THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 83]

Amendments to the Pennsylvania Rules of Disciplinary Enforcement Regarding the Client Security Fund

Notice is hereby given that the Pennsylvania Lawyers Fund for Client Security is considering recommending to the Supreme Court of Pennsylvania that the Court amend the Pennsylvania Rules of Disciplinary Enforcement, as set forth in Annex A. The proposed changes closely follow the Model Rules for Client Protection as adopted by the American Bar Association.

Interested persons are invited to submit written comments regarding the proposed amendments to the Executive Director, Pennsylvania Lawyers Fund for Client Security, 4909 Louise Drive, Suite 101, Mechanicsburg, PA 17055, on or before May 12, 2006.

By the Pennsylvania Lawyers Fund for Client Security

KATHRYN J. PEIFER, Esq.,
Executive Director

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter E. CLIENT SECURITY FUND

GENERAL PROVISIONS

Rule 501. Definitions.

The following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meaning given to them in this section:

* * * * *

"Covered **[attorney] Attorney**." An individual defined in Rule 512 (relating to covered attorney).

"Claimant." A person who makes application to the Board for a disbursement from the **[fund] Fund**.

"Dishonest **[conduct] Conduct**." Conduct defined in Rule 513 (relating to dishonest conduct).

* * * * *

"Reimbursable **[losses] Losses**." Losses defined in Rule 514 (relating to reimbursable losses).

Rule 502. Pennsylvania Lawyers Fund for Client Security.

(a) *General rule.* **[There is hereby established in the Administrative Office of Pennsylvania Courts] The Supreme Court shall establish** a separate fund to be known as the "Pennsylvania Lawyers Fund for Client Security." The **[fund] Fund** shall consist of such amounts as shall be transferred to the **[fund] Fund** pursuant to this subchapter. The **[fund] Fund** is created by contributions of the members of the Bar to aid in ameliorating the losses caused to clients and others by defalcating members of the Bar acting as attorney or fiduciary. No **[claimant] Claimant** or other person shall have any legal interest in such **[fund] Fund** or right to receive any portion thereof, except for discretionary disbursements therefrom directed by the Board or the Supreme Court, all payments from the **[fund] Fund** being a matter of grace and not of right. **There shall be no appeal from a decision of the Board. A decision of the Board to grant or deny payment to a Claimant shall not be subject to judicial review by any court.** The Supreme Court reserves the right to amend or repeal this subchapter.

(b) *Additional assessment.* Every attorney who is required to pay an annual assessment under **[Enforcement]** Rule 219 (relating to periodic assessment of attorneys; voluntary inactive status) shall pay an additional annual fee of $45.00 for **[the use of the fund] use by the Fund**. Such additional annual assessment shall be added to, and collected with and in the same manner as, the basic annual assessment, but the statement mailed by the Administrative Office pursuant to **[Enforcement]** Rule 219 shall separately identify the additional assessment imposed pursuant to this subdivision. All amounts received pursuant to this subdivision shall be credited to the **[fund] Fund**.

(c) *Transfers to fund.* The Administrative Office shall transfer to the **[fund] Fund** all bequests and gifts hereafter made for **[the use of the fund] use by the Fund**. **All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Board.**

(d) *Audit.* The Board shall annually obtain an independent audit of the **[fund] Fund** by a certified public accountant, and shall file a copy of such audit with the Supreme Court.

Rule 503. Pennsylvania Lawyers Fund for Client Security Board.

(a) *General rule.* The Supreme Court shall appoint a board to be known as the "Pennsylvania Lawyers Fund for Client Security Board" which shall consist of five members of the bar of this Commonwealth and two non-lawyer public members. One of the members shall be designated by the Court as Chair and another as Vice-Chair. **A majority of the members of the Board shall designate a member of the Board to act as Treasurer.**

* * * * *

(c) ***Vacancies.*** **Vacancies shall be filled by appointment by the Supreme Court for any unexpired terms.**

(d) *Powers.* The Board shall have the power and duty:

(1) To appoint hearing committees. Each committee shall consist of three members who are members of the bar of the Supreme Court or who are current members of the Board **[of the Pennsylvania Lawyers Fund for Client Security]**.

(2) To investigate applications by **[claimants] Claimants** for disbursements from the **[fund] Fund**.

(3) To authorize disbursements from the **[fund] Fund** and to fix the amount thereof.

(4) To determine in January of each year, and to report to the Supreme Court, whether the **[fund] Fund** is of sufficient amount to pay adjudicated claims and other anticipated claims.

* * * * *

(7) With prior approval of the Supreme Court to give financial assistance to Pennsylvania non-profit corporations whose purpose it is to assist alcohol or drug impaired Pennsylvania lawyers and judges to regain their health and to restore them to professional competence**, or to such other Supreme Court Committees or Boards as the Court may direct**.

(8) To prudently invest, per the direction of the Investment Advisory Board or the Court, such portions of the funds as may not be needed currently to pay losses, and to maintain sufficient reserves as appropriate.

(9) To prosecute claims for restitution to which the Fund is entitled.

[(d) ***Assistance and*** **] (e)** ***Compensation;*** *expenses***. [The Administrative Office shall provide necessary clerical assistance to the Board and shall pay the cost thereof and the necessary travel and other expenses of members of the Board and hearing committees out of the fund.] Members of the Board shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.**

(f) ***Conflict of interest.***

(1) A member of the Board who has or has had a client-attorney relationship or a financial relationship with a Claimant or a Covered Attorney shall not participate in the investigation or adjudication of a claim involving that Claimant or Covered Attorney;

(2) A member of the Board who has or has had a relationship, other than as provided in subparagraph (1) above, with a Claimant or Covered Attorney, or who has other potential conflicts of interest, shall disclose such relationship to the Board and, if the Board deems appropriate, that Board member shall not participate in the investigation or adjudication of a claim involving that Claimant or Covered Attorney;

(3) Claims based upon alleged Dishonest Conduct by members of the Board shall be submitted directly to the Supreme Court. Claims based upon alleged dishonest conduct by Counsel to the Board or Staff shall be submitted directly to the Board for disposition.

(g) ***Immunity.*** **Members of the Board, members of hearing committees, Counsel to the Board and Staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, Counsel to the Board or Staff relating to Dishonest Conduct by a Covered Attorney and all testimony given in a proceeding conducted pursuant to this subchapter shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402 or Rule 504 (relating to confidentiality).**

Official Note: **The provisions of subdivision (g) of the Rule recognize that the submission and receipt of applications by Claimants for disbursements from the Fund, and investigation, hearing, decision and disposition of such claims, are all parts of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court of Pennsylvania. The immunity from civil suit recognized to exist in subsection (g) is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding. Communications made or revealed in violation of the confidentiality requirements of Rules 402 and 504 are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity.**

Rule 504. **[Immunity] Confidentiality**.

