THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

Order Adopting Amendments to Pa.R.A.P. 311 and 342; No. 166 Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 29th day of June, 2005, upon the recommendation of the Appellate and Orphans' Court Procedural Rules Committees, the proposal having been published before adoption at 34 Pa.B. 5014 on September 11, 2004, and a Final Report to be published with this *Order*:

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to the Pennsylvania Rules of Appellate Procedure 311 and 342 thereto, are adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective 60 days after adoption.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 311. Interlocutory Appeals as of Right.

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

* * * * *

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

(9) *Other cases.* An order which is made appealable by statute or general rule.

* * * * *

(g) *Waiver of objections.*

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

(i) Under Subdivisions (a)**(1)—(7)**, **(a)(9)**, (b)(2) or (f) of this rule shall not constitute a waiver of the objection to the order and the objection may be raised on any subsequent appeal in the matter from a determination on the merits.

* * * * *

(iii) Under **[Subdivision] Subdivisions (a)(8) or** (e) of this rule shall constitute a waiver of all objections to such orders and any objection may not be raised on any subsequent appeal in the matter from a determination on the merits.

* * * * *

Explanatory Comment—2005

Orders determining the validity of a will or trust including, but not limited to, orders of the Orphans' Court following the grant or denial of probate by the Register of Wills are immediately appealable pursuant to the 2005 amendment of this rule. Prior to the 2005 amendment, the Superior Court often permitted an immediate appeal from such orders without determining the basis for an immediate appeal under the Rules of Appellate Procedure. See *Estate of Janosky*, 2003 Pa. Super. 230, 827 A.2d 512 (2003), and *Estate of Luongo*, 2003 Pa. Super. 171, 823 A.2d 942 (2003). However, in *Estate of Schmitt*, 2004 Pa. Super. 43, 846 A.2d 127 (2004), a panel of the Superior Court held that an order sustaining the Register's striking of a caveat was not immediately appealable as a final order under Pa.R.A.P. 341(b). In response to the *Schmitt* decision, the Appellate Court Procedural Rules Committee decided that while orders determining the validity of a will or trust are not strict final orders under Subdivision (b) of Rule 341, it is not practical to administer an estate or trust while there is a pending challenge to the validity of the instrument. Accordingly, a party seeking to probate an instrument, or to challenge the validity of an instrument, will be allowed to take an immediate interlocutory appeal as of right under Rule 311, and shall be bound by the waiver doctrine if such party does not file an immediate appeal. See the 2005 amendment to Subdivision (g) of this rule.

FINAL ORDERS

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

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

An order of the Orphans' Court Division making a distribution, or determining an interest in realty or personalty or the status of individuals or entities, shall be immediately appealable:

(1) upon a determination of finality by the Orphans' Court Division, or

(2) as otherwise provided by Chapter 3 of these rules.

Explanatory Comment—1976

See comment following Rule 341.

Official Note: **This rule was amended in 2001 to allow appeals from orders determining an interest in realty, personalty or status of individuals or entities, upon certification of the Orphans' Court judge. Prior to the 2001 amendment, this rule only permitted appeals from an order of distribution not**

final under Rule 341(b). The amendment to the rule was not intended to preclude immediate appeals in Orphans' Court matters as heretofore permitted under Rule 311 (Interlocutory Appeals as of Right) and Rule 313 (Collateral Orders).

However, Rule 342 may have been ambiguous in that regard because in *Estate of Sorber*, 2002 Pa. Super. 226, 803 A.2d 767 (2002), a panel of the Superior Court interpreted the 2001 amendment of Rule 342 to preclude immediate appeals from collateral orders unless determined to be final by the Orphans' Court judge. The holding in *Estate of Sorber*, to wit, that Rule 342 precludes collateral order appeals under Rule 313, is now superseded by the 2005 amendment to Rule 342.

The 2005 amendment provides that Rule 342 is not the exclusive means for appealing orders: (a) determining an interest in realty or personalty or the status of individuals or entities, or (b) making a distribution. An aggrieved party may appeal such orders under any other Rule in Chapter 3 of the Rules of Appellate Procedure to the extent that the order meets the requirements for appealability under any such rule.

FINAL COMMITTEE REPORT OF THE ORPHANS' COURT PROCEDURAL RULES COMMITTEE[1]

Background

In 1992, the Supreme Court of Pennsylvania amended Rule 341 to redefine final orders as "any order that disposes of all claims and all parties." See Pa.R.A.P., Rule 341(b)(1), 42 Pa.C.S.A. This amendment was intended to limit excessive and unnecessary interlocutory appeals that had proliferated under the "final aspect doctrine." Under that doctrine, a final order was any order that either, disposed of the entire case, or that, as a practical matter, put the appellant out of court. The 1992 amendments to Rule 341 added Subdivision (c), which provided for immediate appeals following a certification of finality where an order dismissed fewer than all claims and all parties. The discretion to certify an immediate appeal from such orders is circumscribed by specific criteria enumerated in the Note to Rule 341. Otherwise, where an order denies a motion to dismiss less than all claims and all parties, the aggrieved party generally has to wait until the end of the entire case, or attempt to appeal under one or more of the other rules in Chapter 3 that permit an appeal of "non-final" orders.[2]

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

In 1996, a panel of the Superior Court decided that an appeal filed by co-executors from an order approving the sale of the family farm and farmhouse was interlocutory under the 1992 amendment redefining final orders. See *In re Estate of Habazin*, 451 Pa. Super. 421, 679 A.2d 1293 (1996). Following input from the Orphans' Court bench and bar, the Supreme Court of Pennsylvania amended Rule 342 on December 20, 2000, effective January 2, 2001, to permit an immediate appeal from orders determining an interest in realty, personalty or individual rights upon a determination of finality by an Orphans' Court judge. The 2001 version of Rule 342 did not limit the Orphans' Court judge's discretion to determine the propriety of an immediate appeal. Nonetheless, the right to appeal depended on the aggrieved party persuading the Orphans' Court judge that such an appeal is appropriate to facilitate the ultimate resolution of the case. At that time, the only way to seek review of the denial of such a determination was a petition for review, addressed to the intermediate appellate court, alleging an abuse of discretion. Such petitions are reviewed narrowly and are very rarely granted.

Since 2001, Rule 342 has permitted interlocutory appeals in Orphans' Court proceedings while providing for judicial oversight so that an aggrieved party is not given an unfettered immediate right to appeal orders such as those disposing of incidental property, making small interim distributions or permitting or compelling the payment of debts and taxes.[3] Within the past two years, however, several decisions of the Superior Court raised the issue of whether the 2001 version of Rule 342 is sufficient to provide a comprehensive vehicle for interlocutory appeals in Orphans' Court matters.

For example, a number of Orphans' Court judges and practitioners expressed the view that appeals from orders removing executors or trustees, or refusing to do so, should be immediately appealable as of right. Prior to the 2001 amendment to Rule 342, such orders were considered immediately appealable as collateral orders. See *Estate of Georgiana*, 312 Pa. Super. 339, 458 A.2d 989 (1983), affirmed, 504 Pa. 510, 475 A.2d 744 (1984) (holding that such orders were separable from and collateral to the main cause of action, and that if an immediate appeal was not allowed, such orders would evade appellate review and result in the irreparable loss of important rights). See also *McGillick Foundation*, 537 Pa. 194, 642 A.2d 467 (1994) (where the Supreme Court ruled on the merits of a trustee's removal without addressing the jurisdictional issue of whether or not the Orphans' Court order was final and immediately appealable).[4]

However, in 2002, a Superior Court panel held that following the 2001 amendments to Rule 342, orders removing an executor or trustee, or declining to do so, were no longer immediately appealable. See *Estate of*

[1] The Orphans' Court Procedural Rules Committee has prepared this Final Committee Report for the convenience of the bench and bar. It is not a part of the Appellate Rules and has not been officially adopted by the Court.

[2] There are several other vehicles for appealing from "non-final" orders. Rule 311 permits interlocutory appeals as of right for certain specific kinds of orders, while Rules 312 and 1311 allow interlocutory appeals by permission under certain specific circumstances. Rule 313 allows an appeal as of right from collateral orders, and while such orders are not, strictly speaking, characterized as interlocutory, once the three prongs of the collateral order doctrine test are satisfied, they are not "final" in the sense of "ending the case as to all claims and all parties."

Finally, there is a procedure under Rule 341(c) for an aggrieved party to seek and obtain a "determination of finality" to permit an immediate appeal. Such determinations of finality are fictional in a sense because they are not final as to all claims and all parties, but are more closely akin to interlocutory orders appealable by permission. In order to be appealable, such orders must involve a controlling question of law in which an immediate appeal would facilitate resolution of the entire case. Subdivision (c) of Rule 341, somewhat like Rules 312 and 1311, also has strict standards as a predicate for a "determination of finality."

[3] Prior to the 2005 amendments, Rule 342 provided, as follows: "In addition to final orders pursuant to Subdivision (b) of Rule 341 or determined to be final under Subdivision (c) of Rule 341, an order of the Orphans' Court Division determining an interest in realty, personalty, the status of individuals or entities, or an order of distribution not final under Subdivision (b) of Rule 341, or determined to be final under Subdivision (c) of Rule 341, shall constitute a final order upon a determination of finality by the Orphans' Court Division."

[4] See *Geniviva v. Frisk*, 555 Pa. 589, 725 A.2d 1209 (1999) (where the Supreme Court of Pennsylvania clarified the meaning of the "importance" factor of the collateral order doctrine, stating that ". . .it is not sufficient that the issue be important to the particular parties. Rather, it must involve rights deeply rooted in public policy going beyond the particular litigation at hand." Id. at 598, 725 A.2d at 1214). Even absent the *Sorber* decision, the *Geniviva* case calls into question the continued use of the collateral order doctrine for appeals from Orphans' Court orders removing executors or trustees, or refusing to do so.

Sorber, 2002 Pa. Super. 226, 803 A.2d 767 (2002). In *Sorber*, the Superior Court panel interpreted Rule 342 to be the sole vehicle for appeal of "non-final" Orphans' Court orders determining an interest in realty, personalty or the status of individuals. *Sorber* held that the new Rule 342 had, in effect, overruled *Georgianna*.

Orphans' Court practitioners and judges commenting on the *Sorber* decision have unanimously stated their view that the inability to obtain immediate review of orders removing executors or trustees, or refusing to so remove them, substantially upsets the orderly administration of an estate. It is essential that there be a final determination that a competent and trustworthy fiduciary was in place to carry out, carefully and faithfully, the intentions of the testator or settlor. See *Georgianna*, *supra*.

The second decision calling the 2001 version of Rule 342 into question is *Estate of Schmitt*, 2004 Pa. Super. 43, 846 A.2d 127 (2004), appeal dismissed, _____ Pa. _____ , 857 A.2d 679 (2004), where a panel of the Superior Court sua sponte quashed an appeal from an Orphans' Court order striking a caveat to a will. The *Schmitt* panel, citing *Sorber*, held that an Orphans' Court order in a matter involving the validity of a will is not "final" until confirmation of the personal representative's final account. However, an arguably different result was reached by Superior Court panels in *Estate of Janosky*, 2003 Pa. Super. 230, 827 A.2d 512 (2003), and *Estate of Luongo*, 2003 Pa. Super. 171, 823 A.2d 942 (2003), appeal denied, 577 Pa. 722, 847 A.2d 1287 (2003). In both *Janosky* and *Luongo*, the panels did not sua sponte raise the issue of whether orders determining the validity of a will are appealable as final orders, and thus, in both cases, the Superior Court decided the appeals on their merits.

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

Some Orphans' Court judges and practitioners have suggested that orders determining the validity of a will or trust are "final orders" because they decide the only matter at issue in a will contest, to wit, the validity of the will or trust itself. The fact that there may be subsequent litigation involving the administration of a will or trust after its validity is determined by order of court does not mean that the aggrieved party should be deprived of the opportunity for an immediate appeal. Once the validity of the instrument is determined, the administration of the estate or trust may be routine and not result in a formal accounting. Consequently, there would be no final order approving the accounting, and hence, no final, appealable order. Simply put, the failure to allow an immediate appeal from orders determining the validity of a will may put the losing party out of court without any right of appeal if he or she must wait until "confirmation of the personal representative's final account." Since that party may not be a beneficiary under the document admitted to probate, he may not have standing to compel the filing of a final account.[5] Moreover, it would not be efficient to administer an estate under one instrument only to have it supplanted with a new instrument after a successful appeal challenging the initial instrument's validity.

Summary of Recommendation

As a result of the 2005 amendments, orders determining the validity of a will or trust are immediately appealable under Rule 311 as interlocutory appeals as of right.[6] In order to assure that parties will have the opportunity to take an immediate appeal as of right from such orders, the Appellate Court and Orphans' Court Procedural Rules Committees have recommended, and the Supreme Court has adopted, new Rule 311(a)(8).[7]

In order to assure that orders removing executors and trustees, or refusing to remove such fiduciaries, are immediately appealable as of right, as was the practice prior to the Superior Court panel decision in *Sorber*, the Supreme Court has amended Rule 342 to clarify that the 2001 amendment was not intended to overrule the *Georgianna* case, or to otherwise preclude an aggrieved party from pursuing immediate appeals in Orphans' Court matters from any order that meets the requirements of any other Rule in Chapter 3 of the Pennsylvania Rules of Appellate Procedure. The 2005 amendment to Rule 342 authorizes interlocutory appeals by permission under Rules 312 and 1311.

However, because the standard for permitting an appeal under Rule 342 is in the discretion of the trial judge, and because the standard for permitting an interlocutory appeal pursuant to Rules 312 and 1311 is much stricter, it is doubtful, as a practical matter, that those Rules will be used as alternative bases for the appeal of orders covered by Rule 342. Moreover, any final order in an Orphans' Court matter that ends a case as to all claims and all parties is still appealable as a final order pursuant to Rule 342(b).

[Pa.B. Doc. No. 05-1320. Filed for public inspection July 15, 2005, 9:00 a.m.]

