Pa. Super. Ct. 1979). See *Commonwealth v. Spriggs*, 344 A.2d 880 (Pa. 1975); *Commonwealth v. Wylie*, 344 A.2d 491 (Pa. 1975).

With regard to the recording and transcribing of the evidence adduced at the proceeding, see Rule 127.

All motions to suppress are to comply with the provisions of Rules 344 and 345.

To join this motion with a motion for return of property, see Comment to Rule 353.

Rule 800 suspends § 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 P.S. § 5720 as being inconsistent with this Rule only insofar as the time frame for making a motion to suppress is concerned.

Official Note: Rule 350 adopted April 1, 2005, effective October 1, 2005.

Rule 351. Adjudicatory Hearing on Separate Petitions.

A. *Standards.* An adjudicatory hearing may be held for:

- 1) offenses alleged in separate petitions if the evidence of each of the offenses would be admissible in a separate adjudicatory hearing for the other;
- 2) offenses alleged in separate petitions if the offenses alleged are based on the same act or transaction;
- 3) juveniles alleged in separate petitions if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions.

B. *Procedure.*

1) Oral or written notice that offenses or juveniles alleged in separate petitions will be heard together shall be given to the juvenile's attorney or the juvenile, if unrepresented, prior to the adjudicatory hearing. If the notice is written, a copy of the notice shall be filed with the clerk of courts.

2) When notice has not been given under paragraph (B)(1), any party may move to consolidate the adjudicatory hearing for separate petitions. The motion ordinarily shall be included in an omnibus motion.

Comment

Under the scheme set forth in this rule, it can be assumed that offenses alleged in the same petition will be heard together. See Rule 332. Similarly, offenses or juveniles will be heard together if notice is given pursuant to (B)(1) of this rule. In these situations, the court may order separate hearings either when the standards in paragraph (A) are not met or pursuant to Rule 352. Absent notice pursuant to paragraph (B)(1), a motion for consolidation is required under paragraph (B)(2). A party may oppose such a motion either on the ground that the standards in paragraph (A) are not met, or pursuant to Rule 352.

Paragraph (A)(1) is based upon statutory and case law that, ordinarily, if all offenses arising from the same episode are not heard together, subsequent prosecution on any such offense not already heard may be barred. *In re Huff*, 582 A.2d 1093 (Pa. Super. Ct. 1990), citing *Commonwealth v. Campana*, 304 A.2d 432, vacated and remanded, 414 U.S. 808 (1973), addendum opinion on remand, 314 A.2d 854 (Pa. 1974).

Official Note: Rule 351 adopted April 1, 2005, effective October 1, 2005.

Rule 352. Separate Adjudicatory Hearings for Offenses or Juveniles.

The court may order separate adjudicatory hearings for offenses or juveniles, or provide other appropriate relief, if it appears that offenses or juveniles being heard together may prejudice any party.

Comment

This rule provides the procedure whereby the court may, because of prejudice to a party, order separate adjudicatory hearings for offenses or juveniles that otherwise would be properly heard together under Rule 351. A juvenile may also request separate adjudicatory hearings for offenses or juveniles on the ground that hearing them together would be improper under Rule 351.

Under Rule 346 (Omnibus Motion for Relief), any request for separate adjudicatory hearings ordinarily is to be made in an omnibus motion or it is considered waived.

Official Note: Rule 352 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 352 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 353. Motion for Return of Property.

A. *Return for lawful possession.* A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to its lawful possession. Such motion shall be filed in writing and served pursuant to Rule 345.

B. *Hearing.* The court hearing such motion shall receive evidence on any issue of fact necessary for its decision. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

C. *Joint motion.* A motion to suppress evidence under Rule 350 may be joined with a motion under this rule.

Comment

A motion for the return of property should not be confused with a motion for the suppression of evidence, governed by Rule 350. However, if the time and effect of a motion brought under the instant rule would be, in the view of the court hearing the motion, substantially the same as a motion for suppression of evidence, the court may dispose of the motion in accordance with Rule 350.

Nothing in this rule is intended to prohibit the court from directing a more appropriate court to hear these motions. For example, a judicial district may have a motions court or specially designed court that hears all motions, including juvenile cases.

Pursuant to Rule 100, only motions for return of property derived from juvenile delinquency cases are appropriate for the juvenile court.

Official Note: Rule 353 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 353 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

PART D(2). ADJUDICATORY SUMMONS AND NOTICE PROCEDURES

Rule 360. Summons and Notice.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the adjudicatory hearing.

B. *Notice.* The court shall give notice of the adjudicatory hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney; and
- 3) the juvenile probation office.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335 of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335.

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 360 adopted April 1, 2005, effective October 1, 2005.

Rule 362. Requirements of the Summons.

The summons shall:

- 1) be in writing;
- 2) set forth the date, time, and place of the adjudicatory hearing;
- 3) instruct the juvenile about the juvenile's right to counsel, and if the juvenile is without financial resources or otherwise unable to employ counsel, the right to assigned counsel;
- 4) give a warning stating that the failure to appear for the hearing may result in arrest; and
- 5) include a copy of the juvenile petition.

Comment

Section 6335(a) of the Juvenile Act requires a copy of the petition to accompany the summons. 42 Pa.C.S. § 6335(a).

Official Note: Rule 362 adopted April 1, 2005, effective October 1, 2005.

Rule 363. Service of Summons and Notice.

A. *Method of Service.* The summons or notice shall be served:

- 1) in-person; or
- 2) by first-class mail.

B. *Time of Service.*

1) *Juvenile detained.* If the juvenile is detained, the summons or notice shall be served no less than seven days prior to the adjudicatory hearing.

2) *Juvenile not detained.* If the juvenile is not detained, the summons or notice shall be served no less than fourteen days prior to the adjudicatory hearing.

Comment

Pursuant to Rule 360, the juvenile and the juvenile's guardian should be served a summons, and the attorney for the Commonwealth, the juvenile's attorney, and the juvenile probation officer should receive notice.

Official Note: Rule 363 adopted April 1, 2005, effective October 1, 2005.

Rule 364. Failure to Appear on the Summons.

If any summoned person fails to appear for the adjudicatory hearing and the court finds that sufficient notice was given, the court may issue a bench warrant.

Official Note: Rule 364 adopted April 1, 2005, effective October 1, 2005.

PART E. CONSENT DECREE**Rule 370. Consent Decree.**

A. At any time after the filing of a petition and before the entry of an adjudication order, the court may, upon agreement of the attorney for the Commonwealth and the juvenile's attorney or the juvenile, if unrepresented, suspend the proceedings, and continue the juvenile under supervision in the juvenile's home, under terms and conditions negotiated with the juvenile probation office. The order of the court continuing the juvenile under supervision shall be known as a consent decree.

B. The court shall explain on the record or in writing:

1) the terms, conditions, and duration of the consent decree pursuant to Rule 373; and

2) the consequences for violating the conditions of the consent decree, which include the petition under which the juvenile was continued under supervision may, in the discretion of the attorney for the Commonwealth following consultation with the juvenile probation officer, be reinstated, and the juvenile held accountable as if the consent decree had never been entered if:

a) prior to discharge by the juvenile probation officer or expiration of the consent decree, there is a filing of a new petition against the juvenile; or

b) the juvenile otherwise fails to fulfill express terms and conditions of the decree.

Comment

See 42 Pa.C.S. § 6340.

A consent decree is a device for placing an allegedly delinquent juvenile under supervision of the juvenile probation office prior to, and as an alternative to, adjudication, thus avoiding potential stigma attached to an adjudication of delinquency. *Commonwealth v. Wexler*, 431 A.2d 877 (Pa. 1981).

Before placing the juvenile on consent decree, the victim(s) of the offense should be consulted. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Under this rule, it is expected that the attorney for the Commonwealth should consult with the juvenile probation officer before revoking the consent decree. The consent decree should only be revoked if the juvenile fails to meet the conditions of the program or new allegations have been filed against the juvenile.

If a juvenile violates the conditions of the consent decree, double jeopardy does not attach and bar subsequent prosecution. See *Commonwealth v. Szebin*, 785 A.2d 103 (Pa. Super. Ct. 2001). In *Commonwealth v. Wexler*, 431 A.2d 877 (Pa. 1981), the Supreme Court viewed a consent decree in the same fashion as Accelerated Rehabilitative Disposition. See also *In re John W.*, 446 A.2d 621 (Pa. Super. Ct. 1982).

Official Note: Rule 370 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 370 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 371. Objection to Consent Decree.

When the juvenile or the attorney for the Commonwealth objects to a consent decree, the court shall proceed to findings, adjudication, and disposition.

Comment

A consent decree may not be used unless the attorney for the Commonwealth consents and the juvenile agrees to accept the conditions required by the court. If the attorney for the Commonwealth objects to a consent decree or the juvenile refuses to accept the conditions required by the court, the court is to proceed to findings, adjudication, and disposition. *In re Basket*, 590 A.2d 774 (Pa. Super. Ct. 1991). See also 42 Pa.C.S. § 6340(b).

See Rule 401 for the findings that are to be made in the juvenile delinquency process.

See also Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Official Note: Rule 371 adopted April 1, 2005, effective October 1, 2005.

Rule 373. Conditions of Consent Decree.

A. *Terms and conditions.* The court may place upon the juvenile any reasonable conditions that are consistent with the protection of the public interest. The conditions of the consent decree shall provide a balanced attention to:

1) the protection of the community;

2) the juvenile's accountability for the offenses committed; and

3) the development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community.

B. *Duration of consent decree.* A consent decree shall remain in force for no more than six months as agreed upon unless the juvenile is discharged sooner upon motion. Upon motion, the court may:

1) discharge the juvenile at an earlier time; or

2) extend the time period not to exceed an additional six months.

Comment

If the juvenile fails to accept the conditions required by the court pursuant to paragraph (A), the case should proceed to findings, adjudication, and disposition. See Comment to Rule 371.

Nothing in this rule is intended to prevent the juvenile probation officer from being the movant for consent decree. For rule on motions, see Rule 344.

Paragraph (B) departs from the Juvenile Act, 42 Pa.C.S. § 6340(c), in that an agreement for a consent decree of less than six months is allowed. See Rule 800.

Official Note: Rule 373 adopted April 1, 2005, effective October 1, 2005.

PART F. PRESERVATION OF TESTIMONY AND EVIDENCE**Rule 380. Preservation of Testimony After Commencement of Proceedings.**

A. *By Court Order.*

1) At any time after the commencement of proceedings, upon motion of any party, and after notice and hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for the adjudicatory hearing or for any other proceeding, or when due to exceptional circumstances, it is in the interests of justice that the witness' testimony be preserved.

2) The court shall state on the record the grounds on which the order is based.

3) The court's order shall specify the time and place for the taking of the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

4) The testimony shall be taken in the presence of the court, the attorney for the Commonwealth, the juvenile, and the juvenile's attorney, unless otherwise ordered.

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

B. By agreement of the parties.

1) At any time after the commencement of proceedings, the testimony of any witness may be taken and preserved upon the express written agreement of the attorney for the Commonwealth, the juvenile, and the juvenile's attorney.

2) The agreement shall specify the time and place for taking the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

3) The testimony shall be taken in the presence of the attorney for the Commonwealth, the juvenile, and the juvenile's attorney, unless they otherwise agree.

4) The agreement shall be filed with the clerk of courts pursuant to Rule 345(A).

5) The court shall rule on the admissibility of the preserved testimony if it is offered into evidence at the adjudicatory hearing or other judicial proceeding.

Comment

This rule is intended to provide the means by which testimony may be preserved for use at a current or subsequent stage in the proceedings, which includes the taking of a deposition during the adjudicatory hearing to be used at a later stage of the adjudicatory hearing.

When testimony is to be preserved by video recording, see also Rule 381.

Commencement of proceedings includes any action after the submission of a written allegation. See Rule 200 (Commencement of Proceedings).

This rule does not address the admissibility of the preserved testimony. The court is to decide all questions of admissibility. See the Pennsylvania Rules of Evidence. Also see, e.g., Judicial Code § 5917, 42 Pa.C.S. § 5917 (1982); *Commonwealth v. Scarborough*, 421 A.2d 147 (Pa. 1980); *Commonwealth v. Stasko*, 370 A.2d 350 (Pa. 1977).

"May be unavailable," as used in paragraph (A)(1), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at the adjudicatory hearing or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore cannot be effectively served with a subpoena, or may become incompetent to testify for any legally sufficient reason.

Under paragraph (A)(4), the court should preside over the taking of testimony. The court, however, may order that testimony be taken and preserved without the court's presence when exigent circumstances exist or the location of the witness renders the court's presence impracticable. Furthermore, nothing in this rule is intended to preclude the juvenile's attorney, the juvenile, and the court from agreeing on the record that the court need not be present. Paragraph (B)(3) permits the attorney for the Commonwealth, the juvenile, and the juvenile's attorney to determine among themselves whether the court should be

present during the taking of testimony. That determination should be made a part of the written agreement required by paragraph (B)(1).

Nothing in this rule is intended to preclude the juvenile from waiving his or her presence during the taking of testimony.

The means by which the testimony is recorded and preserved are within the discretion of the court under paragraph (A) and the parties under paragraph (B), and may include the use of electronic or photographic techniques such as videotape or digital video diskette. There are, however, additional procedural requirements for preservation of testimony by video recording mandated by Rule 381.

The party on whose motion testimony is taken should normally have custody of and be responsible for safeguarding the preserved testimony. That party should also promptly provide a copy of the preserved testimony to the other party. Additionally, this rule is not intended to conflict with the requirements of the Pennsylvania Rules of Judicial Administration. For reporting and transcripts by court-employed reporters, see the Pa.R.J.A. Nos. 5000.1—5000.13.

When testimony is taken under this rule, the proceeding should afford the parties full opportunity to examine and cross-examine the witness. Counsel should not reserve objections for time of the adjudicatory hearing.

Paragraphs A(5) and B(5) are intended to guard against pre-adjudicatory hearing disclosure of potentially prejudicial matters.

For the definition of "court," see Rule 120.

Official Note: Rule 380 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter three, Part F published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 381. Preservation of Testimony by Video Recording.

A. When the testimony of a witness is taken and preserved pursuant to Rule 380 by means of video recording, the testimony shall be recorded simultaneously by a stenographer.

B. The following technical requirements shall be made part of the court order required by Rule 380(A) or the written agreement provided in Rule 380(B):

1) The video recording shall begin with a statement on camera that includes:

- a) the operator's name and business address;
- b) the name and address of the operator's employer;
- c) the date, time, and place of the video recording;
- d) the caption of the case;
- e) the name of the witness;
- f) the party on whose behalf the witness is testifying; and
- g) the nature of the judicial proceedings for which the testimony is intended.