(a) **[Claims submitted to the Board shall be confidential. Members of the Board, members of hearing committees, General Counsel and staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, General Counsel or staff relating to dishonest conduct by a covered attorney and all testimony given in a proceeding conducted pursuant to this subchapter shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony, except that such immunity shall not extend to any action that violates Rule 402 (relating to confidentiality).] All claims filed with the Fund shall be confidential and shall not be disclosed. This confidentiality requirement extends to all documents and things made and/or obtained, and all investigations and proceedings conducted and/or held by the Fund in connection with the filing of a claim.**

(b) **[Claims based upon alleged dishonest conduct by members of the Board shall be submitted directly to the Supreme Court. Claims based upon alleged dishonest conduct by General Counsel or staff shall be submitted directly to the Board for disposition.] Notwithstanding subsection (a), the Fund, after an award is approved, may disclose the following information:**

(1) the name of the Claimant (if Claimant has granted permission to disclose);

(2) the name of the Covered Attorney;

(3) the amount claimed;

(4) the amount awarded; and

(5) a summary of the claim.

(c) Nothing in this Rule shall preclude the Fund from utilizing confidential information in the release of statistical data or in the pursuit of the Fund's subrogation rights.

(d) This Rule shall not be construed to preclude disclosure, at any time during the investigation

and/or proceeding, for confidential information requested by the following entities:

(1) authorized agencies investigating the qualifications of judicial candidates;

(2) the Judicial Conduct Board and/or its counterpart in other jurisdictions conducting an investigation;

(3) authorized agencies investigating qualifications for government employment;

(4) federal courts and/or other jurisdictions investigating qualifications for admission to practice law;

(5) Office of Disciplinary Counsel and/or the Disciplinary Board investigating misconduct by the Covered Attorney;

(6) lawyer discipline agencies and client protection funds in other jurisdictions conducting an investigation; or

(7) law enforcement authorities investigating and/or prosecuting the Covered Attorney for a criminal offense.

(e) Requests for the release of confidential information by any person or entity, other than those identified in subsection (d), must be made to the Fund through the issuance of a subpoena; requests for same made under the Freedom of Information Act will not be honored.

[*Official Note:* **The provisions of subdivision (a) of the rule recognize that the submission and receipt of applications by claimants for disbursements from the fund, and the investigation, hearing, decision and disposition of such claims, are all parts of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court of Pennsylvania. The immunity from civil suit recognized to exist in subsection (a) is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding. Communications made or revealed in violation of the confidentiality requirement of Rule 402 are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity.]**

DISHONEST CONDUCT OF ATTORNEY

Rule 511. Reimbursement of certain losses authorized.

The Board in its discretion may authorize a disbursement from the **[fund] Fund** in an amount not exceeding the **[reimbursable loss] Reimbursable Loss** caused by the **[dishonest conduct of a covered attorney] Dishonest Conduct of a Covered Attorney**.

Rule 512. Covered attorney.

This subchapter covers conduct of **[an active] a** member of the bar of the Supreme Court, **including attorneys admitted pro hac vice and formerly admitted attorneys whose clients reasonably believed the former attorney to be licensed to practice when the Dishonest Conduct occurred,** an active foreign legal consultant, an active military attorney, or a person holding an active Limited In-House Corporate Counsel License, which conduct forms the basis of the application to the Board. The conduct complained of need not have taken place in this Commonwealth for application to the Board to be considered by the Board and an award granted, except that an award shall not be granted with respect to conduct outside of this Commonwealth of a foreign legal consultant, military attorney or person holding a Limited In-House Corporate Counsel License unless the conduct related to the provision of legal services to a resident of this Commonwealth.

Rule 513. Dishonest conduct.

For the purposes of this subchapter**,** dishonest conduct **[consists of wrongful acts or omissions committed by a covered attorney in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value] means wrongful acts committed by a Covered Attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money or property or other things of value**.

Rule 514. Reimbursable losses.

(a) *General rule.* For the purposes of this subchapter reimbursable losses consist of those losses of money, property or other things of value which meet all of the following requirements:

(1) The loss was caused by the **[dishonest conduct of a covered attorney] Dishonest Conduct of a Covered Attorney** when acting:

* * * * *

(2) The loss was that of money, property or other things of value which came into the hands of the **[covered attorney] Covered Attorney** by reason of having acted in the capacity described in paragraph (1) **of this subdivision**. **Consequential or incidental damages, such as lost interest, or attorney fees or other costs incurred in seeking recovery of a loss, may not be considered in determining the Reimbursable Loss.**

(3) The loss, or the reimbursable portion thereof, was not covered by any insurance or by any fidelity or similar bond or fund, whether of the **[covered lawyer] Covered Attorney**, or the **[claimant] Claimant** or otherwise.

(4) The loss was not incurred by:

(i) the spouse or other close relative, partner, associate, employer or employee of the **[covered attorney] Covered Attorney**, or a business entity controlled by the **[covered attorney] Covered Attorney**, or any entity controlled by any of the foregoing;

(ii) an insurer, surety or bonding agency or company, or any entity controlled by any of the foregoing; **[or]**

(iii) any government unit**[.];**

(iv) any financial institution that may recover under a "banker's blanket bond" or similar commonly available insurance or surety contract; or

(v) an individual or business entity suffering a loss arising from personal or business investments not arising in the course of the client-attorney relationship.

(5) **In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, and consistent with the purpose of the**

Fund, recognize a claim which would otherwise be excluded under this subchapter.

(6) In cases where it appears that there will be unjust enrichment, or the Claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

(7) A payment from the **[fund] Fund**, by way of subrogation or otherwise, will not benefit any entity specified in paragraph (4) **of this subdivision**.

(b) *Maximum recovery*. The maximum amount which may be disbursed from the **[fund] Fund** to any one **[claimant] Claimant** with respect to the **[dishonest conduct of any one covered attorney] Dishonest Conduct of any one Covered Attorney** shall be $75,000.

(c) No lawyer shall accept payment for assisting a Claimant with the filing of a claim with the Fund, unless such payment has been approved by the Board.

PAYMENT OF CLAIMS

Rule 521. Investigation and payment of claims.

(a) *Cooperation with Disciplinary Board*. At the request of the Board, the Disciplinary Board of the Supreme Court of Pennsylvania shall make available to the Board all reports of investigations and records of formal proceedings conducted under these rules with respect to any attorney whose conduct is alleged to amount to **[dishonest conduct causing reimbursable loss to a claimant] Dishonest Conduct causing Reimbursable Loss to a Claimant**, and shall otherwise cooperate fully with the Board. The Board shall cooperate fully with the Disciplinary Board of the Supreme Court of Pennsylvania and shall preserve the confidential nature of any information which is required to be kept confidential under these rules.

