

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

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

Amendment to Pennsylvania Bar Admission Rule 201(d); No. 369 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 29th day of April, 2005, Rule 201(d) of the Pennsylvania Bar Admission Rules is amended as follows.

This rule amendment is adopted pursuant to the Constitution of Pennsylvania, Article V, Section 10, and is promulgated in accordance with Rule 103(a)(3), Pa.R.J.A. as the matter is perfunctory in nature and is required in the interests of efficient administration.

This order shall be processed in accordance with Rule 103(b), Pa.R.J.A. 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 B. ADMISSION TO THE BAR GENERALLY

IN GENERAL

Rule 201. Bar of the Commonwealth of Pennsylvania

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(d) *Certification of Good Standing.* Upon written request and the payment of a fee of \$25.00 the Prothonotary shall issue a certificate of good standing to any member of the bar of this Commonwealth **or limited licensed attorney** entitled thereto. The certificate shall be one appropriate for admission to the bar of the federal courts and other state courts. A certificate of good standing shall not be issued to a member of the bar of this Commonwealth **or limited licensed attorney** who currently is the subject of:

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[Pa.B. Doc. No. 05-922. Filed for public inspection May 13, 2005, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES [210 PA. CODE CH. 63]

Amendments to the Internal Operating Procedures of the Supreme Court; No. 371 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 29th day of April, 2005, it is ordered that Section IV of the Internal Operating Procedures of the Supreme Court is amended as set forth in Annex A.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES

CHAPTER 63. INTERNAL OPERATING PROCEDURES OF THE SUPREME COURT

§ 63.4. Opinions.

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B. Labeling.

1. *Majority.* An opinion will be labeled “Opinion” when a majority of the Court joins the opinion.

Proposed majority opinions that involve multiple, complex issues which the Justice believes may garner disparate votes should be divided into sections. See, e.g., *Phillips v. Cricket Lighters*, 841 A.2d 1000 (Pa. 2003). If there is a split on an opinion that has been divided into sections, the author of the lead opinion will be responsible for preparing a short introductory explanatory statement regarding the breakdown of votes.

2. *Concurrences and Dissents.* An opinion is a “concurring opinion” when it agrees with the result of the lead opinion. A Justice who agrees with the result of the lead opinion, but does not agree with the rationale supporting the lead opinion, in whole or in part, may write a separate “concurring opinion.” An opinion is a “dissenting opinion” when it disagrees with the result of the lead opinion. An opinion is “concurring and dissenting opinion” only when there is more than one result and the Justice agrees with one or more of the results, but not the other(s). Alternatively, a Justice may choose to “concur in result” or “dissent” without writing a separate opinion.

C. Reargument Petitions.

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[Pa.B. Doc. No. 05-923. Filed for public inspection May 13, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1, 7 AND 9]

Order Amending Rules 120, 122, 704, and 904, and Approving the Revision of the Comment to Rule 902; No. 318 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the April 28, 2005 amendments to Rules of Criminal Procedure 120, 122, 704, and 904, and approved the revision of the Comment to Rule 902. These rule changes clarify the procedures governing the entry and withdrawal of counsel's appearance in criminal cases; provide that the filing of the court's order appointing counsel enters appointed counsel's appearance; and set forth the requirements for the contents of both retained counsel's entry of appearance and the court's appointment order. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 28th day of April, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been published before adoption at 32 Pa.B. 1039 (February 23, 2002) and 33 Pa.B. 968 (February 22, 2003), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vols. 788 and 815), and a Final Report to be published with this *Order*:

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

(1) Rules of Criminal Procedure 120, 122, 704, and 904 are amended, and

(2) the revision of the Comment to Rule of Criminal Procedure 902 is approved all in the following form.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

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

PART B. Counsel

Rule 120. Attorneys—Appearances and Withdrawals.

(A) ENTRY OF APPEARANCE

(1) Counsel for defendant shall [enter an appearance in writing] file an entry of appearance with the clerk of courts promptly after being retained [or appointed], and serve a copy [thereof] of the entry of appearance on the attorney for the Commonwealth.

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

(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 122 (Appointment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.

[(B)] (3) Counsel shall not be permitted to represent a defendant following a preliminary hearing unless an entry of appearance is [entered] filed with the clerk of courts.

(4) An attorney who has been retained or appointed by the court shall continue such representation through direct appeal or until granted leave to withdraw by the court pursuant to paragraph (B).

(B) WITHDRAWAL OF APPEARANCE

[(C)] (1) Counsel for a defendant may not withdraw his or her appearance except by leave of court. [Such leave shall be granted only upon motion made and served on the attorney for the Commonwealth and the client, unless the interests of justice otherwise require.]

(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 defendant; or

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

(3) Upon granting leave to withdraw, the court shall determine whether new counsel is entering an appearance, new counsel is being appointed to represent the defendant, or the defendant is proceeding without counsel.

Comment

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Paragraph (A)(2) was added in 2005 to make it clear that the filing of an order appointing counsel to represent a defendant enters the appearance of appointed counsel. Appointed counsel does not have to file a separate entry of appearance. Rule 122 (Appointment of Counsel) requires that (1) the judge include in the appointment order the name, address, and phone number of appointed counsel, and (2) the order be served on the defendant, appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries).

Under paragraph [(C), the] (B)(2), counsel must file a motion to withdraw in all cases, and counsel's obligation to represent the defendant, 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 [should] must make a determination of the status of a 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 whether new counsel will be stepping in or the defendant is proceeding without counsel, and that the change in attorneys will not delay the proceedings or prejudice the defendant, particularly concerning time limits. In addition, case law suggests

other factors the court should consider, such as whether (1) the defendant has failed to meet his or her financial obligations to pay for the attorney's services and (2) there is a written contractual agreement between counsel and the defendant terminating representation at a specified stage in the proceedings such as sentencing. See, e.g., *Commonwealth v. Roman. Appeal of Zaiser*, 549 A.2d 1320 (Pa. Super. Ct. 1988).

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For the filing and service procedures, see Rules 575-576.

For waiver of counsel, see Rule 121.

For the procedures for appointment of counsel, see Rule 122.

See Rule 904(A) that requires an attorney who has been retained [or appointed] to represent a defendant during post-conviction collateral proceedings to file a written entry of appearance.

Official Note: Adopted June 30, 1964, effective January 1, 1965; formerly Rule 303, renumbered Rule 302 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended March 22, 1993, effective January 1, 1994; renumbered Rule 120 and amended March 1, 2000, effective April 1, 2001; Comment revised February 26, 2002, effective July 1, 2002; Comment revised June 4, 2004, effective November 1, 2004; amended April 28, 2005, effective August 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 28, 2005 amendments concerning the filing of an appointment order as entry of appearance for appointed counsel and withdrawal of counsel published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

Rule 122. [Assignment] Appointment of Counsel.

(A) [IN SUMMARY CASES.] Counsel shall be [assigned] appointed:

(1) in all summary cases [to], for all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed[.];

[(B) IN COURT CASES. In]

(2) in all court cases [counsel shall be assigned], prior to the preliminary hearing to all defendants who are without financial resources or who are otherwise unable to employ counsel[.];

[(C) IN ALL CASES.]

(1) The [(3) in all cases, by the court, [of] on its own motion, [shall assign counsel to represent a defendant whenever] when the interests of justice require it.

[(2) A motion for change of counsel by a defendant to whom counsel has been assigned shall not be granted except for substantial reasons.

(3) [(B) When counsel [has been assigned] is appointed, [such assignment]

(1) the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries); and

(2) the appointment shall be effective until final judgment, including any proceedings upon direct appeal.

(C) A motion for change of counsel by a defendant for whom counsel has been appointed shall not be granted except for substantial reasons.

Comment

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[Assignment] Appointment of counsel can be waived, if such waiver is knowing, intelligent, and voluntary. See *Faretta v. California*, 422 U.S. 806 (1975). Concerning the appointment of standby counsel for the defendant who elects to proceed pro se, see Rule 121.

In both summary and court cases, the [assignment] appointment of counsel to represent indigent defendants remains in effect until all appeals on direct review have been completed.

Ideally, counsel should be [assigned] appointed to represent indigent defendants immediately after they are brought before the issuing authority in all summary cases in which a jail sentence is possible, and immediately after preliminary arraignment in all court cases. This rule strives to accommodate the requirements of the Supreme Court of the United States to the practical problems of implementation. Thus, in summary cases, paragraph (A)(1) requires a pretrial determination by the issuing authority as to whether a jail sentence would be likely in the event of a finding of guilt in order to determine whether trial counsel should be [assigned] appointed to represent indigent defendants. It is expected that the issuing authorities [will] in most instances will be guided by their experience with the particular offense with which defendants are charged. This is the procedure recommended by the ABA Standards Relating to Providing Defense Services § 4.1 (Approved Draft 1968) and cited in the United States Supreme Court's opinion in *Argersinger*, supra. If there is any doubt, the issuing authority can seek the advice of the attorney for the Commonwealth, if one is prosecuting the case, as to whether the Commonwealth intends to recommend a jail sentence in case of conviction.

In court cases, paragraph [(B)] (A)(2) requires counsel to be [assigned] appointed at least in time to represent the defendant at preliminary hearing. Although difficulty may be experienced in some judicial districts in meeting the *Coleman* requirement, it is believed that this is somewhat offset by the prevention of many post-conviction proceedings [which] that would otherwise be brought based on the denial of the right to counsel. However, there may be cases in which counsel has not been [assigned] appointed prior to the preliminary

hearing stage of the proceedings; e.g., counsel for the preliminary hearing has been waived, or a then-ineligible defendant subsequently becomes eligible for [assigned] appointed counsel. In such cases it is expected that the defendant's right to [assigned] appointed counsel will be effectuated at the earliest appropriate time.

* * * * *

Paragraph [(C)(1)] (A)(3) retains in the issuing authority or judge the power to [assign] appoint counsel regardless of indigency or other factors when, in the issuing authority's or the judge's opinion, the interests of justice require it.

Pursuant to paragraph [(C)(3)] (B)(2), counsel retains his or her [assignment] appointment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U. S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. Ct. 2001).

* * * * *

Official Note: Rule 318 adopted November 29, 1972, effective 10 days hence, replacing prior rule; amended September 18, 1973, effective immediately; renumbered Rule 316 and amended June 29, 1977, and October 21, 1977, effective January 1, 1978; renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004; Comment revised June 4, 2004, effective November 1, 2004; **amended April 28, 2005, effective August 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).

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Final Report explaining the April 28, 2005 changes concerning the contents of the appointment order published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART A. Sentencing Procedures

Rule 704. Procedure at Time of Sentencing.

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(C) SENTENCING PROCEEDING.

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(3) The judge shall determine on the record that the defendant has been advised of the following:

* * * * *

(b) of the rights,

(i) if the defendant is indigent, to proceed in forma pauperis and to proceed with [assigned] appointed counsel as provided in Rule 122; or,

(ii) if represented by retained counsel, to proceed with retained counsel unless the court has granted leave for counsel to withdraw pursuant to Rule 120(B);

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Comment

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SENTENCING PROCEDURES

* * * * *

Paragraph (C)(3) requires the judge to ensure the defendant is advised of his or her rights concerning post-sentence motions and appeal, and the right to proceed with counsel. See, e.g., *Commonwealth v. Librizzi*, 810 A. 2d 692 (Pa. Super. 2002).

The rule permits the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the sentencing proceeding. This written colloquy must be supplemented by an on-the-record oral examination to determine that the defendant has been advised of the applicable rights enumerated in paragraph (C)(3) and that the defendant has signed the form.

* * * * *

After sentencing, following a conviction in a trial de novo in a summary case, the judge should advise the defendant of the right to appeal and the time limits within which to exercise that right, the right to proceed in forma pauperis and with [assigned] appointed counsel to the extent provided in Rule 122(A), and of the qualified right to bail under Rule 521(B). See paragraphs (C)(3)(a), (b), and (e). See also Rule 720(D) (no post-sentence motion after a trial de novo).