2) The court and the persons shall identify themselves on camera.

3) The witness shall be sworn on camera.

4) If the length of the testimony requires the use of more than one video recording, the end of each video recording and the beginning of each succeeding video recording shall be announced on camera.

5) At the conclusion of the witness' testimony, a statement shall be made on camera that the testimony is concluded. A statement shall also be made concerning the custody of the video recording(s).

6) Statements concerning stipulations, exhibits, or other pertinent matters may be made at any time on camera.

7) The video recording shall be timed by a digital clock on camera that continually shows the hour, minute, and second of the testimony.

8) All objections and the reasons for them shall be made on the record. When the court presides over the video recording of testimony, the court's rulings on objections shall also be made on the record.

9) When the court does not preside over the video recording of testimony, the video recording operator shall keep a log of each objection, referenced to the time each objection is made. All rulings on objections shall be made before the video recording is shown at any judicial proceeding.

10) The original video recording shall not be altered.

Comment

This rule provides the basic technical requirements for taking and preserving testimony by video recording under Rule 380. The list of requirements is not intended to be exhaustive. Rather, it is recommended that all recording by video be carefully planned and executed, and that in addition to complying with the basic requirements, each court order or written agreement for the video recording of testimony be tailored to the nature of the case and the needs of the persons.

Generally, the camera should focus on the witness to the extent practicable.

Under paragraph (B)(9), the court may rule on objections by either reviewing pertinent sections of the video recording, aided by the video operator's log, or by reviewing the stenographic transcript required by paragraph (A).

Any editing procedure ordered by the court or agreed upon by the persons may be used as long as it comports with current technology and does not alter the original video recording. Paragraph (B)(10) is intended to insure preservation of the original video, thereby providing for those situations in which a dispute arises over editing procedures.

This rule authorizes the use of video recording devices only for the preservation of testimony under Rule 380. It is not intended to affect other rules governing recording devices.

Official Note: Rule 381 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Chapter three, Part F published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 384. DNA Testing (Reserved).

PART G. TRANSFER FOR CRIMINAL PROSECUTION

Rule 390. Notice of Request for Transfer to Criminal Proceedings.

A. *General rule.* After a petition is filed but before the first scheduled adjudicatory hearing, any notice of a request for transfer to criminal proceedings pursuant to 42 Pa.C.S. § 6355 shall be filed and served on:

- 1) the juvenile;
- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the juvenile probation office; and
- 5) the attorney for the Commonwealth.

B. *Exception.* If, after the first scheduled adjudicatory hearing but prior to the commencement of the adjudicatory hearing, there is a change in circumstances, a request for transfer to criminal proceedings may be filed and served in accordance with paragraph (A).

Comment

The Juvenile Act gives the juvenile the opportunity to petition the court for transfer to criminal proceeding as reflected in this rule. See 42 Pa.C.S. § 6355(c). The court should use caution when a juvenile petitions the court for transfer to criminal proceedings. The court should inquire if the petition has been knowingly, intelligently, and voluntarily made.

The allegations requested to be transferred are to be classified as "delinquent acts", pursuant to 42 Pa.C.S. § 6302 (definition of "delinquent acts") and are to comply with the requirements as set forth in 42 Pa.C.S. § 6355 (Transfer to Criminal Proceedings). Any offense excluded from the definition of "delinquent acts," paragraph (2) of the definition of "delinquent act" in 42 Pa.C.S. § 6302, should originate in criminal proceedings and may be transferred to delinquency proceedings, if so determined by the court. See 42 Pa.C.S. § 6322 (Transfer from Criminal Proceedings). For juveniles charged in criminal proceedings, the Rules of Criminal Procedure are applicable. See also Rule 100 on Scope of Rules. Also, any juvenile previously found guilty in criminal proceedings, for any charge other than a summary offense, should be charged in criminal proceedings for all subsequent offenses. See paragraph (2)(v) of the definition of "delinquent act" in 42 Pa.C.S. § 6302 and 42 Pa.C.S. § 6355(d).

The court should conduct a transfer hearing no sooner than three days after the notice of request for transfer to criminal proceedings is served unless the time requirement is waived. See Rule 394(A).

Under paragraph (A), it is anticipated that most notices of requests for transfer will be filed prior to the first scheduled adjudicatory hearing. However, under paragraph (B), it is noted that there may be changed circumstances, in which a notice for request of transfer may be filed at a later date but before the commencement of the adjudicatory hearing.

The attorney for the Commonwealth should notify the victim of any request for transfer. See Victim's Bill of Rights, 18 P. S. § 11.213.

Official Note: Rule 390 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 390 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 391. Time Restrictions for Detention of Juveniles Scheduled for Transfer Hearing.

A. *Generally.* The detention requirements of Rules 240, 241, 242, and 243 shall be followed for juveniles scheduled for a transfer hearing except for the time restrictions provided in paragraph (B) of this rule.

B. *Time Restrictions.* If the transfer hearing is not held within ten days of the filing of the notice of request for transfer to criminal proceedings, the juvenile shall be released except as provided in paragraphs (B)(1) and (B)(2).

1) A juvenile may be detained for an additional single period not to exceed ten days when the court determines:

a) that evidence material to the case is unavailable, including a psychological or psychiatric evaluation;

b) that due diligence to obtain such evidence or evaluation has been exercised;

c) that there are reasonable grounds to believe that such evidence or evaluation will be available at a later date; and

d) that the detention of the juvenile would be warranted.

2) A juvenile may be detained for successive ten-day intervals if the result of delay is caused by the juvenile. The court shall state on the record if failure to hold the hearing resulted from delay caused by the juvenile. Delay caused by the juvenile shall include, but not be limited to:

a) delay caused by the unavailability of the juvenile or the juvenile's attorney;

b) delay caused by any continuance granted at the request of the juvenile or the juvenile's attorney; or

c) delay caused by the unavailability of a witness resulting from conduct by or on behalf of the juvenile.

Comment

The filing of a request for transfer to criminal proceedings resets the ten-day clock for a hearing for the juvenile in detention. The transfer hearing is to be held within ten days of the filing of a request for transfer to criminal proceedings, not ten days from the date of detention for the juvenile. This time requirement is different than the time requirement for the adjudicatory hearing under Rule 240(D). See Rule 800.

Under Paragraph (B)(1), the case may be extended for only one single period of ten days. However, under paragraph (B)(2) when the juvenile causes delay, the case may be extended for successive ten-day intervals.

Official Note: Rule 391 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 391 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 394. Transfer Hearing.

A. *Scheduling.* The court shall conduct a transfer hearing no earlier than three days after the notice of request for transfer to criminal proceedings is served unless this time requirement is waived.

B. *Findings.* At the hearing, if the court finds:

1) the juvenile is fourteen years old or older at the time of the alleged delinquent act;

2) notice has been given pursuant to Rule 390;

3) there is a prima facie showing of evidence that the juvenile committed a felony delinquent act;

4) there are reasonable grounds to believe that transfer of the case for criminal prosecution will serve the public interest by considering all the relevant factors; and

5) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill, then the court shall transfer the case to the division or a judge of the court assigned to conduct criminal proceedings for prosecution. Otherwise, the court shall schedule an adjudicatory hearing.

Comment

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the "prima facie phase." The court should determine if there is a prima facie showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a prima facie showing of evidence is found, the court proceeds to the second phase, known as the "public interest phase." During the "public interest phase," the court should determine if the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile and what is in the public's interest.

In determining public interest, the court should balance the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile's culpability; 6) the adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that the juvenile is not amenable to treatment, supervision, or rehabilitation in the juvenile system rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was fourteen years of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a prima facie case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii)

or (iii)(relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. See 42 Pa.C.S. § 6355.

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

Official Note: Rule 394 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 394 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 395. Procedure to Initiate Criminal Information.

After the court orders the case transferred pursuant to Rule 394, these Rules no longer apply and the case shall be governed by the Pennsylvania Rules of Criminal Procedure. The attorney for the Commonwealth may file an information in accordance with Pa.R.Crim.P. 565.

Comment

The transfer hearing serves as the preliminary hearing, therefore, the attorney for the Commonwealth may file the criminal information after the issuance of the transfer order. See Pa.R.Crim.P. 565 for presentation of an information without the preliminary hearing.

For any procedural questions concerning a juvenile whom has been transferred to criminal proceedings, see the Pennsylvania Rules of Criminal Procedure.

Official Note: Rule 395 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 395 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 396. Bail.

If transfer to criminal proceedings is ordered at the conclusion of the transfer hearing, the juvenile court judge shall determine bail for the juvenile. The bail rules in the Pennsylvania Rules of Criminal Procedure shall apply.

Comment

See Pa.R.Crim.P. 520 through 536.

If the juvenile cannot post bail, the judge may issue a commitment order so the juvenile may be detained in a jail or the judge may continue the juvenile's detention as a juvenile pending trial. See 42 Pa.C.S. § 6327(d).

Official Note: Rule 396 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 396 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 4. ADJUDICATORY HEARING

Rule	
401.	Introduction to Chapter Four.
404.	Prompt Adjudicatory Hearing.
406.	Adjudicatory Hearing.

407.	Admissions.
408.	Ruling on Offenses.
409.	Adjudication of Delinquency.

Rule 401. Introduction to Chapter Four.

Under these rules and the Juvenile Act, 42 Pa.C.S. § 6301 et seq., a determination for each case requires separate and distinct findings. First, the court is to hold an adjudicatory hearing, governed by Rule 406 or receive an admission from the juvenile of the allegations, governed by Rule 407. Second, after hearing the evidence or receiving an admission, the court is to rule on the offenses pursuant to Rule 408, stating with particularity the grading and counts of each offense. Third, after ruling on the offenses or entering its findings, the court is to determine if the juvenile is in need of treatment, supervision, or rehabilitation pursuant to Rule 409. After the court has made these findings and if the court finds that the juvenile is in need of treatment, supervision, or rehabilitation, the court is to hold a dispositional hearing as provided for in Rule 512 and is to enter a dispositional order pursuant to Rule 515. Nothing in these rules precludes the court from making these determinations at the same proceeding as long as the requirements of Rules 406 through 409 are followed.

Official Note: Rule 401 adopted April 1, 2005, effective October 1, 2005.

Rule 404. Prompt Adjudicatory Hearing.

A. *Detained juvenile.* If the juvenile is detained, an adjudicatory hearing shall be held within ten days of the filing of the petition. If the adjudicatory hearing is not held within ten days, the juvenile shall be released unless the exceptions of Rule 240(D) apply.

B. *Non-detained juvenile.* If the juvenile is not detained, the adjudicatory hearing shall be held within a reasonable time.

Official Note: Rule 404 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 404 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 406. Adjudicatory Hearing.

A. *Manner of hearing.* The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.

B. *Recording.* The adjudicatory hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

Comment

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U. S. 528 (1971).

Official Note: Rule 406 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 406 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 407. Admissions.

A. *Admissions.* At any time after a petition is filed, the juvenile may tender an admission to the facts, adjudication of delinquency, and/or disposition.

1) *Requirements.* Before the court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly. The court, at a minimum, shall ask questions to elicit the following information:

a) Does the juvenile understand the nature of the allegations to which he or she is admitting?

b) Is there a factual basis for the admission?

c) Does the juvenile understand that he or she has the right to a hearing before the judge?

d) Does the juvenile understand that he or she is presumed innocent until found delinquent?

e) Is the juvenile aware of the dispositions that could be imposed?

f) Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?

g) Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?

h) Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?

i) Has the juvenile had the opportunity to speak with a guardian about his or her decision?

2) *Agreements.* If the parties agree upon the terms of an admission, the tender shall be presented to the court.

3) *Court action.* If the court accepts the tender, the court shall enter an order incorporating any agreement. If the court does not accept the tender, the case shall proceed as if no tender had been made.

4) *Limitations on withdrawals.* An admission cannot be withdrawn after the court enters the dispositional order.

B. *Incriminating statements.* An incriminating statement made by a juvenile in the discussions or conferences incident to an admission that is not ultimately accepted by the court or otherwise permitted to be withdrawn by the court shall not be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act, 42 Pa.C.S. § 6301 et seq.

Comment

Under paragraph (A)(1), the court is to determine if the admission is voluntarily and knowingly made. Nothing in this rule is intended to prevent the court from using a written form to ascertain the necessary information, provided the court asks questions of the juvenile, on the record, to authenticate the juvenile's completion and understanding of the form and the juvenile's agreement with the statements made.

Under paragraph (A)(3), if the disposition agreed upon by the parties is unavailable or the court does not agree with the terms of the tender, the case is to proceed as if no tender had been made.

The court is not to accept a plea of *nolo contendere*. See *In re B.P.Y.*, 712 A.2d 769 (Pa. Super. Ct. 1998).

Official Note: Rule 407 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 407 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 408. Ruling on Offenses.

A. Within seven days of hearing the evidence on the petition or accepting an admission under Rule 407, the court shall enter a finding by specifying which, if any, offenses, including grading and counts, alleged in the petition were committed by the juvenile.

B. If the court finds the juvenile did not commit the alleged delinquent acts, the court shall dismiss the allegations and release the juvenile, if detained, unless there are other grounds for the juvenile's detention.

C. If the court finds that the juvenile committed any delinquent act, the court shall proceed as provided in Rule 409.

Comment

Under paragraph (A), for any offense the court finds that the juvenile committed, the court is to specify the grading and count(s). See 42 Pa.C.S. § 6341(b). It is noted that some offenses have no specific grading, i.e., ungraded felony or misdemeanor of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq., or the ungraded delinquent act of failure to comply with a sentence for a summary offense, 42 Pa.C.S. § 6302 (definition of "delinquent act").

Under paragraph (B), if all the allegations are dismissed, the court is to order the destruction of fingerprints and photographs. See 42 Pa.C.S. § 6341(a).

Official Note: Rule 408 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 408 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 409. Adjudication of Delinquency.

A. *Adjudicating the juvenile delinquent.* Once the court has ruled on the offenses as provided in Rule 408, the court shall conduct a hearing to determine if the juvenile is in need of treatment, supervision, or rehabilitation.

1) If the court determines that the juvenile is not in need of treatment, supervision, or rehabilitation, jurisdiction shall be terminated and the juvenile shall be released, if detained, unless there are other reasons for the juvenile's detention.

2) If the court determines that the juvenile is in need of treatment, supervision, or rehabilitation, the court shall enter an order adjudicating the juvenile delinquent and proceed in determining a proper disposition under Rule 512.

B. Timing.

1) If the juvenile is in detention, the court shall make its finding within twenty days of the ruling on the offenses pursuant to Rule 408.