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[5] For example, in the *Pennsylvania Probate, Estates and Fiduciaries Code*, ("the P.E.F. Code"), 20 Pa.C.S.A. § 101 et seq., personal representatives who act pursuant to a will that has been admitted to probate are protected. Section 793 of the P.E.F. Code states: "No appeal from an order or decree . . . concerning the validity of a will or the right to administer shall suspend the powers or prejudice the acts of a personal representative acting thereunder."

[6] The 2005 amendments were published in the following periodicals: *Pennsylvania Bulletin*, the *Pittsburgh Legal Journal*, *The Legal Intelligencer*, the *Pennsylvania Law Journal*, as well as on the internet website of the Administrative Office of Pennsylvania Courts. Comments were received and considered by the Committee, resulting in several changes ot the Final Recommendation submitted to the Court.

[7] Former Subdivision (a)(8) of Rule 311 concerned "other cases," in which an order was made appealable by statute or rule.

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rules 1910.16-4, 1910.16-6 and 1910.17; No. 430 Civil Procedural Rules; Doc. No. 5

Amended Order

Per Curiam:

And Now, this 17th day of May, 2005, Rules 1910.16-4, 1910.16-6 and 1910.17 of the Pennsylvania Rules of Civil Procedure are amended as follows.

This order shall be processed in accordance with Pa. R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.

* * * * *

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* Where children are residing with the spouse obligated to pay spousal support **or alimony pendente lite** (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support these children, the guideline amount of spousal support **or alimony pendente lite** shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support **or alimony pendente lite**, and awarding the net difference **either** to the non-custodial parent as spousal support/**alimony pendente lite or to the custodial parent as child support as the circumstances warrant**.

* * * * *

Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation.

* * * * *

(b) *Health Insurance Premiums.*

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it**, as long as a statutory duty of support is owed to the party who is paying the premium**. If the obligor is paying the premium, then **the** obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then **the** obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

(2) When the health insurance covers **a party to whom no statutory duty of support is owed or** other persons who are not parties to the support action or children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event this portion is not known or cannot be verified, it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not **owed a statutory duty of support, or are not** parties to, or the subject of the support action. The resulting amount is excluded from allocation.

[For example, if] ***Example 1.*** **If the parties are separated, but not divorced, and** Husband pays $200 per month **[for] toward the cost of** a health insurance policy **provided through his employer** which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing $200 by five persons and then multiplying the resulting amount of $40 per person by the two additional children, for a total $80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—$120. Since Husband is paying the premium, **and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S.A. § 4321,** Wife's percentage share of **the** $120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

Example 2. **If the parties are divorced and Father pays $200 per month toward the cost of a health insurance policy provided through his employer which covers himself, the parties' child and two additional children from a previous marriage, the portion of the premium attributable to Father and the two additional children will not be allocated between the parties. Thus, using the same calculations in Example 1, the amount of the premium attributable to Father and the two other children is $150 ($200 premium divided among four covered persons equals $50 per person multiplied by three) and that amount is deducted from the total cost of the premium, leaving $50 ($200 − $150 = $50) to be allocated between the parties.**

(3) Pursuant to 23 Pa.C.S.**A.** § 4326, the non-custodial parent bears the initial responsibility of providing health care coverage for the children if it is available at a reasonable cost on an employment-related or other group basis.

* * * * *

Official Note: Subdivision (b) of this **[Rule] rule** does not apply to Medical Assistance. See 23 Pa.C.S.**A.** § 4326(l). **The 2005 amendments to Rule 1910.16-6(b)(1) and (2) clarify that the portion of the insurance premium covering the party carrying the insurance cannot be allocated between the parties if there is no statutory duty of support owed to that party by the other party. See *Maher v. Maher,* 575 Pa. 181, 835 A.2d 1281 (2003) and 23 Pa.C.S.A. § 4321.**

(c) *Unreimbursed Medical Expenses.* Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes. **Notwithstanding the prior sentence, there shall be no apportionment of unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party.** The court may direct that obligor's

share be added to his or her basic support obligation, or paid directly to the obligee or to the health care provider.

* * * * *

[Explanatory Comment—2003

Subdivision (b)(2) has been amended to clarify that in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order.]

Rule 1910.17. Support Order. Effective Date. Change of Circumstances. Copies of Order.

(a) An order of support shall be effective from the date of the filing of the complaint **or petition for modification** unless the order specifies otherwise. **However, a modification of an existing support order may be retroactive to a date preceding the date of filing if the petitioner was precluded from filing a petition for modification by reason of a significant physical or mental disability, misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition.**

Official Note: **Subdivision (a) was amended in 2005 to include the statutory provision at 23 Pa.C.S.A. § 4352(e) that authorizes the court to enter a modified order that is effective to a date prior to the date on which the petition for modification was filed in certain circumstances. To the effect that the holding in *Kelleher v. Bush*, 832 A.2d 483 (Pa. Super. Ct. 2003), is inconsistent, it is superseded. See 23 Pa.C.S.A. § 4352(e) for additional provisions.**

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[Pa.B. Doc. No. 05-1321. Filed for public inspection July 15, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 4, 5 AND 10]

Order Promulgating New Rule 117; Amending Rules 131, 132, 430, 431, 441, 509, 519, 525, and 535; Approving the Revision of the Comment to Rule 520; and Renumbering Rule 117 as Rule 118 and Rule 118 as Rule 119; No. 324 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the June 30, 2005 promulgation of new Rule of Criminal Procedure 117; the changes to Rules of Criminal Procedure 131, 132, 430, 431, 441, 509, 519, 520, 525, and 535; and the renumbering of current Rule 117 as Rule 118 and current Rule 118 as Rule 119. The changes, which will be effective August 1, 2006, clarify the requirements for coverage to provide the services required under the Criminal Rules, and place the responsibility of ensuring sufficient availability of issuing authorities and other officials to provide the services required by the Criminal Rules on the president judge of each judicial district. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 30th day of June, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 33 Pa.B. 5607 (November 15, 2003) and 34 Pa.B. 4412 (August 14, 2004), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vols. 833 and 853), 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) New Rule of Criminal Procedure 117 is promulgated;

(2) Rules of Criminal Procedure 131, 132, 430, 431, 441, 509, 519, 525, and 535 are amended;

(3) the revision of the Comment to Rule of Criminal Procedure 520 is approved; and

(4) Rules of Criminal Procedure 117 and 118 are renumbered Rules 118 and 119 respectively, 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, 2006.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

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

PART A. Business of the Courts

Rule 117. Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.

(A) The president judge of each judicial district shall ensure sufficient availability of issuing authorities to provide the services required by the Rules of Criminal Procedure as follows:

(1) continuous coverage for the issuance of search warrants pursuant to Rule 203 and arrest warrants pursuant to Rule 513;

(2) coverage using one or a combination of the systems of coverage set forth in paragraph (B) to:

(a) conduct summary trials or set collateral in summary cases following arrests with a warrant issued pursuant to Rule 430(A) as provided in Rule 431(B)(3) and following arrests without a warrant as provided in Rule 441(C);

(b) conduct preliminary arraignments without unnecessary delay whenever a warrant of arrest is executed within the judicial district pursuant to Rule 516;

(c) set bail without unnecessary delay whenever an out-of-county warrant of arrest is executed within the judicial district pursuant to Rule 517(A);

(d) accept complaints and conduct preliminary arraignments without unnecessary delay whenever a case is initiated by an arrest without warrant pursuant to Rule 519(A)(1); and

(3) coverage during normal business hours for all other business.

(B) The president judge, taking into consideration the rights of the defendant and the judicial district's resources and coverage needs, by local rule promulgated pursuant to Rule 105, shall establish one or a combination of the following systems of coverage to provide the services enumerated in paragraph (A)(2):

(1) a traditional on-call system providing continuous coverage;

(2) an "after-hours court" or a "night court" staffed by an on-duty issuing authority and staff;

(3) a regional on-call system; or

(4) a schedule of specified times for after-hours coverage when the "duty" issuing authority will be available to conduct business.

(C) The president judge of each judicial district, by local rule promulgated pursuant to Rule 105, shall ensure that coverage is provided pursuant to Rule 520(B) to admit defendants to bail on any day and at any time in any case pending within the judicial district.

Comment

By this rule, the Supreme Court is clarifying the responsibility of president judges in supervising their respective judicial districts to ensure compliance with the statewide Rules of Criminal Procedure to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority. See also Rule 116 (General Supervisory Powers of President Judge) and Rule 131 (Location of Proceedings Before Issuing Authority).

Paragraph (A), derived from former Rule 132(A) (Continuous Availability), clarifies that it is the president judge's responsibility to make sure that there are issuing authorities available within his or her judicial district (1) on a continuous basis to issue search and arrest warrants, paragraph (A)(1); (2) pursuant to one or a combination of the systems of coverage enumerated in paragraph (B) to conduct summary trials and preliminary arraignments, and perform related duties, paragraph (A)(2); and (3) during normal business hours to conduct all other business of the minor judiciary, paragraph (A)(3). It is expected that the president judge will continue the established procedures in the judicial district or establish new procedures to ensure sufficient availability of issuing authorities consistent with this paragraph.

By providing the alternate systems of coverage in paragraph (B), this rule recognizes the differences in the geography and judicial resources the judicial districts.

An issuing authority is "available" pursuant to paragraph (A) when he or she is able to communicate in person or by using advanced communication technology ("ACT") with the person requesting services pursuant to this rule. See Rule 103 for the definition of ACT. Concerning the use of ACT, see Rule 118 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). See also Rules 203, 513, 518, and 540 providing for the use of ACT to request and obtain warrants and conduct preliminary arraignments.

Nothing in this rule limits an issuing authority from exercising sound judicial discretion, within the parameters established by the president judge pursuant to paragraph (B), in deciding how to respond to a request for services outside normal business hours. See, e.g., Rule 509, paragraphs (1) and (2), that authorize the use of summonses instead of warrants in certain court cases; and Rule 519(B) that requires the police officer to release a defendant arrested without a warrant in certain specified court cases.

In determining which system of coverage to elect, the president judge must consider the rights of the defendant, see, e.g. *Commonwealth v. Duncan*, 514 Pa. 395, 525 A.2d 1177 (1987), and the judicial district's resources and coverage needs, as well as the obligations of the police and attorney for the Commonwealth to ensure the defendant is brought before an issuing authority without unnecessary delay as required by law, see, e.g., Rules 431, 441, 516, 517, and 519. See also *Commonwealth v. Perez*, 577 Pa. 360, 845 A.2d 779 (2004).

When the police must detain a defendant pursuant to these rules, 61 P. S. § 798 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and city or county prisons."

The proceedings enumerated in paragraph (A)(2) include (1) setting bail before verdict pursuant to Rule 520(A) and Rule 540, and either admitting the defendant to bail or committing the defendant to jail, and (2) determining probable cause whenever a defendant is arrested without a warrant pursuant to Rule 540(C).

Pursuant to paragraph (C), the president judge also is responsible for making sure there is an issuing authority or other designated official available within the judicial district on a continuous basis to accept bail pursuant to Rule 520(B). The president judge, by local rule, may continue established procedures or establish new procedures for the after-hours acceptance of deposits of bail by an issuing authority, a representative of the office of the clerk of courts, or such other individual designated by the president judge. See Rule 535(A). Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside normal business hours.

When the president judge designates another official to accept bail deposits, that official's authority is limited under this rule to accepting the bail deposit, and under Rule 525 to releasing the defendant upon execution of the bail bond. Pursuant to Rule 535(A), the official is authorized only to have the defendant execute the bail bond and to deliver the bail deposit and bail bond to the issuing authority or clerk of courts.

The local rule requirements in paragraphs (B) and (C):

(1) ensure there is adequate notice of (a) the system of coverage, thereby providing predictability in the issuing authority's duty schedule, and (b) the official authorized to accept bail; (2) promote the efficient administration of justice; and (3) provide a means for the Supreme Court to monitor the times and manner of coverage in each judicial district.

The local rules promulgated pursuant to this rule should include other relevant information, such as what are the normal business hours of operation or any special locations designated by the president judge to conduct business, that will assist the defendants, defense counsel, attorneys for the Commonwealth, police, and members of the public.

Concerning other requirements for continuous coverage by issuing authorities in Protection from Abuse Act cases, see 23 Pa.C.S. § 6110 and Pa.R.C.P.D.J. 1203.

Official Note: Former Rule 117 adopted September 20, 2002, effective January 1, 2003; renumbered Rule 118

June 30, 2005, effective August 1, 2006. New Rule 117 adopted June 30, 2005, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. (July 16, 2005).

Rule **[117] 118**. Court Fees Prohibited For Two-Way Simultaneous Audio-Visual Communication.

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Official Note: New Rule 117 adopted September 20, 2002, effective January 1, 2003**; renumbered Rule 118 June 30, 2005, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the June 30, 2005 renumbering of Rule 117 as Rule 118 published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Rule **[118] 119**. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

* * * * *

Comment

* * * * *

Nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may waive other rights. See, e.g., Rule 602 Comment. Negotiated guilty pleas when the defendant has agreed to the sentence and probation revocation hearings are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings, **bench warrant hearings,** extradition hearings, and *Gagnon* I hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

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Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003**; renumbered Rule 119 and Comment revised June 30, 2005, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the June 30, 2005 renumbering of Rule 118 as Rule 119 and the revision of the second paragraph of the Comment published at 35 Pa.B. 3911 (July 16, 2005).

PART C. Venue, Location, and Recording of Proceedings before Issuing Authority

Rule 131. Location of Proceedings Before Issuing Authority.

(A) An issuing authority within the magisterial district for which he or she is elected or appointed shall have jurisdiction and authority **[at all times]** to receive complaints, issue warrants, hold preliminary arraignments, set and receive bail, issue commitments to jail, and hold hearings and summary trials.

* * * * *

Comment

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Paragraph (B) of this rule is intended to facilitate compliance with the requirement that defendants be represented by counsel at the preliminary hearing. *Coleman v. Alabama,* 399 U.S. 1**[, 90 S.Ct. 1999]** (1970).