(b) *Hearing committees*. The Board may utilize a hearing committee to conduct any hearings under this subchapter for the purpose of resolving factual issues. Imposition of discipline under Rule 204 (relating to types of discipline) or otherwise shall not be a prerequisite for favorable action by the Board with respect to a claim against the **[fund] Fund**, but the **[covered attorney] Covered Attorney** involved shall be given notice of and an opportunity to contest any claim made with **[request] respect** to his or her alleged **[dishonest conduct] Dishonest Conduct**.

(c) *Subpoenas*. At any stage of an investigation under this subchapter the Board, a **[claimant] Claimant** and a contesting **[covered attorney] Covered Attorney** shall have the right to summon witnesses before a hearing committee and require production of records before the same by issuance of subpoenas in substantially the same manner, and with the effect provided by Rule 213(b), (e), (f), (g) and (h), and if applicable, (c) and (d) (relating to subpoena power, depositions and related matters).

(d) *Factors to be considered*. In exercising its discretion under Rule 511 (relating to reimbursement of certain losses authorized) the Board may consider, among other things:

(1) The amount available and likely to become available to the **[fund] Fund** for payment to **[claimants] Claimants**.

* * * * *

(3) The total amount of losses caused by **[dishonest conduct] Dishonest Conduct** by any one **[covered attorney] Covered Attorney** or associated group of **[covered attorneys] Covered Attorneys**.

(4) The degree of hardship the **[claimant] Claimant** has suffered by the loss.

(e) **The Claimant or Covered Attorney may request a reconsideration of the denial or approval of an award. Such request for a reconsideration shall be made in writing and shall be received by the Fund within 30 days of the date of the notification of the Board's denial or approval of an award. If the Claimant or Covered Attorney fails to make such a request, or the request is denied, the decision of the Board is final and there is no further right of appeal.**

(f) ***Conditions.*** **In addition to such other conditions and requirements as it may impose, the Board shall:**

(1) require each **[claimant] Claimant**, as a condition of payment, to execute such instruments, to take such action, and to enter into any agreements, including assignments of claims and subrogation agreements, as may be feasible in order to maximize the possibility that the **[fund] Fund** will be appropriately reimbursed for payments made from it. Amounts recovered pursuant to any such arrangements shall be paid to the **[Administrative Office for reimbursement of the fund; and] Fund;**

(2) require each **[claimant] Claimant**, as a condition of payment, to file a formal complaint with the Disciplinary Board of the Supreme Court of Pennsylvania against the **[covered attorney] Covered Attorney** and to cooperate in the fullest with the Disciplinary Board or other authorities in connection with other investigations of the alleged **[dishonest conduct.] Dishonest Conduct; and**

(3) require a Claimant who has commenced an action to recover unreimbursed losses against the Covered Attorney, or another entity or third party who may be liable for the Claimant's loss, to notify the Board of such action.

REINSTATEMENT

Rule 531. Restitution a condition for reinstatement.

The Board shall file with the Supreme Court a list containing the names of all formerly admitted attorneys with respect to the **[dishonest conduct] Dishonest Conduct** of which the Board has made unrecovered disbursements from the **[fund] Fund**. No person will be reinstated by the Supreme Court under Rule 218 (relating to reinstatement), Rule 219(h) (relating to periodic assessment of attorneys; voluntary inactive status), **[or]** Rule 301(h) (relating to proceedings where an attorney is declared to be incompetent or is alleged to be incapacitated) **[or],** Pennsylvania Rules for Continuing Legal Education, Rule 111(b) (relating to noncompliance with continuing legal education rules) **or who has been suspended from the practice of law for any period of time, including, but not limited to suspensions under Rule 208(f) (relating to emergency temporary suspension)** until the **[fund] Fund** has been repaid in

full, plus 10% *per annum* interest, for all disbursements made from the **[fund] Fund** with respect to the **[dishonest conduct] Dishonest Conduct** of such person.

[Pa.B. Doc. No. 06-477. Filed for public inspection March 24, 2006, 9:00 a.m.]

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 51]

Order Amending Rules 19 and 21 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 228 Magisterial Doc. No. 1

The Minor Court Rules Committee has prepared a Final Report explaining the Supreme Court of Pennsylvania's Order amending Rules 19 and 21 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges, effective July 1, 2006. These rule changes impose a two year limitation on the certification of a person who has successfully completed the course of training and instruction and passed the examination, but has not served as a magisterial district judge, bail commissioner, or judge of the Philadelphia Traffic Court. The Final Report follows the Court's Order.

Order

Per Curiam:

And Now, this 8th day of March, 2006, upon the recommendation of the Minor Court Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 19 and 21 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges be, and hereby are, amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2006.

Madame Justice Baldwin did not participate in the decision of this matter.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 51. STANDARDS OF CONDUCT OF MAGISTERIAL DISTRICT JUDGES

PENNSYLVANIA RULES FOR MAGISTERIAL DISTRICT JUDGES

Rule 19. Certification requirements of interested persons.

(a) Magisterial district judges, bail commissioners**,** and judges **of the Philadelphia Traffic Court** who are not members of the bar of this Commonwealth **[shall] must** complete a course of training and instruction in the duties of their respective offices and pass an examination and be certified by the Administrative Office of Pennsylvania Courts prior to assuming office.

(b)(1) [In addition to those required to complete the course of training and instruction, any] Any interested **[person] individual** may apply to the Administrative Office **of Pennsylvania Courts** to be enrolled in the course of **training and** instruction and take the examination **to be certified**.

(2) Any individual who has successfully completed the course of training and instruction and passed the examination, but who has not served as a magisterial district judge, bail commissioner, or judge of the Philadelphia Traffic Court shall be certified for only a two year period, and must complete the continuing education course every year in order to maintain his or her certification.