2) If the juvenile is not in detention, the court shall make its finding within sixty days of the ruling on the offenses pursuant to Rule 408.

C. *Extending Time by Agreement.* The time restrictions under paragraphs (B)(1) and (B)(2) may be extended if there is an agreement by both parties.

Comment

Under paragraph (A), absent evidence to the contrary, evidence of the commission of acts that constitute a felony is sufficient to sustain a finding that the juvenile is in need of treatment, supervision, or rehabilitation. See 42 Pa.C.S. § 6341(b).

This rule addresses adjudicating the juvenile delinquent or releasing the juvenile from the court's jurisdiction. This determination is different from finding the juvenile committed a delinquent act under Rule 408. For dispositional hearing procedures, see Chapter Five.

Official Note: Rule 409 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 409 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

CHAPTER 5. DISPOSITIONAL HEARING

PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

Rule

500. Summons and Notice of the Dispositional Hearing.

PART B. DISPOSITIONAL HEARING AND AIDS

- 510. Prompt Dispositional Hearing.
- 512. Dispositional Hearing.
- 513. Aids in Disposition.
- 515. Dispositional Order.
- 516. Service of the Dispositional Order.

PART C. INTER-STATE TRANSFER OF DISPOSITION

- 520. Transfer of Disposition and Supervision of Juvenile to Another State (Reserved).
- 521. Disposition and Supervision of a Juvenile Received from Another State (Reserved).

PART A. SUMMONS AND NOTICE OF THE DISPOSITIONAL HEARING

Rule 500. Summons and Notice of the Dispositional Hearing.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the dispositional hearing.

B. *Notice.* The court shall give notice of the dispositional hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney; and
- 3) the juvenile probation office.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 500 adopted April 1, 2005, effective October 1, 2005.

Part B. DISPOSITIONAL HEARING AND AIDS

Rule 510. Prompt Dispositional Hearing.

A. *General rule.* If the juvenile is detained, the dispositional hearing shall be held no later than twenty days after the ruling on the offenses under Rule 408.

B. *Continuances.* The dispositional hearing may be continued, if necessary. If the juvenile is detained, each continuance shall not exceed twenty days.

Comment

Under paragraph (B), if there is a continuance, the court should review the juvenile's case every twenty days until there is a final dispositional order.

See 42 Pa.C.S. § 6341(b).

Official Note: Rule 510 adopted April 1, 2005, effective October 1, 2005.

Rule 512. Dispositional Hearing.

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

1) *Evidence.* The court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the juvenile and the victim an opportunity to make a statement.

B. *Recording.* The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

Comment

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

Official Note: Rule 512 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 513. Aids in Disposition.

A. *Social Study.* The court may order the preparation of a social study in any case to aid in the decision for disposition.

B. *Examinations.* The court may order the juvenile to undergo psychological, psychiatric, drug and alcohol, or any other examination, as it deems appropriate to aid in the decision for disposition.

C. *Victim-Impact Statement.* The victim may submit a victim-impact statement to the court. If the victim has submitted a victim-impact statement, the court shall accept and consider the victim-impact statement in determining disposition.

Comment

Section 6341(e) of the Juvenile Act requires the court to receive reports and other evidence bearing on the disposi-

tion or need of treatment, supervision, or rehabilitation. *In re McDonough*, 430 A.2d 308 (Pa. Super. Ct. 1981).

Paragraph (C) addresses a statement submitted by the victim to the court. For the victim's opportunity to be heard, see Rule 512(A)(2). See also Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Official Note: Rule 513 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 513 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 515. Dispositional Order.

A. *Generally.* When the court enters a disposition, the court shall issue a written order, which provides balanced attention to the protection of the community, accountability for the offenses committed, and development of the juvenile's competencies to enable the juvenile to become a responsible and productive member of the community. The order shall include:

- 1) the terms and conditions of the disposition;
- 2) the name of any agency or institution that is to provide care, treatment, supervision, or rehabilitation of the juvenile;
- 3) the date of the order; and
- 4) the signature and printed name of the judge entering the order.

B. *Restitution.* If restitution is ordered in a case, the dispositional order shall include:

- 1) a specific amount of restitution to be paid by the juvenile;
- 2) to whom the restitution is to be paid; and
- 3) a payment schedule, if so determined by the court.

C. *Guardian participation.* The court shall include any obligation in its dispositional order imposed upon the guardian.

Comment

See 23 Pa.C.S. § 5503 and 42 Pa.C.S. § 6310.

Dispositional orders should comport in substantial form and content to the Juvenile Court Judges' Commission model orders to receive funding under the federal Adoption and Safe Families Act (ASFA) of 1997 (P. L. 105-89). The model forms are also in compliance with Title IV-B and Title IV-E of the Social Security Act. For model orders, see <http://www.jcjc.state.pa.us> or <http://www.dpw.state.pa.us> or request a copy on diskette directly from the Juvenile Court Judges' Commission, Room 401, Finance Building, Harrisburg, PA 17120.

Official Note: Rule 515 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 515 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 516. Service of the Dispositional Order.

Upon entry of the disposition, the court shall issue a dispositional order and the order shall be served promptly upon:

- 1) the juvenile;

- 2) the juvenile's guardian;
- 3) the juvenile's attorney;
- 4) the attorney for the Commonwealth;
- 5) the juvenile probation officer;
- 6) any agency directed to provide treatment; and
- 7) any other person as ordered by the court.

Official Note: Rule 516 adopted April 1, 2005, effective October 1, 2005.

PART C. INTER-STATE TRANSFER OF DISPOSITION

Rule 520. Transfer of Disposition and Supervision of Juvenile to Another State (Reserved).

Rule 521. Disposition and Supervision of a Juvenile Received From Another State (Reserved).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART A. SUMMONS AND NOTICE

Rule

600. Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

605. Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation.
610. Dispositional and Commitment Review.
612. Modification or Revocation of Probation.
613. Termination of Court Supervision.
616. Post-Dispositional Procedures; Appeal (Reserved).
617. Release of Juvenile Pending Appeal (Reserved).

PART A. SUMMONS AND NOTICE

Rule 600. Summons and Notice of the Commitment Review, Dispositional Review, and Probation Revocation Hearing.

A. *Summons.* The court shall issue a summons compelling the juvenile and the juvenile's guardian to appear for the commitment review, dispositional review, or probation revocation hearing.

B. *Notice.* The court shall give notice of the hearing to:

- 1) the attorney for the Commonwealth;
- 2) the juvenile's attorney;
- 3) the juvenile probation office; and
- 4) the placement facility staff, if the juvenile is in placement.

C. *Requirements.* The general summons and notice procedures of Rule 124 shall be followed.

Comment

Section 6335(a) of the Juvenile Act provides that the court shall direct the issuance of a summons to the juvenile, guardian, and any other persons as appears to the court to be proper and necessary for the proceedings. 42 Pa.C.S. § 6335(a).

The attorney for the Commonwealth or the juvenile probation officer should notify the victim of the hearing. See Victim's Bill of Rights, 18 P. S. § 11.201 et seq.

Other persons may be subpoenaed to appear for the hearing. See 42 Pa.C.S. § 6333.

Official Note: Rule 600 adopted April 1, 2005, effective October 1, 2005.

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

Rule 605. Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation.

A. A juvenile may be detained for a modification of a dispositional order or a violation of probation by:

- 1) the filing of a motion for modification of the dispositional order;
- 2) the anticipated filing of a motion for modification of the dispositional order within twenty-four hours of the juvenile's detention; or
- 3) the filing of a motion alleging probation violations.

B. The court shall adhere to the detention, notice, time, and manner of hearing provisions of Rules 240, 241 and 242.

Official Note: Rule 605 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 605 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 610. Dispositional and Commitment Review.

A. *Dispositional Review Hearing.*

- 1) A court may schedule a review hearing at any time.
- 2) In all cases when the juvenile is removed from the home, the court shall hold dispositional review hearings at least every six months.

B. *Change in dispositional order.* Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, the court shall give the parties notice of the request and an opportunity to be heard.

- 1) The juvenile may be detained pending a court hearing.
- 2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.
- 3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.
- 4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

C. *Advanced Communication Technology.* If the parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding.

Comment

Under paragraph (A), the court may hold a review hearing at any time; however, if the juvenile is removed from the home, the court is to conduct a hearing at least every six months.

Nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing, when a juvenile is in a placement facility, to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

Official Note: Rule 610 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 610 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 612. Modification or Revocation of Probation.

A. *Filing.* A motion to modify or revoke probation shall be filed in accordance with Rule 345.

B. *Time of Hearing on the Motion.*

- 1) If the juvenile is detained, the hearing on the motion shall be held within ten days of the detention hearing.
- 2) If the juvenile is not detained, the hearing on the motion shall be held promptly.

C. *Modification.* If the court modifies the dispositional order, the court shall state the grounds for the modification and shall issue a new dispositional order in accordance with Rule 515.

Comment

A juvenile should be afforded due process before probation can be revoked. *Cf. Gagnon v. Scarpelli*, 411 U.S. 778 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972). A juvenile's probation cannot be revoked simply on the grounds of hearsay evidence. *In re Davis*, 586 A.2d 914 (Pa. 1991).

For detention procedures, see Rules 240 through 243.

For dispositional orders, see Rule 515.

Official Note: Rule 612 adopted April 1, 2005, effective October 1, 2005.

Rule 613. Termination of Court Supervision.

A. *Notice.* When the juvenile has completed the terms of the dispositional order, the juvenile probation officer shall move for the termination of the court's supervision by filing a motion. The motion shall set forth:

- 1) The juvenile has completed the terms of the court's dispositional order;
- 2) Restitution, fines, and costs have been paid in full; and
- 3) The juvenile has not committed any new offenses in which a criminal proceeding or proceeding governed by the Juvenile Act, 42 Pa.C.S. § 6301 et seq., may be commenced.

B. *Objection.* Any party may object to the motion under paragraph (A) and request a hearing. Such objection shall be made within thirty days of receipt of the motion; otherwise, objections are deemed waived.

C. *Hearing.* If objections have been made under paragraph (B), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.

D. *Termination.* When the requirements of paragraphs (A) through (C) have been met and the court is satisfied

that the juvenile has carried out the terms of the dispositional order, the court may discharge the juvenile from its supervision.

Comment

For procedures on motions, see Rule 344 and 345. For procedures on the dispositional order, see Rule 515. See also, 42 Pa.C.S. § 6352.

Under paragraph (A)(2), see 42 Pa.C.S. § 9728 for collection of outstanding restitution.

Official Note: Rule 613 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 613 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Rule 616. Post-Dispositional Procedures; Appeal (Reserved).

Rule 617. Release of Juvenile Pending Appeal (Reserved).

CHAPTER 8. SUSPENSIONS

Rule
800. Suspensions of Acts of Assembly.

Rule 800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

1) The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing or search warrant affidavits, and which is implemented by Pa.R.Crim.P. 211, through Pa.R.J.C.P. 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206, 211.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rule 124, which requires a summoned person to fail to appear and the court to find that sufficient notice was given.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.

4) The Public Defender Act, Act of December 2, 1968, P. L. 1144, No. 358, § 1 et seq. as amended through Act of December 10, 1974, P. L. 830, No. 277, § 1, 16 P. S. 9960.1 et seq., which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which requires separate counsel if there is a conflict of interest.

5) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may

direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to detain in limited circumstances.

9) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.

10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

12) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

13) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. See also Rule 102.

Official Note: Rule 800 adopted April 1, 2005, effective October 1, 2005.

[Pa.B. Doc. No. 05-695. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 200, 300 AND 500]

Proposed Amendments to Rules 209, 301, 303—305, 307, 313—315, 318—319, 501—504, and 506—508 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 Rules 209, 301, 303—305, 307, 313—315, 318—319, 501—504, and 506—508 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges¹ to, among other things, require that the defendant in a civil action file a simplified answer to the plaintiff's complaint before a hearing date is set. The Committee has not yet 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,

Michael F. Krimmel, Counsel
Supreme Court of Pennsylvania
Minor Court Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
Fax 717-795-2175

or e-mail to: minorrules@pacourts.us

no later than Monday, July 18, 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 209.² Continuances.

A. Continuances may be granted for cause or by agreement.

¹ The title "district justice" was replaced in these rules 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 As amended December 16, 2004, effective July 1, 2005.

B. Continuances shall be to a specific time and date. The magisterial district judge shall note continuances on the docket and shall promptly give or mail to the parties written notice of continuances.

C. Except as otherwise provided in these rules and for good cause shown,

(1) not more than one continuance shall be granted to each party, and

(2) the aggregate of all continuances shall not extend the date of the hearing:

(a) beyond [90] 30 days from the hearing date [of filing the plaintiff's complaint] scheduled in accordance with Rule 319 in proceedings commenced pursuant to Rule 303, or

(b) beyond 30 days from the date of filing the plaintiff's complaint in proceedings commenced pursuant to Rule 502.

D. In all proceedings governed by these rules the following shall constitute cause for granting a continuance:

(1) the scheduling of a party's attorney of record to appear at any proceeding under the Pennsylvania Rules of Disciplinary Enforcement, whether

(a) as counsel for a respondent-attorney before a hearing committee, special master, the Disciplinary Board, or the Supreme Court;

(b) as a special master or member of a hearing committee, or

(c) as a member of the Disciplinary Board.

(2) the scheduling of a party's attorney of record to appear at any proceeding involving the discipline of a justice, judge, or magisterial district judge under Section 18 of Article V of the Constitution of Pennsylvania, whether

(a) as counsel for a justice, judge, or magisterial district judge before the special tribunal provided for in 42 Pa.C.S. § 727, the Court of Judicial Discipline, the Judicial Conduct Board, or any hearing committee or other arm of the Judicial Conduct Board; or

(b) as a member of the Court of Judicial Discipline, the Judicial Conduct Board, or any hearing committee or other arm of the Judicial Conduct Board.

Official Note: This rule was amended in 2005 to consolidate the provisions of former Rules 320 (relating to continuances in civil actions) and 511 (relating to continuances in possessory actions) into one general rule governing continuances. The limitations set forth in subdivision C are intended to ensure that these cases proceed expeditiously. **The operative dates for calculating the limitations on continuances differ in civil actions (commenced pursuant to Rule 303) and landlord and tenant actions (commenced pursuant to Rule 502). In civil actions, the 30 day limitation runs from the hearing date scheduled in accordance with Rule 319; in landlord and tenant actions, the 30 day limitation runs from the date of filing the plaintiff's complaint.** The grounds set forth in subdivision D, of course, are not intended to be the only grounds on which a continuance will be granted.

CHAPTER 300. CIVIL ACTION

Rule 301. Definition. Scope.