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Official Note: Formerly Rule 156, paragraph (a) adopted January 16, 1970, effective immediately; paragraph (a) amended and paragraph (b) adopted November 22, 1971, effective immediately; renumbered Rule 22 September 18, 1973, effective January 1, 1974; renumbered Rule 131 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2002, effective July 1, 2002; amended May 10, 2002, effective September 1, 2002**; amended June 30, 2005, effective August 1, 2006**.

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 June 30, 2005 deletion in paragraph (A) of "at all times" published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Rule 132. **[Continuous Availability and]** Temporary Assignment of Issuing Authorities.

[(A) Continuous Availability

(1) The president judge of each judicial district shall be responsible for ensuring the availability at all times within the judicial district of at least one issuing authority.

(2) The issuing authority assigned to be on duty after business hours shall set bail as provided in Chapter 5 Part C, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.

(B) Temporary Assignment

(1)] (A) * * *

[(a)] (1) to satisfy the requirements of **[paragraph (A)(1)] Rule 117**;

[(b)] (2) * * *

[(c)] (3) * * *

[(d)] (4) * * *

* * * * *

[(2)] (B) * * *

[(3)] (C) A motion may be filed requesting a temporary assignment under **[paragraph (B)(1)] this rule** on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

[(4)] (D) A motion shall be filed requesting a temporary assignment under paragraph **[(B)(1)(c)] (A)(3)** whenever the attorney for the Commonwealth elects to proceed under Rule 544(B) following the refiling of a complaint.

Comment

[This rule is intended to impose the responsibility on the president judge to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority.

Paragraph (A)(2) requires an issuing authority on duty after business hours to set bail, as provided by law, and to accept deposits of bail in any case pending in any magisterial district within the judicial district, so that a "defendant may be admitted to bail on any date and at any time." Rule 520(B).

Nothing in this rule is intended to preclude judicial districts from continuing established procedures or establishing new procedures for the after-hours acceptance of deposits of bail by a representative of the clerk of courts' office.]

The provisions of former paragraph (A) (Continuous Availability) were incorporated into new Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail) in 2005.

Paragraphs **[(B)(1)(b)] (A)(2)** and **[(3)] (C)** make explicit the authority of president judges to assign issuing authorities when necessary to insure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as "change of venue" at the **[district justice] magisterial district** level. See, e.g., *Sufrich v. Commonwealth*, **68 Pa. Cmwlth. 42,** 447 A.2d 1124 (**[Pa. Cmwlth.]**1982).

The motion procedure of paragraph **[(B)(3)] (C)** is intended to apply when a party requests temporary assignment to insure fair and impartial proceedings. The president judge may, of course, order a response and schedule a hearing with regard to such a motion. However, this paragraph is not intended to require "a formal hearing . . . beyond the narrow context of a motion for temporary assignment of issuing authority to insure fair and impartial proceedings predicated upon allegations which impugn the character or competence of the assigned issuing authority and which seek the recusal of the assigned issuing authority." See *Commonwealth v. Allem*, **367 Pa. Super. 173,** 532 A.2d 845 (**[Pa. Super.]** 1987) (filing and service of the written motion and answer, and allowance of oral argument were more than adequate to meet the rule's requirements).

Paragraphs **[(B)(1)(c)] (A)(3)** and **[(4)] (D)** govern those situations in which the attorney for the Commonwealth, after refiling the complaint following the withdrawal or dismissal of any criminal charges at, or prior to, a preliminary hearing, determines that the preliminary hearing should be conducted by a different issuing authority. See also Rule 544 (Reinstituting Charges **[following] Following** Withdrawal or Dismissal). Under Rule 544, the president judge may designate another judge within the judicial district to handle reassignments.

* * * * *

Official Note: Formerly Rule 152, adopted January 16, 1970, effective immediately; amended and renumbered Rule 23 September 18, 1973, effective January 1, 1974; amended October 21, 1983, effective January 1, 1984; amended February 27, 1995, effective July 1, 1995; amended October 8, 1999, effective January 1, 2000; renumbered Rule 132 and amended March 1, 2000, effective April 1, 2001**; amended June 30, 2005, effective August 1, 2006**.

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 June 30, 2005 changes to the rule correlative to the changes in procedure in new Rule 117 published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of **[Arrest]** Warrant.

(A) **ARREST WARRANTS INITIATING PROCEEDINGS**

A warrant for the arrest of the defendant shall be issued when:

[(1) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested;

(2)] (1) * * *

[(3)] (2) * * *

[(4) the defendant has failed to appear for the execution of sentence as required in Rule 454(E)(3).]

(B) **BENCH WARRANTS**

(1) A bench warrant shall be issued when:

(a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or

(b) the defendant has failed to appear for the execution of sentence as required in Rule 454(E)(3).

(2) A **bench** warrant **[for the arrest of the defendant]** may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

[(C)] (3) A **bench** warrant **[for the arrest of the defendant]** may be issued when:

[(1)] (a) * * *

[(2)] (b) * * *

[(3)] (c) * * *

[(D)] (4) No warrant shall issue under paragraph **[(C)] (B)(3)** unless the defendant has been given notice in person or by first class mail that failure to pay the

amount due or to appear for a hearing may result in the issuance of **[an arrest] a bench** warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Comment

Personal service of a citation under paragraph **[(A)] (B)**(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue **[an arrest] a** warrant as provided in **either** paragraph (A)(1) **[and (2)] or (B)(1)**.

[An arrest] A bench warrant may not be issued under paragraph **[(A)] (B)**(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

* * * * *

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a **bench** warrant for the arrest of the defendant pursuant to paragraph (B)**(2)** in order to bring the defendant before the issuing authority for the summary trial.

The **[arrest] bench** warrant issued under paragraph **[(C)] (B)(3)** should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph **[(C)] (B)(3)**, the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph **[(D)] (B)(4)** to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

* * * * *

Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005**; amended June 30, 2005, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Rule 431. Procedure When Defendant Arrested With Warrant.

(A) **[A] When a** warrant **[of arrest] is issued pursuant to Rule 430 in a summary case, the warrant** shall be executed by a police officer as defined in Rule 103.

(1) If the warrant is executed between the hours of 6 a.m. and 10 p.m., the police officer shall proceed as provided in paragraphs (B) or (C).

(2) If the warrant is executed outside the hours of 6 a.m. and 10 p.m., unless the time period is extended by the president judge by local rule enacted pursuant to Rule 105, the police officer shall call the proper issuing authority to determine when the issuing authority will be available pursuant to Rule 117.

(B) **Arrest Warrants Initiating Proceedings**

(1) When **[a] an arrest** warrant **[of arrest]** is executed, the police officer shall either:

[(1)] (a) * * *

[(2)] (b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant; **or**

[(3) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; or]

[(4)] (c) if the defendant is unable to pay, cause the defendant to be taken without unnecessary delay before the proper issuing authority.

[(C)] (2) When the police officer accepts **[restitution,]** fine**[,]** and costs, or collateral under paragraphs (B)(1)**[, (2), or (3),] (a) or (b)** the officer shall issue a receipt to the defendant setting forth the amount of **[restitution,]** fine**[,]** and costs, or collateral received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

[(D)] (3) When the defendant is taken before the issuing authority under paragraph (B)**[(4)] (1)(c)**,

[(1)] (a) * * *

[(2)] (b) * * *

[(a)] (i) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial; **or**

[(b)] **(ii)** the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged, in which event the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information**[; or].**

[(c) the warrant was issued for the collection of restitution, fine, and costs after a guilty plea or conviction, in which event the issuing authority shall proceed as specified in Rule 456.

(3)] (c) * * *

(C) Bench Warrants

(1) When a bench warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant;

(c) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; or

(d) if the defendant is unable to pay, promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(3).

(2) When the defendant pays the restitution, fines, and costs, or collateral pursuant to paragraph (C)(1), the police officer shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant does not pay the restitution, fines, and costs, or collateral, the defendant promptly shall be taken before the proper issuing authority when available pursuant to Rule 117 for a bench warrant hearing. The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

Comment

For the procedure in court cases following arrest with a warrant **initiating proceedings**, see Rules 516 **[and],** 517**, and 518**.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. See also *Commonwealth v. Mason,* **507 Pa. 396,** 490 A.2d 421 (**[Pa.]** 1985).

Nothing in paragraph (A) is intended to preclude the issuing authority when issuing a warrant pursuant to Rule 430 from authorizing in writing on the warrant that the police officer may execute the warrant at any time and bring the defendant before that issuing authority for a hearing under these rules.

For what constitutes a "proper" issuing authority, see Rule 130.

Delay of trial under paragraph **[(D)(2)(b)] (B)(3)(b)(ii)** is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements).

* * * * *

When the police must detain a defendant pursuant to this rule, 61 P. S. § 798 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and city or county prisons."

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

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

For the procedures required before a **[an arrest] a bench** warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 430**[(D)](B)(4)**. When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

[For what constitutes a "proper" issuing authority, see Rule 130.]

For the procedures when a bench warrant is issued in court cases, see Rule 150.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Pursuant to Rule 117(B), when establishing the system of coverage best suited for the judicial district, the president judge may require defendants arrested on summary case bench warrants after hours to be taken to the established night court where the defendant would be given a notice to appear in the proper issuing authority's office the next business day or be permitted to pay the full amount of fines and costs.

Concerning the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.

For the procedures in summary cases within the jurisdiction of Philadelphia Traffic Court or Philadelphia Municipal Court, see Chapter 10.

Official Note: Rule 76 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005**; amended June 30, 2005, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the June 30, 2005 changes distinguishing between procedures for warrants that initiate proceedings and bench warrants procedures in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

PART D(2). Arrests Without a Warrant

Rule 441. Procedure Following Arrest Without Warrant.

* * * * *

(B) When a defendant has been arrested without a warrant, the arresting officer **[may, when the officer deems it appropriate,] shall** promptly release the defendant from custody when the following conditions have been met:

[(1) the defendant is a resident of the Commonwealth;

(2)] (1) the defendant poses no threat of immediate physical harm to any other person or to himself or herself; **and**

[(3)] (2) the arresting officer has reasonable grounds to believe that the defendant will appear as required**[; and].**

[(4) the defendant does not demand to be taken before an issuing authority.]

* * * * *

(C) When the defendant has not been released from custody under paragraph (B),

(1) the defendant shall be taken without unnecessary delay before the issuing authority **when available pursuant to Rule 117** where a citation shall be filed against the defendant, and

[(1)] (a) * * *

[(2)] (b) * * *

[(a)] (i) * * *

[(b)] (ii) * * *

[(3)] (2) * * *

Comment

This rule **[provides] was amended in 2005 to require** the arresting police officer **[with a choice to be made based upon the criteria set forth in paragraph (B). Under the rule, the police will either] to** promptly arrange for the defendant's release **[or, if it is necessary to detain the defendant, provide for immediate trial. Prompt release allows for the completion of any post-arrest procedures authorized by law] if the two criteria set forth in paragraph (B) are met.**

"Reasonable grounds" as used in paragraph (B)(2) would include such things as concerns about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the police officer's personal knowledge of the defendant.

Delay of trial under paragraph **[(C)(2)(b)] (C)(1)(b)(ii)** is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements). Although the defendant's trial may be delayed under this paragraph, the requirement that the defendant be taken without unnecessary delay before the proper issuing authority remains unaffected. See also Rules 408, 413, and 423.

* * * * *

For the procedure in court cases initiated by arrest without warrant, see Rule 518.

For the procedures in summary cases within the jurisdiction of Philadelphia Traffic Court or Philadelphia Municipal Court, see Chapter 10.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

When the police must detain a defendant pursuant to this rule, 61 P. S. § 798 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and city or county prisons."

Official Note: Rule 71 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995; amended May 14, 1999, effective July 1, 1999; renumbered Rule 441 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004**; amended June 30, 2005, effective August 1, 2006**.

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 June 30, 2005 changes concerning release of defendant following arrest and procedures when defendant is not released published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(1). Complaint Procedures

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

If a complaint charges an offense **[which] that** is a court case, the issuing authority with whom it is filed shall:

(1) issue a summons and not a warrant of arrest in cases in which the **most serious** offense charged is **[punishable by a sentence to imprisonment of not more than one year] a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802**, except as set forth in paragraph (2);

(2) issue a warrant of arrest when:

(a) **[the offense charged is punishable by a sentence to imprisonment of more than five years] one or more of the offenses charged is a felony or murder**; or

* * * * *

(c) **the issuing authority has reasonable grounds for believing that the defendant poses a threat of physical harm to any other person or to himself or herself; or**

(d) the summons has been returned undelivered; or

[(d)] (e) * * *

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

(3) issue a summons or a warrant of arrest, within the issuing authority's discretion, when the offense charged does not fall within any of the categories specified in paragraphs (1) or (2)**[; or] .**

[(4) when a defendant is charged with more than one offense and one of such offenses is punishable by a sentence to imprisonment for more than five years, issue a warrant of arrest.]

Comment

This rule provides for the mandatory use of a summons instead of a warrant in court cases except in **the** special circumstances **[as specified therein] enumerated in paragraphs (2) and (3)**.

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

When a defendant has been released pursuant to Rule 519(B), the issuing authority must issue a summons.

See Rule 1003 (Procedure in Non-Summary Municipal Court Cases), paragraph (C), for the procedures for issuing a summons and a warrant in Philadelphia.

It is expected when a case meets the requirements for the issuance of a summons, the police officer will proceed during the normal business hours of the proper issuing authority except in extraordinary circumstances. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

The procedure in paragraph (3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, etc. However, in all cases in which the defendant has been released pursuant to Rule **[518] 519**(B), a summons shall be issued.

Official Note: Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; Comment revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001; Comment revised August 24, 2004, effective August 1, 2005**; amended June 30, 2005, effective August 1, 2006**.

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 June 30, 2005 amendments concerning in which cases a summons or a warrant are issued published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

PART B(3). Arrest Procedures in Court Cases

(b). Arrests Without Warrant

Rule 519. Procedure in Court Cases Initiated by Arrest Without Warrant.