(c) Any **[persons successfully completing the course of training and instruction and examination, who have] individual certified under paragraph (b) who has** not served as a magisterial district judge, bail commissioner, or **[Judge] judge of the Philadelphia Traffic Court** within two years**[,]** will be required to **[update their certification by taking] take** a review course as defined by the Minor Judiciary Education Board and **[passing] pass** an examination**[, prior to being certified] in order to maintain certification** by the Administrative Office of Pennsylvania Courts as qualified to perform **[his or her]** duties as required by the Constitution of Pennsylvania. **[Individuals who have completed the continuing education course every year since being certified are exempt from this provision.]**

***Official Note*: This rule was amended in 2006 to limit to two years the period of certification for individuals who have successfully completed the certification course and examination but have not served as judges or bail commissioners. The rule permits individuals who are certified to serve as judges or bail commissioners but who have not done so within two years of certification to take a review course and pass an examination to maintain their certification for an additional two year period. Admission to the review course and recertification examination under paragraph (c) may be limited by the availability of space. In addition, the rule requires that all certified individuals must attend the annual continuing education course to maintain certification.**

Rule 21. **[Admission of Senior Magisterial District Judges and Those Persons Who Have Successfully Completed the Course of Training and Instruction and Examination and Who Have Not Served as a Magisterial District Judge, Bail Commissioner or Judge] Continuing Education Requirement: Senior Magisterial District Judges**.

(a) Any magisterial district judge **[who has left that Judicial Office for any good reason and]** who has been certified by the Administrative Office of Pennsylvania Courts as eligible to serve as **[Senior Magisterial District Judges] a senior magisterial district judge** shall be admitted to the continuing education program sponsored by the Minor Judiciary Education Board every year as required by **[42 Pa.C.S.A. Section 3118] Rule 20**. **[Any person successfully completing the course of training and instruction and examination and**

who has not served as a magisterial district judge, bail commissioner or judge may apply to the Administrative Office of Pennsylvania Courts to be enrolled in the continuing education course based on the availability of space. Such enrollment will be at the expense of the party.]

(b) In the event that the Court Administrator of Pennsylvania notifies the Minor Judiciary Education Board that a **[Senior Magisterial District Judge] senior magisterial district judge** has not accepted an assignment for a continuous period of two **[(2)]** years, the Minor Judiciary Education Board may refuse **[enrollment] to enroll the senior magisterial district judge** in the continuing education **[course] program**.

***Official Note*: With regard to certification of senior judges, *see* Pa. R.J.A. No. 701.**

This rule was amended in 2006 to delete the provision relating to the continuing education of persons who have successfully completed the course of training and instruction and examination but have not served as judges or bail commissioners. The continuing education requirement of those persons is governed by Rule 19.

FINAL REPORT[1]

Amendments to Rules 19 and 21 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Two Year Limitation on Certification of Interested Persons

On March 8th, 2006, effective July 1, 2006, upon recommendation of the Minor Court Rules Committee,[2] the Supreme Court of Pennsylvania amended Rules 19 and 21 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.[3]

I. Background

The Minor Court Rules Committee (the Committee), in consultation with the Minor Judiciary Education Board (the MJEB) and at the direction of the Supreme Court, undertook a review of Rule 19 of the Standards of Conduct of Magisterial District Judges (Certification requirements of interested persons).[4] The MJEB had alerted the Supreme Court to concerns about a significant number of individuals who have completed the course of training and instruction and passed the examination to be certified to serve as magisterial district judges, but who have never served in office. Prior to these amendments to Rule 19, these individuals could maintain their certification so long as they attended the annual one-week continuing education course offered by the MJEB. The MJEB reported that some of these individuals have maintained certification in this manner for considerable periods of time, and some have run for office more than once without being elected.

The MJEB raised concerns about the ability and competency of some of these individuals to perform the duties of their office if they were to be appointed or elected after so long a delay from initial certification and absence of day-to-day involvement with the law and procedure as a sitting judicial officer. The Committee and the MJEB recognized a need to require more current certification for individuals who have never served in office, beyond just the annual continuing education program. They agreed that the annual continuing education program alone is insufficient to maintain the knowledge and skills needed to serve as a judicial officer when the skills are not being practiced on a day-to-day basis as they are by sitting judicial officers.[5]

To address the concerns raised by the MJEB, the Committee and the MJEB recommended that the Court approve amendments to Rule 19 to disallow the practice of maintaining certification merely by attending the annual continuing education program, and that the Court approve correlative amendments to Rule 21. Because of the concerns about the ability of some of the currently certified individuals to perform the duties of their office if appointed or elected, the Committee believed exigent circumstances existed that required prompt submission of the recommendation to the Supreme Court. Therefore, the Committee submitted its recommendation, and the Court adopted it, without prior publication for public comment.[6]

II. Approved Rule Changes

A. *Rule 19*

The Committee recommended that the last sentence of existing Rule 19, which created the exception to the two-year certification period, be deleted. In addition, the Committee recommended that the rule be restructured to make clear that certification is effective for only two years for individuals who are certified but have not served in office. The amended rule does, however, permit an individual to maintain certification by completing a review course as prescribed by the MJEB and passing a recertification examination.[7]

The amendments also require all certified individuals to attend the annual one week continuing education program. Under the rule prior to these amendments, an individual could maintain certification for up to two years without attending continuing education. Because of the constantly and rapidly changing nature of law and procedure, the Committee and the MJEB believe these annual updates are necessary for certified individuals to be informed of developments since their initial certification.

Further, the Committee recommended that an Official Note be added to Rule 19 to explain the intent of the rule, including clarification that admission to the review course and recertification examination may be limited by the availability of space.

B. *Correlative Amendment to Rule 21*

In addition to the amendment to Rule 19, the Committee recommended that Rule 21 be amended to delete the provisions relating to continuing education of individuals who are certified but have not served in office. These provisions are rendered unnecessary by, and would be inconsistent with, the amendments to Rule 19.

Finally, in addition to the substantive changes discussed above, the Committee recommended other edito-

[1] The Committee's Final Report should not be confused with the Official Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Official Notes or the contents of the explanatory Final Report.

[2] Recommendation No. 1 Minor Court Rules 2005.

[3] Supreme Court of Pennsylvania Order No. 228, Magisterial Docket No. 1 (March 8, 2006). Madame Justice Baldwin did not participate in the decision of this matter.

[4] Pa. Code tit. 207, ch. 51, Rule 19 (hereinafter Rule 19).

[5] The curriculum and format of the continuing education program assume that the participants maintain a certain level of knowledge that comes from sitting as a judicial officer and directly dealing with legal issues on a day-to-day basis, or from having completed the initial certification course within the relatively recent past. There is no examination component to the continuing education program.

[6] See Pa.R.J.A. No. 103(a)(3).

[7] The initial certification course is a four week program; the one week review course required for recertification is simply the last week of the initial certification course that is offered on a regular basis to prospective judges. The examination required for recertification is the same length and format as that required for initial certification.

rial revisions to both rules to address gender neutrality issues, to conform to modern drafting style, and to enhance readability.