A. As used in this chapter, "action" means a civil action brought before a magisterial district judge.

B. Civil action includes any action within the jurisdiction of a magisterial district judge except an action by a landlord against a tenant for the recovery of the possession of real property.

C. [As used in this chapter, "complaint" or Civil Action shall include, where applicable, the attached and completed Civil Action Hearing Notice form.] Rescinded.

Official Note: Civil action includes actions formerly denominated "assumpsit" or "trespass" and civil claims for fines and penalties. See Section 1515(a)(3) of the Judicial Code, 42 Pa.C.S. § 1515(a)(3), prescribing the jurisdiction of magisterial district judges. The rules in this chapter will apply to all civil actions before magisterial district judges except an action by a landlord against a tenant for the recovery of possession of real property, which are governed by Chapter 500 of these rules.

[Statutes authorizing a civil fine or penalty include the following: (1) Section 10.1 of the Act of April 27, 1927, P. L. 465, No. 299, added by section 2 of the Act of December 21, 1988, P. L. 1315, No. 168, 35 P. S. § 1230.1 relating to clean indoor air; and Sections 617.1 and 817-A of the Act of July 31, 1968, P. L. 805, No. 247, as added by sections 62 and 77 of the Act of December 21, 1988, P. L. 1329, No. 170, 53 P. S. §§ 10617.1, 10817-A relating to violation of zoning and joint municipal zoning ordinances.]

Rule 303. Commencement of [the] Action.

An action [shall] may be commenced by [the] filing [of] a written complaint with the magisterial district court.

Official Note: The complaint must be in writing on a form prescribed by the Court Administrator of Pennsylvania. See Rule 212. The use of a standardized complaint form is intended to promote uniformity, simplification of procedure, and better access by the public to the judicial services of magisterial district courts.

This rule does not permit the commencement of an action by a writ of summons.

Rule 304. [Form] Contents of Complaint; Verification.

A. [The complaint shall be made in writing on a form which shall be prescribed by the State Court Administrator.] The complaint must set forth the following:

- (1) The names and addresses of the parties.
- (2) The amount claimed.
- (3) A brief and concise statement of the facts upon which the claim is based including the following:
 - (a) The date, time and place of the occurrence and a brief description of the damages sustained when the claim alleges tortious conduct.
 - (b) The date of the transaction and a brief description of the subject matter when the claim is contractual.
 - (c) The date and a description of the occurrence, and the citation to the statute authorizing the claim, when the claim is for a civil fine or penalty.

(4) Such other information as may be required on the complaint form.

B. The complaint [shall] must be signed by the plaintiff or plaintiff's agent and verified as follows:

The facts set forth in this complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signature

[C. The complaint shall set forth:

- (1) The names and addresses of the parties.
- (2) The amount claimed.
- (3) A brief and concise statement of the facts upon which the claim is based including:
 - (a) the date, time and place of the occurrence and a brief description of the damages sustained when the claim alleges tortious conduct; or

Official Note: A civil action in which the claim alleges tortious conduct was formerly called an action in trespass.

(b) the date of the transaction and a brief description of the subject matter when the claim is contractual;

Official Note: A civil action in which the claim is contractual was formerly called an action in assumpsit.

(c) the date and description of the occurrence when the claim is for a civil fine or penalty and the citation to the statute authoring the claim.

(4) Such other information as shall be required on the complaint form.]

Official Note: [Rule 304 is designed to promote uniformity, simplification of procedure and better access by the public to the judicial services of magisterial district judges. The use of a form will help to accomplish this purpose and will also provide easier statistical and other administrative control by the Supreme Court.] A civil action in which the claim alleges tortious conduct was formerly called an action in trespass. A civil action in which the claim is contractual was formerly called an action in assumpsit.

Rule 305. [Setting the Date for Hearing; Delivery for Service] Notice to Defendant; Form.

[The magisterial district judge, at the time the complaint is filed, shall:

- (1) Set a hearing date which shall be not less than 12 or more than 60 days from the date the complaint is filed.
- (2) Insert the hearing time and date and the address of the magisterial district court in the complaint form.
- (3) Deliver a copy of the complaint form with hearing time and date thereon to the plaintiff.
- (4) Deliver a copy of the complaint form with hearing time and date thereon for service on the

defendant as hereinafter set forth, which copy shall contain the following notice:

(a) If you intend to enter a defense to this complaint you should so notify this office immediately.

(b) If you have a claim against the plaintiff which is within magisterial district court jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

(c) YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.]

A. Every complaint filed by a plaintiff must include a notice to defendant in substantially the form set forth in subdivision B. No other notice to plead to a complaint is required.

B.

Notice To Defendant

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE COMPLAINT, YOU MUST TAKE ACTION WITHIN TEN DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY FILING WITH THE MAGISTERIAL DISTRICT COURT A WRITTEN ANSWER ON THE ANSWER/COUNTERCLAIM FORM INCLUDED WITH THIS COMPLAINT AND NOTICE. YOU ARE WARNED THAT IF YOU FAIL TO FILE AN ANSWER A JUDGMENT WILL BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

IF YOU FILE YOUR ANSWER AS REQUIRED AND YOU DENY THE PLAINTIFF'S CLAIMS IN WHOLE OR IN PART, THE MAGISTERIAL DISTRICT COURT WILL NOTIFY YOU BY FIRST CLASS MAIL WHEN YOU MUST APPEAR AT A HEARING TO PRESENT YOUR DEFENSE. IF YOU DO NOT RECEIVE NOTICE OF YOUR HEARING DATE WITHIN SEVEN DAYS AFTER FILING YOUR ANSWER, YOU SHOULD CALL THE MAGISTERIAL DISTRICT COURT AT THE TELEPHONE NUMBER LISTED ON THE COMPLAINT FORM.

If you have a counterclaim against the plaintiff you must file it with your answer on the Answer/Counterclaim form included with this complaint and notice.

If you are disabled and require a reasonable accommodation to gain access to the magisterial district court and its services, please contact the court at the address or telephone number listed on the complaint form. The court is unable to provide transportation.

Official Note: [The 60 day limitation in subdivision (1) of this rule was considered to provide sufficient time in which to effect service under requirement of Rule 307 that service be made at least ten days before the hearing. See Rule 314E as to reinstatement of complaints dismissed because of lack of service. The copies required in subdivisions (3) and (4) are provided by the Magisterial District Judge Automated System. Giving the notice mentioned in subdivision (4)(a) is necessary if the defendant is to obtain judgment under Rule 319A

because of the plaintiff's failure to appear. Subdivision (4)(b) gives notice of the right to file a cross-claim within magisterial district court jurisdiction. The procedure for filing such a claim is set forth in Rule 315, and the Note to that rule indicates possible procedures as to counterclaims not within magisterial district court jurisdiction. Subdivision (4)(c) provides for a warning concerning a default judgment, which may be rendered under Rule 319B.] This rule was amended in 2005 to provide for a more thorough notice to defendant and a written answer. Because rules now require the defendant to file a simplified answer to the complaint before a hearing is scheduled, the former provisions of this rule relating to setting the hearing date and delivering the complaint for service have been either deleted as obsolete or incorporated into other rules.

As to the defendant's answer and counterclaim, see Rules 315 and 318.

Rule 307. Service [of the Complaint] Generally; Service within the Commonwealth; Service by Mail.

[Service shall be made at least ten days before the hearing, in the following manner:] A. The complaint must be served within the Commonwealth within 40 days after the filing or reinstatement of the complaint.

B. Except as otherwise provided in subdivision C, service within the Commonwealth must be made in the following manner:

(1) A copy of the complaint for each defendant shall be delivered by the magisterial district judge for service to the sheriff of, or any certified constable in, the county in which the magisterial district of the magisterial district judge is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth. If the complaint is delivered for service to the sheriff and service is to be made in a county other than the one in which the magisterial district of the magisterial district judge is situated, the sheriff shall deputize the sheriff of the county in which service is to be made. A certified constable may serve the complaint anywhere in the Commonwealth.

(2) If service is to be made in a county other than the one in which the magisterial district judge's magisterial district is situated, the magisterial district judge, instead of acting in accordance with [subdivision] subparagraph (1), may:

(a) [send] Send the copy of the complaint for service to a magisterial district judge in the county in which service is to be made who shall deliver it for service to the sheriff of, or any certified constable in, that county. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth[, or].

(b) [if] If service is to be made in Philadelphia, send the copy of the complaint for service to the Court Administrator of the Philadelphia Municipal Court who shall deliver it for service to a writ server of that court or to the sheriff of Philadelphia.

[(3)] C. When service of the complaint by mail is permitted by the rules in this chapter, it shall be at the

option of the plaintiff and shall be made by the magisterial district judge by certified or registered mail. Such service may be made to any place in or outside the Commonwealth.

D. Except as otherwise provided in these rules, all notices and legal papers other than the complaint filed in an action shall be served by first class mail.

E. As used in this rule "complaint" includes the complaint form specified in Rule 303, the notice to defendant specified in Rule 305, and the blank Answer/Counterclaim form specified in Rule 318.

Official Note: This rule was amended in 2005 to conform the service rules to the requirement that the defendant file an answer before a hearing is scheduled. Under the new procedures, service is to be made within a specified time period after the complaint is filed, as opposed to the former procedure of requiring service within a specified time before the hearing date.

This rule provides a number of alternative methods of serving the complaint. [Subdivision] Subparagraph B(1) permits a certified constable to serve the complaint anywhere in the Commonwealth and authorizes deputized service by sheriffs. Subparagraph B(2)(a) permits service out of the county through magisterial district judges in the county in which service is to be made, a method of service which might be preferable to service under [subdivision] subparagraph B(1) by a certified constable of the county where the complaint was filed when that county is a considerable distance from the county of service. Subparagraph B(2)(b) provides for service in Philadelphia by writ servers of the Philadelphia Municipal Court or by the sheriff of Philadelphia, although service may still be made in accordance with [subdivision] subparagraph B(1) if the magisterial district judge so desires. Subdivision [3] C makes service of the complaint by mail, when permitted, at the option of the plaintiff. This was done because service by mail will ordinarily reduce costs.

Rule 313. Service Outside the Commonwealth.

A. The complaint must be served outside the Commonwealth within 60 days after the filing or reinstatement of the complaint.

B. [When service of the complaint is to be made upon a defendant] Service outside the Commonwealth[, it shall] must be made in one of the following ways:

(1) [by] By delivery in the manner prescribed by Rule 308, 309, 310 or 311, whichever is applicable, by a Pennsylvania sheriff or constable or by [any] a competent adult[, other than the plaintiff] designated by the magisterial district judge [or].

(2) [by] By certified or registered mail as provided by Rule 308, 309 or 310, whichever is applicable[;].

(a) [if] If the registered or certified mail is returned with a notation by the postal authorities that receipt was refused, then the magisterial district judge may serve the complaint by sending a copy of the complaint by ordinary mail to the same address with a return address on the envelope. Service by ordinary mail is complete if the mail is not returned to the sender within fifteen days after the mailing[; or].

(b) [if] If the mail is returned with a notation by the postal authorities that it was unclaimed, the plaintiff [shall] must make service by another means pursuant to these rules[, or].

(3) [in] In the manner provided or prescribed by the law of the place in which service is to be made for service in that place in an action in any of its courts of general jurisdiction.

C. As used in this rule "complaint" includes the complaint form specified in Rule 303, the notice to defendant specified in Rule 305, and the blank Answer/Counterclaim form specified in Rule 318.

Official Note: This rule was amended in 2005 to conform the service rules to the requirement that the defendant file an answer before a hearing is scheduled. Under the new procedures, service is to be made within a specified time period after the complaint is filed, as opposed to the former procedure of requiring service within a specified time before the hearing date.

See Section 5322 of the Judicial Code, [§ 5322,] 42 Pa.C.S. § 5322 [(as amended by § 10(61) of the Judiciary Act Repealer Act, Act of April 28, 1978, P. L. 202, No. 53) and § 5329(1), 42 Pa.C.S. § 5329(1)], as to the basis of personal jurisdiction over persons outside the Commonwealth. The magisterial district judge may designate [any] a Pennsylvania sheriff or constable to make service under [subdivision] subparagraph B(1), but [such] this method of service should not be attempted if it would be offensive to the jurisdiction in which service is to be made. See generally Uniform Interstate and International [Procedures] Procedure Act, [§ 2.02, Commissioners' Comment, 13 Uniform Laws Annotated 297] 42 Pa.C.S. §§ 5321 to 5329. Alternatively, the magisterial district judge may designate [any] a competent adult [other than the plaintiff] to make service under [subdivision] subparagraph B(1). Although the magisterial district judge may not designate the plaintiff as the person to make [such] this service, the plaintiff may suggest to the magisterial district judge the name of a person to make service. If service is made by ordinary mail under [subdivision] subparagraph B(2)(a), the magisterial district judge shall note that fact on the [original complaint form] docket with the remark that a sufficient time having elapsed the ordinary mail was not returned, and shall [attach to the original complaint form] file the returned certified or registered letter with the notation by the postal authorities that the defendant refused to accept it. If service is to be made under [subdivision] subparagraph B(3), the magisterial district judge may send the service copy of the complaint to an appropriate official of the jurisdiction in which service is to be made. If service is made under [subdivisions] subparagraphs B(1) or (3), proof of service may be made on the form provided under Rule 314A with such alterations as may be necessary or in any manner provided by the law of the jurisdiction in which the service is made for proof of service in an action in any of its courts of general jurisdiction.

Rule 314. Return, Waiver and Failure of Service; Reinstatement.

A. [The person serving the complaint shall, at or before the time of the hearing, make proof] (1) Except when service of the complaint is made by mail, the person making service of the complaint shall make a return of service forthwith.

(2) The return of service [which shall show (1) the] must set forth the following:

(a) The manner of service [, (2) the].

(b) The date, time, and place of service [and, (3) the].

(c) The name and relationship or title, if any, of the person on whom the complaint was served. [The proof of service shall be filed with the original complaint.]

(d) Any other facts necessary for the magisterial district judge to determine whether proper service has been made.

(3) If service has not been made, a return of no service shall be made upon the expiration of the period allowed for service.

B. [When] If service is made by registered or certified mail, the return receipt [shall] must be filed with the original complaint.

C. The appearance of a defendant in person or by representative or the filing by a defendant of [a claim] an answer in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.

D. If [the complaint is not served on the defendant in time to permit holding a hearing within 60 days of the filing of the complaint] service within the Commonwealth is not made within the time prescribed by Rule 307 or outside the Commonwealth within the time prescribed by Rule 313, the magisterial district judge shall dismiss the complaint without prejudice.