* * * * *

(B) RELEASE

(1) **[When the arresting officer deems it appropriate, the] The arresting** officer **[may] shall** 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:

(a) the most serious offense charged is a misdemeanor of the second degree **or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802;**

(b) **[the defendant is a resident of the Commonwealth;**

(c)] the defendant poses no threat of immediate physical harm to any other person or to himself or herself; **and**

[(d)] (c) the arresting officer has reasonable grounds to believe that the defendant will appear as required**[; and].**

[(e) the defendant does not demand to be taken before an issuing authority.]

(2) When a defendant is released pursuant to paragraph (B)(1), a complaint shall be filed against the defendant within 5 days of the defendant's release. Thereafter, **the issuing authority shall issue** a summons, not a warrant of arrest, **[shall be issued and the case] and** shall proceed as provided in Rule 510.

Comment

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

Paragraph (A) requires that the defendant receive a prompt preliminary arraignment. See Rule 540 (Preliminary Arraignment).

* * * * *

Paragraph (B)(1) **[provides an exception to the requirement that a defendant be afforded a preliminary arraignment after a warrantless arrest. It permits an] requires the** arresting officer, in specified circumstances, to release a defendant rather than take

the defendant before an issuing authority for preliminary arraignment. **[Prior to 1994, this exception applied to all DUI cases, but in other cases was only available at the election of individual judicial districts. With the 1994 amendments, the exception is now an option available to arresting officers statewide and] Prior to the 2005 amendments, the release provision in paragraph (B) was optional. With the 2005 amendments, release is mandatory if the three criteria are met, and this requirement** may not be **[prohibited] modified** by local rule.

"Reasonable grounds" as used in paragraph (B)(1)(c) would include such things as concerns about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the police officer's personal knowledge of the defendant.

Pursuant to paragraph (B), the police will either promptly arrange for the defendant's release or, if it is necessary to detain the defendant, proceed pursuant to paragraph (A). See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

Prompt release allows, of course, for the administration of any sobriety tests pursuant to the Vehicle Code, 75 Pa.C.S. § 1547, and for the completion of any procedures authorized by law.

With respect to "necessary" delay, see, e.g., *Commonwealth v. Williams*, **484 Pa. 590,** 400 A.2d 1258 (**[Pa.]** 1979).

[Appropriate circumstances for following the procedure under paragraph (B)(1) may vary. Among the factors that may be taken into account are whether the defendant resides in the Commonwealth, and whether he or she can safely be released without danger to self or others.]

By statute, **a defendant may not be released but must be brought before the issuing authority for a preliminary arraignment when a police officer has arrested the defendant for failure to comply with the registration requirements for sexual offenders, see 18 Pa.C.S. § 4915(E)(2), or** when a police officer has arrested **[a] the** defendant in a domestic violence case, **[the defendant may not be released but must be brought before the issuing authority for preliminary arraignment. See] see** 18 Pa.C.S. § 2711. See also 23 Pa.C.S. § 6113(c) of the Protection from Abuse Act.

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Official Note: Original Rule 118 and 118(a) adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 118 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 130 September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 102 and amended August 9, 1994, effective January 1, 1995; Comment revised September 26, 1996, effective immediately; renumbered Rule 518 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 519 and amended May 10, 2002, effective September 1, 2002**; amended June 30, 2005, effective August 1, 2006**.

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 June 30, 2005 amendments concerning in which cases a defendant must be promptly released published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

PART C. Bail

Rule 520. Bail Before Verdict.

* * * * *

Comment

* * * * *

See *Commonwealth v. Truesdale*, **449 Pa. 325,** 296 A.2d 829 (**[Pa.]** 1972), concerning the bail authority's discretion to refuse bail under paragraph (A).

Under paragraph (A), whenever the bail authority is a judicial officer in a court not of record, that officer must set forth in writing his or her reasons for refusing bail, and the written reasons must be included with the docket transcript.

Rule 117(C) requires the president judge to ensure coverage is provided to satisfy the requirements of paragraph (B).

Official Note: Former Rule 4001 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4002; amended January 28, 1983, effective July 1, 1983; Comment revised September 23, 1985, effective January 1, 1986; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 520. Present Rule 4001 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; Comment revised September 3, 1999, effective immediately; renumbered Rule 520 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised April 1, 2005, effective October 1, 2005**; Comment revised June 30, 2005, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the June 30, 2005 revision of the Comment adding a cross-reference to Rule 117(C) published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

PART C(1). Release Procedures

Rule 525. Bail Bond.

(A) A bail bond is a document **[executed by a defendant, and, when applicable, one or more sureties,]** whereby the defendant agrees that while at liberty after being released on bail, he or she will appear at all subsequent proceedings as required and comply with all the conditions of the bail bond.

(B) At the time the bail is set, the bail authority shall

(1) have the bail bond prepared; and

(2) sign the bail bond verifying the conditions the bail authority imposed.

(C) If the defendant is unable to post bail at the time bail is set, when the bail authority commits the defendant to jail, he or she shall send the prepared and verified bail bond and the other necessary paperwork with the defendant to the place of incarceration.

(D) When the defendant is going to be released, the defendant, and, when applicable, one or more sureties, shall sign the bail bond. The official who releases the defendant also shall sign the bail bond witnessing the defendant's signature.

[(B)] (E) * * *

[(C)] (F) The defendant shall not be released until he or she **[executes] signs** the bail bond.

[(D) A] (G) After the defendant signs the bail bond, a copy of the bail bond shall be given to the defendant, and the original shall be included in the record.

Comment

For the types of release and the conditions of release, see Rule 524.

Paragraph (G) requires the court official who accepts a deposit of bail and has the defendant sign the bail bond to include the original of the bail bond in the record of the case. See Rule 535(A) for the other contents of the record in the context of the bail deposit.

* * * * *

Official Note: Former Rule 4004 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 523. Present Rule 4004 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 525 and amended March 1, 2000, effective April 1, 2001**; amended June 30, 2005, effective August 1, 2006**.

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 June 30, 2005 changes clarifying the bail authority's responsibility concerning the preparation of the bail bond published with the Court's Order at 35 Pa.B. (July 16, 2005).

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

Rule 535. Receipt for Deposit; Return of Deposit.

(A) **[The issuing authority or the clerk of courts who accepts a deposit of cash in satisfaction of a monetary condition of bail shall give the depositor an itemized receipt, and shall note on the transcript or in the list of docket entries and the bail bond the amount deposited and the name of the person who made the deposit.] Any deposit of cash in satisfaction of a monetary condition of bail shall be given to the issuing authority, the clerk of courts, or another official designated by the president judge by local rule pursuant to Rule 117(C). The issuing authority, clerk, or other official who accepts the deposit shall give the depositor an itemized receipt, and shall note on the bail bond the amount deposited and the name of the person who made the deposit. The defendant shall sign the bail bond, and be given a copy of the signed bail bond.**

(1) When the issuing authority accepts **[such]** a deposit **of bail**, **the issuing authority shall note on the docket transcript the amount deposited and the name of the person who made the deposit. The issuing authority shall have** the deposit, the docket transcript, and a copy of the bail bond **[shall be]** delivered to the clerk of courts.

(2) When another official is designated by the president judge to accept a bail deposit, that official shall deliver the deposit and the bail bond to either the issuing authority, who shall proceed as provided in paragraph (A)(1), or the clerk of courts, who shall proceed as provided in paragraph (A)(3).

(3) When the clerk of courts accepts the deposit, the clerk shall note in the list of docket entries the amount deposited and the name of the person who made the deposit, and shall place the bail bond in the criminal case file.

(B) When the deposit is the percentage cash bail authorized by Rule 528, the depositor shall be notified that by signing the bail bond, the depositor becomes a surety for the defendant and is liable for the full amount of the monetary condition in the event the defendant fails to appear or comply as required by these rules.

* * * * *

Comment

This rule is not intended to change current practice.

When the president judge has designated another official to accept the bail deposit as provided in Rule 117, the other official's authority under Rule 117 and this rule is limited to accepting the deposit, having the defendant sign the bail bond, releasing the defendant, and delivering the bail deposit and bail bond to the issuing authority or the clerk of courts.

A deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be retained to pay for the defendant's court costs and/or fines. See *Commonwealth v. McDonald*, **476 Pa. 217,** 382 A.2d 124 (**[Pa.]** 1978).

Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside the normal business hours.

* * * * *

When cash bail that is deposited in a bank pursuant to paragraph (C) is retained by a county in an interest-bearing account, case law provides that the county retains the earned interest. See *Crum v. Burd*, **131 Pa. Cmwlth. 550,** 571 A.2d 1 (**[Pa. Commw.]** 1989), allocatur denied **525 Pa. 649,** 581 A.2d 574 (**[Pa.]** 1990).

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Official Note: Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September

13, 1995, effective January 1, 1996, and replaced by present Rule **[535] 4015**. Present Rule 4015 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000; amended March 3, 2004, effective July 1, 2004**; amended June 30, 2005, effective August 1, 2006**.

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 new paragraph (E) concerning the interplay with Rules **130(B) (former Rule 21(B))** and **555 (former Rule 300)** published with Court's Order at 30 Pa.B. 2219 (May 6, 2000).

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Final Report explaining the June 30, 2005 changes to the rule correlative to new Rule 117 published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

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

Rule 1000. Scope of Rules.

* * * * *

(B) Any procedure that is governed by a statewide **[rule of criminal procedure, but which] Rule of Criminal Procedure that** is not specifically covered in Chapter 10**[,] or by a Philadelphia local rule adopted pursuant to Rule 105** shall be governed by the relevant statewide rule.

* * * * *

Official Note: Rule 6000 adopted December 30, 1968, effective January 1, 1969; amended March 28, 1973, effective March 28, 1973; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1000 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; amended June 30, 2005, effective August 1, 2006**.

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 June 30, 2005 amendments to paragraph (B) concerning local rules published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

FINAL REPORT[1]

New Pa.R.Crim.P. 117, Amendments to Pa.Rs.Crim.P. 131, 132, 430, 431, 441, 509, 519, 525, and 535, Revision of the Comment to Pa.R.Crim.P. 520, and Renumbering Rule 117 as Rule 118 and Rule 118 as Rule 119

Coverage: Issuing Warrants; Preliminary Arraignment and Summary Trial; Arrests Without Warrant and Release; and Setting and Accepting Bail

On June 30, 2005, effective August 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Pa.R.Crim.P. 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail); amended Pa.Rs.Crim.P. 131 (Location of Proceedings Before Issuing Authority), 132 (Continuous Availability and Temporary Assignment of Issuing Authorities), 430 (Issuance of Arrest Warrant), 431 (Procedure When Defendant Arrested with Warrant), 441 (Procedure Following Arrest without Warrant), 509 (Use of Summons or Warrant of Arrest in Court Cases), 519 (Procedure in Court Cases Initiated by Arrest without Warrant), 525 (Bail Bond), and 535 (Receipt for Deposit; Return of Deposit); approved the revision of the Comment to Rule 520 (Bail Before Verdict); and renumbered current Rule 117 as Rule 118 and current Rule 118 as Rule 119. The changes clarify the requirements for coverage to provide the services required under the Criminal Rules, and place the responsibility of ensuring sufficient availability of issuing authorities and other officials to provide the services required by the Criminal Rules on the president judge of each judicial district.

I. INTRODUCTION

New Rule of Criminal Procedure 117 provides a clear set of procedures governing the requirements for providing adequate coverage by issuing authorities and other officials within the judicial districts to perform the services required by the Criminal Rules. In addition, the correlative changes to Rules 131, 132, 430, 431, 441, 509, 519, 520, 525, and 535 more clearly explain what the services are that require coverage.

As explained more fully in the following background discussion, these rule changes are the culmination of several years of work by

• the Criminal Procedural Rules Committee (the Committee)

• the Special Courts Administration Subcommittee of the Supreme Court's Intergovernmental Task Force to Study the District Justice System (the Subcommittee)

• the Supreme Court's District Justice Task Force Ad Hoc Committee (the Ad Hoc Committee) and

• a joint Subcommittee of Criminal Procedural Rules Committee members and District Justice Task Force Ad Hoc Committee members (the Joint Subcommittee).

The work of each of these groups identified the problems encountered by the judicial districts in meeting the current Rule 132 requirements that (1) the president judge of each judicial district must ensure the availability at all times within the judicial district of at least one issuing authority, paragraph (A)(1), and (2) the issuing authority assigned to be on duty after business hours shall set bail and shall accept deposits of bail in any case pending in any magisterial district within the judicial district. These rule changes, the product of a hard fought compromise, provide a workable resolution for these problems that is fair and equitable for defendants and issuing authorities specifically, and the bench, bar, law enforcement, and the public generally.

II. BACKGROUND

For a number of years, most recently in 2001, the Committee, pursuant to Rule 105 (Local Rules), has been

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

reviewing local rules that have limited the night time and weekend availability of issuing authorities. We learned from this review, in most cases, the president judges are implementing these local rules to accommodate specific problems with providing Rule 132 coverage within their judicial districts, such as geography,[2] unavailability of one or more magisterial district judges in their judicial districts,[3] and limited police resources.[4] Although the Committee thought these local rules may have some merit, we were concerned because the local rules conflicted with the requirements of paragraphs (A)(1) and (A)(2) of Rule 132 (Continuous Availability and Temporary Assignment of Issuing Authorities). After consulting with the president judges who had promulgated the local rules, we initiated a review of possible means to address their problems and concerns.

As the Committee was considering this matter, on November 1, 2001, the Court's Intergovernmental Task Force to Study the District Justice System released the Report of the Special Courts Administration Subcommittee. One of the issues the Court directed the Subcommittee to address was night and weekend duty coverage.[5] After completing its review, the Subcommittee recommended to the Court that changes be implemented that would provide a menu of coverage options from which president judges could choose in order to provide the required coverage, based on the after-hours responsibilities of magisterial district judges required by rule, case law, and statute, and the types of things for which a magisterial district judge is typically called out to handle.