[Pa.B. Doc. No. 06-478. Filed for public inspection March 24, 2006, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1900]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 79

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to Protection from Abuse matters to reflect recent amendments to the Protection from Abuse Act in Act 66 of 2005. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, May 12, 2006 directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
FAX (717) 795-2175
E-mail: patricia.miles@pacourts.us

By the Domestic Relations Procedural Rules Committee

NANCY P. WALLITSCH, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1901. Definitions

As used in this chapter:

"Act" means "Protection From Abuse Act" No. 206 approved December 19, 1990, 23 Pa.C.S.**A.** § 6101 et seq.

"Action" means a proceeding for protection from **[abuses] abuse** defined in § 6102 of the Act.

"Court" means the court of common pleas.

"Emergency Order" means an order entered by a hearing officer, who is a person meeting the definition set forth at 23 Pa.C.S.**A.** § 6102.

"Fees" means any costs associated with the filing, issuance, registration, service or appeal of a Protection from Abuse matter, including any foreign protection order.

"Master for Emergency Relief" means an attorney, admitted to the practice of law by the Supreme Court of Pennsylvania and appointed pursuant to 23 Pa.C.S.A. § 6110(e), to hear petitions for emergency protection from abuse.

"Temporary Order" means an ex parte order entered by the court pursuant to 23 Pa.C.S.**A.** § 6107.

Explanatory Comment—2006

The 2005 amendments to the Protection From Abuse Act, Act 66 of 2005, authorize two methods to secure emergency protection from abuse orders. The first is through a magisterial district judge and the other is through a master for emergency relief. In order for a county to exercise the master for emergency relief option, the county must assume the costs of the master and the Administrative Office of Pennsylvania Courts must approve the master's selection and appointment. 23 Pa.C.S.A. § 6110(e).

The 2005 amendments to the Protection From Abuse Act also prohibit the assessment of fees or costs against the plaintiff. This prohibition includes fees related to filing, serving, registering or appealing a protection from abuse petition or order. 23 Pa.C.S.A. § 6106(b).

Rule 1901.1. Venue

(a) Except as provided in subdivision (b), an action for protection from abuse may be brought in a county in which

(1) the plaintiff resides, either temporarily or permanently, or is employed, or

(2) the defendant may be served, or

(3) the abuse occurred.

(b) If the relief sought includes possession of the residence or household to the exclusion of the defendant, the action shall be brought only in the county in which the residence or household is located.

(c) An action for indirect criminal contempt may be filed in, and heard by, the court in the county in which the order was issued or where the violation occurred.

Explanatory Comment—1991

The statute and rules governing actions for protection from abuse formerly contained no provision for venue. Recommendation No. 84 of the Civil Procedural Rules Committee proposed a new rule to fill that void and the rule has been adopted as Rule 1901.1

Subdivision (a) provides for venue in the following counties: (1) the county in which the abuse occurred, (2) the county in which the defendant may be served, (3) the county in which the plaintiff resides, either permanently

or temporarily, and (4) the county in which the plaintiff is employed. These are the counties with which the plaintiff has the most significant contacts and the greatest interest in remaining free from abuse. The county of temporary residence is included because an abused person may have to flee the county of permanent residence to escape further abuse.

The rule imposes limited venue when the relief sought includes the sole possession of the residence or household. In that instance, the action must be brought in the county in which the residence or household is located.

Explanatory Comment—2006

The 2005 amendments to the Protection From Abuse Act grant jurisdiction over indirect criminal contempt complaints in either the county in which the order was issued or the county where the violation occurred. This rule allows for flexible and immediate enforcement of protection from abuse orders. 23 Pa.C.S.A. § 6114 (a.1). With this amendment, indirect criminal contempt jurisdiction is parallel to prosecution for stalking and harassment.

Rule 1901.2. Scheduling.

Each judicial district shall establish times when the court will hear temporary Protection From Abuse Matters.

Rule 1901.3. Commencement of Action.

(a) Except as provided in subdivision (b), an action shall be commenced by presenting to the court or filing with the prothonotary a petition setting forth the alleged abuse by the defendant. The petition shall be substantially in the form set forth in Rule 1905(b) and shall have as its first page the Notice of Hearing and Order set forth in Rule 1905(a).

(b) An action may be commenced by filing with the prothonotary a certified copy of an emergency order entered pursuant to 23 Pa.C.S.**A.** § 6110**, including orders issued by masters for emergency relief**.

(c) Any fees associated with this action shall not be charged to the plaintiff.

Explanatory Comment—2006

New subdivision (c) reflects the 2005 amendments to the Protection from Abuse Act which prohibit charging fees or costs against the plaintiff. 23 Pa.C.S.A. § 6106(b). The 2005 amendments to 23 Pa.C.S.A. § 6110(e) of the Protection from Abuse Act authorize the use of masters for emergency relief which is reflected in subdivision (b).

Rule 1901.4. Service and Registration of Order.

(a) Service of the petition and temporary order shall be in accordance with Rule 1930.4.

(b) An Affidavit of Service substantially in the form set forth in Rule 1905(d) shall be filed with the prothonotary.

(c) Upon the filing of a protection order with the prothonotary, the prothonotary shall transmit a copy of the order to the State Police PFA Registry in the manner prescribed by the Pennsylvania State Police.

Official Note: This provision also applies to an order denying **a** plaintiff's request for a final protection order.

(d) No fee shall be charged to the plaintiff for service of any protection from abuse order or pleading or for the registration, filing or service of any foreign protection order.

Explanatory Comment—1997

Subdivision (c) reflects the prothonotary's role in ensuring that all protection orders reach the new statewide PFA Registry. Pursuant to the 1994 amendments to the Protection **[From] from** Abuse Act, the Pennsylvania State Police Department is mandated to establish this registry for all protection orders issued or registered in the **[Commonwealth] commonwealth**. Once it becomes fully operational, it will be available at all times to inform law enforcement officers, dispatchers and courts of the existence and terms of protection orders. The **[Registry] registry** represents a major improvement in the manner in which **[Protections] protections** orders are registered and verified by not only eliminating the need to register the order in every county where the victim believes enforcement is necessary, but also enabling the police to immediately verify the order for purposes of enforcement. In order to ensure that the information n the registry remains current, subdivision (c) requires the prothonotary to transmit all protection orders issued or registered in the **[Commonwealth] commonwealth**, including temporary, final, modified and consent orders, as well as any orders withdrawing, extending or denying **the** plaintiff's request for a protection order.

Explanatory Comment—2006

New subdivision (d) reflects the prohibition against charging fees to the plaintiff, even those related to foreign protection orders, as set forth in the 2005 amendments to the Protection from Abuse Act. 23 Pa.C.S. A. § 6106(b).

Rule 1901.5. Enforcement.