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Official Note: Previous Rule 1405 approved July 23, 1973, effective 90 days hence; Comment amended June 30, 1975, effective immediately; Comment amended and paragraphs (c) and (d) added June 29, 1977, effective September 1, 1977; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment amended April 24, 1981, effective July 1, 1981; Comment amended November 1, 1991, effective January 1, 1992; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1405. Present Rule 1405 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended January 3, 1995, effective immediately; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996. Comment revised December 22, 1995, effective February 1, 1996. The April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; Comment revised April 18, 1997, effective immediately; Comment revised January 9, 1998, effective immediately; amended July 15, 1999, effective January 1, 2000; renumbered Rule 704 and amended March 1, 2000, effective April 1, 2001; Comment revised March 27, 2003, effective July 1, 2003; **amended April 28, 2005, effective August 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 28, 2005 amendments to paragraph (C)(3)(b) concerning retained counsel's obligations published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 902. Content of Petition for Post-Conviction Collateral Relief; Request for Discovery.

(A) A petition for post-conviction collateral relief shall bear the caption, number, and court term of the case or cases in which relief is requested and shall contain substantially the following information:

* * * * *

(14) a verification by the defendant that:

[(1)] (a) * * *

[(2)] (b) * * *

* * * * *

Comment

[Whether privately retained or appointed, the attorney] All privately retained counsel must enter an appearance as provided in Rule 904.

* * * * *

Official Note: Previous Rule 1502 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rules [903 and 905] 1503 and 1505. Present Rule 1502 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; Comment revised January 21, 2000, effective July 1, 2000; renumbered Rule 902 and Comment revised March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; **Comment revised April 28, 2005, effective August 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 28, 2005 Comment revision published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

Rule 904. Entry of Appearance and Appointment of Counsel; In Forma Pauperis.

(A) Counsel for defendant shall file a written entry of appearance with the clerk of courts promptly after being retained [or appointed], and serve a copy on the attorney for the Commonwealth.

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

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

(B) When counsel is appointed, the filing of the appointment order shall enter the appearance of appointed counsel.

(C) Except as provided in paragraph [(G)] (H), when an unrepresented defendant satisfies the judge that the defendant is unable to afford or otherwise procure counsel, the judge shall appoint counsel to represent the defendant on the defendant's first petition for post-conviction collateral relief.

[(C)] (D) * * *

[(D)] (E) * * *

(F) When counsel is appointed,

(1) the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries); and

[(E) An] (2) the appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

[(F)] (G) * * *

[(G)] (H) Appointment of Counsel in Death Penalty Cases.

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(2) [The] When counsel is appointed,

(a) the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries); and

(b) the appointment of counsel shall be effective throughout the post-conviction collateral proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

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Comment

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Paragraph (B) was added in 2005 to make it clear that the filing of an order appointing counsel to represent a defendant enters the appearance of appointed counsel. Appointed counsel does not have to file a separate entry of appearance.

Paragraphs (F)(1) and (H)(2)(a) require that (1) the judge include in the appointment order the name, address, and phone number of appointed counsel, and (2) the order be served on the defendant, appointed counsel, the previous attorney of record, if any, and the attorney for the Common-

wealth pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries).

Pursuant to paragraphs [(E)] (F)(2) and [(G)] (H)(2)(b), appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. Ct. 2001).

Paragraph [(G)] (H) was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.

An attorney may not [be appointed to] represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

Official Note: Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; Comment revised March 12, 2004, effective July 1, 2004; Comment revised June 4, 2004, effective November 1, 2004; **amended April 28, 2005, effective August 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 28, 2005 amendments concerning entry of appearance and content of appointment order published with the Court's Order at 35 Pa.B. 2859 (May 14, 2005).

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 120, 122, 704, and 904; Revision of the Comment to Pa.R.Crim.P. 902

Entry of Appearance and Withdrawal of Appearance; Filing of Appointment Order Enters Appearance; Contents and Service of Appointment Order

On April 28, 2005, effective August 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 120, 122, 704, and 904 and approved the revision of the Comment to Rule 902. These rule changes clarify the procedures governing the entry and withdrawal of coun-

sel's appearance in criminal cases; provide that the filing of the court's order appointing counsel enters appointed counsel's appearance; and set forth the requirements for the content of both retained counsel's entry of appearance and the court's appointment order.

I. BACKGROUND

This Recommendation was developed in two parts in response to questions posed to the Committee by the Common Pleas Court Joint Application Design (JAD) Staff during JAD's study of the Criminal Rules and the practice and procedures in criminal cases in the judicial districts for the development of the Common Pleas Case Management System (CPCMS).

The first issue posed by JAD concerned the entry of appearance by appointed counsel and whether the filing of an order appointing counsel pursuant to Rule 122 (Assignment of Counsel) satisfies the entry of appearance requirements of Rule 120 (Attorneys—Appearances and Withdrawals). Resolution of this issue was important to the JAD Staff because their research revealed that in a number of judicial districts appointed counsel is not required to file a formal entry of appearance; these judicial districts consider the filing of the appointment order to be tantamount to the entry of appearance notwithstanding the current provision in Rule 120(A) that "counsel for defendant shall enter an appearance in writing with the clerk of courts promptly after being retained or appointed." Because the procedures in these judicial districts conflict with the Rule 120 requirement that appointed counsel file an entry of appearance, the JAD Staff requested a clarification, and asked the Committee to consider proposing a change to the rule.

The second issue posed by the JAD Staff concerned the duration of retained counsel's obligation to represent the defendant.² They questioned whether the requirements for retained counsel were the same as the requirements for appointed counsel, and asked the Committee to consider clarifying this in the rules.

II. DISCUSSION

A. Entry of Appearance; Filing Appointment Order: Rules 120 (Attorneys—Appearances and Withdrawals), 122 (Appointment of Counsel), 902 (Content of Petition for Post-Conviction Collateral Relief; Request for Discovery), and 904 (Entry of Appearance and Appointment of Counsel; In Forma Pauperis)

During the Committee's consideration of the issue of whether the filing of an order appointing counsel enters appointed counsel's appearance, some members expressed concerns about changing the rule, questioning whether providing for the filing of the order to enter appointed counsel's appearance would create difficulties in the situation in which the appointed attorney does not want the appointment or has a conflict and cannot accept the appointment. The Committee concluded (1) this was not a problem because counsel would communicate with the judge and the judge would appoint a different attorney, which would satisfy the requirements of Rule 120; (2) the change would be beneficial in situations in which the defendant is trying to hire counsel but has not done so; and (3) appointed counsel, being counsel of record, is available to represent the defendant if a critical stage, such as a request for a handwriting exemplar or a line-up, arises.

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 In 2004, the Court approved the revision of the Comments to Rules 122 and 904 clarifying the duration of appointed counsel's obligation. See 34 Pa.B. 1671 (March 27, 2004).

Another concern was the timeliness of the notice to counsel of the appointment. Some members posited that permitting the filing of the order also to enter the appearance would cause problems for the appointed attorney who does not know that he or she has been appointed and his or her appearance entered. Ultimately, the Committee concluded this would not be a significant problem because once the CPCMS is in place, when the attorney's name, address, and phone number is entered into the automated system for the case, which would occur when either the appointment order or an entry of appearance is filed, the appointment order would be sent to that attorney pursuant to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries).

After considerable debate about these issues, the Committee was satisfied the members' concerns were addressed, noting (1) an entry of appearance that is filed as early as possible in a case is a benefit to the defendant, the attorneys, and the court; and (2) by having the filing of the appointment order enter appointed counsel's appearance, the prompt entry of appearance in these cases is ensured.

During the Committee's consideration of Rule 120, several members noted the difficulty they have experienced obtaining the name and address of appointed counsel, and expressed concern this would be exacerbated without a formal entry of appearance. The Committee agreed this could be a problem, and concluded the rules should require the appointment order include the name, address, and phone number of the appointed attorney. In addition, to ensure proper notice to not only appointed counsel and the attorney for the Commonwealth, but also the defendant and any previous counsel of record, the Committee agreed the rules should require service of the appointment order on these additional people.

The amendments to Rules 120, 122, 902, and 904 address these considerations, as follows.

(1) *Rule 120 (Attorneys—Appearance and Withdrawals)*

Rule 120 has been amended by adding a new paragraph (A)(2) specifically providing that the filing of the appointment order enters the appearance of appointed counsel, with an explanatory paragraph added to the Rule 120 Comment reiterating that appointed counsel does not have to file a separate entry of appearance, and cross-referencing Rule 122 (Assignment of Counsel) with regard to the contents and service of the appointment order. In addition, Rule 120 has been amended to include the requirement that the entry of appearance form include the attorney's address, phone number, and attorney ID number so this information is readily available to the clerk of courts who is responsible pursuant to Rule 113 (Criminal Case File and Docket Entries) for including this information in the list of docket entries. Similarly, Rule 904 has been amended to conform the counsel provisions in the context of a post-conviction collateral proceeding with these Rule 120 changes, and a correlative change has been made to the Rule 902 Comment.

In addition to the changes related to the entry of appointed counsel's appearance, paragraph (A) has been amended by (1) replacing "enter an appearance in writing" with "file an entry of appearance," which conforms to the filing terminology in Rule 576 (Filing and Service by Parties), to bring Rule 120 in line with the motions rules, and (2) making other housekeeping changes.

(2) *Rule 122 (Appointment of Counsel)*

Rule 122 currently only sets forth the procedures for the appointment of counsel; it does not address the

appointment order. Rule 122 has been amended to address the contents of the appointment order and the service requirements with the addition of a paragraph requiring (1) the judge to include in the appointment order the name, address, and phone number of the appointed counsel, and (2) the order be served on the defendant, appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth. Comparable changes also have been made in Rule 904.

In addition, Rule 122 has been reorganized by deleting the paragraph headings, and (1) moving paragraphs (A), (B), and (C) with regard to when counsel should be appointed into new paragraphs (A)(1), (2), and (3); (2) adding the new language concerning the content and service of the appointment order as new paragraph (B)(1); (3) moving current paragraph (C)(3) to paragraph (B)(2); and (4) making paragraph (C)(2) paragraph (C). Because the terms "assignment" and "appointment" are used interchangeably throughout Rules 120 and 122, the Committee agreed one term should be used. Accordingly "appointment" replaces "assignment" in both Rules 120 and 122.

B. Duration of Retained Counsel's Representational Obligation: Rules 120 (Attorneys—Appearances and Withdrawals) and 704 (Procedure at Time of Sentencing)

The Committee has spent a great deal of time considering the issues related to counsel's representational obligations in developing the proposal that resulted in the 2004 revision of the Comments to Rules 122 and 904,³ which clarified that appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 825 A.2d 630 (Pa. 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. Ct. 2001).

In our review of the case law concerning retained counsel's obligations, the Committee found that the same requirements that apply for appointed counsel apply—counsel is required to continue to represent the defendant through direct appeal unless the court grants counsel leave to withdraw. The case law recognizes there are other considerations that affect retained counsel's obligations, such as counsel and the defendant entering into a contractual agreement establishing the duration of the representation or the defendant is not paying counsel. On the other hand, the courts are required to consider the defendant's right to representation and the time limits for filing motions or appeals that could be jeopardized if retained counsel terminates the representation.

In considering these points, the Committee observed Rule 120 already recognizes the need to balance counsel's rights and defendant's rights, as well as to provide administratively a mechanism to ensure the defendant, counsel, and the court are aware of the nature of the defendant's representation, by requiring that the defendant's attorney file an entry of appearance and seek the court's permission to withdraw. However, the members pointed out, in their experience they have found, notwithstanding the requirements of Rule 120, retained counsel frequently does not file a motion to withdraw or obtain

³ See footnote 1.

the court's leave when he or she has entered into an agreement with the defendant to terminate representation at a specified point. Some members also pointed out the concerns retained counsel have that judges will not grant leave to withdraw thereby forcing counsel to remain in the case beyond the contractual agreement he or she has with the defendant or when the defendant is not paying the attorney. In view of these considerations, the Committee agreed Rule 120 should be amended to more clearly enumerate the procedures concerning the withdrawal of counsel.