Following the release of the Task Force's Report, the Court appointed the Ad Hoc Committee to develop implementation strategies for specific recommendations contained in the Task Force's Report, including the recommendation about night and weekend duty coverage. The Ad Hoc Committee met several times during 2002, and developed a draft of proposed changes to the Rule 132 Comment providing the president judges with a suggested menu of coverage options to use in meeting the Rule 132 requirements based on the needs of their respective judicial districts. The Court asked the Committee to review this proposal and directed both Committees to work together on this matter. In late 2002, a Joint Subcommittee of the two Committees was convened to develop a proposal that would incorporate the respective views of the Committee, the Subcommittee, and the Ad Hoc Committee.

The Joint Subcommittee debated at length the merits of the Ad Hoc Committee's proposal for a Rule 132 Comment revision and the Committee's suggestions for changes to Rule 132, and eventually settled on a compromise procedure the members agreed provides some flexibility to the president judges in determining the manner of coverage for their respective judicial districts, is fair to the defendants and the issuing authorities, and provides a mechanism for the Court to continue to monitor the various systems of coverage. The Joint Subcommittee submitted its recommendation to the Committee in March 2003.

At several meetings, the Committee reviewed the Joint Subcommittee's recommendation, as well as the Report of the Special Courts Administration Subcommittee of the Court's Intergovernmental Task Force to Study the District Justice System and the Ad Hoc Committee's proposal. Using the Joint Subcommittee's recommendation as the starting point, the Committee developed this proposal encompassing the goals of the Joint Subcommittee's recommendation. The Committee members believe the proposal (1) will alleviate the concerns articulated by some members of the Committee, and of the bench and bar, that any changes to the continuous availability requirements would lead to abuses in the methods of coverage within the judicial districts and denials of the defendants' rights to a prompt preliminary arraignment; (2) provides clear guidance to the president judges and magisterial district judges who have been struggling to comply with present Rule 132(A), giving president judges reasonable options and flexibility for providing the required coverage without unduly burdening the magisterial district judges or the judicial districts while encouraging continuous, "24/7," coverage, with the preference that the president judges continue current night courts and on-call systems; and (3) satisfies the directive from the Court to address night and weekend coverage.

III. DISCUSSION

Because the problems with providing coverage by issuing authorities identified by the Subcommittee and the Ad Hoc Committee stem from the Rule 132(A) requirements, the Committee began its analysis with Rule 132. We agreed the continuous availability provisions of Rule 132 raise two issues: (1) whether available "at all times" in paragraph (A)(1) means "24 x 7" availability in all cases; and (2) whether the bail requirement in paragraph (A)(2) means that issuing authorities must be the individuals who are to accept after-hour deposits of monetary bail. In order to understand the application of the availability requirement, the Committee, as did the Subcommittee and the Ad Hoc Committee,[6] looked to the Criminal Rules themselves, to the extent that the specific rules address when an issuing authority must be available. We noted the rules requiring coverage break down into four categories:

- Rules requiring continuous or "24/7" availability of an issuing authority.

- Rules requiring availability of an issuing authority outside normal business hours.

- Rules requiring availability of an issuing authority during official business hours.

- Rules requiring continuous or "24/7" availability of a court official.

(1) *Rules requiring continuous or "24/7" availability of an issuing authority:* We identified two rules that come within this category, Rules 203 (Requirements for Issuance) (search warrants) and 513 (Requirements of Issu-

[2] For example, some judicial districts are rural, with many mountainous roads that are difficult to traverse during the winter months, making the transport of defendants at night to the on-call district justice unsafe and difficult for the police.

[3] For example, in the less populated judicial districts, there are many fewer magisterial district judges to provide coverage, and when the one on-call magisterial district judge is located at the opposite end of the judicial district from the location of an arrest, the defendant and police can face travel times as long as 2 or 3 hours. In addition, when one magisterial district judge is ill and another on vacation, the remaining magisterial district judge ends up being on-call 24 hours a day for a week or two at a time, making it difficult for the magisterial district judge to properly perform his or her duties.

[4] For example, in the less populated judicial districts and the multi-county judicial districts, where the on-call duty magistrate could be located one or two hours away from the municipality where the offense occurred, when the municipality has only one or two police officers on duty, taking one away to transport the defendant before the duty magisterial district judge puts a significant strain on the limited police resources.

[5] The Court, in its directive to the Intergovernmental Task Force to Study the District Justice System, has acknowledged there is a need for some procedural changes in providing for afterhours coverage to alleviate some of the burdens on magisterial district judges and the strains on the judicial system encountered in some of the judicial districts while continuing to protect the rights of the defendants. The Court's directive was interpreted as suggesting that a relaxation of the twenty-four hour/seven day a week ("24/7") system would not be inappropriate as long as the changes are consistent with the rules and law.

[6] See, e.g., page 35 of the Report of the Special Courts Administration Subcommittee of the Court's Intergovernmental Task Force to Study the District Justice System.

ance) (arrest warrants).[7] Although there is no specific provision in either rule for when an issuing authority must be available to issue warrants, the consensus is that an issuing authority must be available whenever a search or arrest warrant is requested.

(2) *Rules requiring availability of an issuing authority outside normal business hours:* The rules in this category all affect the amount of time a defendant is detained following an arrest before appearing before the issuing authority, requiring the issuing authority to conduct an immediate trial in summary cases or a preliminary arraignment in court cases[8] without unnecessary delay or set collateral or bail. Included in this category are Rule 431(D)(1), (2) (Procedure When Defendant Arrested with Warrant) and Rule 441(C) (Procedure Following Arrest without Warrant) that require immediate trials or that collateral be set in summary cases following an arrest; Rule 516 (Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance) that requires the issuing authority to conduct a preliminary arraignment without unnecessary delay following execution of an arrest warrant within the county; Rule 517(A) (Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance) that requires the issuing authority to set bail without unnecessary delay following execution of an arrest warrant outside the county;[9] and Rule 519(A)(1) (Procedure in Court Cases Initiated by Arrest Without Warrant) that requires the issuing authority to receive complaints and conduct a preliminary arraignment without unnecessary delay following an arrest without a warrant.

(3) *Rules requiring availability of an issuing authority during official business hours:* The rules in this category require the issuing authorities to perform the functions of the office of the issuing authority but do not have the same impact on a defendant's liberty as the rules in category (2), and therefore these duties ordinarily will be performed during the normal business hours of the issuing authority's office. The list of rules is extensive, but examples include Rules 456 (Default Procedures: Restitution, Fines, and Costs) that requires the issuing authority to conduct an immediate default hearing or set bail whenever a defendant appears pursuant to a 10-day notice or is arrested on a warrant for failure to pay costs and fines in a summary case, and 430 (Issuance of Arrest Warrant) that provides the procedures for issuing arrest warrants in summary cases.

(4) *Rules requiring continuous or "24/7" availability of a court official:* A related category of coverage includes any rules that affect the defendant's liberty and therefore require availability on a continuous or "24/7" basis by a court official, but not necessarily the issuing authority. Rule 520 (Bail Before Verdict) fits into this category because it requires that a defendant to be admitted to bail on any day and at any time, but does not specifically require that it be an issuing authority who accepts the bail deposit.

From our discussions about these rules and Rule 132(A), and the input we received from magisterial district judges and common pleas court judges, the Committee realized there is a great deal of confusion about how the Rule 132(A) continuous availability requirements apply to these different Criminal Rules. The members agreed, if the rule governing the availability of issuing authorities was broken down into the categories we enumerate above, the confusion could be eliminated, the rule would provide more guidance to the bench and bar in determining the issuing authorities' responsibilities, and the rule would be helpful from an administrative perspective. We also thought the issue of continuous availability and the rule categorization would be easier to understand if the provisions are in a separate rule. Furthermore, Rule 132 is a rule specifically for issuing authorities.[10] With the inclusion of a category of rules applicable to more than issuing authorities, it makes sense to have a separate rule in the general business of the courts section, Chapter 1 Part A. Accordingly, the availability/coverage provisions in Rule 132(A) have been moved into a separate new rule, new Rule 117.[11] The title for this new rule, "Coverage: Issuance of Warrants; Preliminary Arraignments and Summary Trials; Setting and Accepting Bail," reflects the categories of services requiring coverage we have identified in the rules. We have used the new term, "coverage," to describe more generally the concept of an official being available to conduct the court's business and provide the services required by the rules.

A. *NEW RULE 117*

New Rule 117 retains the provisions from Rule 132(A) that place on the president judges the responsibility for ensuring that the coverage needs of the judicial districts are met. Paragraph (A) enumerates the coverage requirements for issuing authorities, separating the requirements into the three categories we identified above: (1) continuous, or "24/7," coverage by issuing authorities to handle search warrants and arrest warrants, paragraph (A)(1); (2) one of the systems of coverage provided in the rule to conduct summary trials and preliminary arraignments following arrests,[12] set collateral or bail, and accept complaints, paragraph (A)(2); and (3) for all other matters handled by the issuing authorities, coverage during normal business hours, paragraph (A)(3).[13]

Paragraph (B) sets forth the only systems of coverage that a president judge may chose from for the conduct of the proceedings enumerated in paragraph (A)(2).[14] The president judge is given the responsibility to select one or a combination of systems of coverage that will work the best in his or her judicial district. The rule makes it clear that the president judge must consider the rights of the defendant and the judicial resources and the needs of the judicial district in making this selection. Paragraph (B) also requires the president judge to promulgate a local rule pursuant to Rule 105 to enact the selected system of coverage.

The fifth paragraph of the Comment provides a gloss on the provisions of paragraph (B), emphasizing the importance of balancing the rights of the defendant with the judicial districts' resources and coverage needs, and the obligations of the prosecution. Also included in this

[7] The Committee also noted that, although not a Criminal Rule, disposition of emergency Protection From Abuse petitions, 23 Pa.C.S. § 6101 et seq., is another proceeding that necessitates continuous or "24/7" availability by an issuing authority.

[8] See also Rule 540 (Preliminary Arraignment) that permits an issuing authority to conduct the preliminary arraignment using two-way simultaneous audio-visual communication.

[9] Rule 518 authorizes the use of advanced communication technology for a preliminary arraignment or posting of bail when the warrant in executed outside the judicial district.

[10] Rule 132 is located in Chapter 1 Part C (Issuing Authorities, Venue, Location, and Recording of Proceedings).

[11] To accommodate new Rule 117, current Rule 117 would be renumbered Rule 118, and current Rule 118 would be renumbered Rule 119.

[12] At the preliminary arraignment, the issuing authority is required to set bail and if not previously done, to make a probable cause determination. These duties also are contemplated within the requirements of paragraph (A)(2), as explained in the Comment.

[13] We use the term "issuing authority" in Rule 117 to make it clear that the provisions of Rule 117 apply not only to magisterial district judges but to all members of the minor judiciary and common pleas court judges when sitting as magisterial district judges.

[14] The systems of coverage permitted in paragraph (B) are similar to the menu of options proposed by the Subcommittee in its Report to the Court. See page 34 et seq. of the Report of the Special Courts Administration Subcommittee of the Court's Intergovernmental Task Force to Study the District Justice System.

portion of the Comment are references to the statewide rule requirements for prompt proceedings and the pertinent case law to alert the president judges to the importance of these issues when establishing a system of coverage.

Paragraph (C) addresses the members' conclusion that Rule 520 does not require the magisterial district judge to personally handle the proffer of the bond or other security. The president judge is required to promulgate a local rule that provides for the continuous, or "24/7," coverage by the official or officials designated by the president judge to accept bail pursuant to Rule 520(B). The Comment explains that the designated official does not have to be limited to an issuing authority or an employee of the clerk of courts, and includes a cross-reference to Rule 535(A). See discussion below of the correlative amendments.

The Rule 117 Comment includes several other explanatory provisions.[15] As noted in the fourth paragraph, the use of advanced communication technology to facilitate providing the coverage required by paragraph (A) is encouraged. This provision also explains an issuing authority is "available" when he or she is able to communicate in person or by using advanced communication technology with the individual requesting services.

The seventh paragraph of the Comment cross-references 61 P. S. § 798 (Temporary Detention of Prisoners), that provides:

> Sheriffs, constables, members of the State constabulary, or other persons authorized by the laws of this Commonwealth to make arrests, hereafter shall have the use, for a period not to exceed forty-eight hours, of borough and township lockups and city or county prisons, for the detention of prisoners until they can be disposed of according to law, if found necessary by the officer in charge,

to provide guidance to the police when they must detain a defendant pursuant to the rules.[16]

The ninth paragraph of the Comment includes a provision cautioning, given the complexities of posting realty for bail, that the posting of real estate may not be feasible outside normal business hours.[17]

The eleventh and twelfth paragraphs highlight the importance and purpose of the local rule requirements in paragraphs (B) and (C), explaining in the eleventh paragraph that the properly promulgated local rules ensure the designation information is published and readily available to members of the bench, bar, law enforcement, and public, and provide the means for the Committee and the Court to monitor the systems of coverage. The twelfth paragraph recommends the president judges include in these local rules other relevant information such as the normal business hours of the issuing authorities or special locations that have been designated, thus providing adequate and easily accessible notice of this information.

Included as the last paragraph of the Comment is a reference to the continuous coverage requirements for issuing authorities to handle emergency petitions under the Protection from Abuse Act, 23 Pa.C.S. § 6110, and the Rule of Civil Procedure Governing Actions and Proceedings before District Justices 1203.

B. *CORRELATIVE CHANGES*

A number of correlative changes have been made that accommodate the procedures in new Rule 117(C). From our review of all the issues and concerns related to the continuous availability of issuing authorities, and the obvious confusion about what the rules' require, the Committee concluded several of the Criminal Rules should be amended to more clearly establish the coverage requirements for the procedures set forth in the rules. We also took this opportunity to streamline and update some of the arrest procedures in both summary and court case.