(a) When an arrest is made for violation of an order, a complaint for indirect criminal contempt shall be completed and signed by either a police officer**, the sheriff** or the plaintiff. When the complaint is filed by a police officer **or sheriff**, neither **the** plaintiff's presence nor signature is required.

(b) If an arrest is not effected, a complaint for indirect criminal contempt may be completed and signed by the plaintiff pursuant to 23 Pa.C.S.**A.** § 6113.1.

Explanatory Comment—2006

The 2005 amendments to the Protection from Abuse Act authorize the sheriff to arrest the defendant for violations of a protection from abuse order. In addition, the sheriff is authorized to exercise a search and seizure of any firearm, other weapon and ammunition subsequent to arrest. 23 Pa.C.S.A. § 6113(a) and (b).

Rule 1901.6. No responsive pleading required.

No pleading need be filed in response to the petition or the certified order and all averments not admitted shall be deemed denied.

Official Note: For **[procedure] procedures** as to the time and manner of hearings and issuance of orders, see 23 Pa.C.S.**A.** § 6107. For provisions as to the scope of relief available, see 23 Pa.C.S.**A.** § 6108. For provisions as to contempt for violation of an order, see 23 Pa.C.S.**A.** § 6114.

Rule 1901.7. Decision. Post-trial relief.

(a) The decision of the court may consist of only general findings of abuse but shall dispose of all claims for relief. The court's order shall be rendered substantially in the form set forth in Rule 1905(e).

(b) No motion for post-trial relief may be filed to the final order.

Official Note: The procedure relating to Motions for Reconsideration is set forth in Rule 1930.2.

Explanatory **[Note] Comment**—1977

New Rules 1901, et seq. promulgated March 9, 1977 and effective 15 days after publication in the *Pennsylvania Bulletin* implement the Protection from Abuse Act No. 218 of 1976 which became effective December 6, 1976.

The Act introduces a new civil remedy authorizing protective orders to bring about cessation of abuse of the plaintiff or minor children, which relief includes, inter alia, exclusion of the errant spouse from the household, the award of temporary custody and visitation rights with regard to minor children and support.

The Act also authorizes temporary ex parte orders when the exigency of the situation requires immediate relief before process can be served on a defendant.

Jurisdiction is also conferred on the magisterial district judges over the weekend if and when a judge of the court of common pleas is not available, but any temporary order of a magisterial district judge expires at the resumption of business of the common pleas court at the beginning of the week or within seventy-two (72) hours, whichever occurs first. The magisterial district judge is required immediately to certify his or her order to the common pleas court and the certification under the Act has the effect of commencing a proceeding in the common pleas court and invoking the other provisions of the Act.

Section 9 of the Act provides that all proceedings shall be in accordance with Rules of Civil Procedure and shall be in addition to any other available civil or criminal remedies.

Explanatory Comment—2005

Act 207-2004 amended numerous titles of the *Pennsylvania Consolidated Statutes* changing the title of "district justice" to "magisterial district judge." The amendments to Rule 1901.7's Explanatory Comment—1977 reflect the change in title, make the comment gender-neutral and delete outdated material.

Rule 1905. Forms for Use in PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

(a) The Notice of Hearing and Order required by Rule 1901.3 shall be substantially in the following form:

(Caption)
NOTICE OF HEARING AND ORDER

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following papers, you must appear at the hearing scheduled herein. If you fail to do so, the case may proceed against you and a FINAL **[Order] order** may be entered against you granting the relief requested in the **[Petition] petition**. In particular, you may be evicted from your residence**, be prohibited from possessing any firearm, other weapon, ammunition or any firearm license,** and lose other important rights**, including custody of your children**. Any protection order granted by a court may be considered in subsequent proceedings under Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, including child custody proceedings under Chapter 53 (relating to custody).

A hearing on the matter is scheduled for the _____ day of _____**,** 20 _____, at _____.m., in Courtroom _____ at _____ Courthouse, _____, Pennsylvania.

You MUST obey the **[Order] order** that is attached until it is modified or terminated by the court after notice and hearing. If you disobey this **[Order] order**, the police **or sheriff** may arrest you. Violation of this **[Order] order** may subject you to a charge of indirect criminal contempt which is punishable by a fine of up to $1,000.00 and/or up to six months in jail under 23 Pa.C.S.**A.** § 6114. Violation may also subject you to prosecution and criminal penalties under the Pennsylvania Crimes Code. Under federal law, 18 U.S.C. § 2265, this **[Order] order** is enforceable anywhere in the United States, tribal lands, U.S. Territories and the Commonwealth of Puerto Rico. If you travel outside of the state and intentionally violate this **[Order] order**, you may be subject to federal criminal proceedings under the Violence Against Women Act, 18 U.S.C. §§ 2261—2262.

If this order directs you to relinquish any firearm, other weapon, ammunition or any firearm license to the sheriff, you may do so upon service of this order. As an alternative, you may relinquish any firearm, other weapon, or ammunition listed herein to a third party provided you and the third party first comply with all requirements to obtain a safekeeping permit. You must relinquish any firearm, other weapon, ammunition or any firearm license listed herein no later than 24 hours after service of the order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. § 6105.

NOTICE: Even if this order does not direct you to relinquish firearms, you may be subject to federal firearms prohibitions and federal criminal penalties under 18 U.S.C. § 922(g)(8).

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. YOU HAVE THE RIGHT TO HAVE A LAWYER REPRESENT YOU AT THE HEARING. THE COURT WILL NOT, HOWEVER, APPOINT A LAWYER FOR YOU. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE. IF YOU CANNOT FIND A LAWYER, YOU MAY HAVE TO PROCEED WITHOUT ONE.

County Lawyer Referral Service
[insert Street Address]
[insert City, State, and ZIP]
[insert Phone Number]

(b) The **[Petition] petition** in an action filed pursuant to the Act shall be substantially in the following form:

(Caption)
PETITION FOR PROTECTION FROM ABUSE

1. Plaintiff's name is: _____

2. I am filing this Petition on behalf of: ☐ Myself and/or ☐ Another Person

If you checked "myself," please answer all questions referring to yourself as "Plaintiff." If you checked "another person," please answer all questions referring to that person as the "Plaintiff," and provide your address here, unless confidential:

If you checked "Another Person," indicate your relationship with Plaintiff:

☐ parent of minor Plaintiff(s)

☐ applicant for appointment as guardian ad litem of minor Plaintiff(s)

☐ adult household member with minor Plaintiff(s)

☐ court appointed guardian of incompetent Plaintiff(s)

3. Name(s) of ALL person(s), including Plaintiff and minor children, who seek protection from abuse: _____

_____

4. ☐ Plaintiff's address is confidential
or
☐ Plaintiff's address is: _____

5. Defendant is believed to live at the following address: _____
Defendant's Social Security Number (if known) is:
Defendant's date of birth is: _____
Defendant's place of employment is: _____
☐ **Check here if you have reason to believe that Defendant is a licensed firearms dealer or is employed in a profession that requires Defendant to handle firearms or to carry a firearm as a condition of employment.**
☐ Check here if Defendant is 17 years old or younger.