(1) *Rule 120 (Attorneys—Appearance and Withdrawals)*

Rule 120 has been divided into two sections: paragraph (A) addressing entry of appearance and paragraph (B) addressing withdrawal of appearance. Paragraph (A)(4) clarifies that counsel, whether retained or appointed, is required to continue representation through direct appeal or until granted leave to withdraw.⁴

New paragraph (B) incorporates as paragraph (1) the first sentence of present paragraph (C). Paragraph (2) retains the requirement in the second sentence of current paragraph (C) that there be a motion to withdraw, and that the motion to withdraw must be filed with the clerk of courts and served on the attorney for the Commonwealth and the defendant, paragraph (B)(2)(a), thereby ensuring the relevant information concerning defendant's representation and changes in representation are properly recorded on the docket and that the defendant and attorney for the Commonwealth have notice.

In addition, as an alternative to the written motion procedure, a provision has been added providing that the motion may be made orally on the record in open court in the presence of the defendant, paragraph (B)(2)(b). Several members questioned whether the motion to withdraw should ever be made orally. After thoroughly debating this point, the Committee ultimately concluded oral motions should be permitted in the limited circumstances of an open-court proceeding when the defendant is present because it promotes judicial efficiency. Furthermore, in these circumstances, the oral motion will be on the record, and the clerk of courts will be able to transfer the fact of the withdrawal to the list of docket entries as provided in Rule 113.

One issue debated at length by the Committee concerned whether the rule should provide guidance to the judges for determining whether to permit an attorney to withdraw. The members reasoned some guidance would be helpful, and concluded it was important to emphasize in the rule that the judge should make the decision to permit withdrawal based on what will happen next in the case, i.e. whether new counsel is entering an appearance, new counsel is being appointed to represent the defendant, or the defendant is proceeding without counsel, rather than based on the attorney's reasons for wanting to withdraw. New paragraph (B)(3) incorporates this idea.

Included in the Comment are additional explanations about the withdrawal requirements and counsel's obligation to remain in the case until leave to withdraw is granted, citing *Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. Ct. 2002). In addition, the Comment emphasizes the judge must make a determination about the status of the case before permitting withdrawal. The Comment also incorporates the principles espoused in the case law with regard to the withdrawal of counsel, (1) emphasizing that the judge, when determining whether to

permit a withdrawal by counsel, must ensure that the defendant has counsel to proceed and that the change in attorneys will not delay the proceedings, and (2) highlighting other factors the judge should consider including whether there is a written contractual agreement between counsel and the defendant, and whether the defendant is able to meet his or her financial obligations to pay for the attorney's services, citing by way of example, *Commonwealth v. Roman, Appeal of Zaiser*, 549 A.2d 1320 (Pa. Super. Ct. 1988).

(2) *Rule 704 (Procedure at Time of Sentencing)*

During our discussion of Rule 120 and the issue of retained counsel's representational obligations to defendants, the Committee observed that in many cases, an attorney is retained to represent a defendant through sentencing, which raises at the time of sentencing the issue of counsel's withdrawal and future representation of the defendant, and the impact of this on defendant's ability to meet the time limits for post-sentence motions and appeals. The members expressed concern about the delays that can occur and the prejudice to the defendant, as well as the impact on the court system. In view of these considerations, we looked at Rule 704(C) (Sentencing Proceeding). Noting the importance of emphasizing the need for the defendant and the court to revisit the issue of counsel at this critical stage, i.e. post-sentence or appeal, to ensure defendant's post-trial rights are protected, and that the judge is required in paragraph (C)(3)(b) to advise the defendant of the right, if indigent, "to proceed in forma pauperis and to proceed with assigned counsel as provided in Rule 122," the Committee agreed Rule 704 should provide a similar notice concerning the defendant's rights when proceeding with retained counsel. Accordingly, paragraph (C)(3)(b) has been amended by the addition of a new paragraph (b)(ii) requiring the judge to give the defendant who is represented by retained counsel notice of the right to proceed with retained counsel "unless the court has granted leave for counsel to withdraw pursuant to Rule 120(B)." A provision has been added to the Comment emphasizing the judge must advise defendant of his or her rights concerning counsel at the post-sentence and appeal stage of the proceedings, cross-referencing *Commonwealth v. Librizzi*, supra.

[Pa.B. Doc. No. 05-924. Filed for public inspection May 13, 2005, 9:00 a.m.]

[234 PA. CODE CH. 2]

Amendments to Pa.Rs.Crim.P. 203, 205 and 206

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 203, 205, and 206 to provide procedures for anticipatory search warrants. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed changes to Rules 203, 205, and 206 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

⁴ See Section (II)(A) above for discussion of the remainder of the changes in paragraph (A).

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

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no later than Friday, June 17, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS T. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 203. Requirements for Issuance.

* * * * *

(F) A search warrant may be issued in anticipation of a prospective event so long as the warrant is based upon an affidavit showing probable cause that at some future time, but not presently, certain evidence of a crime will be located at a specified place.

Comment

* * * * *

The "visual" requirement in paragraph (C) must allow, at a minimum, the issuing authority to see the affiant at the time the oath is administered and the information received.

Paragraph (F) was added to the rule in 2005 to provide for anticipatory search warrants. The rule incorporates the definition of anticipatory search warrants set forth in *Commonwealth v. Glass*, 754 A.2d 655 (2000).

Official Note: Rule 2003 adopted March 28, 1973, effective for warrants issued 60 days hence; renumbered Rule 203 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **amended** , **2005, effective** , **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).

* * * * *

Report explaining the proposed amendments regarding anticipatory search warrants published at 35 Pa.B. 2863 (May 14, 2005).

Rule 205. Contents of Search Warrant.

Each search warrant shall be signed by the issuing authority and shall:

* * * * *

(4) direct that the search be executed **either**;

(a) within a specified period of time, not to exceed 2 days from the time of issuance, **or**;

(b) when the warrant is issued for a prospective event, only after the specified event has occurred;

* * * * *

Comment

* * * * *

Paragraph (4)(b) provides for anticipatory search warrants. These types of warrants were defined in *Commonwealth v. Glass*, 754 A.2d 655 (2000), as "a warrant based upon an affidavit showing probable cause that at some future time, but not presently, certain evidence of a crime will be located at a specified place."

Paragraph (5) supplements the requirement of Rule 203(C) that special reasonable cause must be shown to justify a nighttime search. A warrant allowing a nighttime search may also be served in the daytime.

* * * * *

Official Note: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; **amend** , **2005, effective** , **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).

Report explaining the proposed amendments to paragraph (4) and the Comment published at 35 Pa.B. 2863 (May 14, 2005).

Rule 206. Contents of Application for Search Warrant.

Each application for a search warrant shall be supported by written affidavit(s) signed and sworn to or affirmed before an issuing authority, which affidavit(s) shall:

* * * * *

(6) set forth specifically the facts and circumstances which form the basis for the affiant's conclusion that there is probable cause to believe that the items or property identified are evidence or the fruit of a crime, or are contraband, or are **expected to be** otherwise unlawfully possessed or subject to seizure, and that these items or property are **or are expected to be** located on the particular person or at the particular place described;

* * * * *

Comment

* * * * *

The 2005 amendments to paragraph (6) recognize anticipatory search warrants. To satisfy the requirements of paragraph (6) when the warrant being requested is for a prospective event, the application for the search warrant also must include a statement explaining how the affiant knows that the items to be seized on a later occasion will be at the place specified. See *Commonwealth v. Glass*, 754 A.2d 655 (2000) and *Commonwealth v. Coleman*, 830 A.2d 554 (Pa. 2003).

When the attorney for the Commonwealth is requesting that the search warrant affidavit(s) be sealed, the affida-

vit(s) in support of the search warrant must set forth the facts and circumstances the attorney for the Commonwealth alleges establish that there is good cause to seal the affidavit(s). See also Rule 211(B)(2). Pursuant to Rule 211(B)(1), when the attorney for the Commonwealth requests that the search warrant affidavit be sealed, the application for the search warrant must be made to a judge of the court of common pleas or to an appellate court justice or judge, who would be the issuing authority for purposes of this rule. For the procedures for sealing search warrant affidavit(s), see Rule 211.

Official Note: Previous Rule 2006 adopted October 17, 1973, effective 60 days hence; rescinded November 9, 1984, effective January 2, 1985. Present Rule 2006 adopted November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 206 and amended March 1, 2000, effective April 1, 2001; **amended** , **2005, effective** , **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).

Report explaining the proposed amendments to paragraph (6) and the Comment published at 35 Pa.B. 2863 (May 14, 2005).

REPORT

Amendments to Pa.Rs.Crim.P. 203, 205, 206 Anticipatory Search Warrants

In *Commonwealth v. Glass*, 754 A.2d 655 (2000), the Supreme Court of Pennsylvania held that anticipatory search warrants were permissible in Pennsylvania. As defined in *Glass*, an anticipatory search warrant is "a warrant based upon an affidavit showing probable cause that at some future time, but not presently, certain evidence of crime will be located at a specified place." *Glass* favored the position that anticipatory search warrants were not inconsistent with constitutional protections against unreasonable searches and seizures so long as the issuing authority is satisfied that the warrant will not be executed prematurely. The Court held, "Our analysis simply recognizes that, in making the practical determination of what amounts to probable cause, the magistrate may consider likely future events, subject to the sorts of specificity and reliability strictures attending all probable cause evaluations." 754 A.2d at 664.

In 2003, the Court rendered the decision in *Commonwealth v. Coleman*, 830 A.2d 554 (2003), to "provide further guidance on the proper contours of anticipatory search warrants." The Court held that, in order for an anticipatory search warrant to be valid, it must be based upon a finding that probable cause exists at the time of issuance that evidence will be found when the warrant is to be executed. In other words, the execution of the warrant must be explicitly conditioned upon the occurrence of a triggering event and that, at the time of issuance, there must be a fair probability that the event will actually occur.

The Committee, after reviewing *Glass* and *Coleman* and Part A (Search Warrants) of Chapter 2 (Investigations) of the rules, agreed the rules needed to be amended to accommodate anticipatory search warrants as recognized in *Glass* and its progeny. This proposal would add a new paragraph (F) to the Rule 203 (Requirements for Issuance) which would provide general authority for

anticipatory search warrants, using the definition contained in *Glass*. A reference to *Glass* would also be added to the Comment to Rule 203.

The proposed amendment to paragraph (4)(b) of Rule 205 (Contents of Search Warrant) provides that when a warrant is issued for a prospective event, it may be executed only after the specified event has occurred. Officers executing the warrant would not need further approval from or contact with the issuing authority in order to execute the warrant. The officers' decision to execute the warrant could be challenged by suppression motion. A citation to the *Glass* definition of "anticipatory search warrant" is also added to the Comment to Rule 205.

Paragraph (6) of Rule 206 (Contents of Application For Search Warrant) would be amended to require that the facts and circumstances that form the basis of the probable cause conclusion may include prospective events. The Comment would also be amended to refer to *Glass* and *Coleman*, adding further refinement to the probable cause determination regarding anticipatory search warrants.

[Pa.B. Doc. No. 05-925. Filed for public inspection May 13, 2005, 9:00 a.m.]

[234 PA. CODE CH. 4]

Proposed New Pa.R.Crim.P. 450

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule 450 (Suppression of Evidence). This new rule would permit requests for the suppression of evidence to be raised in summary cases before magisterial district judges. This supplemental proposal resulted from the Committee's further review of the proposed rule changes in response to the extensive correspondence received after publication of our original explanatory Report that would have required that suppression motions in summary cases only may be handled in the court of common pleas when a summary case is appealed for a trial de novo. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights the Committee's considerations in formulating this supplemental proposal. Please note that the Committee's Supplemental Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed new rule precedes the Supplemental Report.