1. *Summary Case Arrest Procedures*

A major issue raised with the Committee concerns the continuous availability requirement as applied to summary trials—the requirement a defendant be taken before the proper issuing authority without unnecessary delay following an arrest—and the tension between the detention of defendants in summary cases and the availability of issuing authorities to conduct the summary trials. Communications with the Committee indicated strong views on both sides of the issue—those concerned about defendants in summary cases being unnecessarily detained pending the summary trial, and those concerned about the unnecessary burden on the magisterial district courts and the police in these cases involving less serious offenses. Sensitive to these concerns, the Committee explored possible changes to lessen the burden on the minor judiciary and police while protecting the rights of the defendant.

The Committee reviewed the summary warrant procedures in Rules 430 and 431, and noted that most of the cases when summary arrest warrants are authorized under Rules 430 and 431 are cases in which the defendant has failed to do something—failed to pay the fines and costs or failed to appear—cases more akin to the bench warrant cases in common pleas court. As with court cases, the Committee thought these summary bench warrant situations should be treated differently procedurally than the warrants issued to initiate summary cases. Although a defendant arrested pursuant to a bench warrant is entitled to a hearing within a reasonable amount of time, the Committee does not believe these cases fall within the constitutional requirement of appearing before the issuing authority without unnecessary delay that applies to arrests that initiate the proceedings.

Another aspect of the issues related to the summary warrant procedures concerns when the warrants are executed. From time to time, the Committee has examined the feasibility of limiting the execution of summary case arrest warrants to specific hours, such as between 6 am and 10 pm, similar to what other jurisdictions provide in their rules.[18] The Committee considered that the basis for summary case warrants ordinarily does not necessitate the warrant be executed at all hours; rather, it would be reasonable to establish a time range when the warrant may be executed, which could fall either during the normal business hours of the issuing authority or at such times that a defendant would not be unnecessarily detained.

a. *Rule 430*

Having agreed that the summary case rules should distinguish between warrants that initiate proceedings,

[15] The Comment is lengthy. The detail is necessary because new Rule 117 provides a significant change from what has been the rule for coverage by issuing authorities for at least 30 years. In addition, this area of law has been the source of much confusion and debate. The Committee believes providing the bench and bar with as much guidance as possible will aid in the smooth transition to the new procedures.

[16] The same cross-reference is included in the Comments to Rules 431 and 441.

[17] A similar cautionary provision is being added to the Rule 535 Comment.

[18] We also discussed a procedure used in other jurisdictions that requires the police officer to release the defendant on ROR when the warrant is executed after these hours. However, in view of the other changes the Committee is proposing, this suggestion was not deemed necessary.

"arrest warrants," and warrants issued when a defendant has failed to do something, "bench warrants," the Committee has divided Rule 430 into two sections: warrants to initiate summary proceedings and warrants that would be issued in all the other circumstances enumerated in Rule 430. Paragraph (A) addresses only the warrants that initiate proceedings, paragraphs (A)(2) and (A)(3) of the current rule. New paragraph (B) addresses bench warrants, incorporating the provisions of current Rule 430(A)(1), (B), (C), and (D).

b. *Rule 431*

Rule 431 currently sets forth the procedures to be used when a summary case warrant is executed. Several changes have been made to the rule that incorporate the new distinction between arrest warrants and bench warrants, and establish new procedures for bench warrants.

Paragraph (A) has been amended to be an introductory paragraph applicable to all summary case warrants issued for the arrest of the defendant. Tying the execution of summary case warrants to the Rule 117 coverage procedures, a time frame of 6 am to 10 pm has been established as the time when an issuing authority should be available to conduct the summary trial following the execution of a summary case warrant, paragraph (B), or to conduct the bench warrant hearing following the execution of a bench warrant, paragraph (C). The president judge is given the authority to provide by local rule that this time frame may be extended. Accordingly, when a warrant is executed between the hours of 6 am to 10 pm, the police officer is to proceed as provided in paragraphs (B) or (C). When a warrant is executed outside the hours of 6 am to 10 pm, the police officer is required to first call the issuing authority to find out when he or she will be available pursuant to Rule 117 to conduct the proceeding. The Committee believes establishing this time frame and requiring that the police officer communicate with the issuing authority before executing a warrant after-hours will alleviate many of the concerns expressed to the Committee by significantly reducing the number of times a issuing authority is called out after-hours to conduct a summary trial. The Comment includes the suggestion that the issuing authority may indicate on the warrant when the issuing authority will be available for the police officer to bring the defendant in for a summary trial or bench warrant hearing if the warrant is executed outside the hours of 6 am to 10 pm.

Paragraph (B) sets forth the procedures when the warrant initiates proceedings. The procedures are, for the most part, the procedures in current Rule 431. Noting the rule encourages the police officer to accept the defendant's plea and the fines and costs or collateral rather than taking the defendant before the issuing authority, the Committee agreed to limit the cases when the police officer may take the defendant in to those cases in which the defendant is unable to pay, further emphasizing that accepting the pleas and payments is the preferred procedure in summary cases.

Paragraph (C) sets forth the new bench warrant procedures. New paragraph (C)(1) enumerates the same options to be considered when executing a summary bench warrant that are in current Rule 431(B), with the three payment options set out first to encourage the police to accept payments rather than taking the defendant into custody. New paragraph (C)(2) is the same as current Rule 431(C).

Paragraph (C)(3) establishes the new procedures when a defendant is taken into custody on a bench warrant in a summary case, requiring the defendant to be taken before the proper issuing authority for a bench warrant hearing when the issuing authority is "available pursuant to Rule 117," and permitting the use of two-way simultaneous audio-visual communication to conduct the hearing. The Comment points out that the president judge, in determining the system of coverage for his or her judicial district pursuant to Rule 117, may require the defendant to be taken to night court if there is an established night court where the defendant would be given a notice to appear in the proper issuing authority's office the next business day or the opportunity to pay the full amount of fines and costs.

c. *Rule 441*

The changes to Rule 441 are the same as or comparable to the Rule 519 changes discussed more fully below—the prompt release provisions are mandatory if the criteria in paragraph (B) are met, the residency requirement is deleted as no longer necessary, and the meaning of "reasonable grounds" in paragraph (B)(3) is explained in the Comment.

In addition to the changes correlative to the Rule 519 changes, paragraph (C) has been amended by adding a reference to Rule 117, and the last sentence of the first paragraph of the Comment concerning completion of post-arrest procedures has been deleted because it is unnecessary and mischievous.

2. *Arrest Warrants in Court Cases*

A number of correlative changes have been made to Rules 509 (Use of Summons or Warrant of Arrest in Court Cases) and 519 (Procedure in Court Cases Initiated by Arrest Without Warrant) that address a major area of concern raised in correspondence with the Committee: what "continuous coverage" means in the context of arrests in court cases, and whether magisterial district judges are required to make themselves available immediately for every call for services from law enforcement, regardless of whether the nature of the matter really necessitates immediate availability.

The Committee noted that (1) the substantive and procedural requirements for a prompt preliminary arraignment are only triggered when there has been an arrest, and (2) Rules 509 and 519 provide for non-custodial proceedings—the use of summonses in Rule 509 and the release provisions in Rule 519[19]—in certain cases involving misdemeanors. After reviewing these "exceptions" to the arrest procedures, the current criteria in Rules 509 and 519 when these exceptions may be used, and the offenses that are graded misdemeanors, the Committee agreed Rules 509 and 519 should be amended to encourage the use of summonses whenever appropriate to reduce the number of cases in which an issuing authority is going to have to be available to conduct preliminary arraignments. The Committee considered providing the same grade of misdemeanor as the trigger for the mandatory summons provisions in Rule 509 and the trigger for the release provisions in Rule 519, and that the grade should be all first degree misdemeanors. However, given the seriousness of many of the first degree misdemeanors, the Committee ultimately decided to modify the outside limit for the triggers in Rules 509 and 519 to be misdemeanors of the second degree except for DUI cases in which case the outside limit would be a

[19] Rule 519 requires summons be issued following any release under this rule.

misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802.[20] See Rule 509(1) and Rule 519(B)(1)(a).

a. *Rule 509*

In addition to the changes to Rule 509(1) that require the issuing authority to issue a summons and not a warrant when the most serious offense charged is a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802, the following correlative changes have been made to Rule 509:

(1) paragraph (2)(a) restates the requirements for issuance of an arrest warrant to be when "one or more of the offenses charged is a felony or murder;"

(2) a new paragraph (2)(c) adds, as another consideration for when an arrest warrant should be issued rather than a summons, cases in which the defendant poses a threat of any physical harm to any other person or to himself or herself; and

(3) current paragraph (4) has been deleted as no longer necessary in view of the changes to paragraphs (1) and (2).

b. *Rule 519*

Several correlative changes also have been made to Rule 519(B). The procedure permitting the prompt release following an arrest without a warrant in Rule 519(B) was originally added to the rules in 1979 to apply only to drunk driving cases in the discretion of the police officer.[21] The reasons offered in the Committee's 1981 explanatory Report in support of the prompt release provision—the substantial burden the requirement of a prompt preliminary arraignment in misdemeanor cases places on the local police, the magisterial district judges, and the defendant—remain valid today.

Considering this background into the prompt release provisions and the issues related to arrests and the continuous availability of issuing authorities to conduct preliminary arraignments, the Committee reassessed the discretionary aspect of the release provision and the criteria that must be met for release. We agreed once the police officer determines the defendant meets the criteria for release, the prompt release should be mandatory. From the members' experience and from our research, we did not discern any reasons in support of maintaining the discretionary nature of the release provision. Accordingly, paragraph (B) has been amended to require the police officer to release the defendant when the defendant satisfies the criteria set forth in the rule.

In reviewing the five criteria set forth in paragraph (B)(1), the members concluded the residency requirement in paragraph (a) and the criteria that the defendant does not demand to be taken before the issuing authority in paragraph (e) are unnecessary because these two criteria are considerations when making a judgment whether there are reasonable grounds to believe the defendant will appear as required, the criteria in paragraph (d). In view of these considerations, Rule 519(B) has been amended to require the police officer to promptly release a defendant following an arrest without a warrant when (1) the most serious offense is a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802; (2) the defendant poses no threat of immediate physical harm to any other person or to himself or herself; and (3) the arresting officer has reasonable grounds to believe the defendant will appear as required. The Comment includes an explanation of what would be considered "reasonable grounds" as a guide to the police officer.

3. *Bail-related Procedures*

a. *Rule 525*

Several correlative amendments have been made to Rule 525. First, a new paragraph (B) has been added requiring the issuing authority to have the bail bond prepared at the time bail is set, and to sign the bail bond verifying the conditions the bail authority has imposed. New paragraph (C) directs the issuing authority to send the prepared and verified bail bond with the defendant to the jail in those cases in which the defendant is unable to post bail. Finally, as an added precaution against potential abuses, new paragraph (D) sets forth the additional requirement that the official who releases the defendant when the bail is posted must sign the bail bond indicating he or she released the defendant.

Rule 535

The correlative amendments to Rule 535 make it clear bail may be accepted by the issuing authority, the clerk of courts, or another official designated by the president judge. Paragraph (A) has been divided into subparagraphs setting forth the procedures applicable to the acceptance of bail deposits by the issuing authority, the clerk of courts, and the other official designated by the president judge. Paragraphs (A)(1) and (3) are taken from current paragraph (A). Paragraph (A)(2) is new and requires the other official to deliver the deposit and bail bond to the issuing authority or the clerk of courts to ensure proper processing of the bail deposit.

(C) *CONFORMING CHANGES*

1. *Rule 131*

The phrase "at all times" has been deleted from Rule 131(A) to avoid any possible misconstruction that this language in some way overrides what is provided in new Rule 117.

2. *Rule 132*

Rule 132(A) has been deleted since this is now covered in new Rule 117, and the title changed "Temporary Assignment of Issuing Authorities." In addition, the provisions in the Comment addressing paragraph (A) have been deleted.

3. *Rule 520*

The Rule 520 Comment has been revised to include a cross-reference to Rule 117(C), tying the requirements of paragraph (B) that "a defendant may be admitted to bail on any day and at any time" to the provisions Rule 117(C) that requires the president judge by local rule to ensure coverage is provided pursuant to Rule 520(B).

(D) *PHILADELPHIA MUNICIPAL COURT*

As we developed the continuous availability package, the Committee received communications from Philadelphia Municipal Court concerning the impact the proposed changes would have on that court. We agreed that summary and court cases in Philadelphia Municipal Court should not be subject to the changes being proposed for Rules 431, 441, 509, and 519. To make this clear in the rules, several cross-references to Municipal Court procedures have been added to the Comments as follows:

[20] Rule 519(B) as originally adopted by the Court applied only to DUI cases, and was subsequently expanded to apply to all cases in which the most serious offense was a misdemeanor of the second degree, the most serious grading for a DUI offense at that time. The DUI statute, 75 Pa.C.S. § 3802, was amended in 2004 to increase some of the penalties to misdemeanors of the first degree

[21] See discussion of the historical development of this procedure in the Committee's explanatory Reports at 9 Pa.B. 2326 (July 14, 1979), 11 Pa.B. 495 (January 31, 1981), and 24 Pa.B. 4342 (August 27, 1994).

(1) Rules 431 and 441: "For the procedures in summary cases within the jurisdiction of Philadelphia Traffic Court or Philadelphia Municipal Court, see Chapter 10."

(2) Rule 509: "See Rule 1003 (Procedure in Non-Summary Municipal Court Cases), paragraph (C), for the procedures for issuing a summons and a warrant in Philadelphia."

(3) Rule 519: "See Rule 1003 (Procedure in Non-Summary Municipal Court Cases) for procedures in Philadelphia Municipal Court."

Rule 1000(B) has been amended to specifically permit Philadelphia Municipal Court to enact local rule provisions that elaborate on their procedures that are different from the statewide procedures. This local rule requirement provides the Court and the Committee with the ability to monitor the local procedures as permitted by Rule 105.

[Pa.B. Doc. No. 05-1322. Filed for public inspection July 15, 2005, 9:00 a.m.]