E. Upon written request of the plaintiff, a complaint that has been dismissed without prejudice for failure to make service pursuant to subdivision D of this rule may be reinstated at any time and any number of times. The date of reinstatement shall be the date upon which the request for reinstatement is filed.

Official Note: The provision concerning appearance not being a waiver of venue was inserted in subdivision C of this rule to prevent the concentration of business in the office of a favorable magisterial district judge. Also, the public cannot generally be expected to be aware of venue provisions. See Rule 302H regarding improper venue.

Subdivision D is intended to prevent the accumulation of stale claims in the office of the magisterial district judge.

Subdivision E provides for the reinstatement, upon written request of the plaintiff, of a complaint that has been dismissed without prejudice for failure to make service under subdivision D. Compare Pa.R.C.P. No. 401(b). The written request for reinstatement may be in any form and may consist of a notation on the permanent copy of the complaint form, "Reinstatement of complaint requested," subscribed by the plaintiff. The magisterial district judge shall mark all copies of the reinstated

complaint, "Complaint reinstated. Request for reinstatement filed on _____ (date)." If it is necessary to use a new form for the reinstated complaint, the reinstated complaint, except for service portions thereof, shall be an exact copy of the original complaint, although signatures may be typed or printed with the mark "/s/" indicating an actual signature. The language in subdivision E that a complaint may be reinstated "at any time" will permit reinstatement after a faulty service without waiting for further proceedings in the case. Reinstatement must occur within the period of the statute of limitations from the date of the last filing or reinstatement. The cost for reinstating a complaint is specified in Section 1725.1 of the Judicial Code, 42 Pa.C.S. § 1725.1. In addition, there may be additional server costs for service of the reinstated complaint.

Rule 315. Claim by Defendant.

A. The defendant [, by filing a complaint at least five days before the date set for the hearing,] may assert in the case [any claim] a counterclaim against the plaintiff that is within the jurisdiction of a magisterial district judge. [Such a claim] The counterclaim need not arise from the same transaction or occurrence from which the plaintiff's claim arose, nor need it be the same type of claim.

B. [The rules governing the form, processing, and service of a plaintiff's complaint shall apply also to the defendant's complaint. The magisterial district judge shall set a date and time for the hearing of both complaints together that shall not be less than 12 or more than 30 days from the filing of the defendant's complaint.] (1) A counterclaim may be filed only as prescribed by Rule 318.

(2) A counterclaim is deemed denied by the plaintiff and no responsive pleading is required.

C. (1) If the defendant files a counterclaim, the magisterial district judge shall hear both matters together at a consolidated hearing.

(2) If the defendant's counterclaim is properly and timely filed in accordance with this rule and Rule 318, the hearing on the defendant's counterclaim may proceed even if the plaintiff voluntarily withdraws his or her complaint.

(3) Although a separate award on each claim and counterclaim may be rendered, one single consolidated net [A] money judgment for the plaintiff or for the defendant, but not for both, shall be entered with respect to [such cross-complaints] counterclaims, any lesser amount found due on the claim asserted in one being [deducted] set off from the greater amount found due on the claim asserted in the other.

D. [If the defendant files a cross-complaint, the magisterial district judge shall promptly notify the plaintiff of the time and date set for the hearing of both complaints together. If the plaintiff has an attorney of record, the notice shall be given to the attorney of record instead of to the plaintiff.] Rescinded.

Official Note: Subdivision A of this rule permits the defendant to file a [cross-complaint] counterclaim against the plaintiff [at least five days before the date originally set for the hearing,] if it is for a claim cognizable by a magisterial district judge. See Section

1515(a)(3) of the Judicial Code, 42 Pa.C.S. § 1515(a)(3), as to waiver of jurisdictional limits, a defendant filing a [**cross-complaint**] counterclaim being considered a "plaintiff" as to the [**cross-complaint**] counterclaim within the meaning of this statute. [**The requirement that a cross-complaint be filed at least five days before the hearing is intended to give the magisterial district judge time to notify the plaintiff or the plaintiff's attorney, under subdivision D of the rule, of any new hearing time and date. Notice under subdivision D is not a substitute for the service required under subdivision B.]**

The counterclaim must be in writing on the Answer/Counterclaim form prescribed by the Court Administrator of Pennsylvania. See Rules 212, 305, and 318.

If the defendant does not file [**an action at least five days before the hearing**] a claim as prescribed by this rule, the defendant may still file a complaint against the plaintiff but it will not be processed as a [**cross-complaint**] counterclaim.

Subparagraph C(3) makes clear that only one money judgment should be entered for either the plaintiff or the defendant.

No provision has been made for a stay of the magisterial district court proceedings upon notice by the defendant of intention to commence an action in the court of common pleas on a claim against the plaintiff not within magisterial district [**judge**] court jurisdiction. It was thought that no such provision was necessary, for if the plaintiff prevails in the magisterial district [**judge**] court action the defendant may appeal, the appeal operates as an automatic supersedeas of the money judgment, the case is heard de novo, and the defendant may assert a claim in the court of common pleas, possibly as a counterclaim. See Rules 1002, 1007, and 1008.

Since a [**cross-complaint**] counterclaim is in the nature of a responsive pleading, there is no fee for filing it.

No [**cross-complaint**] counterclaim may be filed in a supplementary action filed under Rule 342. See Rule 342 and Note.

Rule 318. [**Informing Plaintiff of Notice of Intention to Defend**] Defendant's Answer and Counterclaim; Time for Filing Answer and Counterclaim; Judgment by Consent and Judgment by Default.

[**If the defendant gives the magisterial district judge notice of his intention to defend under Rule 305(4)(a), the magisterial district judge shall promptly inform the plaintiff in writing that he has received such a notice by mailing to the plaintiff a copy of the completed Notice of Intent to Defend form. If the plaintiff has an attorney of record named in the complaint form, this information shall be given to the attorney of record instead of to the plaintiff.]**

A. (1) The defendant must file an answer with the magisterial district court within ten days after the complaint is served upon the defendant.

(2) The time period for filing the answer may not be extended except by the magisterial district judge for good cause shown.

B. The answer must be in writing on the Answer/Counterclaim form prescribed by the Court Administrator of Pennsylvania and must set forth the following:

(1) The name, address, and telephone number of the defendant.

(2) A statement by the defendant declaring one of the following:

(a) That the defendant does not owe the plaintiff any part of what is claimed, with a brief and concise explanation as to why, and that the defendant requests a hearing before the magisterial district judge.

(b) That the defendant owes the plaintiff only part of what is claimed, with a brief and concise explanation as to how much and why, and that the defendant requests a hearing before the magisterial district judge.

(c) That the defendant owes the plaintiff what is claimed, and that the defendant does not contest the claim or request a hearing before the magisterial district judge.

(3) Any other matter that the defendant may assert in the case.

(4) A counterclaim asserted by the defendant under Rule 315, if any.

(5) Such other information as may be required on the Answer/Counterclaim form.

C. The answer must be signed by the defendant or defendant's attorney.

D. (1) If the defendant files an answer in accordance with subparagraph B(2)(c), the magisterial district judge shall enter judgment by consent forthwith.

(2) If the defendant fails to file a timely answer with the magisterial district court, the magisterial district judge shall enter judgment by default forthwith.

Official Note: [**No specific form of notification is required by this rule, but entries on the complaint form will show that the defendant gave notice of his intention to defend and that the magisterial district judge informed the plaintiff or his attorney of record thereof, when these events have occurred. A notation that a copy of the Notice of Intent to Defend form was sent to the plaintiff or his attorney of record shall be made on the complaint maintained in the magisterial district judge's files.] This rule was amended in 2005 to require the defendant to file a simplified answer before a hearing date is set. This significant change in magisterial district court practice was intended to give magisterial district judges and parties more certainty in hearing dates and to reduce the number of unnecessarily scheduled hearings that result in default judgments.**

Subparagraph A(2) makes clear that the time period for filing the answer may not be extended except by the magisterial district judge for good cause shown. The time period may not be extended merely by agreement of the parties. This restriction is necessary because under these rules a default judgment may be entered against the defendant for

failure to file a timely answer by operation of law without the need for a praecipe by the plaintiff.

The requirement that the defendant file an answer in civil actions governed by the rules in this chapter is not intended to affect the procedures in possessory actions governed by Chapter 500. No answer or notice of intention to defend is required in possessory actions because the plaintiff must appear in every case to present testimony.

The answer must be in writing on the Answer/Counterclaim form prescribed by the Court Administrator of Pennsylvania. See Rules 212 and 305. The use of a standardized Answer/Counterclaim form is intended to promote uniformity, simplification of procedure, and better access by the public to the judicial services of magisterial district courts.

When the magisterial district judge enters judgment under subdivision D, the magisterial district court shall promptly give or mail to the parties written notice of judgment in accordance with Rule 324.

Rule 319. **Setting the Date for Hearing; Notice; Failure of a Party to Appear at the Hearing.**

A. [If a plaintiff who has been given notice of the defendant's intention to defend does not appear at the hearing, but the defendant does appear, the magisterial district judge shall enter judgment for the defendant or continue the case for cause. If the plaintiff does not appear at the hearing and the defendant does, but the plaintiff has not been given notice of the defendant's intention to defend, the case shall be continued.] Upon the timely filing of an answer by the defendant in which the defendant denies the plaintiff's claim in whole or in part and requests a hearing, or in which the defendant asserts a counterclaim against the plaintiff, the magisterial district court shall:

(1) Set a hearing date and time which must be not less than 12 or more than 30 days from the date of the hearing notice required by subparagraph (2).

(2) Give or mail to all parties not in default written notice of the date, time, and place of the hearing.

(3) Give or mail to the plaintiff a copy of the defendant's answer and the defendant's counterclaim, if any.

B. [If the defendant does not appear at the hearing, the magisterial district judge shall, whether or not the plaintiff appears, enter judgment for the plaintiff or continue the case for cause. If judgment is entered for the plaintiff, the magisterial district judge shall assess damages for the amount to which the plaintiff is entitled if it is for a sum certain or which can be made certain by computation, but if it is not, the damages shall be assessed by the magisterial district judge at a hearing at which the issues shall be limited to the amount of the damages. If such a hearing is to be held, the magisterial district judge shall give the defendant written notice of the time and date of the hearing, which shall be not less than ten (10) days from the date of the notice.] (1) If the plaintiff does not appear at the hearing, but the defendant does

appear, the magisterial district judge shall enter judgment for the defendant or continue the case for good cause shown.

(2) If the defendant does not appear at the hearing, but the plaintiff does appear, the magisterial district judge shall enter judgment for the plaintiff or continue the case for good cause shown.

(3) If neither party appears at the hearing, the magisterial district judge shall dismiss the complaint without prejudice or continue the case for good cause shown.

Official Note: [The first sentence of subdivision A of this rule] Subparagraph B(1) provides for a judgment for the defendant rather than merely a dismissal of the plaintiff's complaint. This provision is intended to prevent the plaintiff from bringing the action again before a magisterial district judge when the plaintiff fails to appear at the hearing but the defendant does appear, although [he can] the plaintiff may appeal. [The continuance called for in the second sentence of subdivision A will constitute a form of notice to defend and if the plaintiff does not appear at the second hearing judgment will be entered against him.] A complaint dismissed without prejudice under subparagraph B(3) may not be reinstated. If the plaintiff wishes to refile a complaint dismissed under this rule, the case must begin anew with the filing of a complaint, payment of costs, and proper service.

[As to the provisions concerning assessment of damages in subdivision B, compare Pa.R.C.P. Nos. 1037(b) and 1047(b).]

If the defendant files a counterclaim, the hearing scheduled in accordance with subparagraph A(1) will be a consolidated hearing on both the plaintiff's complaint and the defendant's counterclaim. See Rule 315.

When the magisterial district judge enters judgment or dismisses a complaint under subdivision B, the magisterial district court shall promptly give or mail to the parties written notice of judgment or dismissal in accordance with Rule 324.

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 501. Definition.

A. As used in this chapter, "action" means an action by a landlord against a tenant for the recovery of possession of real property brought before a magisterial district judge.

B. [As used in this chapter, "complaint" shall include, where applicable, the attached and completed Recovery of Real Property Hearing Notice form.] Rescinded.

Official Note: Distress for rent will not be covered in rules of civil procedure for magisterial district judges, for it is not an action or proceeding before a magisterial district judge and any constable carrying out the "landlord's warrant" is acting as an agent of the landlord and not as an officer serving process of a magisterial district judge. See § 302 of the Landlord and Tenant Act of 1951, 68 P. S. § 250.302. Actions for rent (§ 301 of the Act, 68 P. S. § 250.307) are not included in this chapter, for these are actions of assumpsit. See also § 572 of the Act, added

by Act of May 3, 1968, P.L. 107, No. 56, § 1, 68 P.S. § 250.512. A number of trespass actions are also detailed in the Landlord and Tenant Act of 1951 (see §§ 311—313, 68 P.S. §§ 250.311—250.313), and these would be brought under the rules pertaining to trespass actions. Consequently, this chapter will be concerned only with the action for the recovery of possession of real property. But see Rules 503C(8) and 508 as to joinder of actions and **[cross-complaints] counterclaims**.

Rule 502. Venue; Commencement of **[the]** Action.

A. **[The] An** action may be brought in and only in the magisterial district where the whole or part of the real property possession of which is sought to be recovered is located.

B. **[The] An** action **[shall]** may be commenced by **[the]** filing **[of]** a complaint **with the magisterial district court**.

Official Note: Since only recovery of possession of real property and incidental matters are involved, the reason for the restriction on venue in subdivision A is obvious. Compare Pa.R.C.P. No. 1052.

The complaint must be in writing on a form prescribed by the Court Administrator of Pennsylvania. See Rule 212. The use of a standardized complaint form is intended to promote uniformity, simplification of procedure, and better access by the public to the judicial services of magisterial district courts.

Rule 503. **[Form]** Contents of Complaint, Verification.

A. **[The complaint shall be made in writing on a form which shall be prescribed by the State Court Administrator.]** The complaint must set forth the following:

- (1) **The names and addresses of the parties.**
- (2) **The location and the address, if any, of the real property the possession of which is sought to be recovered.**
- (3) **That the plaintiff is the landlord of that property.**
- (4) **That the plaintiff leased or rented the property to the defendant or to some other person under whom the defendant claims.**
- (5) **That notice to remove was given to the defendant in accordance with law, or that no notice was required under the terms of the lease.**
- (6) **That the plaintiff alleges one or more of the following:**
 - (a) **The term for which the property was leased or rented is fully ended.**
 - (b) **A forfeiture has resulted by reason of a breach of the conditions of the lease.**
 - (c) **Rent reserved and due has, upon demand, remained unsatisfied.**
 - (7) **That the defendant retains the real property and refuses to give up possession of the property.**
 - (8) **The amount of rent, if any, which remains due and unpaid on the date the complaint is filed and whatever additional rent shall remain due and unpaid at the date of the hearing, and the amount**

of damages, if any, claimed for injury to or unjust detention of the real property.