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

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no later than Friday, June 17, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS T. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART E. General Procedures in Summary Cases

Rule 450. Suppression of Evidence.

(A) A defendant at a summary trial may orally or in writing request the magisterial district judge to suppress evidence alleged to have been obtained in violation of the defendant's rights.

(B) At the conclusion of the suppression hearing, the trial shall proceed as provided in Rule 454.

Comment

This rule provides the procedures for the suppression of evidence in summary cases before the magisterial district judges. See Rule 581 for the procedures for suppression of evidence in cases before a judge of the court of common pleas.

While this rule permits requests for suppression to be made orally at any time prior to trial, nothing in this rule is intended to preclude the defendant from presenting a written request for suppression. Whenever practical, the defendant should provide advanced written notice of the request for suppression to the Commonwealth.

Official Note: New Rule 450 adopted , effective .

Committee Explanatory Reports:

Report explaining the provisions of the proposed new rule concerning suppression of evidence in summary proceedings published at 34 Pa.B. 34 (January 31, 2004); Supplemental Report explaining the modifications to proposed new Rule 450 providing procedures for suppression of evidence in summary proceedings published at 35 Pa.B. 2864 (May 14, 2005).

SUPPLEMENTAL REPORT¹ *Proposed New Pa.R.Crim.P. 450²* Suppression Motions in Summary Cases

The Criminal Procedural Rules Committee is proposing the Court adopt new Rule 450 (Suppression of Evidence). The new rule would permit magisterial district judges to hear suppression issues in summary cases. The new rule fills the existing gap in the summary case rules concerning the procedures for handling summary case suppression issues.

Background

Over the past several years, the Committee has been reviewing the summary case rules in general, and the issue of suppression motions in cases before the magisterial district judges specifically. The members and a number of correspondents pointed out that because the Criminal Rules are silent concerning summary case suppression issues, there is a lot of confusion among members of the bench and bar about the procedures to follow in order to raise a suppression issue when a summary case is before the magisterial district judge: some magisterial district judges make rulings on suppression issues

¹ The original Report proposing new Rule 450 was published at 34 Pa.B. 34 (January 31, 2004).

² The proposed new rule is being numbered Rule 450, a number reserved for motions in Chapter 4 Part E (General Procedures in Summary Cases) when the Criminal Rules were reorganized and renumbered in 2000.

that are raised before them, while other magisterial district judges do not consider a suppression issue when a defendant raises one.

In view of the Committee's ongoing review of the summary case rules, the interest of the members and the correspondents in procedures for handling a summary case suppression issue raised before a magisterial district judge, the lack of uniformity in and among the judicial districts, and the controversy that has arisen concerning magisterial district judges deciding suppression motions, the Committee agreed that the summary case rules should be amended to provide the procedures for handling summary case suppression issues.

Initially, the Committee proposed providing that a suppression issue in a summary case could be raised only when the summary case is appealed for a trial de novo in the court of common pleas. The proposal was published for comment on January 31, 2004. The response to this proposal was overwhelmingly negative. Some commentators expressed concerns that a defendant would be deprived of his or her constitutional rights; when a defendant is precluded from raising the suppression issue before the magisterial district judge, then many defendants will not raise it because they will "just want to get the case over and pay the fine," rather than going through the lengthy process of appealing for a trial de novo and paying the additional fees in order to have the issue addressed by the common pleas court. Others noted that because magisterial district judges are finders of fact and law and regularly hear admissibility issues, they should hear suppression issues. If the judicial function of a magisterial district judge is to preside over a summary offense, they should preside over the whole proceeding including suppression issues.

In view of these publication comments, the Committee reexamined the issue with an eye towards creating a procedure that would permit suppression issues to be raised in summary cases before magisterial district judges. During the Committee's discussions of the publication comments, the members agreed that, when important rights are violated, these violations should be addressed as soon as practicable. Swift and direct resolution of such issues would also serve to act as a deterrent to illegal police conduct.

On the other hand, the Committee reaffirmed that summary case proceedings are intended to provide a quick and streamlined method of adjudicating minor offenses. The members did not think the new rule should create a complex and elaborate suppression mechanism for summary case trials. The Committee therefore has modified proposed new Rule 450 to permit magisterial district judges to address suppression issues.

Discussion of Rules

Under this proposal, new Rule 450 would contain two paragraphs. Paragraph 450(A) would provide the explicit permission for raising a request for suppression of evidence at a summary trial. The term "request" is used instead of "motion" to distinguish the procedure for raising suppression in summary cases before the magisterial district judges as being a procedure separate from the motions practice under Rule 581 in cases in the court of common pleas.

The proposed rule would not require that the request be in writing, but the Comment contains language encouraging that the request be in writing.

Paragraph 450(B) would provide that, upon the conclusion of the suppression hearing, the case should proceed

to trial before the magisterial district judge as provided in the summary trial procedures of Rule 454.

[Pa.B. Doc. No. 05-926. Filed for public inspection May 13, 2005, 9:00 a.m.]

[234 PA. CODE CH. 5]
Amendments to Pa.R.Crim.P. 550

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 550 and revise the Comment to confirm that when jurisdiction in a court case is granted to magisterial district judges, their exercise of this jurisdiction is limited to those cases in which the defendant pleads guilty. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed changes to Rule 550 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

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no later than Friday, June 17, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS T. NASTASI,
Chair

Annex A

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

**PART D. Proceedings in Court Cases Before Issuing
Authorities**

**Rule 550. Pleas of Guilty Before [District Justice]
Magisterial District Judge in Court Cases.**

(A) In a court case in which a [district justice] magisterial district judge is specifically empowered by statute to exercise jurisdiction, a defendant may plead guilty before [an issuing authority] a magisterial district judge at any time up to the completion of the preliminary hearing or the waiver thereof.

(B) The [district justice] magisterial district judge may refuse to accept a plea of guilty, and the [district justice] magisterial district judge shall not accept such plea unless there has been a determination, after inquiry of the defendant, that the plea is voluntarily and understandingly tendered.

(C) The plea shall be in writing:

* * * * *

(2) signed by the [district justice] magisterial district judge, with a certification that the plea was accepted after a full inquiry of the defendant, and that the plea was made knowingly, voluntarily, and intelligently.

(D) A defendant who enters a plea of guilty under this rule may, within 10 days after sentence, change the plea to not guilty by so notifying the [district justice] magisterial district judge in writing. In such event, the [district justice] magisterial district judge shall vacate the plea and judgment of sentence, and the case shall proceed in accordance with Rule 547, as though the defendant had been held for court.

(E) Ten days after the acceptance of the guilty plea and the imposition of sentence, the [district justice] magisterial district judge shall certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings.

Comment

In certain cases, [provisions for taking a plea of guilty in] what would ordinarily be a court case within the jurisdiction of the court of common pleas [have] has been placed within the jurisdiction of [district justices] magisterial district judges. See **Judicial Code, 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7)**. This rule provides the procedures to implement this expanded jurisdiction of [district justices to accept pleas of guilty under certain circumstances in certain specified misdemeanors] magisterial district judges. [See **Judicial Code, 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7)**.]

In those cases in which either the defendant declines to enter a plea of guilty or the magisterial district judge refuses to accept a plea of guilty, the case is to proceed in the court of common pleas.

This rule applies whenever a [district justice] magisterial district judge has jurisdiction to accept a plea of guilty in a court case.

* * * * *

Prior to accepting a plea of guilty under this rule, it is suggested that the [district justice] magisterial district judge consult with the attorney for the Commonwealth concerning the case, concerning the defendant's possible eligibility for ARD or other types of diversion, and concerning possible related offenses [which] that might be charged in the same complaint. See *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973).

Before accepting a plea:

(a) The [district justice] magisterial district judge should be satisfied of jurisdiction to accept the plea, and should determine whether any other related offenses exist which might affect jurisdiction.

(b) The [district justice] magisterial district judge should be satisfied that the defendant is eligible under the law to plead guilty before a [district justice] magisterial district judge, and, when relevant, should check the defendant's prior record and inquire into the amount of damages.

(c) The **[district justice] magisterial district judge** should advise the defendant of the right to counsel. For purposes of appointment of counsel, these cases should be treated as court cases, and the Rule 122 (Assignment of Counsel) procedures should be followed.

(d) The **[district justice] magisterial district judge** should advise the defendant that, if the defendant wants to change the plea to not guilty, the defendant, within 10 days after imposition of sentence, must notify the **[district justice] magisterial district judge** who accepted the plea of this decision in writing.

(e) The **[district justice] magisterial district judge** should make a searching inquiry into the voluntariness of the defendant's plea. A colloquy similar to that suggested in Rule 590 should be conducted to determine the voluntariness of the plea. At a minimum, the **[district justice] magisterial district judge** should ask questions to elicit the following information:

* * * * *

(6) that the defendant is aware that the **[district justice] magisterial district judge** is not bound by the terms of any plea agreement tendered unless the **[district justice] magisterial district judge** accepts such agreement; and

* * * * *

At the time of sentencing, or at any time within the 10-day period before transmitting the case to the clerk of courts pursuant to paragraph (E), the **[district justice] magisterial district judge** may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.

If a plea is not entered pursuant to this rule, the papers must be transmitted to the clerk of courts of the judicial district in accordance with Rule 547. After the time set forth in paragraph (A) for acceptance of the plea of guilty has expired, the **[district justice] magisterial district judge** no longer has jurisdiction to accept a plea.

Regardless of whether a plea stands or is timely changed to not guilty by the defendant, the **[district justice] magisterial district judge** must transmit the transcript and all supporting documents to the appropriate court, in accordance with Rule 547.

Once the case is forwarded as provided in this rule and in Rule 547, the court of common pleas has exclusive jurisdiction over the case and any plea incident thereto. The case would thereafter proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation in those cases in which the **[district justice] magisterial district judge** has accepted a guilty plea and imposed sentence.

Official Note: Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; **amended** , 2005, **effective** , 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).

Report explaining the proposed changes to the rule clarifying the magisterial district judges' exercise of jurisdiction published at 35 Pa.B. 2866 (May 14, 2005).

REPORT

Amendments to Pa.R.Crim.P. 550

Pleas of Guilty Before Magisterial District Judge in Court Cases

Background

During the course of Committee's ongoing monitoring of new legislation and the legislation's interplay with the Criminal Rules, we reviewed Act No. 2004-177 that, inter alia, amends 42 Pa.C.S. § 1515 to provide magisterial district judges with jurisdiction over offenses under 75 Pa.C.S. § 3808 (relating to illegally operating a motor vehicle not equipped with ignition interlock) and increases the penalty level of Section 3808(a)(1) from a summary offense to a misdemeanor. This addition, unlike previous jurisdictional expansions, did not limit the magisterial district judges' jurisdiction to acceptance of guilty pleas in these cases. The broader scope of the jurisdiction is problematic from a procedural perspective because of the nature of proceedings before the magisterial district judges, which currently are not courts of record and are non-jury.

The Committee, during our discussions of this addition to the magisterial district judges' jurisdiction, noted the Legislature has consistently limited any grant of jurisdiction to a magisterial district judge in a court case to the situation in which the defendant intends to enter a plea of guilty, suggesting the Legislature's understanding of the procedural difficulties that would arise should trials in these cases be conducted at the magisterial district court level. In view of these considerations, the Committee agreed Rule 550 should continue to provide that the procedures for the magisterial district judges' exercise of their jurisdiction under 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7) are limited to the acceptance of guilty pleas. This limitation continues the expedited disposition of many of these cases by the magisterial district judges, while protecting the defendants' rights by providing them with the opportunity for a full trial in the court of common pleas. The Committee therefore proposes to revise the Comment to Rule 550 to clarify that, under the rules, the magisterial district judges' exercise of their statutorily granted jurisdiction over misdemeanors continues to be restricted to acceptance of guilty pleas.