[234 PA. CODE CH. 6]

Order Rescinding Rule 644; Promulgating New Rule 644; Amending Rule 646, and Approving the Revision of the Comment to Rule 647; No. 323 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the June 30, 2005 rescission of current Rule of Criminal Procedure 644 (Note Taking by Jurors); promulgation of new Rule of Criminal Procedure 644 (Note Taking by Jurors); amendments to Rule of Criminal Procedure 646 (Materials Permitted in Possession of the Jury); and revision of the Comment to Rule of Criminal Procedure 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions). New Rule 644, which will be effective August 1, 2005, permits jurors to take notes during criminal trials on a three-year trial basis, and establishes the procedures for note taking. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 30th day of June, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 33 Pa.B. 2164 (May 3, 2003), 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) Rule of Criminal Procedure 644 is rescinded;

(2) new Rule of Criminal Procedure 644 is promulgated;

(3) Rule of Criminal Procedure 646 is amended; and

(4) the Comment revision to Rule of Criminal Procedure 647 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.

Mr. Justice Nigro dissents.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(2). Conduct of Jury Trial

Rule 644. **[Note Taking by Jurors] (Reserved)**.

[The jurors shall not be permitted to take notes during the course of the trial.

Comment

This rule codifies the present Pennsylvania practice that discourages note taking by jurors. Cf. Fisher v. Strader, 160 A.2d 303 (Pa. 1960); *Thornton v. Weaber,* 112 A.2d 344 (Pa. 1955) (both involving civil cases); *Commonwealth v. Fontaine,* 128 A.2d 131 (Pa. Super. 1956) (involving a criminal case).]

Official Note: Rule 1113 adopted January 24, 1968, effective August 1, 1968; renumbered Rule 644 and Comment revised March 1, 2000, effective April 1, 2001; **Rule 644 rescinded June 30, 2005, effective August 1, 2005, and replaced by new Rule 644**.

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 rescission of present Rule 644 published with the Court's Order at 35 Pa.B. 3919 (July 16, 2005).

Rule 644. Note Taking by Jurors.

(A) When a jury trial is expected to last for more than two days, jurors shall be permitted to take notes during the trial for their use during deliberations. When the trial is expected to last two days or less, the judge may permit the jurors to take notes.

(1) The jurors shall not take notes during the judge's charge at the conclusion of the trial.

(2) The court shall provide materials to the jurors that are suitable for note taking. These are the only materials that may be used by the jurors for note taking.

(3) The court, the attorney for the Commonwealth, and the defendant's attorney, or the defendant if unrepresented, shall not request or suggest that jurors take notes, comment on the jurors' note taking, or attempt to read any notes.

(4) The notes of the jurors shall remain in the custody of the court at all times.

(5) The jurors may have access to their notes and use their notes only during the trial and deliberations. The notes shall be collected or maintained by the court at each break and recess, and at the end of each day of the trial.

(6) The notes of the jurors shall be confidential and limited to use for the jurors' deliberations.

(7) Before announcing the verdict, the jury shall return their notes to the court. The notes shall be destroyed by court personnel without inspection upon the discharge of the jury.

(8) The notes shall not be used as a basis for a request for a new trial, and the judge shall deny any request that the jurors' notes be retained and sealed pending a request for a new trial.

(B) The judge shall instruct the jurors about taking notes during the trial. At a minimum, the judge shall instruct the jurors that:

(1) the jurors are not required to take notes, and those jurors who take notes are not required to take extensive notes;

(2) note taking should not divert jurors from paying full attention to the evidence and evaluating witness credibility;

(3) the notes merely are memory aids, not evidence or the official record;

(4) the jurors who take few or no notes should not permit their independent recollection of the evidence to be influenced by the fact that other jurors have taken notes;

(5) the jurors may not show their notes or disclose the contents of the notes to other jurors until deliberations begin, but may show the notes or disclose the contents during deliberations;

(6) the jurors may not take their notes out of the courtroom except to use their notes during deliberations; and

(7) the jurors' notes are confidential, will not be reviewed by the court or anyone else, will be collected before the verdict is announced, and will be destroyed immediately upon discharge of the jury.

(C) This rule is rescinded three years from the effective date.

Comment

This rule was adopted in 2005 to permit the jurors to take notes during the course of any trial that is expected to last more than two days. Pursuant to this rule, except for trials expected to last two days or less, the jury may take notes as a matter of right without the permission of the court. See, e.g., ABA Standards For Criminal Justice, Second Edition, Standard 15-3.2 (Note taking by jurors) (1980). This is a temporary rule promulgated for the purpose of assessing whether juror note taking in criminal cases is beneficial to the system of justice in Pennsylvania.

The judge must instruct the jurors concerning the note taking. Paragraph (B) sets forth the minimum information the judge must explain to the jurors. The judge also must emphasize the confidentiality of the notes.

It is strongly recommended the judge instruct the jurors along the lines of the following:

> We will distribute notepads and pens to each of you in the event you wish to take notes during the trial. You are under no obligation to take notes and it is entirely up to you whether you wish to take notes to help you remember what witnesses said and to use during your deliberations.
>
> If you do take notes, remember that one of your responsibilities as a juror is to observe the demeanor of witnesses to help you assess their credibility. Do not become so involved with note taking that it interferes with your ability to observe a witness or distracts you from hearing the questions being asked the witness and the answers being given by the witness.
>
> Your notes may help you refresh your recollection of the testimony and should be treated as a supplement to, rather than a substitute for, your memory. Your notes are only to be used by you as memory aids and should not take precedence over your independent recollection of the facts.
>
> Those of you who do not take notes should not be overly influenced by the notes of other jurors. It is just as easy to write something down incorrectly as it is to remember it incorrectly and your fellow jurors' notes are entitled to no greater weight than each juror's independent memory. Although you may refer to your notes during deliberations, give no more or no less weight to the view of a fellow juror just because that juror did or did not take notes. Although you are permitted to use your notes for your deliberations, the only notes you may use are the notes you write in the courtroom during the proceedings on the materials distributed by the court staff.
>
> Each time that we adjourn, your notes will be collected and secured by court staff. Your notes are completely confidential and neither I nor any member of the court's staff will read your notes, now or at any time in the future. After you have reached a verdict in this case, your notes will be destroyed immediately by court personnel. Pennsylvania Bar Association Civil Litigation Update, *Juror Note-taking in Civil Trials: An Idea Whose Time Has Come*, Volume 5, No. 2 (Spring 2002), at 12.

Pursuant to paragraph (B)(6), the jurors are not permitted to remove the notes from the courtroom during the trial.

Pursuant to paragraph (A)(7), the judge must ensure the notes are collected and destroyed immediately after the jury renders its verdict. The court may designate a court official to collect and destroy the notes.

Official Note: Rule 1113 adopted January 24, 1968, effective August 1, 1968; renumbered Rule 644 and Comment revised March 1, 2000, effective April 1, 2001. Rule 644 rescinded June 30, 2005, effective August 1, 2005. New Rule 644 adopted June 30, 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. 1478 (March 18, 2000).

Final Report explaining the provisions of new Rule 644 allowing note taking by jurors published with the Court's Order at 35 Pa.B. 3919 (July 16, 2005).

Rule 646. Material Permitted in Possession of the Jury.

* * * * *

(C) The jurors shall be permitted to have their notes for use during deliberations.

Comment

This rule prohibits the jury from receiving a copy of the indictment or information during its deliberations. The rule also prohibits the jury from taking into the jury room any written or otherwise recorded confession of the defendant. In *Commonwealth v. Pitts*, **450 Pa. 359,** 301 A.2d 646, 650 n. 1 (**[Pa.]** 1973), the Court noted that "it would be a better procedure not to allow exhibits into the jury room which would require expert interpretation."

The 1999 amendment to paragraph (B) makes it clear that the trial court is prohibited from sending written jury instructions with a jury for use during deliberations. See *Commonwealth v. Karaffa*, **551 Pa. 173,** 709 A.2d 887

([Pa.] 1998), in which the Court held it was reversible error to submit written jury instructions to the jury.

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*, **425 Pa. Super. 61,** 624 A.2d 144 ([**Pa. Super.**] 1993).

Paragraph (C) was added in 2005 to make it clear that the notes the jurors take pursuant to Rule 644 may be used during deliberations.

* * * * *

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 June 30, 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 amendment concerning jurors' notes published with the Court's Order at 35 Pa.B. 3919 (July 16, 2005).

Rule 647. Request for Instructions, Charge to the Jury, and Preliminary Instructions.

* * * * *

Comment

* * * * *

Paragraph (D), added in 1985, recognizes the value of jury instructions to juror comprehension of the trial process. It is intended that the trial judge determine on a case by case basis whether instructions before the taking of evidence or at anytime during trial are appropriate or necessary to assist the jury in hearing the case. The judge should determine what instructions to give based on the particular case, but at a minimum the preliminary instructions should orient the jurors to the trial procedures and to their duties and function as jurors. In addition, it is suggested that the instructions may include such points as **note taking,** the elements of the crime charged, presumption of innocence, burden of proof, and credibility. Furthermore, if a specific defense is raised by evidence presented during trial, the judge may want to instruct on the elements of the defense immediately after it is presented to enable the jury to properly evaluate the specific defense. See also Pennsylvania Suggested Standard Criminal Jury Instructions, Chapter II (1979).

Official Note: Rule 1119 adopted January 24, 1968, effective August 1, 1968; amended April 23, 1985, effective July 1, 1985; renumbered Rule 647 and amended March 1, 2000, effective April 1, 2001**; Comment revised June 30, 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 Comment revision concerning the note taking instruction published with the Court's Order at 35 Pa.B. 3919 (July 16, 2005).

FINAL REPORT[1]

New Pa.R.Crim.P. 644; Amendments to Pa.R.Crim.P. 646; and Revision of the Comment to Pa.R.Crim.P. 647

Juror Note Taking

On June 30, 2005, effective August 1, 2005, upon the recommendation of the Criminal Procedural Rules Committee, the Court rescinded current Rule of Criminal Procedure 644 (Note Taking by Jurors); promulgated new Rule of Criminal Procedure 644 (Note Taking by Jurors); amended Rule of Criminal Procedure 646 (Materials Permitted in Possession of the Jury); and approved the revision of the Comment to Rule of Criminal Procedure 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions). New Rule 644 permits jurors to take notes during criminal trials on a three-year trial basis, and establishes the procedures for note taking.

I. INTRODUCTION

New Rule 644 and the correlative rule changes are the result of lengthy discussions, extensive and thorough research, and a nationwide evolution in the manner in which jury trials are conducted in both the criminal and civil sides of the courts.

The prohibition on juror note taking was the product of several common misconceptions held by many members of the judiciary and individuals who work within the judicial system concerning how jurors should approach trials to ensure impartial findings: jurors should be passive, and should not be permitted to take or use notes, or ask questions, during trial and deliberations; jurors should be "clean slates" and wipe all their life experiences, prejudices, and biases away at the start of trial; jurors should be "recorders" and should remember all information that is presented from case orientation through instructions, facts, and charges; and jurors should remain open-minded throughout the trial process. In the last twenty or so years, the extensive research into these misconceptions and studies of juror note taking has revealed that, in reality, active learners learn better, and for example, if jurors take a more active role during the trial process, they better learn about the trial procedures and the facts of the case they are trying; jurors have their lifetime of experiences, prejudices, and biases, and they view the trial through these experiences; people do not and cannot remember everything, and although they may like to recall all that is presented to them during a trial, their memories are selective; and jurors begin to construct a "story" in their minds from the moment they begin to hear information concerning the trial.

II. BACKGROUND

During the past several years, the Committee has visited and revisited the concept of jury trial innovations generally, and specifically the issue of note taking by jurors. The Committee's interest in this review is kindled annually by the correspondence we receive from members of the bench, bar, and public suggesting that the prohibition on note taking should be removed. In fact, each time another jurisdiction has changed their rules, statutes, or case law to specifically authorize jurors to take notes

[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.

during trial, one regular correspondent has sent a request to the Committee to consider proposing that the note taking prohibition be lifted.

The Committee's current "re-review" of the note taking issue was undertaken in light of several factors: Pennsylvania is the only jurisdiction that does not permit note taking by jurors in criminal cases and to have an explicit prohibition on note taking by jurors; the issue of note taking by jurors has been receiving a lot of attention from the Legislature, the media, and some Pennsylvania trial judges;[2] and the members' own favorable experiences with note taking in other jurisdictions, including the federal courts. In addition, during the time of this re-review, the Court adopted the Civil Procedural Rules Committee's proposal permitting juror note taking in civil cases. See Pa.R.Civ.P. 223.2.

A. *Committee Rule History*

The issue of jurors taking notes was before the Committee as early as 1965 when the Committee suggested to the Court that note taking by jurors should be permitted in the discretion of the judge. However, after further consideration of this issue, including a thorough review of the case law,[3] although recognizing that benefits might inure to the judicial process through discretionary permission to take notes, when warranted by the type of evidence presented and accompanied by the proper instructions, the Committee in June 1967 reversed its recommendation explaining to the Court the Committee's view that a blanket prohibition would be easier to administer. In 1984 during a review of the jury trial rules, the Committee recommended to the Court that the rule prohibition concerning note taking by jurors be changed to a permissive rule that would allow jurors to take notes,[4] but the Court declined to adopt the recommendation.

B. *Research*

The Committee also researched other jurisdictions' rules, statutes, and case law, particularly our sister states;[5] consulted the studies and reports by "jury innovation experts;"[6] and had a presentation by some experts in the field on the current practices nationwide for note taking and other jury innovations.[7] All this research has revealed that note taking has been well accepted by the bench, bar, jurors, and parties, has had a positive effect on the trials in which it has been used, and has not caused problems or interruptions or delays in the trial process.

III. DISCUSSION OF RULE CHANGES

A. *New Rule 644*[8]

Because the prohibition on note taking by jurors has remained unchanged since 1968, and to emphasize the change to permit note taking, current Rule 644 prohibiting note taking has been rescinded, and new Rule 644 permitting note taking by jurors and establishing the procedures to effectuate note taking was promulgated.