B. The complaint **[shall]** must be signed by the plaintiff or plaintiff's agent and verified as follows:

The facts set forth in this complaint are true and correct to the best of my knowledge, information and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Signature

[C. The complaint shall set forth:

- (1) **The names and addresses of the parties.**
- (2) **The location and the address, if any, of the real property possession of which is sought to be recovered.**
- (3) **That the plaintiff is the landlord of that property.**
- (4) **That he leased or rented the property to the defendant or to some other person under whom the defendant claims.**
- (5) **That notice to remove was given to the defendant in accordance with law, or that no notice was required under the terms of the lease.**
- (6) **That—**
 - (a) **the term for which the property was leased or rented is fully ended, or**
 - (b) **a forfeiture has resulted by reason of a breach of the conditions of the lease, or**
 - (c) **rent reserved and due has, upon demand, remained unsatisfied.**
 - (7) **That the defendant retains the real property and refuses to give up possession of the property.**
 - (8) **The amount of rent, if any, which remains due and unpaid on the date the complaint is filed and whatever additional rent shall remain due and unpaid at the date of the hearing, and the amount of damages, if any, claimed for injury to or unjust detention of the real property.]**

Official Note: **[As in the other rules of civil procedure for magisterial district judges, the complaint will be on a printed form.]** As to notice to remove, the **[form will]** complaint must simply state that **[such a]** the notice, when required, was given to the defendant in accordance with law. See § 501 of the Landlord and Tenant Act, 68 P.S. § 250.501 **[, as amended by § 2(a) of the Judiciary Act Repealer Act, Act of April 28, 1978, P.L. 202, No. 53, 42 P.S. § 20002(a)]. [In subdivision C] Under subparagraph A(8) the landlord is permitted to claim, in addition to the specific amount of rent due and unpaid at the date of filing, whatever unspecified amount of rent will remain due and unpaid at the date of the hearing. As to claiming damages for injury to property, compare Pa.R.C.P. No. 1055.**

See Act of January 24, 1966, P.L. (1965) 1534, § 1, as amended by Act of August 11, 1967, P.L. 204, No. 68, § 1, Act of June 11, 1968, P.L. 159, No. 89, § 2, 35 P.S. § 1700-1, which states that "no tenant shall be evicted for any reason whatsoever while rent is deposited in escrow"

because the dwelling in question has been certified as unfit for human habitation by the appropriate city or county agency. It seems appropriate to leave the matter of evidencing or pleading such a certification or lack thereof to local court of common pleas rules.

[Explanatory Note

The amendment to subdivision c(6)(c) of Rule 503 and the note to the rule deletes the former requirement of pleading, when the action is based on failure to pay rent, that there is not on the premises property subject to distress adequate to satisfy rent in arrears. See also the amendment to Rule 582(1).]

Rule 504. Setting the Date for Hearing; Delivery for Service; Notice to Defendant.

A. The magisterial district judge, at the time the complaint is filed, shall:

(1) Set a hearing date and time which [shall] must be not less than [seven (7)] 7 or more than [fifteen (15)] 15 days from the date the complaint is filed.

(2) [Insert the] Prepare a hearing notice with the hearing time and date and the address of the magisterial district's [judge's magisterial district in the complaint form] district court.

(3) Deliver a copy of the complaint [form with hearing time and date thereon] and hearing notice to the plaintiff or the plaintiff's agent.

(4) Deliver a copy of the complaint [form with] and hearing [time and date thereon] notice for service as hereinafter set forth[, which copy shall contain the following notice:

(a) If you have a defense to this complaint, you may present it at the hearing.

(b) If you have a claim against the plaintiff arising out of the occupancy of the premises, which is within magisterial district court jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office before the time set for the hearing.

(c) IF YOU DO NOT APPEAR AT THE HEARING, a judgment for possession and costs, and for damages and rent if claimed, may nevertheless be entered against you. A judgment against you for possession may result in YOUR EVICTION from the premises].

B. (1) Every complaint filed by a plaintiff must include a notice to defendant in substantially the form set forth in subparagraph (2). No other notice to plead to a complaint is required.

(2)

Notice To Defendant

YOU HAVE BEEN SUED BY YOUR LANDLORD IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE COMPLAINT, YOU MUST APPEAR AND PRESENT YOUR DEFENSE AT THE HEARING. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR POSSESSION OF THE LEASED PREMISES AND ANY MONEY CLAIMED IN THE COMPLAINT. A

JUDGMENT AGAINST YOU FOR POSSESSION MAY RESULT IN YOUR EVICTION FROM THE PREMISES, AND YOU MAY ALSO LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

If you have a counterclaim against the plaintiff arising out of the occupancy of the premises you must file it on the Counterclaim form included with this complaint and notice before the time set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the magisterial district court and its services, please contact the court at the address or telephone number listed on the complaint form. The court is unable to provide transportation.

Official Note: The hearing date in [subdivision] subparagraph A(1) of this rule is required to be set not less than seven days from the filing of the complaint because of the requirement in Rule 506(B) that service be made at least five days before the hearing. It was thought that the requirement that the hearing be held not more than [fifteen] 15 days from the filing of the complaint should provide ample time to make the type of service required in these cases.

This rule was amended in 2005 to provide for a more thorough notice to defendant. The notice [for the defendant], set forth in [subdivision (4)] subparagraph B(2) of this rule, varies somewhat from the notice required in civil actions under Rule 305. There are a number of reasons for this. First, there can be no default judgment in these possessory actions [and, secondly it was thought that cross-complaints of defendants]. In all cases the plaintiff must appear and give testimony to prove the complaint, even when the defendant fails to appear for the hearing. It is not necessary, therefore, for the defendant to file an answer or notice of intention to defend before the hearing date is set. Secondly, because of the expedited nature of these cases, the defendant may file a counterclaim any time before the hearing. Counterclaims in these cases [should be] are limited to those arising out of the occupancy of the premises.

As to the defendant's counterclaim, see Rule 508.

Rule 506. Service [of Complaint] Generally; Failure of Service.

A. (1) The magisterial district judge shall serve the complaint by mailing a copy of it to the defendant by first class mail and by delivering a copy of it for service to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge is situated. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth.

(2) The officer receiving the [copy] complaint shall serve it by handing it to the defendant or to an adult [person] in charge for the time being of the premises possession of which is sought to be recovered or, if none of the above is found, by posting it conspicuously on those premises.

B. (1) The [copy shall] complaint must be served at least five days before the hearing.

(2) If the complaint is not served at least five days before the hearing as required by subpara-

graph (1) and the defendant does not appear in person or by representative or file a claim in the case, the magisterial district judge shall continue the case, set a new hearing date, and serve the complaint in accordance with Rule 504 and this rule.

C. Except as otherwise provided in these rules, all notices and legal papers other than the complaint filed in an action shall be served by first class mail.

D. As used in this rule "complaint" includes the complaint form specified in Rule 502, the hearing notice and notice to defendant specified in Rule 504, and the blank Counterclaim form specified in Rule 508.

Official Note: Under subdivision A of this rule, service must be made both by first class mail and delivery for service in the manner prescribed.

As to subdivision B, see Rule 507B regarding waiver of defect in service. The continuance for lack of service provided for in subparagraph B(2) is solely for the purpose of rescheduling the hearing date and redelivering the complaint for service, which should occur as quickly as practicable. This continuance will not be charged against either party (see Rule 209C(1)), and will not be considered for purposes of the 30 day limitation on continuances (see Rule 209C(2)(b)).

Rule 507. Notation and Return of Service; Waiver of Service.

A. (1) The magisterial district judge shall note on the [complaint form] docket the date on which he or she mailed a service copy of the complaint to the defendant[, and the].

(2) The sheriff or constable serving [a copy of] the complaint shall, at or before the time [of] set for the hearing, make [proof] a return of service [on the form provided, which shall show the manner of service and the day, hour and place thereof].

(3) The return of service must set forth the following:

- (a) The manner of service.
- (b) The date, time, and place of service.
- (c) If the complaint was handed to an adult, the name and relationship to the defendant or title of that adult.

(d) Any other facts necessary for the magisterial district judge to determine whether proper service has been made.

(4) The return of service must be filed with the original complaint.

B. The appearance of a defendant in person or by representative or the filing by [him] a defendant of a claim in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.

Official Note: This rule [parallels] is similar to the provisions of Rule 314A and C of the [trespass and assumpsit] civil action rules.

Rule 508. Claim by Defendant.

A. (1) At any time before the hearing, the defendant may file a [cross-complaint on the form prescribed

for civil complaints,] counterclaim asserting any claim against the plaintiff [which] that arises out of the occupancy of the premises and [which] that is within the jurisdiction of the magisterial district judge.

(2) The counterclaim must be in writing on the Counterclaim form prescribed by the Court Administrator of Pennsylvania.

B. If the defendant files [such] a [cross-complaint] counterclaim, the magisterial district judge shall [set a time and date for the hearing of] hear both complaints together[, which shall not be less than 7 or more than 15 days from the filing of the defendant's complaint] at a consolidated hearing.

C. The magisterial district judge shall serve the defendant's [cross-complaint shall be served] counterclaim on the plaintiff [at least five days before the hearing. At the option of the defendant, the magisterial district judge shall serve the cross-complaint by mailing a copy of it to the plaintiff. If the defendant does not request service by mail, the magisterial district judge shall deliver a copy of the cross-complaint for service to the sheriff of, or any certified constable in, the county in which the office of the magisterial district judge is located. If this service is not available to the magisterial district judge, service may be made by any certified constable of the Commonwealth. The officer receiving the copy shall serve it by handing it to the plaintiff or to an adult person in charge for the time being of the plaintiff's residence or usual place of business] by handing a copy of the counterclaim to the plaintiff or the plaintiff's representative in person at the time of the hearing scheduled in accordance with Rule 504, and shall note on the docket that service was made in this manner.

D. (1) Upon being served with the defendant's counterclaim, the plaintiff may elect to proceed immediately with the consolidated hearing of both complaints or to request a continuance.

(2) If a continuance is granted, the magisterial district court shall give or mail to the parties written notice of the time and date of the continued hearing, which must be not more than ten days from the grant of the continuance.

E. Although a separate award on each claim and counterclaim may be rendered, one single consolidated net money judgment for the plaintiff or for the defendant, but not for both, shall be entered with respect to counterclaims, any lesser amount found due on the claim asserted in one being set off from the greater amount found due on the claim asserted in the other.

Official Note: Because of the expedited nature of these cases, and because there is no requirement that the defendant file an answer or notice of intention to defend before the hearing is scheduled, the defendant may file a counterclaim any time before the hearing. The counterclaim must be in writing on the Counterclaim form prescribed by the Court Administrator of Pennsylvania. See Rules 212 and 504.

As to subdivision A of this rule, see the Note to Rule 504. See also 42 Pa.C.S. § 1515(a)(3), as to waiver of

jurisdictional limits, the defendant filing a [**cross-complaint**] counterclaim being considered a "plaintiff" as to the [**cross complaint**] counterclaim within the meaning of this statute.

Subdivision B [**sets forth the time limits for setting hearings when a cross-complaint is filed. These limits recognize the need for reasonable expedition in these cases**] requires that the magisterial district judge hear the plaintiff's complaint and the defendant's counterclaim together at a consolidated hearing.

This rule was amended in 2005 to provide a more streamlined procedure for service of a defendant's counterclaim. These changes were intended to reduce delay caused by the necessity of continuing the original hearing to allow for service of the counterclaim.

Subdivision C [**contains provisions**] provides for service of the [**cross-complaint. Mail service need not be by certified or registered mail**] counterclaim by the magisterial district judge simply handing a copy of the counterclaim to the plaintiff or the plaintiff's representative at the hearing scheduled in accordance with Rule 504. Because the defendant may file the counterclaim any time before the hearing, it may not be practicable to make service of the counterclaim upon the plaintiff before the hearing.

Because the plaintiff may wish to avoid any delay in the recovery of possession of the premises, subdivision D gives the plaintiff the option of proceeding with the scheduled hearing after being served with a counterclaim, or requesting a continuance if needed to prepare a defense. Under these circumstances, it would be highly unusual for the magisterial district judge to deny the continuance request. Because both claims are necessarily related to the occupancy of the premises, however, the plaintiff may be prepared to proceed immediately, and hearing both claims together should not take excessive time.

Subdivision E makes that clear that only one money judgment is to be entered for either the plaintiff or the defendant. Nothing in this subdivision is intended to prevent, however, the entry of a separate judgment for possession in favor of the plaintiff/landlord, even if the plaintiff/landlord is not entitled to a money judgment after the set-off.

Since a [**cross-complaint**] counterclaim is in the nature of a responsive pleading there is no fee for filing it.

REPORT

Proposed Amendments to Rules 209, 301, 303—305, 307, 313—315, 318—319, 501—504, and 506—508 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Form and Content of Civil and Landlord/Tenant Complaints; Notice to Defendant and Defendant's Answer and Counterclaim in Civil Action; Notice to Defendant and Defendant's Counterclaim in Landlord Tenant Action; Setting Hearing Date

I. Introduction and Background

The Minor Court Rules Committee (the Committee) is proposing significant amendments to the rules of procedure governing civil and landlord/tenant actions before magisterial district judges that would substantially change practice in the magisterial district courts. Most notably, the Committee is proposing that the rules require the defendant in a civil action to file a simplified answer to the plaintiff's complaint, and to file any counterclaim, before an initial hearing date is set in the case. Existing procedure requires the magisterial district court to set a hearing date immediately upon the filing of the plaintiff's complaint,³ and does not require any responsive pleading or formal notice of intention to defend by the defendant.⁴ In addition, existing counterclaim procedures usually necessitate a continuance of the initial hearing date.⁵ The Committee learned, as will be explained below, that these existing procedures require unnecessarily scheduled hearings and continuances, with the end result often being a default judgment because the defendant does not appear and defend.

The Committee initiated this project partly in response to a survey that it circulated to all magisterial district judges in 2002. The purpose of the Committee's survey was to collect samples of "cover sheets" or instructions that magisterial district judges send to parties at the time of service of civil and landlord/tenant complaints. The Committee had contemplated developing standardized civil and landlord/tenant cover sheets that would provide parties with general information about court procedures and what to expect at a magisterial district court hearing. More than 150 magisterial district judges responded to the Committee's survey, and provided copies of civil and landlord/tenant cover sheet forms used in their district courts. Some cover sheets appear to have been adopted countywide, but most were developed by individual judges and are unique to one district court. Some cover sheets provide only very basic information such as directions to the district court. Other cover sheets are very comprehensive, providing details on the conduct of hearings, court dress codes, continuance policies, and other information. It is apparent that many magisterial district judges use these cover sheets to provide information to litigants and to provide answers to frequently asked questions so as to make the court process run as smoothly as possible.