Discussion of the Rule

Rule 550(A) limits exercise of jurisdiction by a magisterial district judge to the acceptance of a guilty plea. The language of the first paragraph of the Comment may create the impression of unduly limiting the application of the rule. The proposed revision would remove the qualifying language "provisions for taking a plea of guilty" from this paragraph and clarify that the rule applies to any statute that grants court case jurisdiction to magisterial district judges. The same paragraph would also be revised to include a reference to new paragraph 5.1 of Section 1515 in the list of the sections providing the magisterial

district judges with jurisdiction over certain misdemeanors that are cross-reference in the Rule 550 Comment.

A new second paragraph would be added to the Comment clarifying that in the event that a defendant declines to enter a guilty pleas or a magisterial district judge refuses to accept a guilty plea, the case would go forward in the court of common pleas.

Additionally, pursuant to Act 207 of 2004 and the Order of the Supreme Court of Pennsylvania, 269 Judicial Administrative Docket No. 1 (January 6, 2005), the term "district justice" would be replaced by "magisterial district judge" throughout the rule and Comment.

[Pa.B. Doc. No. 05-927. Filed for public inspection May 13, 2005, 9:00 a.m.]

[234 PA. CODE CH. 6]

Amendments to Pa.R.Crim.P. 646

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 646 to permit the discretionary use of binders by the jury to assist in the organization of trial materials. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

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

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

Anne T. Panfil, Chief Staff Counsel
 Supreme Court of Pennsylvania
 Criminal Procedural Rules Committee
 5035 Ritter Road, Suite 100
 Mechanicsburg, PA 17055
 fax: (717) 795-2106
 e-mail: criminal.rules@pacourts.us

no later than Friday, June 17, 2005.

By the Criminal Procedural Rules Committee

NICHOLAS T. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(2). Conduct of Jury Trial

Rule 646. Material Permitted in Possession of the Jury.

* * * * *

(C) In the discretion of the trial judge, the jury may be provided with binders for the purpose of

collecting and organizing trial materials to be used in the performance of its duties during the trial and deliberations.

(1) The contents of the binders shall be agreed upon by the attorney for the Commonwealth and by the attorney for the defendant, or by the defendant if pro se, subject to the trial judge's approval.

(2) The contents of the binders shall be destroyed at the conclusion of trial.

Comment

* * * * *

The 1996 amendment adding "or otherwise recorded" in paragraph (B)(2) is not intended to enlarge or modify what constitutes a confession under this rule. Rather, the amendment is only intended to recognize that a confession can be recorded in a variety of ways. See *Commonwealth v. Foster*, 624 A.2d 144 (Pa. Super. Ct. 1993).

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in this rule because there may be some cases still pending that were instituted prior to the abolition of the indicting grand jury.

Paragraph (C) was added in 2005 to provide that the trial judge, in his or her discretion, may permit the jury to be provided with binders to be used in collecting and organizing the various materials presented at trial. While the court is responsible for providing the binders for use by the jury, counsel should be permitted to prepare exhibits and other materials that may facilitate trial for inclusion in the juror binder.

Jurors are to be allowed access to the binders for use only during trial and deliberations, and only when in the courtroom or the jury room. A specific time should not be set aside during trial to review the binder contents; the jurors should do this during side-bars and recesses.

The contents of the binders are subject to agreement by the prosecution and defense and may include, but are not limited to, such items as: a list of witnesses, including identifying information; photographs of key witnesses; copies of appropriate exhibits if admissibility is stipulated or added as the items are admitted into evidence; a glossary of technical terms; a seating chart of the courtroom identifying all trial participants.

Binders may be utilized for multiple purposes, including providing basic information about jury service, as well as information specific to the trial.

In the trial court's discretion, the contents of the juror binders that are prepared by the court and of a general instructional nature applicable to all cases may be preserved following the conclusion of trial.

Official Note: Rule 1114 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; amended November 18, 1999,

effective January 1, 2000; renumbered Rule 646 March 1, 2000, effective April 1, 2001; **amended** , 2005, **effective** , 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).

Report explaining the revision to permit use of juror binders published at 35 Pa.B. 2868 (May 14, 2005).

REPORT
Amendments to Pa.R.Crim.P. 646
Juror Binders

Background

As part of the Committee's ongoing study of innovations designed to assist juror participation at trial, the Committee examined the practice of providing the jurors with notebooks or binders to assist jurors in organizing and understanding case information.

A few states currently have a direct rule or statute on juror binders.¹ A number of states have reviewed the matter, usually as part of a general study or pilot project on jury innovations. In these studies, jurors overwhelmingly approved of their use. For example, in a pilot project in Tennessee, 94% of over 400 jurors who had used notebooks found them in some degree useful, with 68% of the total describing them as "very useful" in trial.²

Most jurisdictions do not have specific rules governing the use of juror notebooks or binders but permit the practice as within a trial court's discretion. Pennsylvania has no statute, rule, or case law that precludes use of binders and anecdotal evidence suggests that the practice has been allowed to some extent in civil cases.

Juror binders will assist jurors to organize, understand, and recall large amounts of information. Binders can be designed for multiple purposes, including providing basic information about jury service as well as information specific to the trial. This will help reduce juror stress and confusion about the trial process.

Discussion of the Rule

The proposed amendment to Rule 646 creates new paragraph (C) that, within the discretion of the trial judge, permits the jurors to be provided with binders in which any trial materials may be collected and organized.

Paragraph (C)(1) provides that if either party objects or if the parties cannot agree to a particular item to be included in the notebook, the item would be omitted.

Paragraph (C)(2) provides that the contents of the binders shall be destroyed at the conclusion of trial.

The Comment provides further suggestions upon the use of the binders. The practice would generally entail providing a three-ring binder to each juror to assist jurors in organizing case information. Jurors would only be allowed access to the binders during trial and deliberation; they would not be allowed to take the binders home

¹ See, e.g., Arizona Rule of Criminal Procedure 18.6, Tennessee Rule of Criminal Procedure 24.1 and Colorado Rule of Criminal Procedure 16. The *Wyoming Trial Handbook* also describes this practice in that state.

² Cohen, Daniel R., *Jury Reform in Tennessee*, 34 U.Mem.L.Rev. 1 (fall 2003).

at night. A specific time would not be set aside during trial to review the notebook contents; it is assumed that the jurors will do this during side-bars and recesses.

The Comment notes that while the court is responsible for providing the binders, either side may contribute to the contents. The contents of binders will vary from case to case. The contents are to be determined by agreement among the parties under the supervision of the trial court.

The binders can include such items as: a list of witnesses, including identifying information; photographs of key witnesses; copies of appropriate exhibits if admissibility is stipulated or added as the items are admitted into evidence; a glossary of technical terms, and information about the various participants in the trial process, including a seating chart for the courtroom identifying all trial participants. The binders may also include information of a more general and instructional nature about jury service.

[Pa.B. Doc. No. 05-928. Filed for public inspection May 13, 2005, 9:00 a.m.]

[234 PA. CODE CH. 6]

Order Amending Rule 632; No. 319 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the May 2, 2005 amendments to Rule of Criminal Procedure 632. The amendment modifies the juror information questionnaire by separating question #1 into two questions numbered 3 and 15 respectively on the questionnaire, without changing the substance of the question. Additional qualifying language has been included in both new questions. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 2nd day of May, 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 Rule of Criminal Procedure 632 is amended in the following form.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(1). Impaneling Jury

Rule 632. Juror Information Questionnaire.

* * * * *

(H) The form of the juror information questionnaire shall be as follows:

JUROR INFORMATION QUESTIONNAIRE
CONFIDENTIAL; NOT PUBLIC RECORD

NAME: LAST		FIRST		MIDDLE INITIAL	
CITY/TOWNSHIP			COMMUNITIES IN WHICH YOU RESIDED OVER THE PAST 10 YEARS:		
MARITAL STATUS: MARRIED <input type="checkbox"/>		SINGLE <input type="checkbox"/>	SEPARATED <input type="checkbox"/>	DIVORCED <input type="checkbox"/>	WIDOWED <input type="checkbox"/>
OCCUPATION			OCCUPATION(S) PAST 10 YEARS		
OCCUPATION OF SPOUSE/OTHER			PAST 10 YEARS OCCUPATION OF SPOUSE/OTHER		
NUMBER OF CHILDREN			RACE: <input type="checkbox"/> WHITE <input type="checkbox"/> BLACK <input type="checkbox"/> HISPANIC <input type="checkbox"/> OTHER		
LEVEL OF EDUCATION YOURS		SPOUSE/OTHER		CHILDREN	

- | | YES | NO |
|--|--------------------------|--------------------------|
| 1. [Do you have any physical or psychological disability or are you presently taking any medication?] | <input type="checkbox"/> | <input type="checkbox"/> |
| [2.] Have you ever served as a juror before? | <input type="checkbox"/> | <input type="checkbox"/> |
| If so, were you ever on a hung jury? | <input type="checkbox"/> | <input type="checkbox"/> |
| [3.] 2. Do you have any religious, moral, or ethical beliefs that would prevent you from sitting in judgment in a criminal case and rendering a fair verdict? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Do you have any physical or psychological disability that might interfere with or prevent you from serving as a juror? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. Have you or anyone close to you ever been the victim of a crime? | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. Have you or anyone close to you ever been charged with or arrested for a crime, other than a traffic violation? | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Have you or anyone close to you ever been an eyewitness to a crime, whether or not it ever came to court? | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Have you or anyone close to you ever worked in law enforcement or the justice system? This includes police, prosecutors, attorneys, detectives, security or prison guards, and court related agencies. | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Would you be more likely to believe the testimony of a police officer or any other law enforcement officer because of his or her job? | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. Would you be less likely to believe the testimony of a police officer or other law enforcement officer because of his or her job? | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. Would you have any problem following the court's instruction that the defendant in a criminal case is presumed to be innocent unless and until proven guilty beyond a reasonable doubt? | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. Would you have any problem following the court's instruction that the defendant in a criminal case does not have to take the stand or present evidence, and it cannot be held against the defendant if he or she elects to remain silent or present no evidence? | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. Would you have any problem following the court's instruction in a criminal case that just because someone is arrested, it does not mean that the person is guilty of anything? | <input type="checkbox"/> | <input type="checkbox"/> |
| 13. In general, would you have any problem following and applying the judge's instruction on the law? | <input type="checkbox"/> | <input type="checkbox"/> |
| 14. Would you have any problem during jury deliberations in a criminal case discussing the case fully but still making up your own mind? | <input type="checkbox"/> | <input type="checkbox"/> |
| 15. Are you presently taking any medication that might interfere with or prevent you from serving as a juror? | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. Is there any other reason you could not be a fair juror in a criminal case? | <input type="checkbox"/> | <input type="checkbox"/> |

I hereby certify that the answers on this form are true and correct. I understand that false answers provided herein subject me to penalties under 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

SIGNATURE _____ DATE _____

* * * * *

Official Note: Former Rule 1107 rescinded September 28, 1975. Present Rule 1107 adopted September 15, 1993, effective January 1, 1994; suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order is superseded by the September 18, 1998 Order, and present Rule 1107 adopted September 18, 1998, effective July 1, 1999; renumbered Rule 632 and amended March 1, 2000, effective April 1, 2001; **amended May 2, 2005, effective August 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 May 2, 2005 amendments to the mandatory juror information questionnaire form published at 35 Pa.B. 2870 (May 14, 2005).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 632 Juror Information Questionnaire Form

On May 2, 2005, effective August 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended the juror information questionnaire form that is part of Rule of Criminal Procedure 632 (Juror Information Questionnaire). Rule 632 requires, inter alia, prospective jurors to complete the standard juror information questionnaire prior to voir dire.