Paragraph (A)

When the Committee published its explanatory Report for comment,[9] proposed paragraph (A) provided that juror note taking would be permitted in every case, and the jurors would decide for themselves whether to take notes. At the request of the Court that new Rule 644 conform with the provisions of Civil Rule 223.2, paragraph (A) has been modified to incorporate the same mandatory/discretionary distinction based on the anticipated length of trial as provided in Civil Rule 223.2(a)(1) and the Note, so jurors are permitted to take notes in all cases lasting three days or longer, and in cases lasting two days or less, juror note taking is permitted only in the discretion of the trial judge.

Paragraphs (A)(1) through (A)(8) set forth the requirements for juror note taking. Paragraph (A)(1) prohibits the jurors from taking notes during the judge's charge at the conclusion of the trial. This requirement was added to conform with Civil Rule 223.2(a)(2).

Paragraph (A)(2) requires the court to provide suitable note taking materials to the jurors, and that these "court supplied" materials are the only materials the jurors may use for note taking. This paragraph makes it clear that the jurors are not permitted to bring outside materials for note taking. For example, a juror could not bring in his or her laptop computer or palm pilot to "store" his or her notes—a practice the Committee thinks would be distracting to other jurors and problematic for the court to control the notes and protect the confidentiality of the notes.

Paragraphs (A)(4), (5), and (6) require the jurors' notes to remain in the custody of the court at all times, spell out when the jurors may have access to their notes, and emphasize the notes of the jurors are confidential and the use of the notes is limited to deliberations. These paragraphs make it clear that the notes of the jurors are the property of the court, and safeguard against misuse, whether intended or unintended, of the notes by ensuring the notes are maintained by the court.

Paragraphs (A)(3) and (A)(8), added to Rule 644 to conform with Civil Rule 223.2(d)(1) and (d)(2), are cau-

[2] See, for example, Pennsylvania Bar Association Civil Litigation Update, Hon. Thomas King Kistler & Hon. Terrence R. Nealon, *Juror Note-taking in Civil Trials: An Idea Whose Time Has Come*, Volume 5, No. 2 (Spring 2002), at 12.

[3] The prohibition on note taking in Pennsylvania evolved from three cases: *Thornton v. Weaber*, 380 Pa. 590, 112 A.2d 344 (1955); *Commonwealth v. Fontaine*, 183 Pa. Super. 45, 128 A.2d 131 (1956);and *Fisher v. Strader*, 399 Pa. 222, 160 A.2d 203 (1960). In *Thornton v. Weaber*, the Supreme Court firmly established the note taking prohibition with favorable reference to the Indiana Supreme Court's decision in *Cheek v. State*, 35 Ind. 492 (1871):

In a well-reasoned opinion the Supreme Court of Indiana spoke to this subject as follows: "The juror is to register the evidence, as it is given, on the tablets of his memory, and not otherwise. Then the faculty of the memory is made, so far as the jury is concerned, the sole depository of all the evidence that may be given; unless a different course be consented to by the parties, or the court. *Burrill Cir. Ev* (2d ed.) 108 and note (a). The jury should not be allowed to take the evidence with them to their room, except in their memory. It can make no difference whether the notes are written by a juror or by some one else. Jurors would be too apt to rely on what might be imperfectly written, and thus make the case turn on part only of the facts. (*Cheek v. State*, 35 Ind. 492, 495.)"

In *Fontaine*, the Superior Court reaffirmed the note taking prohibition articulated by the Supreme Court. Finally, in *Fisher v. Strader*, the Supreme Court reaffirmed its decision in *Thornton v. Weaber*, again relying on *Cheek*. (Note: on December 21, 2001, Indiana Rule 20 (Preliminary Instructions) that recognizes juror note taking by requiring trial courts to give the instruction that jurors may take notes was adopted, effective January 1, 2003, after the Indiana Courts since 1970 had eroded the holding in *Cheek* finding no authority in support of the rule prohibiting juror note taking announced in *Cheek*. See *Stevenson v. State*, 742 N.E.2d 463 (Ind. 2001), *Maxie v. State*, 481 N.E.2d 1087 (Ind. 1985), and *Dudley v. State*, 263 N.E.2d 161 (Ind. 1970)).

[4] See Committee's Explanatory Report at 14 Pa.B. 3359 (September 29, 1984). At that time, the Committee was exploring various jury innovations and had been conducting limited, controlled experiments (by the judges on the Committee, with the consent of the parties, followed by exit questionnaires) with juror questions and tape recorded jury instructions.

[5] New York; New Jersey; Delaware; Maryland; West Virginia; Ohio; Massachusetts; and Kentucky.

[6] See, e.g., Larry Heuer and Steven Penrod, "Increasing Juror Participation in Trials Through Notetaking and Question Asking," 79 *Judicature* 256 (1996), Larry Heuer and Steven Penrod, "Tweaking Commonsense," 3 *Psych. Pub. Pol. and L.* 259 (1997), G. Thomas Munsterman, Paula L. Hannaford, and G. Marc Whitehead, *Jury Trial Innovations* at pp. 141-143 (1997), American Judicature Society, *Toward More Active Juries: Taking Notes and Asking Questions* (1991), B. Michael Dann, "Learning Lessons and Speaking Rights: Creating Educated and Democratic Juries, 68 *Ind. L.J.* 1229 (1993), B. Michael Dann, "Free the Jury," 23 NO.1 *Litigation* 5 (1996).

[7] The presenters were G. Thomas Munsterman, Director for Jury Studies at the National Center for State Courts, Hon. B. Michael Dann, Visiting Fellow at the National Institute of Justice, and Hon. Barry Schneider, Trial Judge in Phoenix, AZ.

[8] New Rule 644 is substantively in conformity with Civil Rule 223.2 thereby providing a standard, uniform procedure for juror note taking in civil and criminal cases. However, because the Criminal Rules and Civil Rules historically have been different in style and format, Rule 644 is stylistically and cosmetically consistent with the Criminal Rule format.

[9] See 33 Pa.B. 2165 (May 3, 2003).

tionary provisions that specifically prohibit the attorneys or the defendant from suggesting the jurors take notes or trying to read the notes, and from using the notes for post-trial challenges.

Finally, paragraph (A)(7) requires that, before the verdict is announced, the jury must return their notes to the court, and the court personnel must destroy the jurors' notes upon discharge of the jury. This procedure ensures confidentiality of the notes, and also prevents the notes from becoming the subject of appeals.

Paragraph (B)

Paragraph (B) requires that the judge instruct the jurors about taking notes during the trial. Because of the significant change in practice the new procedure establishes, paragraph (B)(1)—(7) sets forth specific areas of instruction, comparable to the requirements set forth in Civil Rule 223.2(b), including: 1) taking notes is the juror's decision; 2) the importance of not allowing the note taking to interfere with the juror's observation of the proceedings; 3) parameters for using the notes; 4) confidentiality, security, and destruction of the notes. This is the minimum information the judge must explain to the jurors during the instructions.

The Comment augments the jury note taking instructions required by the new rule by setting forth a suggested set of jury instructions related to the jurors taking notes,[10] instructions we believe will provide guidance to the judges as they prepare their juror instructions in this new and important area of procedure.

Paragraph (C)

Paragraph (C) sets forth the three-year sunset provision the Court has imposed to provide adequate opportunity to study juror note taking in criminal cases.

B. *Correlative Changes: Rules 646 (Material Permitted in Possession of the Jury) and Rule 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions)*

The Committee also is recommending correlative changes to Rules 646 and 647. Rule 646 includes a new paragraph (C) that makes it clear the jury may take their notes with them for use during deliberations. The Comment to Rule 647 has been changed to also include as "suggested preliminary instructions" that the trial judge include instructions on note taking.

[Pa.B. Doc. No. 05-1323. Filed for public inspection July 15, 2005, 9:00 a.m.]

[10] The *Handbook of Pennsylvania Trial Judges* also advocates note taking and includes a suggested jury note taking instruction that is similar to the suggested note taking instruction the Committee has included in the new Rule 644 Comment.

Procedure Governing Petition And Motion And Practice, and the subsequent amendment thereto by Order entered on January 4, 2005, which follows, it is hereby *Ordered* that Berks County Rules Of Civil Procedure 206.5(d), 206.7(d), 207, 208, 1028(a) and 1028(c), are *Rescinded* in their entirety and made null and void effective this date, but no rights acquired thereunder shall be disturbed.

The District Court Administrator of Berks County is further *Ordered* and *Directed* to do the following:

1. File ten (10) certified copies of this Order with the Administrative Office of Pennsylvania Courts for distribution in accordance with Pa.R.J.A. 103(c);

2. File two (2) certified copies of this Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

3. File one (1) certified copy of this Order with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania;

4. File one (1) certified copy of this order with the Berks County Law Library; and

5. Have other, non-certified copies of this Order continually available for public inspection and copying.

By the Court

ARTHUR E. GRIM,
President Judge

Administrative Order Adopting and Establishing Effective Date for Rules of Court Governing Petition and Motion Practice; No. 98-8009 Prothonotary; No. 1-MD-2005 Clerk of Courts

Order

And Now, this 4th day of January, 2005, it is hereby *Ordered* that Rule 208.3(b)(1) of the Berks County Rules Of Civil Court Governing Petition And Motion Practice, as adopted and approved by the 23rd Judicial District on June 15, 2004, is amended to read as follows:

> (1) motions which do not involve disputed facts for which a record must be developed shall proceed in accordance with B.R.C.P. 211.1 through 211.7, inclusive, which can be found at the Berks County Website, www.co.berks.pa.us/courts.

By the Court

ARTHUR E. GRIM,
President Judge

[Pa.B. Doc. No. 05-1324. Filed for public inspection July 15, 2005, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BERKS COUNTY

Administrative Order Relative to Amendment of Rules of Civil Procedure; No. 98-8009 Prothonotary; No. 1-MD-2005 Clerk of Courts

Order

And Now, this 18th day of May, 2005, as a result of the approval and adoption of the Berks County Rules Of Civil

DELAWARE COUNTY

Amendment to Local Rule 1920.54 Petitions for Leave to Withdraw as Counsel, Reconsideration and Appeal of Decisions Rendered by the Master in Equitable Distribution; 05-193

Order

And Now, to wit, this 21st day of June, 2005, it is hereby Ordered that Delaware County Local Rule 1920.54 is *Amended* to provide as follows:

(J)(i) In cases assigned to the Equitable Distribution Masters for disposition, petitions filed by counsel seeking

Leave to Withdraw as Counsel shall be filed pursuant to Local Rule 206.8. All Petitions filed by Counsel seeking Leave to Withdraw as Counsel, and the Certification required in connection therewith, shall be filed at least ten (10) days prior to any scheduled proceeding before the Equitable Distribution Master.

(ii) At the time of the filing of the Petition, or prior to the Hearing Date assigned thereto, petitioning counsel, when appropriate, may file a Certification reporting that all parties and counsel have been notified of the filing of the Petition, and that there is no opposition thereto. Upon the filing of such a Certification, the matter shall be removed from the Hearing List, and the Order submitted with the Petition shall be entered as a matter of course.

(K)(i) The parties to a Decision of an Equitable Distribution Master shall have the right to seek Reconsideration of the Decision by the filing of a detailed Petition within fourteen (14) days of the date of entry of the Decision. Grounds for Reconsideration shall be limited to miscalculation, failure of the Master to consider specific assets or liabilities, and other or similar errors. Reconsideration shall not lie in order to permit re-litigation by the parties of an award or denial of Alimony or Counsel Fees or Costs, the percentage of division, or other issues related to the dispositive plan decided-upon by the Master.

The Petition for Reconsideration shall be referred immediately to the Master making the Decision for disposition. Filing of the Petition shall not, in and of itself, serve to stay the time for Appeal. Grant of the Petition for Reconsideration shall act as a Supersedeas of all matters.

(ii) The parties to a decision of an Equitable Distribution Master shall have the right of Appeal from the Decision of the Equitable Distribution Master by the filing of a Request for Hearing De Novo within twenty (20) days of the date of entry of the Decision.

(iii) A party filing an Appeal of a Decision of the Equitable Distribution Master shall pay a fee to the Office of Judicial Support in the amount of Three Hundred Dollars ($300.00) in consideration thereof.

By the Court

KENNETH A. CLOUSE,
President Judge

[Pa.B. Doc. No. 05-1325. Filed for public inspection July 15, 2005, 9:00 a.m.]

WESTMORELAND COUNTY
Adopting Rule W1910.11; No. 3 of 2005

Order

And Now, this 29th day of June, 2005, *It Is Hereby Ordered* that Westmoreland County Rule of Civil Procedure W1910.11 is adopted.

By the Court

DANIEL J. ACKERMAN,
President Judge

W 1910.11 Office Conference.

(a) The noncustodial parent should be prepared to pay the accumulated support due (arrearages) at the time of the conference.

(1) All accumulated support due from the entry of the complaint is due immediately upon entry of the temporary or consent support order.

(2) Upon verification, credit towards accumulated support due may be given to the defendant for direct payments to the plaintiff made prior to or at the conference.

(3) If an order is not entered at the time of the conference, payment of accumulated support due up to the date the order is received is due immediately upon receipt of the order.

(b) The filing of a Petition for a de novo proceeding before a hearing officer shall not stay payment of accumulated support due or payments pursuant to the temporary order.

(c) When a wage withholding order is issued, the defendant shall make payments to the State Collection and Disbursement Unit (SCDU) until payroll deductions begin.

[Pa.B. Doc. No. 05-1326. Filed for public inspection July 15, 2005, 9:00 a.m.]

WESTMORELAND COUNTY
Adopting Rule W1910.21; No. 3 of 2005

Order

And Now, this 29th day of June, 2005, *It Is Hereby Ordered* that Westmoreland County Rule of Civil Procedure W1910.21 is adopted.

By the Court

DANIEL J. ACKERMAN,
President Judge

W1910.21 Support Order. Enforcement. Withholding of Income.

Pursuant to Pa.R.C.P. 1910.21(f), upon review of the Domestic Relations Section and without the need of a hearing, the DRS may administratively assess a payment of no more than 15% of the obligation toward any arrearages, current or future.

[Pa.B. Doc. No. 05-1327. Filed for public inspection July 15, 2005, 9:00 a.m.]