In reviewing the sample cover sheets, the Committee noticed one practice used by a significant number of district courts that raised concerns with the Committee. As noted above, existing procedures require that the magisterial district court set a hearing date immediately upon the filing of the plaintiff's complaint, and require that the court send a hearing notice along with the complaint when it is served on the defendant.⁶ The Committee noticed that many district courts, while technically complying with the requirement that a hearing date be set immediately, are including instructions on their cover sheets that the hearing date on the hearing

noticed one practice used by a significant number of district courts that raised concerns with the Committee. As noted above, existing procedures require that the magisterial district court set a hearing date immediately upon the filing of the plaintiff's complaint, and require that the court send a hearing notice along with the complaint when it is served on the defendant.⁶ The Committee noticed that many district courts, while technically complying with the requirement that a hearing date be set immediately, are including instructions on their cover sheets that the hearing date on the hearing

³ Pa. R.C.P.M.D.J. No. 305 (Setting the Date for Hearing; Delivery for Service) ("The magisterial district judge, at the time the complaint is filed, shall: (1) Set a hearing date which shall be not less than 12 or more than 60 days from the date the complaint is filed. . . . (4) Deliver a copy of the complaint form with the hearing time and date thereon for service on the defendant.").

⁴ Id. (Rule 305(4)(a) provides an instruction to the defendant that "[i]f you intend to enter a defense to this complaint, you should notify this office immediately." In addition, Pa. R.C.P.M.D.J. No. 318 (Informing Plaintiff of Notice of Intention to Defend) provides for notice to the plaintiff if the defendant gives notice of intention to defend. Neither rule, however, expressly requires the defendant to give the notice, and there is no penalty for the defendant who appears at the scheduled hearing without having given prior notice of intention to defend. In fact, a defendant appearing at the hearing without giving notice builds into the system automatic delay of the proceedings, because doing so often results in a continuance. See Pa. R.C.P.M.D.J. No. 319A (Failure of a Party to Appear at the Hearing).)

⁵ Pa. R.C.P.M.D.J. No. 315 (Claim by Defendant) (Rule 315B provides in part, "[t]he magisterial district judge shall set a date and time for the hearing of both complaints together that shall not be less than 12 or more than 30 days from the filing of the defendant's complaint.").

⁶ Pa. R.C.P.M.D.J. No. 305, supra n. 1.

notice is, in essence, a default date, *and the parties are not to appear on that date*. The cover sheets further provide that the defendant is to inform the court of his or her intention to defend by the date on the hearing notice, and if the defendant does notify the court by the prescribed date that he or she intends to defend, that the court will notify the parties of an actual hearing date on which they are to appear and present their cases. If the defendant fails to notify the court by the prescribed date, however, a default judgment is entered without the plaintiff having to appear in court. Under this procedure, therefore, the hearing date required by Rule 305 becomes a de facto fictitious date, and only after the defendant notifies the court of his or her intention to defend, is the "real" hearing date set.

It became obvious to the Committee that many magisterial district judges are using this informal procedure as a case management tool to avoid setting hearing dates in cases that may result in a default judgment. After making inquiries about the use of this informal procedure, the Committee heard reports from judges who claim the procedure works very well, enabling the court to schedule its hearing time with greater certainty, to dispose of cases more efficiently, and to avoid unnecessary court appearances by parties.

The Committee acknowledges that courts should employ all proper means to manage and expedite case flow and enhance the administration of justice. Nonetheless, the Committee has concerns about the use of an informal procedure that is not contemplated by or sanctioned under existing rules. The Committee does not suggest that there is anything inherently improper about this procedure, nor does the Committee suggest that the rules of procedure should be so rigid or inflexible so as to quash the ability of individual judges to adopt practices and policies designed to meet the unique needs of their courts. Rather, the Committee's concerns center on the widespread use of an informal procedure that is arguably inconsistent with the official procedural scheme set forth in the general rules, and the confusion that can occur as a result of using this informal procedure in some, but not all, magisterial district courts.⁷

The Committee's primary concern is that the computer generated hearing notice form that is sent to the plaintiff and served on the defendant along with the complaint states, as to the hearing date entered on the form, that "you must appear at the hearing and present your defense."⁸ Therefore, in courts that use the informal "default date" procedure, the instructions on the official hearing notice form are inconsistent with the instructions on the local court-generated cover sheet, which is likely to cause confusion. To make their cover sheet instructions clear, some courts use brightly colored paper or stickers to inform the parties that they are to disregard the date on the hearing notice form. The Committee is also concerned that many, but not all, courts have adopted this informal procedure, thereby resulting in inconsistent practice from court-to-court. In addition, even those courts that use the informal procedure have inconsistent procedures. For example, some cover sheets reviewed by the Committee require the defendant to notify the court of an intention to defend within a certain number of days, others require

notice only by the prescribed date; some cover sheets require written notice, others provide for notice by telephone. Because these procedures are developed by individual magisterial district judges, the Committee found numerous inconsistencies. The statewide general rules are intended to make practice in the magisterial district courts consistent and predictable. While the rules should allow enough flexibility for individual judges to adopt practices or policies that they find necessary to account for local needs and conditions, "local rules" of this nature are not contemplated by or provided for in the general rules.

Given its concerns about the widespread use of this informal procedure, the Committee considered ways in which the use of the procedure could be discouraged so as to maintain consistency in practice in the district courts and promote compliance with the procedural scheme set forth in the general rules. This effort eventually led to the current proposal that will be described in detail below, and which, as stated above, would result in substantial changes in existing practice.

II. Discussion

The Committee's first inclination was to consider rule changes that would "tighten" the existing procedural scheme so as to prevent the use of informal local procedures that, arguably, circumvent the general rules. In the course of its discussions, however, the Committee was reminded that the judges who employ the informal "default date" procedure do so for good reasons - to avoid unnecessarily scheduled hearings, continuances, and inconvenience to the parties. In addition, the informal procedure - although it interjects into the existing procedure the additional step of waiting for the defendant's notice of intention to defend before scheduling the "real" hearing date - allows courts to schedule their hearing time more efficiently and with more certainty, which is advantageous to the courts, counsel, and litigants. The Committee's discussions, therefore, eventually evolved into a proposal to incorporate the concept of this informal procedure into the general rules so as to take advantage of the benefits of the procedure while promoting system wide consistency of practice.⁹

To implement this, the Committee developed a proposal that would eliminate the requirement (currently in Rule 305) that the court set a hearing date immediately upon the filing of the plaintiff's complaint. Instead, the revised procedural scheme would require service of the complaint and an enhanced "Notice to Defendant" on the defendant, with clear instructions that the defendant must file a simple answer to the complaint if he or she wishes to defend. In keeping with the traditional user-friendly nature of district court proceedings, the answer would be on a short, MDJS-generated form with easy-to-understand instructions and check-off boxes for the defendant to complete the required information. Also, in keeping with the expedited nature of district court proceedings, the rules would require that the answer be

⁷ See Pa. R.C.P.M.D.J. No. 204 (Purpose and Intent of Rules) ("The purpose and intent of these rules is to provide a *complete and exclusive procedure* for every action or proceeding to which they are applicable." (emphasis added)).

⁸ Civil Action Hearing Notice, Form AOPC 308B-05. (This form, like most forms used in the magisterial district courts, is produced by the Magisterial District Judge System (MDJS), the statewide computer system, developed and maintained by the Administrative Office of Pennsylvania Courts, that automates all case processing and accounting functions of the magisterial district courts. This form is used to satisfy the requirements of Pa. R.C.P.M.D.J. No. 305, supra n. 1.)

⁹ The Committee did not adopt this approach lightly. The Committee notes that the current procedural scheme has been in existence, with relatively little change, since 1970. The Committee acknowledges, with great respect and admiration, the original drafters of these rules whose vision and work have withstood the test of time. The Committee believes this new approach to scheduling hearings is a natural progression for the magisterial district courts as jurisdictional limits have increased and practice has become more sophisticated. The new approach is intended, however, to remain true to the original drafters' intent as espoused in their 1970 Explanatory Comment preceding the Chapter 300 Rules: "[i]n drafting these rules, the guiding policy was to provide a framework, insofar as the Pennsylvania constitutional system would permit, for a modern, workable small claims procedure, realizing that many magisterial district judges would not be lawyers and that members of the public using the system would be largely unrepresented by legal counsel. Thus, an attempt was made throughout these rules to achieve simplicity of phraseology, uncomplicated administration and as much standardization in the handling of civil actions by magisterial district judges as is possible." Pa. R.C.P.M.D.J., Ch. 300, Explanatory Comment.

filed within ten days of the date of service. Thereafter, if the defendant answers and gives notice of his or her intention to defend, the court would schedule a hearing date and notify the parties. If the defendant fails to file an answer or indicates that he or she does not intend to defend, the rules would provide for the entry of judgment for the amount claimed in the complaint without the necessity for a hearing. In addition, if the defendant has a counterclaim that he or she wishes to assert in the action, the counterclaim would need to be filed along with the answer, thereby notifying the court and the plaintiff of the counterclaim before the initial hearing date is set.

In addition to the major rule changes discussed above, numerous correlative rule changes would be needed to fully implement the new procedural scheme. For example, the time frames established for service, continuances, and the filing of counterclaims must be altered. The Notice to Defendant must be enhanced to clearly set forth the requirement that the defendant file an answer. And, of course, the procedures for setting the hearing date must be revised. In addition, the Committee has included in this proposal a number of changes to the Chapter 500 landlord/tenant action rules. These changes, which are tangentially related to the new procedural scheme for civil cases, primarily provide for an enhanced Notice to Defendant and a more streamlined procedure for service of a defendant's counterclaim in a landlord/tenant action. *The new requirement that a defendant file an answer in a civil action would not apply to landlord/tenant actions. No answer or other notice of intention to defend is required in landlord/tenant actions because the plaintiff must always appear in these cases and give testimony to prove the claim.*¹⁰ The proposed amendments to the landlord/tenant action rules are intended only to revise and modernize the notice and counterclaim provisions in a way that is consistent with the changes proposed to the civil action rules.

III. Proposed Rule Changes

A. Rule Changes to Implement the Requirement of a Defendant's Answer

1. Rule 305

As discussed above, Rule 305 currently requires, among other things, that a hearing date be set immediately upon the filing of the plaintiff's complaint. Under the proposed new procedural scheme, the setting of the hearing would occur later in the judicial process, only after the defendant properly files an answer and gives notice of his or her intention to defend. Therefore, the existing provisions of Rule 305 would be deleted entirely, and would be replaced with provisions for an enhanced Notice to Defendant that would accompany the complaint when served on the defendant. The title of the rule would be changed to "Notice to Defendant; Form." The enhanced Notice to Defendant would be loosely based on the notice required by Pa.R.C.P. No. 1018.1 for civil actions in the courts of record. The notice would inform the defendant that he or she must file an answer with the magisterial district court within ten days in order to defend against the claim, or else suffer judgment by default, and that the court would set a hearing date if the answer is properly filed. In addition, the notice would provide instructions regarding the filing of a counterclaim, which would need to be filed along with the answer. Finally, the notice

¹⁰ See Pa. R.C.P.M.D.J. No. 512 (Hearings and Evidence) and Official Note ("[T]his rule is intended to make clear that the magisterial district judge may not enter a default judgment in a possessory action, including a judgment for money only. The plaintiff must appear and give testimony to prove the complaint even when the defendant fails to appear for the hearing." Pa. R.C.P.M.D.J. No. 512, Official Note.); Pa. R.C.P.M.D.J. No. 514 (Judgment) and Official Note.

would contain a general statement regarding accommodations under the federal Americans With Disabilities Act.

2. Rule 318

Rule 318 currently provides for informing the plaintiff if the defendant notifies the court of his or her intention to defend. Under the proposed new procedural scheme, these provisions would be unnecessary because the plaintiff would be notified after the complaint is served that either the defendant has filed an answer and a hearing date has been set, or that the defendant has not filed an answer and a default judgment has been entered. Therefore, the existing provisions of Rule 318 would be deleted entirely, and the title of the rule would be changed to "Defendant's Answer and Counterclaim; Time for Filing Answer and Counterclaim; Judgment by Consent and Judgment by Default." Subdivision A of the amended rule would provide that the defendant must file an answer within ten days of service of the complaint, and that "[t]he time period for filing the answer may not be extended except by the magisterial district judge for good cause shown." This latter provision was deemed necessary because of the common practice in the courts of record of attorneys informally agreeing to extensions of the time period for filing responsive pleadings. As the proposed Official Note to Rule 318 points out, however, "[t]his restriction is necessary because under these rules a default judgment may be entered against the defendant for failure to file a timely answer by operation of law without the need for a praecipe by the plaintiff."

Subdivision B of the amended rule would make clear that the answer must be in writing on an official form, and would set forth the contents of the answer. Among the contents of the answer would be a statement by the defendant in which he or she would (1) deny the claim entirely and request a hearing, (2) deny the claim in part and request a hearing, or (3) not contest the claim and not request a hearing. The Committee anticipates that this portion of the answer form would be in an easy-to-understand check-off format.

Subdivision D of the amended rule would provide for the entry of judgment by consent if the defendant files an answer in which he or she does not contest the claim, and judgment by default if the defendant fails to file a timely answer.

3. Rule 319

Rule 319 currently provides only for what action is to be taken when a party fails to appear for the hearing. While failure to appear at the hearing would still be addressed in amended Rule 319, these provisions would be substantially changed to conform to the new procedural scheme. In addition, the rule would be expanded to include provisions for scheduling the hearing date upon the timely filing of an answer by the defendant. Therefore, the existing provisions of Rule 319 would be deleted entirely, and the title of the rule would be changed to "Setting the Date for Hearing; Notice; Failure of a Party to Appear at the Hearing." Subdivision A of the amended rule would provide for the setting of the hearing date within 12 to 30 days. The 30 day outside limit in this provision is shorter than the 60 day limit currently provided for in Rule 305, however under the new procedural scheme many fewer hearings would need to be scheduled because hearings would be scheduled only after the defendant files an answer requesting a hearing. In addition, under the new scheme the hearing notice would be sent by regular mail because service of original process would have already been made. District courts, therefore,

should have no difficulty complying with the shortened time frame for scheduling hearings. Also under subdivision A, the plaintiff would be provided with a copy of the defendant's answer and counterclaim, if any.