The Committee developed the changes to the Rule 632 Juror Information Questionnaire form after monitoring the use of the form for several years. During this time period, we received various comments and complaints about the form of the questions on the form, in particular the form of question # 1 ("Do you have any physical or psychological disability or are you presently taking any medication?"), suggesting the question was difficult to understand and answer because it asks about three different issues: ill health, mental health, and drug usage or abuse. A potential juror might want to answer "yes" for one issue and "no" for the others, but not know how to enter an appropriate response on the questionnaire. It also was suggested that question #1 might violate federal and state disability statutes.

After thoroughly discussing these issues, the Committee reaffirmed the following points: 1) the questionnaire specifically is designed to aid in the determination whether a prospective individual is capable of serving in the capacity of a juror; 2) Rule 632 is intended to encourage that instructions be given by the court to the prospective jurors; and 3) it is the intent of Rule 632 that when a "yes" response is provided for any of the questions on the questionnaire, there would be follow-up questions to the juror during voir dire. Furthermore, we agreed that these aspects of the rule and questionnaire are intended to ensure compliance with the ADA. However, in view of the comments we have received, the members concluded that question #1 may be causing mischief, resulting in unintended consequences and confusion to the prospective jurors completing the questionnaire. Accordingly, without changing the substance of the question, question # 1 has been separated into two questions numbered 3 and 15

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.

respectively on the questionnaire.² Additional qualifying language—"that might interfere with or prevent you from serving as a juror"—has been included in both new questions.

[Pa.B. Doc. No. 05-929. Filed for public inspection May 13, 2005, 9:00 a.m.]

Title 25—LOCAL COURT RULES

ARMSTRONG COUNTY

Adoption of New Local Rules of Court—2002; No. CP-03-AD-000033—2004

Order

And Now, this 25th day of April, 2005 it is hereby Ordered as follows:

1. L.R.C.P. No. 208.2 is hereby rescinded. This rescission shall become effective thirty (30) days after the date of publication of said rescission in the *Pennsylvania Bulletin*.

By the Court

JOSEPH A. NICKLEACH,
President Judge

[Pa.B. Doc. No. 05-930. Filed for public inspection May 13, 2005, 9:00 a.m.]

SCHUYLKILL COUNTY

Amended/Adopted Criminal Rules of Procedure; AD69-2005

Order of Court

And Now, this 22nd day of April, 2005, at 4:30 p.m., Schuylkill County Criminal Rules of Procedure Rule 106, Rule 560(f) and Rule 570.1 are amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Clerk of Courts of Schuylkill County is Ordered and Directed to do the following:

1) File seven (7) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.

3) File one (1) certified copy of this Order and Rules with the Pennsylvania Criminal Procedural Rules.

4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

² In addition, dotted lines from the question marks to the "yes" and "no" boxes on the form have been added to further aid the prospective jurors who answer the questions.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Rules of Criminal Procedure

Rule 106 Continuances.

All motions for continuance of trial shall be in writing, upon forms approved by the Court, and served on the opposing party. A motion by the Defendant must be signed by the Defendant and his or her attorney, if any. All such motions shall be heard by the Court each Criminal Term on the date and at the time established by the published Court Calendar.

The Commonwealth must be represented at the hearing for all continuance motions. The presence in Continuance Court of the Defendant and his or her counsel is only required in response to a Commonwealth motion for continuance when the Defendant opposes the motion; however, lack of opposition from the Defendant will not automatically result in the Commonwealth's motion being granted. Their presence may also be excused in Continuance Court for an unopposed first continuance motion by the Defendant. A Defendant's first continuance motion will be deemed unopposed if filed with the Clerk of Courts and contemporaneously served on the Commonwealth before the close of business on the Monday preceding Continuance Court as set forth in the Court Calendar, and if the District Attorney has not notified the Defendant and Court Administrator of the Commonwealth's opposition within 48 hours after receipt of the Defendant's motion. For all later filed, opposed and subsequent continuance motions by the Defendant, defense counsel and the Defendant must be present at the hearing on the motion.

In no event shall a continuance motion be filed and served on the opposing party less than 24 hours prior to Continuance Court.

Rule 560 Information: Filing, Contents, Functions

(f) *Murder Cases.*—Whenever the District Attorney files a criminal information against a defendant alleging the commission of murder as defined in 18 Pa.C.S.A. § 2502, the District Attorney shall contemporaneously forward a copy of the information to the Criminal Court Administrator. Upon receipt of the information, the Court Administrator shall assign the case to a member of the Court and shall notify the Clerk of Courts and counsel for the parties as to which judge the case has been assigned. Thereafter, all pre-trial and trial matters occurring in the case shall be referred to the assigned judge for disposition. That judge shall also set the date for trial independent of the Court Calendar. Either party may at any time request that a trial date be set.

Rule 570.1 Trial Ready Cases/Pre-Trial Conference.

Promptly following the conclusions of a Criminal Term, the Court will attach those cases to be listed for trial during the next succeeding Criminal Term. The Court will generally attach cases to the Trial List based upon the age of the case. Until the day after the date for plea negotiation published in the Court Calendar for that Criminal Term, any party may request a case be added to the Trial List by submitting that request in writing to the Court Administrator and providing a copy of the request to the opposing party. Thereafter, a party may seek the

addition of a case to the Trial List only by motion filed with the Clerk of Courts and contemporaneously served on the opposing party. [Note: Cases in which the Commonwealth has charged murder as defined in 18 Pa.C.S.A. § 2502 are separately listed pursuant to Sch.R.Crim.P. 560(f)].

Pretrial conferences with a member of the Court shall be conducted at 9:30 a.m. on the pretrial conference date as published in the Court Calendar for all cases remaining on the Trial List by that date. The conference shall be attended by the assigned district attorney and defense counsel. Pro se defendants must also attend. A victim may be present, if the victim desires to attend.

It shall be the duty of each party, **prior to the pretrial conference**, to verify the availability of all necessary witnesses for trial. The Court may decline to consider scheduling problems and requests which are not brought to the Court's attention at the pretrial conference.

[Pa.B. Doc. No. 05-931. Filed for public inspection May 13, 2005, 9:00 a.m.]

SCHUYLKILL COUNTY Amended Civil Rules of Procedure; S-788-05

Order of Court

And Now, this 22nd day of April, 2005, at 4:30 p.m., Schuylkill County Civil Rules of Procedure 2206, 2039 and 1301 are amended/adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.
- 4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rules as they existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 2206 Petitions for Approval of Wrongful Death and Survival Settlements.

(a)(1) Petitions for Approval of Wrongful Death and Survival Settlements shall be filed in the Orphans' Court Division where the estate is being administered if no suit has been previously filed or in the Prothonotary's Office under the docket number of the previously filed suit.

- (2) The petition shall set forth:
- (i) A heading briefly identifying the purpose of the petition;
 - (ii) The factual background of the claim;
 - (iii) Whether the decedent died intestate; if the decedent died testate, a copy of the will shall be attached to the petition;
 - (iv) Identification of the wrongful death beneficiaries;
 - (v) Whether any wrongful death beneficiaries are minors or incapacitated persons and whether a guardian has been appointed for the person or estate;
 - (vi) Counsel's analysis of the liability and damages issues relevant to the determination of the reasonableness of the proposed settlement;
 - (vii) The types and amounts of insurance coverage applicable to the claim and representation as to the efforts made to identify other collateral sources;
 - (viii) The proposed apportionment between wrongful death and survival recoveries including the factual basis for said apportionment;
 - (ix) Whether there are any unpaid liens, claims or debts;
 - (x) A statement of the proposed distribution of the settlement funds, which includes the percentage of requested counsel fees and an itemization of costs. The petitioner shall attach appropriate documentation in support of the itemized costs; and
 - (xi) Certification of joinder of the beneficiaries in the terms of the proposed settlement and petition.
- (3) The petition shall contain the following exhibits:
- (i) Copies of accident, medical or expert reports related to the alleged cause of death of decedent;
 - (ii) The counsel fee agreement between any counsel seeking recovery of counsel fees and the administrator, executor or beneficiaries on whose behalf approval of settlement is sought; and
 - (iii) A copy of correspondence from the Pennsylvania Department of Revenue approving the proposed allocation of settlement funds between the wrongful death and the survival actions.
- (4) Any amendments or supplements to the petition required by the Court shall be filed of record.
- (5) All petitions filed under this rule shall be assigned to the Orphans' Court for disposition. The Court may approve a petition without a hearing. If the Court schedules a hearing, the Court may require the personal attendance and testimony of the administrator or executor of the estate on whose behalf the settlement is sought, the representative of the financial institution responsible for the investment of settlement funds received by a minor or incapacitated person, or any other evidence which the Court deems necessary to determine whether the proposed settlement adequately protects the interests of the decedent's estate or the distribution to minors or incapacitated persons.
- (6) The Court may require a hearing on the issue of counsel fees. If a hearing on counsel fees is required, the Court shall require the testimony of counsel primarily responsible for the preparation of the case.
- (7) The Petitioner shall attach a proposed order in substantially the following form and setting forth:

- (i) The Court's authorization for the petitioner to enter into a settlement and release;
- (ii) Reference to the total amount of the settlement; and
- (iii) A complete statement of the distribution of the settlement amount as set forth in the petition.

(CAPTION)

ORDER OF COURT

AND NOW, this ____ day of _____, 20____, at ____ .m., upon consideration of the Petition for Approval of Wrongful Death and Survival Settlement, noting the consent of the Pennsylvania Department of Revenue, and the certification filed by counsel, the Court finds that there are no outstanding unpaid creditors of the Estate and that the proposed settlement of the civil survival action is adequate to protect the interests of the estate and beneficiaries, IT IS THEREFORE ORDERED AND DECREED that payment of _____ Dollars (\$ _____) in settlement of the Survival Action is APPROVED.

The settlement proceeds shall be distributed as follows:

TO: _____, attorney at law, \$ _____ for counsel fees;

TO: _____, attorney at law, \$ _____ for reimbursement of costs;

The balance of the settlement is apportioned as follows:

Wrongful Death Action \$ _____

TO: (spouse)

TO: (child)

TO: (other)

Survival Action \$ _____

TO: _____, personal representative of the Estate of _____.

BY THE COURT,

Rule 2039 Petitions for Approval of Minors' Compromises.

(a)(1) Petitions for Approval of Settlement or Compromise in matters in which a minor has an interest shall be filed in the Orphans' Court Division where the minor resides if no suit has been previously filed or in the Prothonotary's Office under the docket number of the previously filed suit.

(2) The petition shall set forth:

(i) The factual background of the claim;

(ii) The identification of the parties, including the age of the minor and the addresses of the biological parents of the minor; (if the minor is not living with both natural parents, a copy of any order of court awarding custody or guardianship and a description of where and with whom the minor has resided over the preceding five years);

(iii) Counsel's analysis of the liability and damages issues relevant to the determination of the reasonableness of the proposed settlement;

(iv) Counsel's certification that the settlement is reasonable and in the best interest of the minor;

(v) The types and amounts of insurance coverage applicable to the claim and representation as to the efforts made to identify other collateral sources;

(vi) Whether there are any unpaid liens, claims or debts. Where claims or debts have been waived, petitioner shall attach as an exhibit written proof of waiver of such lien, claim or debt;

(vii) A request for authorization of parent or natural guardian to sign the proposed release;

(viii) A description of the type of account into which the settlement proceeds will be deposited;

(ix) A statement of the proposed distribution of the settlement funds which includes the proposed percentage of counsel fees and an itemization of costs. The petitioner shall attach appropriate documentation in support of the itemized costs; and

(x) Certification of joinder of the custodial parent(s) or appointed guardians in the proposed settlement.

(3) The petition shall contain the following exhibits:

(i) Copies of medical reports or records evidencing the diagnosis and prognosis of the minor's injuries;

(ii) Investigative or police accident reports which provide background information regarding the incident which caused the minor's injuries; and

(iii) The counsel fee agreement with the parents or natural guardians of the minor executed by any attorney seeking recovery of counsel fees.

(4) Any amendments or supplements to the petition required by the Court shall be filed of record.