6. Indicate the relationship between Plaintiff and Defendant.

☐	Spouse	☐	Current or former sexual/intimate partner	☐	Other relationship by blood or marriage: _____
☐	Ex-spouse	☐	Parent/Child		_____
☐	Persons who live or have lived like spouses	☐	Parents of the same children	☐	Brother/Sister

7. Have Plaintiff and Defendant been involved in any of the following court actions?

☐ Divorce ☐ Custody ☐ Support ☐ Protection from Abuse

If you checked any of the above, briefly indicate when and where the case was filed and the court number, if known:

_____

8. Has **[the]** Defendant been involved in any criminal court action? _____
If you answered Yes, is **[the]** Defendant currently on probation? _____

9. Plaintiff and Defendant are the parents of the following minor child/ren:

Name(s)	Age(s)	who reside at (list address unless confidential)
_____	_____	_____
_____	_____	_____

10. If Plaintiff and Defendant are parents of any minor child/ren together, is there an existing court **[Order] order** regarding their custody? _____

If you answered Yes, describe the terms of the **[Order] order** (e.g., primary, shared, legal and/or physical custody):

_____

_____

If you answered Yes, in what county and state was the order issued?

If you are now seeking an **[Order] order** of child custody as part of this petition, list the following information:

(a) Where has each child resided during the past five years?

Child's name	Person(s) child lived with	Address, unless confidential	When
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(b) List any other persons who are known to have or claim a right to custody of each child listed above.

Name	Address	Basis of Claim

11. The following other minor child/ren presently live with Plaintiff:

Name(s)	Age(s)	Plaintiffs relationship to child/ren

12. The facts of the most recent incident of abuse are as follows:

Approximate Date: _____ Approximate Time: _____ Place: _____

Describe in detail what happened, including any physical or sexual abuse, threats, injury, incidents of stalking, medical treatment sought, and/or calls to law enforcement (attach additional sheets of paper if necessary):

13. If **[the]** Defendant has committed prior acts of abuse against Plaintiff or the minor child/ren, describe these prior incidents, including any threats, injuries, or incidents of stalking, and indicate approximately when such acts of abuse occurred (attach additional sheets of paper if necessary):

14. **[List the weapon(s) that] (a) Has** Defendant **[has]** used or threatened to use **any firearms or other weapons** against Plaintiff or the minor child/ren**? If so, please describe**:

(b) To the best of your knowledge or belief, does Defendant own or possess any firearm, other weapon, ammunition or any firearm license?

(c) If the answer to (b) above is "yes," list any firearm, other weapon or ammunition owned by or in the possession of Defendant on Attachment A, which is incorporated by reference into this petition.

15. Identify the **sheriff,** police department or law enforcement agency in the area in which Plaintiff lives that should be provided with a copy of the protection order:

16. There is an immediate and present danger further abuse from **[the]** Defendant.

CHECK THE FOLLOWING BOXES ONLY IF THEY APPLY TO YOUR CASE AND PROVIDE THE REQUESTED INFORMATION

☐ Plaintiff is asking the court to evict and exclude **[the]** Defendant from the following residence:

☐ owned by (list owners, if known): _____

☐ rented by (list all names, if known): _____

☐ Defendant owes a duty of support to Plaintiff and/or the minor child/ren.

☐ Plaintiff has suffered out-of-pocket financial losses as a result of the abuse described above. Those losses are: _____

_____

_____

_____

FOR THE REASONS SET FORTH ABOVE, I REQUEST THAT THE COURT ENTER A TEMPORARY ORDER, and AFTER HEARING, A FINAL ORDER THAT WOULD DO THE FOLLOWING (CHECK ALL FORMS OF RELIEF REQUESTED):

☐ A. Restrain Defendant from abusing, threatening, harassing, or stalking Plaintiff and/or minor child/ren in any place where Plaintiff may be found.

☐ B. Evict/exclude Defendant from Plaintiff's residence and prohibit Defendant from attempting to enter any temporary or permanent residence of the Plaintiff.

☐ C. Require Defendant to provide Plaintiff and/or minor child/ren with other suitable housing.

☐ D. Award Plaintiff temporary custody of the minor child/ren and place the following restrictions on contact between Defendant and child/ren: _____

_____

_____

☐ E. Prohibit Defendant from having any contact with Plaintiff and/or minor child/ren, either in person, by telephone, or in writing, personally or through third persons, including but not limited to any contact at Plaintiff's school, business, or place of employment, except as the court may find necessary with respect to partial custody and/or visitation with the minor child/ren.

☐ F. Prohibit Defendant from having any contact with Plaintiff's relatives and Plaintiff's children listed in this **[Petition] petition**, except as the court may find necessary with respect to partial custody and/or visitation with the minor child/ren.

☐ G. Order Defendant to temporarily **[turn over weapons] relinquish any firearm, other weapon, ammunition and any firearm license** to the **[Sheriff of this County] sheriff of this county** and prohibit Defendant from transferring, acquiring or possessing any **[such weapons] firearm, other weapon, ammunition or any firearm license** for the duration of the **[Order] order**.

☐ H. Order Defendant to pay temporary support for Plaintiff and/or the minor child/ren, including medical support and ☐ payment of the rent or mortgage on the residence.

☐ I. Direct Defendant to pay Plaintiff for the reasonable financial losses suffered as the result of the abuse, to be determined at the hearing.

☐ J. Order Defendant to pay the costs of this action, including filing and service fees.

☐ K. Order Defendant to pay Plaintiff's reasonable attorney's fees.

☐ L. Order the following additional relief, not listed above:

_____

_____

_____

_____

_____

_____

_____

M. Grant such other relief as **Plaintiff requests and/or the** court deems appropriate.

N. Order the police**, sheriff** or other law enforcement agency to serve **[the]** Defendant with a copy of this **[Petition] petition**, any **[Order] order** issued, and the **[Order] order** for **[Hearing] hearing**. **[The petitioner] Plaintiff** will inform the designated authority of any addresses, other than Defendant's residence, where Defendant can be served.