Subdivision B of the amended rule would provide for three scenarios in which one or both parties fail to appear at the hearing: (1) where the plaintiff does not appear but the defendant does, judgment would be entered for the defendant; (2) where the defendant does not appear but the plaintiff does, judgment would be entered for the plaintiff, or; (3) where neither party appears, the complaint would be dismissed without prejudice. Under all three scenarios, the magisterial district judge would also have the option to continue the case for good cause shown. These three scenarios provide clearer outcomes than do the current provisions of Rule 319B because the question of whether or not the plaintiff had notice of the defendant's intention to defend is not a concern under the proposed new procedural scheme.

B. Correlative Changes to Rule 315 (Claim by Defendant)

As noted above, under the proposed new procedural scheme, a defendant who intends to assert a counterclaim¹¹ in an action would be required to do so in conjunction with the answer filed pursuant to amended Rule 318. To implement this change, the Committee proposes numerous amendments to Rule 315. Subdivision A of the amended rule would remain substantially the same with only minor editorial changes. The existing provisions of subdivision B would be deleted entirely, and replaced with two new provisions: (1) cross-referencing Rule 318, and (2) providing that "[a] counterclaim is deemed denied by the plaintiff and no responsive pleading is required." The latter provision was added to define a cut-off point for pleadings in district court civil actions in keeping with the simplified and expedited nature of these actions.

Subdivision C of the amended rule would also be significantly altered. New subparagraph C(1) would provide that both the plaintiff's complaint and the defendant's counterclaim would be heard "together at a consolidated hearing." New subparagraph C(2) would provide that a properly filed counterclaim may proceed to hearing even if the plaintiff voluntarily withdraws the original complaint. This provision was added in response to an inquiry from a magisterial district judge who pointed out that the current rules do not provide for such an occurrence. Subparagraph C(3) contains the existing provisions of Rule 315C, but the wording has been enhanced to clarify that only one money judgment, for the plaintiff or the defendant, but no for both, is to be entered in cases involving counterclaims. This provision has created some confusion in district court practice, and the amended wording is intended to clarify the Committee's position that only one judgment should be entered in these cases.

Finally, the existing subdivision D would be deleted entirely as it is no longer necessary under the proposed new procedural scheme.

¹¹ The rules of civil procedure governing actions before magisterial district judges have heretofore used the term "cross-complaint" to describe a complaint filed by the defendant against the plaintiff. With these amendments, the Committee proposes that "cross-complaint" be substituted with the term "counterclaim" in Rule 315 and throughout the rules. The Committee believes that counterclaim more accurately describes "a claim by a defendant against the plaintiff used as an offset against the original claim." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 238 (2d ed. 1995).

C. Correlative Changes to Service Rules 307, 313, and 314

The proposed new procedural scheme requiring the defendant to file an answer before an initial hearing date is scheduled would necessitate fundamental changes to the rules relating to service. Under the current rules, in which the hearing date is set before service is made, the time frame for making service on the defendant is based upon service being made by a specified number of days *before* the scheduled hearing. Under the proposed rules, in which the hearing date would not be set until after service is made and the defendant answers, the time frame for making service would be based upon service being made within a specified number of days after the filing of the plaintiff's complaint.

1. Rule 307

The existing provisions of Rule 307 would remain largely intact with a few notable changes and additions. First, as discussed above, subdivision A would be amended to provide that service within the Commonwealth must be made within 40 days of the filing or reinstatement¹² of the plaintiff's complaint. The 40 day time period is intended to allow sufficient time for either personal service or service by certified or registered mail.

Secondly, a new subdivision D would be added to make clear that "all notices and legal papers other than the complaint filed in an action shall be served by first class mail." This provision merely clarifies and codifies existing practice.

Finally, a new subdivision E would be added to define the term "complaint" as including the complaint form, the notice to defendant, and the blank Answer/Counterclaim form to make clear that all of these documents must be served on the defendant.

2. Rule 313

The service provisions in Rule 313 would remain largely intact, except that a new subdivision A would provide that service outside the Commonwealth must be made within 60 days of the filing or reinstatement of the plaintiff's complaint. The 60 day time frame is intended to allow sufficient time for any of the options for service outside the Commonwealth. In addition, a new subdivision C would be added to define the term "complaint" as including the complaint form, the notice to defendant, and the blank Answer/Counterclaim form to make clear that all of these documents must be served on the defendant.

3. Rule 314

The provisions in Rule 314 would remain largely intact, except that the contents of the return of service would be more specifically defined. In addition, the Committee proposes other minor editorial changes to conform to the proposed new procedural scheme.

D. Other Conforming Amendments—Rules 209, 301, 303, and 304

1. Rule 209

In order to fully implement the proposed new procedural scheme, the provisions of Rule 209 (Continuances)¹³ would require amendment. Under the current rule, which is based on the hearing date being set immediately upon

¹² As to reinstatement, see Pa. R.C.P.M.D.J. No. 314E (Return, Waiver, and Failure of Service; Reinstatement).

¹³ Rule 209 was recently amended by the Supreme Court (Supreme Court of Pennsylvania Order No. 213, Magisterial Docket No. 1, December 16, 2004) effective July 1, 2005. This proposal would amend the Rule as amended by the Court's December 16, 2004 Order.

filing of the plaintiff's complaint, the allowable time frames for continuances in civil actions run from the date of filing the complaint. Under the amended rule, in which the civil action hearing date is set only after the defendant's answer is filed, the allowable time frames for continuances would run from the hearing date. As to civil actions, the amended rule would provide that the aggregate of all continuances shall not extend beyond 30 days from the hearing date. This limitation was thought to be sufficient given the expedited nature of these proceedings and the greater certainty in scheduling that would come with the new scheme.¹⁴ *The existing provisions relating to continuances in landlord/tenant actions would not be affected.*

2. Rules 301, 303, and 304

The Committee proposes only minor editorial amendments to Rules 301, 303, and 304 to conform to the proposed new procedures.

E. Correlative Amendments to the Landlord/Tenant Action Rules

As noted above, the proposed new procedures requiring the defendant to file an answer in a civil action would not apply to landlord/tenant actions under the Chapter 500 rules. The Committee is, however, proposing a number of correlative amendments to these rules to promote consistency between the civil and landlord/tenant rules, and to address other tangentially related issues.

1. Rule 504

The Committee proposes that the Notice to Defendant required by Rule 504 be revised to substantially mirror and be consistent with the notice required by civil action Rule 305.

2. Service Rules 506 and 507

The Committee proposes mostly minor correlative changes to Rules 506 and 507 to make them consistent with their counterparts in the civil action rules. There is, however, one notable new provision. In Rule 506, the Committee proposes a new subparagraph B(2) to provide that if the landlord/tenant complaint is not served at least five days before the hearing date the case shall be continued, a new hearing date shall be set, and proper service would be reattempted. In the course of developing this proposal, the Committee discovered that the rules do not specify what is to occur if service is not made as required by existing Rule 506B.

3. Rule 508

The most significant changes to the landlord/tenant rules under this proposal are found in Rule 508 relating to counterclaims. The Committee has received numerous complaints from magisterial district judges who are dissatisfied with the current rule relating to counterclaims in landlord/tenant proceedings because the rule allows a defendant to file a counterclaim at any time before the hearing. This is necessary, of course, because of the very expedited nature of landlord/tenant proceedings, and because no notice of the defendant's intention to defend is required in these cases.¹⁵ This procedure does, however, often frustrate the prompt disposition of these cases because the filing of a counterclaim invariably results in

¹⁴ In establishing the allowable time frame for continuances in civil cases, the Committee was mindful that, when allowing for service and the defendant's answer under the new scheme, as many as 80-100 days may pass between the filing of the complaint and the initial hearing date. While this may seem substantially longer than the existing time frame for scheduling civil hearings (no more than 60 days after the filing of the complaint), it was considered to be an acceptable trade off for the greater certainty in scheduling and the smaller number of hearings that would actually need to be scheduled under the proposed new procedural scheme.

¹⁵ See supra n. 8.

a continuance of the hearing. The existing procedure requires service of the defendant's counterclaim in accordance with the service rules for regular civil actions, and such service cannot be accomplished in time for the initial hearing date, especially when the defendant files the counterclaim immediately before the initial hearing. To rectify this problem while maintaining the existing procedures for scheduling hearings, the Committee proposes changes to the manner in which landlord/tenant counterclaims are served on the plaintiff. Specifically, the Committee proposes that service of the counterclaim be accomplished by the magisterial district judge simply handing a copy of the counterclaim to the plaintiff or the plaintiff's representative at the hearing. Thereafter, because the plaintiff may wish to avoid any delay in the recovery of possession of the premises, a new subdivision D would give the plaintiff the option of proceeding with the scheduled hearing after being served with the counterclaim, or requesting a continuance if needed to prepare a defense. Under these circumstances, it would be highly unusual for the magisterial district judge to deny the continuance request. Because both claims are necessarily related to the occupancy of the premises, however, the plaintiff may be prepared to proceed immediately, and hearing both claims together should not take excessive time.

4. Rules 501, 502, and 503

The Committee proposes only minor editorial amendments to Rules 501, 502, and 503 to promote consistency between these rules and their counterparts in the Chapter 300 civil action rules.

[Pa.B. Doc. No. 05-696. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Philadelphia Civil Rule *1028.1; President Judge General Court Regulation No. 2005-03

Order

And Now, this 30th day of March, 2005, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on February 26, 2004 to adopt Philadelphia Civil Rule *1028.1, *It Is Hereby Ordered* that Philadelphia Civil Rule *1028.1 is adopted as follows.

This General Court Regulation is issued in accordance with Pa.R.Civil.P. No. 239 and, as required by Rule 239, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts for publication on its website, and the Civil Procedural Rules Committee. Copies of the Order shall also be submitted to *American Lawyer Media*, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of

Pennsylvania, and posted on the website of the First Judicial District: <http://courts.phila.gov>.

By the Court

FREDERICA A. MASSIAH-JACKSON,
President Judge,

Adopted by the Board of Judges on February 26, 2004.

Philadelphia Civil Rule *1028.1

Rule *1028.1 Preliminary Objections to Declaration of Taking Pursuant to Section 406 of The Eminent Domain Code or to Petition for Appointment of Viewers Alleging De Facto Taking or Other Compensable Injury Pursuant to Section 502(e) of The Eminent Domain Code

(A) The general provisions of Rule *1028 and Rule *206.1 shall not apply to preliminary objections to a declaration of taking pursuant to Section 406 of the Eminent Domain Code or to a petition for appointment of viewers alleging a de facto taking or other compensable injury pursuant to Section 502(e) of the Eminent Domain Code.

(B) Preliminary objections to a declaration of taking pursuant to Section 406 of the Eminent Domain Code or to a petition for appointment of viewers alleging a de facto taking or other compensable injury pursuant to Section 502(e) of the Eminent Domain Code shall be filed with the Prothonotary and, within 72 hours of filing, shall be served upon all adverse parties. The objections shall state specifically the grounds relied upon and include a statement as to whether the objections raise issues of fact or raise solely issues of law.

(C) Within twenty (20) days after such filing, any party may, but need not, file as response to the preliminary objections. Any response filed shall specifically respond to the statement as to whether preliminary objections raise issues of fact or raise solely issue of law.

(D) The court shall determine whether factual issues must be resolved in order to determine the preliminary objections. If factual issues must be resolved, the court shall establish a schedule and procedure for the taking of discovery and resolution of the factual issues by evidentiary depositions or an evidentiary hearing, and, if necessary, the court shall set a brief schedule and schedule argument.

[Pa.B. Doc. No. 05-697. Filed for public inspection April 15, 2005, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Rules of the Court of Common Pleas; No. 4 of 2005 Rules Doc.

Order of Court

And Now, to-wit, this 29th day of March 2005, pursuant to action of the Board of Judges, the following Amended Local Rule 1301 affecting the Civil Division of

the Court of Common Pleas is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH M. JAMES,
President Judge

Amended Local Rule 1301

(3) A board of arbitrators may not enter an award in favor of any party in excess of \$25,000.

Note: While a board of arbitrators may hear a lawsuit in which the pleading of a defendant or an additional defendant claims an amount in excess of \$25,000, the award of the board of arbitrators may not exceed \$25,000.

(4) If a party files a counterclaim or a cross-claim seeking an award in excess of \$25,000, any party may file a petition to transfer the entire case to the General Docket.

Existing Local Rule reads as follows:

Local Rule 1301. Scope

(1) The following civil actions, proceedings and appeals or issues therein where the demand is for \$25,000 or less (exclusive of interest and costs) shall first be submitted to and heard by a board of three members of the bar of the Court:

- (a) Assumpsit cases, except:
 - (i) Where an accounting is demanded.
- (b) Trespass cases, except:

(i) Where the Commonwealth is a party defendant or an employee of the Commonwealth is a party defendant under the provisions of 42 Pa.C.S., Chapter 85B (relating to action against Commonwealth parties).

(c) Replevin without bond and Replevin with bond once bond has been set by the Court.

(d) Appeals from final judgments of the minor judiciary.

(e) Matters transferred to compulsory arbitration by the Court even though the original demand may have exceeded \$25,000 (exclusive of interest and costs).

(2) Actions, proceedings appeals or matters other than those set forth in *(1) shall not be submitted to, transferred by a Court to, heard or determined by a Board of Arbitrators appointed under 42 Pa.C.S. § 7361.

[Pa.B. Doc. No. 05-698. Filed for public inspection April 15, 2005, 9:00 a.m.]

ALLEGHENY COUNTY

Rules of the Court of Common Pleas; No. 5 of 2005 Rules Doc.

Order of Court

And Now, to-wit, this 29th day of March 2005, pursuant to action of the Board of Judges, the following Amended Local Rule 1304 affecting the Civil Division of the Court of Common Pleas is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH M. JAMES,
President Judge

Amended Local Rule 1304

(2) A non-jury verdict entered at a hearing held pursuant to Rule 1304(1) shall not exceed \$25,000.

Existing Local Rule reads as follows:

Local Rule 1304. Conduct of Hearing. Failure to Appear for Hearing.

If a party fails to appear for a scheduled arbitration hearing, the matter may, if all present parties agree, be transferred immediately to a Judge of the Court of

Common Pleas for an ex parte hearing on the merits and entry of a non-jury verdict, from which there shall be no right to a trial de novo on appeal.

Note: This local rule results in the loss of the right to a trial de novo on appeal, as described in the local rule. A dismissal or judgment which results from this local rule would be treated as any other final judgment in a civil action, subject to Pa.R.Civ.P. 227.1.

[Pa.B. Doc. No. 05-699. Filed for public inspection April 15, 2005, 9:00 a.m.]