(5) All petitions filed under this rule shall be assigned to the Orphans' Court for disposition. The Court may approve a petition without a hearing. If the Court schedules a hearing, the Court may require the personal attendance and testimony of the guardian, the treating physician, the representative of the financial institution responsible for the investment of settlement funds or any other evidence which the Court deems necessary to determine whether the proposed settlement adequately protects the minor's interests.

(6) The Court may require a hearing on the issue of counsel fees if counsel seeks the recovery of fees in excess of 25% of the gross settlement amount. If a hearing on counsel fees is required, the Court shall require the testimony of counsel primarily responsible for the preparation of the case.

(7) Except as otherwise required by the Court, the appearance of the minor shall not be required.

(8) The Petitioner shall attach a proposed order found at subsection (c) which sets forth:

(i) The Court's authorization for the petitioner to enter into a settlement and release on behalf of the minor;

(ii) Reference to the total amount of the settlement;

(iii) A complete statement of the distribution of the settlement amount as set forth in the petition;

(iv) Identification of the type of account to be utilized, which account shall comply with Pa.R.C.P. 2039, including a provision that no withdrawal shall be made from any such account until the minor attains majority or by a prior order of court;

(v) A provision that counsel shall provide the court with an Affidavit of Deposit of Minor's Funds within thirty (30) days from the date of the order. Said affidavit shall be in substantially the form as follows:

(CAPTION)

AFFIDAVIT OF DEPOSIT OF MINOR'S FUNDS

The undersigned, counsel for _____, parents and natural guardians of _____, a minor, hereby certifies that the net settlement amount of \$ _____ as set forth in this Court's order dated _____ was deposited by _____ into a restricted, federally insured account, marked "NOT TO BE WITHDRAWN UNTIL THE MINOR REACHES THE AGE OF EIGHTEEN (18), EXCEPT FOR THE PAYMENT OF LOCAL, STATE AND FEDERAL INCOME TAXES ON INTEREST EARNED BY THE SAVINGS ACCOUNT OR CERTIFICATE, IF ANY, OR UNTIL FURTHER ORDER OF THIS COURT" on _____. Account No. _____ is entitled: _____, a minor. Proof of deposit is attached hereto as Exhibit A.

Counsel for Parents and Natural Guardians of _____, a minor

(b) The Court shall, in appropriate cases, authorize the parent or natural guardian to deposit cash to be paid for the benefit of the minor into an interest bearing, restricted account, insured by the Federal government, which conforms to the provisions of Pa.R.C.P. 2039.

(c) Form of Proposed Order. The form of proposed order shall be substantially as follows:

(CAPTION)

ORDER OF COURT

AND NOW, this ____ day of _____, 20____, at ____ .m., upon consideration of the Petition for Approval of Minor's Settlement, it is hereby ORDERED and DIRECTED that the Compromise Settlement in the sum of _____ Dollars (\$ _____) is APPROVED, and that the Settlement be distributed as follows:

1. The sum of _____ Dollars (\$ _____) shall be paid to _____ for his legal representation of the plaintiff(s).

2. The sum of _____ Dollars (\$ _____) shall be paid to _____ for costs expended.

3. The sum of _____ Dollars (\$ _____) shall be distributed to the benefit of _____, a minor, to be placed in one or more federally insured savings accounts or federally insured savings certificates in the name of the minor so that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are insured, and to be marked "NOT TO BE WITHDRAWN UNTIL THE MINOR REACHES THE AGE OF EIGHTEEN (18), EXCEPT FOR THE PAYMENT OF LOCAL, STATE AND FEDERAL INCOME TAXES ON INTEREST EARNED BY THE SAVINGS ACCOUNT OR CERTIFICATE, IF ANY, OR UNTIL FURTHER ORDER OF THIS COURT".

Counsel for petitioners is ORDERED to cause the restricted account to be created and to file an affidavit of deposit of minor's funds within thirty (30) days hereof.

Jurisdiction of any further proceeding concerning the minor's estate is transferred to the Orphans' Court Division for disposition.

Pursuant to Sch.Co.O.C. Rule 12.5B(c), if no withdrawals are made from the account prior to the minor reaching his/her majority, the institution may pay over the funds when the minor attains age eighteen (18) years,

upon the joint requests of the natural parent(s) and the former minor without further Order of this Court.

BY THE COURT,

Rule 1301 Scope of Procedure.

(a) All civil cases, where the amount in controversy (exclusive of interest and costs) is less than the compulsory arbitration amount for fourth class counties as set forth in the Judicial Code [42 Pa.C.S.A. 7361(b)], including claims or mechanics liens and all appeals from a civil judgment of a Magisterial District Judge, excepting those involving title to real property and those involving equitable or other than monetary relief, shall be submitted to compulsory arbitration.

(b) In addition, cases, whether or not at issue and without regard to the amount in controversy, may be referred to a Board of Arbitrators by an agreement of reference signed by all of the parties and their counsel. The agreement of reference may contain stipulations as to facts agreed upon or defenses waived. In such cases, the agreement of reference shall take the place of the pleadings and shall be filed of record.

(c) The Court, on its own motion or on the motion of either party at pre-trial settlement conference, after depositions, after hearing or otherwise, may determine that the amount actually in controversy does not exceed the compulsory arbitration amount as set forth at 42 Pa.C.S.A. § 7361(b) and may enter an order of reference to a Board of Arbitration.

[Pa.B. Doc. No. 05-932. Filed for public inspection May 13, 2005, 9:00 a.m.]

SCHUYLKILL COUNTY Amended Civil Rules of Procedure; S-789-05

Order of Court

And Now, this 22nd day of April, 2005, at 4:30 p.m., Schuylkill County Civil Rules of Procedure 1042.1 and 212.1(g) are adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rule with the Pennsylvania Civil Procedural Rules Committee.
- 4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rules as they existed prior to the amendment is hereby repealed and annulled

on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Civil Rules of Procedure

1042.1 Professional Liability Actions

The Court appoints the Schuylkill County Bar Association Alternate Dispute Resolution Program as the authorized program for alternate dispute resolution for civil cases filed in Schuylkill County.

212.1(g) Pre-Trial Listing and Objections Thereto

The Court appoints the Schuylkill County Bar Association Alternate Dispute Resolution Program as the authorized program for alternate dispute resolution for civil cases filed in Schuylkill County.

[Pa.B. Doc. No. 05-933. Filed for public inspection May 13, 2005, 9:00 a.m.]

SCHUYLKILL COUNTY Amended Orphans' Court Rules

Order of Court

And Now, this 22nd day of April, 2005, at 4:30 p.m., the Court hereby amends Schuylkill County Orphans' Court Rule 12.5E. This rule is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Clerk of the Orphans' Court of Schuylkill County is Ordered and Directed to do the following:

- 1) File ten (10) certified copies of this Order and Rule with the Administrative Office of Pennsylvania Courts.
- 2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.
- 3) File one (1) certified copy of this Order and Rule with the Pennsylvania Orphans' Court Rules Committee.
- 4) Forward one (1) copy to the Schuylkill County Law Library for publication in the *Schuylkill Legal Record*.
- 5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rules as they existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 12.5e Compromise, Settlement, Discontinuance and Distribution. Minors.

(a) General rule. Except as provided in subsection (b), no settlement of an action of a minor for personal injuries will be authorized or approved without the appearance of the minor in court, medical evidence as to the extent of

the minor's injuries and whether such injuries have fully resolved, and such further information as the Court shall deem necessary.

(b) The Court may approve the petition without requiring the appearance of the minor, his guardian, or his doctor, provided the Court concludes that the information contained in the petition is sufficient to satisfy that the proposed settlement adequately compensates the minor and his guardian for the injuries sustained and expenses incurred and so long as the petition contains all information set forth in Sch.R.C.P. 2039.

(c) Form of Proposed Order. The form of proposed order shall be as follows:

COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

In Re: | No.
a Minor | Minor's Compromise

ORDER OF COURT

AND NOW, this ___ day of ___, 20___, at ___ .m., upon consideration of the Petition for Approval of Minor's Settlement, it is hereby ORDERED and DIRECTED that the Compromise Settlement in the sum of ___ Dollars (\$ ___) is APPROVED, and that the Settlement be distributed as follows:

- 1. The sum of ___ Dollars (\$ ___) shall be paid to ___ for his legal representation of the petitioners.
2. The sum of ___ Dollars (\$ ___) shall be paid to ___ for costs expended.
3. The sum of ___ Dollars (\$ ___) shall be distributed to the benefit of ___, a minor, to be placed in one or more federally insured savings accounts or federally insured savings certificates in the name of the minor so that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are insured, and to be marked "NOT TO BE WITHDRAWN UNTIL THE MINOR REACHES THE AGE OF EIGHTEEN (18), EXCEPT FOR THE PAYMENT OF LOCAL, STATE AND FEDERAL INCOME TAXES ON INTEREST EARNED BY THE SAVINGS ACCOUNT OR CERTIFICATE, IF ANY, OR UNTIL FURTHER ORDER OF THIS COURT".

Counsel for petitioners is ORDERED to cause the restricted account to be created and to file an affidavit of deposit of minor's funds within thirty (30) days with the Clerk of the Orphans' Court.

Pursuant to Sch. Co. O.C. Rule 12.5B(c), if no withdrawals are made from the account prior to the minor reaching his/her majority, the institution may pay over the funds when the minor attains age eighteen (18) years, upon the joint requests of the natural parent(s) and the former minor without further Order of this Court.

BY THE COURT,

(c) The affidavit of deposit of minor's funds shall be filed within thirty (30) days of the creation of the restricted account and shall be in the following form:

COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY, PENNSYLVANIA

ORPHANS' COURT DIVISION

In Re: | No.
a Minor | Minor's Compromise

AFFIDAVIT OF DEPOSIT OF MINOR'S FUNDS

The undersigned, counsel for ___, parents and natural guardians of ___, a minor, hereby certifies that the net settlement amount of \$ ___ as set forth in this Court's order dated ___ was deposited by ___ into a restricted, federally insured account, marked "NOT TO BE WITHDRAWN UNTIL THE MINOR REACHES THE AGE OF EIGHTEEN (18), EXCEPT FOR THE PAYMENT OF LOCAL, STATE AND FEDERAL INCOME TAXES ON INTEREST EARNED BY THE SAVINGS ACCOUNT OR CERTIFICATE, IF ANY, OR UNTIL FURTHER ORDER OF THIS COURT" on ___. Account No. ___ is entitled: ___, a minor. Proof of deposit is attached hereto as Exhibit A.

Counsel for Parents and Natural Guardians of ___, a minor

[Pa.B. Doc. No. 05-934. Filed for public inspection May 13, 2005, 9:00 a.m.]

SCHUYLKILL COUNTY

Amended Rules of Procedure for Common Pleas and Magisterial District Judges; AD68-2005

Order of Court

And Now, this 22nd day of April, 2005, at 4:30 p.m., Schuylkill County Rules of Criminal Procedure No. 528 and 571 and the Rules of Criminal Procedure for the Magisterial District Judges have been amended in accordance with ACT 207-2004. The rules are for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District Commonwealth of Pennsylvania, and are effective immediately.

The Clerk of Courts of Schuylkill County is Ordered and Directed to do the following:

- 1) File seven (7) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.
2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the Pennsylvania Bulletin together with a diskette reflecting the text in the hard copy version.
3) File one (1) certified copy of this Order and Rules with the Pennsylvania Criminal Procedural Rules.
4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the Schuylkill Legal Record.
5) Keep continuously available for public inspection copies of this Order and Rule.

It is further Ordered that said rule as it existed prior to the amendment is hereby repealed and annulled on the

effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

WILLIAM E. BALDWIN,
President Judge

Rule 528 Types of Bail: Percentage Cash Bail.

(a) In the event the Magisterial District Judge accepts a sum of U.S. Currency equal to ten percent (10%) of the full amount of the monetary condition, the sum of money furnished shall be receipted for, deposited, accounted for, forfeited or returned in accordance with Pa.R.Crim.P. No. 535.

(b) After the final disposition of the case, and provided there has been no forfeiture, the money constituting percentage cash bail shall be returned to the defendant, less a retention fee for administering the percentage cash bail program of ten percent (10%) of the money entered as bail, and in no event shall the retention fee be less than Ten Dollars (\$10.00). The retention fee withheld shall be for the use of the County and shall be received and accounted for by the Clerk of Courts.

(c) When a defendant or a third party surety has deposited a sum of money under the percentage cash bail program, then upon full and final disposition of the case, the deposit less the retention fee for administrative costs, shall be returned to the person who originally posted the deposit. Notice of the full and final disposition shall be sent by the Clerk of Courts to the person who originally posted money at his address of record. Any money not claimed within one hundred eighty (180) days from the time of full and final disposition of the case shall be deemed as fees and shall be forfeited to the use of the County of Schuylkill.

Rule 571 Arraignment.

(a) Every defendant who shall be held for Court by the Magisterial District Judge, at the conclusion of the preliminary hearing or at the time he waives his preliminary hearing, shall be furnished with a notice of arraignment form by the Magisterial District Judge. The form shall advise defendant of the time periods wherein he may commence discovery and file an omnibus pre-trial motion in Court. He shall further be given notice that he has the right to waive appearing for formal arraignment in the District Attorney's Office.

In the event he desires to waive formal arraignment, he and his attorney, if any, shall execute the form provided for that purpose by the Magisterial District Judge, and said form shall be returned to Court with the transcript of the case by the Magisterial District Judge. The date of arraignment will begin the running of the time for the exercise of defendant's pre-trial rights.

In the event the defendant does not waive his arraignment, the District Attorney, upon filing the information, shall give the defendant notice of arraignment by first class mail, addressed to defendant's last known address of record, arraignment to be held at the District Attorney's Office the following Monday morning at 9:30 a.m.

At the time the District Attorney mails the arraignment notices, he shall give the Public Defender a list of those defendants who are scheduled for arraignment. The Public Defender shall assign one of his attorneys to meet with the District Attorney on the day of arraignment to represent those defendants who are not represented by counsel. Such representation shall be solely for the purpose of arraignment and shall not constitute an entry of appearance.

If a defendant fails to appear for arraignment, the Court, upon motion of the District Attorney, may issue a bench warrant for the defendant.

Criminal Procedure Magisterial District Judge Courts

Rule 102 Citation of Rules.

(a) These rules shall be known as Schuylkill Rules of Criminal Procedure for Magisterial District Judge Courts. They may be cited as "Sch.R.Crim.P.M.D.J. No. _____."

Rule 141 Contempt Procedure In Protection From Abuse Cases.

(a)(1) Upon information received on a violation of a protection order, the defendant may be arrested without a warrant, provided that the information is sufficient to constitute probable cause.

(2) Upon arrest, defendant shall be taken before either the Magisterial District Judge who has jurisdiction or the Magisterial District Judge on call; the arresting officer shall file a criminal complaint charging the defendant with indirect criminal contempt per 23 Pa.C.S.A. § 6113 and § 6114; defendant shall at that time be arraigned and bail shall be set; defendant shall either be released on bail or taken to Schuylkill County Prison if bail cannot be posted.

(3) The Magisterial District Judge shall immediately (next working day) provide the Court Administrator with the following information:

- (a) name of defendant
- (b) name of judge whose order was violated

(4) Court Administrator shall arrange with judge who issued original protection order for a hearing to be scheduled within ten (10) days.

Rule 506 Private Complaints.

(c) Private complaints shall be instituted in the manner set forth in Pa.R.Crim.P. No. 506. The affiant shall appear in the office of the District Attorney, who shall determine whether there is a probable cause and either approve or disapprove the complaint without unreasonable delay. If the complaint is approved, it shall be transmitted to the appropriate Magisterial District Judge who shall act as the issuing authority.

Rule 517 Fugitives—Court Cases.

(c) In any court case in which a warrant of arrest has been issued, either upon the filing of the complaint or after the defendant fails to respond to a summons, if the officer to whom the warrant was issued is unable to serve such warrant after good faith effort within thirty (30) days, the said officer shall make a return of "NOT FOUND" to the Magisterial District Judge.

Rule 518 Arrest Without A Warrant In Certain Cases.

(b) Pursuant to the authority granted by Pa.R.Crim.P. No. 518, police officers are hereby authorized, when making an arrest in Schuylkill County and when they deem it appropriate, to promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority when the following conditions have been met:

- (1) the most serious offense charged is a misdemeanor of the second degree;
- (2) the defendant is a resident of the Commonwealth;

(3) the defendant poses no threat of immediate physical harm to any other person or to himself or herself;

(4) the arresting officer has reasonable grounds to believe that the defendant will appear as required; and

(5) the defendant does not demand to be taken before an issuing authority.

When a defendant is released pursuant to this Rule, a complaint shall be filed against the defendant within five (5) days of the defendant's release. Thereafter, a summons, not a warrant of arrest, shall be issued.

Rule 543 Continuances of Preliminary Hearings.

(a) Every request for continuance of a preliminary hearing shall be submitted in writing on a form obtained from the Magisterial District Judge or Criminal Court Administrator and shall be signed by the defendant and his/her counsel if any. The form may be submitted to the Magisterial District Judge by fax directly (or via the Criminal Court Administrator if the Magisterial District Judge office does not have fax capability).

(b) Each party may be granted one continuance by the Magisterial District Judge upon cause shown. Any such initial continuance, made at the request of either party, shall not be for more than twenty-one (21) days. A continuance request submitted by the party not requesting the initial continuance, if granted by the Magisterial District Judge, shall not be for more than fourteen (14) days. The Magisterial District Judge is prohibited from granting more than one continuance to each party.

Any subsequent continuance by either party may be granted only by the President Judge, or his designee, upon completion and with just cause shown on the approved aforementioned continuance request form. This request for continuance form must be completed and signed by the defendant and his/her counsel if any. Upon refusal or approval of said request for continuance form, the Criminal Court Administrator shall file the signed form with the Clerk of Court's office and shall notify the Magisterial District Judge who in turn shall notify the parties.

(1) Pre-Preliminary Hearing Line-Up

Defendants desiring a pre-preliminary hearing line-up shall make such request known to the District Attorney and the Magisterial District Judge at least forty-eight (48) hours in advance of the scheduled preliminary hearing.

In the event the District Attorney opposes defendant's request for a line-up prior to his preliminary hearing, the District Attorney shall advise defendant of such opposition at least twenty-four (24) hours in advance of the scheduled preliminary hearing. Defendant may then request a line-up by filing an original petition with the Clerk of Courts. The Court Administrator shall then assign the matter to a criminal list Judge for disposition. Defendant shall give notice of such filing to the District Attorney and the Magisterial District Judge.

When a Magisterial District Judge has been notified of the filing of such petition, he shall continue the case for at least two (2) weeks to allow for the disposition of the petition.

(2) Scheduling of Preliminary Hearings

Unless there are compelling reasons, no preliminary hearing shall be scheduled for a court case by any Magisterial District Judge during the first two days of jury selection or the first week of criminal court trials in Schuylkill County. If a preliminary hearing is required to

be held within that week by the Pa.R.Crim.P., this local Rule of Court shall be cited by the Magisterial District Judge as a reason for re-scheduling the case for as soon thereafter as possible.

Rule 547 Transcript of Magisterial District Judge.

(c) In addition to the requirements under the Pa.R.Crim.P., the Magisterial District Judge shall also list the defendant's date of birth in brackets following his name on the transcript, and shall list the names, addresses, and telephone numbers of all witnesses who testified at the preliminary hearing or who the parties request to be listed on the transcript.

(d) The Magisterial District Judge shall prepare a transcript of the proceedings before him and return the same together with the documents required by Pa.R.Crim.P. No. 547 to the Office of the Clerk of Courts by first class mail or by hand delivery. In appeals from summary convictions, the Magisterial District Judge shall return the transcript filed with the Office of the Clerk of Courts together with the documents required by Pa.R.Crim.P. No. 460 by certified mail, return receipt requested, together with a letter of transmittal. The copy of the transmittal letter and return receipt card shall be retained by the Magisterial District Judge.

[Pa.B. Doc. No. 05-935. Filed for public inspection May 13, 2005, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Francis X. Gavin having been disbarred from the practice of law in the State of New Jersey by Order dated September 28, 2004, the Supreme Court of Pennsylvania issued an Order on April 27, 2005, disbaring Francis X. Gavin from the Bar of this Commonwealth, effective May 27, 2005. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,

Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 05-936. Filed for public inspection May 13, 2005, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Richard R. Thomas, II, having been suspended from the practice of law in the State of New Jersey for a period of one year, the Supreme Court of Pennsylvania issued an Order dated April 27, 2005 suspending Richard R. Thomas, II, from the practice of law in this Commonwealth consistent with the Order of the Supreme Court of New Jersey dated September 28, 2004. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Com-

monwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 05-937. Filed for public inspection May 13, 2005, 9:00 a.m.]

Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 28, 2005, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 27, 2005 for Compliance Group 2 due August 31, 2004.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Ackerman, Glenn Anthony
 Clifton, VA

Acosta, Inez
 Vineland, NJ

Ardizzone, Dale Steadwell
 Charlotte, NC

Arduini, Lisa Ann
 West Orange, NJ

Augustino Jr., Donald P.
 New York, NY

Berman, William Steven
 Marlton, NJ

Bobman, Steven M.
 Fife, WA

Borger, Gary L.
 Cherry Hill, NJ

Brennan, Michael Gavan
 St. Paul, MN

Bucknam Jr., Robert William
 Haddonfield, NJ

Burr, Scott Allen
 Miami, FL

Carson II, Loftus C.
 Austin, TX

Chang, Jekuk
 Seoul Korea

Conaghan, Stephanie A.
 Washington, DC

Costello, Christopher F.
 Medford, NJ

Davenport, Seth Isaac
 Towaco, NJ

Focht III, William Allen
 Naples, FL

Gallagher, Eileen L.
 Jersey City, NJ

Guyette, Kevin Francis
 Binghamton, NY

Hartman, Andrew L.
 Baltimore, MD

Hightower, Janet R.
 Atlanta, GA

Howard, James Elliot
 Brooklyn, NY

Inglis, Eric Andrew
 Morristown, NJ

Jessup, Matthew Davis
 Newark, NJ

Kades, Eric A.
 Williamsburg, VA

Kim, Yong-Jin T.
 Seoul Korea

Koenig, Peter John
 Washington, DC

Korsen, Elliott
 Princeton, NJ

Lawson, Kenneth
 Arlington, VA

Lehrer, Norman Elliot
 Cherry Hill, NJ

Lependorf, Michelle M.
 Princeton, NJ

Mahoney, Jeffrey John
 Flemington, NJ

Matteucci, Walter
 Overland Park, KS

McElroy, Patricia A.
 New Haven, CT

Meyer, Cynthia Leigh
 Aruada, CO

Mirsky, Ira Benjamin
 Washington, DC

Monahan, Russell Thomas
 Salt Lake City, UT

Murphy, Carol Elizabeth
 Springfield, VA

Oszustowicz, Leonard R.
 Arlington, VA

Paul, Michael G.
 Metuchen, NJ

Powers, Galen Dean
 Washington, DC

Reers, Richard L.
 Williston Park, NY

Rekant, Scott Edward
Monmouth Junction, NJ

Roberts, Victoria H.
Manchester, NH

Sandone, Kathleen Marie
Voorhees, NJ

Scott, April F.
Hackensack, NJ

Smith, Charles Miller
Morris Plains, NJ

Sullivan, Joseph Paul
Lake Villa, IL

Thomas Jr., Walter
Washington, DC

Troublefield, G. Glennon
Roseland, NJ

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 05-938. Filed for public inspection May 13, 2005, 9:00 a.m.]