VERIFICATION

I verify that I am the petitioner as designated in the present action and that the facts and statements contained in the above **[Petition] petition** are true and correct to the best of my knowledge. I understand that any false statements are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

_____

Signature

_____

Date

(Caption)
PETITIONER'S ATTACHMENT A
FIREARMS, OTHER WEAPONS AND AMMUNITION INVENTORY

I, _____, Plaintiff in this Protection from Abuse Action, hereby request the court order Defendant to relinquish the following firearms, other weapons, ammunition, and firearm licenses to the sheriff:

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

If more space is needed, more sheets may be attached to this document.

I believe the above items are located at _____
_____ (List all relevant addresses where they may be found)

_____

Name _____

Date _____

Notice: This attachment will be withheld from public inspection in accordance with 23 Pa.C.S.A. § 6108 (a)(7)(v).

(c) The Temporary Order of Court entered pursuant to the Act shall be substantially in the following form:

(Caption)
TEMPORARY PROTECTION FROM ABUSE ORDER

Defendant's Name: _____

Defendant's Date of Birth: _____

Defendant's Social Security Number: _____

Names of All Protected Persons, including Plaintiff and minor child/ren:

_____

AND NOW, this _____ day of _____, _____, upon consideration of the attached Petition for Protection from Abuse, the court hereby enters the following Temporary Order:

☐ 1. Defendant shall not abuse, harass, stalk or threaten any of the above persons in any place where they might be found.

☐ 2. Defendant is evicted and excluded from the residence at (NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED) or any other permanent or temporary residence where Plaintiff or any other person protected under this **[Order] order** may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this **[Order] order**.

☐ 3. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this Order, Defendant is prohibited from having ANY CONTACT with Plaintiff, or any other **protected** person **[protected]** under this **[Order] order, either directly or indirectly**, at any location, including but not limited to any contact at Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this **[Order]** order:

_____

_____

_____

☐ 4. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this **[Order] order**, Defendant shall not contact Plaintiff, or any other person protected under this **[Order] order**, by telephone or by any other means, including through third persons.

☐ 5. Pending the outcome of the final hearing in this matter, Plaintiff is awarded temporary custody of the following minor child/ren: _____

_____

Until the final hearing, all contact between Defendant and the child/ren shall be limited to the following:

_____

_____

_____

_____

_____

☐ **THIS ORDER SUPERSEDES ANY PRIOR ORDER RELATING TO CHILD CUSTODY.**

The local law enforcement agency **and the sheriff** in the jurisdiction where the child/ren are located shall ensure that the child/ren are placed in the care and control of **[the]** Plaintiff in accordance with the terms of this **[Order] order**.

☐ 6. **[Defendant shall immediately relinquish the following weapons to the Sheriff's Office or a designated local law enforcement agency for delivery to the Sheriff's office:**

_____

_____

_____ **]**

Defendant is prohibited from possessing, transferring or acquiring any **[other weapons] firearms** for the duration of this order.

Check all that apply:

☐ **Defendant shall relinquish to the sheriff all firearms and firearms licenses owned or possessed by Defendant.**

☐ **Defendant is directed to relinquish to the sheriff any firearm, other weapon or ammunition listed in Petitioner's Attachment A, and any firearms license Defendant may possess.**

Defendant may relinquish any firearms, other weapons or ammunition to the sheriff. As an alternative, Defendant may relinquish firearms, other weapons and ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit. Defendant must relinquish any firearm, other weapon, ammunition or firearms license ordered to be relinquished no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. § 6105

☐ 7. The following additional relief is granted:

_____

_____

_____

_____

☐ 8. A certified copy of this **[Order] order** shall be provided to the **sheriff or** police department where Plaintiff resides and any other agency specified hereafter: [insert name of agency]

☐ 9. THIS ORDER SUPERSEDES **[** ☐ **]** ANY PRIOR **[PFA] PROTECTION FROM ABUSE** ORDER **[AND** ☐ **ANY PRIOR ORDER RELATING TO CHILD CUSTODY]**.

10. THIS ORDER APPLIES IMMEDIATELY TO DEFENDANT AND SHALL REMAIN IN EFFECT UNTIL [insert expiration date] OR UNTIL OTHERWISE MODIFIED OR TERMINATED BY THIS COURT AFTER NOTICE AND HEARING.

NOTICE TO THE DEFENDANT

Defendant is hereby notified that violation of this **[Order] order** may result in arrest for indirect criminal contempt, which is punishable by a fine of up to $1,000.00 and/or up to six months in jail. 23 Pa.C.S.**A.** § 6114. Consent of **[the]** Plaintiff to Defendant's return to the residence shall not invalidate this **[Order] order**, which can only be changed or modified through the filing of appropriate court papers for that purpose. 23 Pa.C.S.**A.** § 6113. **If Defendant is required to relinquish any firearms, other weapons or ammunition or any firearms license, those items must be relinquished to the sheriff within 24 ours of the service of this order. As an alternative, Defendant may relinquish any firearm, other weapon or ammunition listed herein to a third party provided Defendant and the third party first comply with all requirements to obtain a safekeeping permit.** Defendant is further notified that violation of this **[Order] order** may subject him/her to state charges and penalties under the Pennsylvania Crimes Code and to federal charges and penalties under the Violence Against Women Act, 18 U.S.C. §§ 2261—262.

NOTICE TO **SHERIFF, POLICE AND** LAW ENFORCEMENT OFFICIALS

This **[Order] order** shall be enforced by the police **department or sheriff** who **[have] has** jurisdiction over **[the plaintiff's] Plaintiff's** residence OR any location where a violation of this order occurs OR where **[the defendant] Defendant** may be located. If **[defendant] Defendant** violates Paragraphs 1 through 6 of this **[Order, defendant] order, Defendant** shall be arrested on the charge of **[Indirect Criminal Contempt] indirect criminal contempt**. An arrest for violation of this **[Order] order** may be made without warrant, based solely on probable cause, whether or not the violation is committed in the presence of **[law enforcement] a police officer or sheriff**.

Subsequent to an arrest, the law enforcement officer **or sheriff** shall seize all **firearms, other** weapons **[used or threatened to be used during the violation of this Order OR during prior incidents of abuse] and ammunition in Defendant's possession**. **[Weapons must forthwith] Any firearm, other weapon, ammunition or any firearm license must** be delivered to the **[Sheriff's] sheriff's** office of the county which issued this **[Order] order**, which office shall maintain possession of the **firearms, other** weapons **and ammunition** until further **[Order] order** of this court, unless the weapon/s are evidence of a crime, in which case, they shall remain with the law enforcement agency whose officer **or sheriff** made the arrest.

BY THE COURT:

_____

Judge

_____

Date

(d) The form of the Affidavit of Service in a Protection From Abuse matter shall be substantially in the following form:

(Caption)
AFFIDAVIT OF SERVICE

I, _____, the undersigned, hereby state that I served a copy of the Petition and Temporary Order in the above-captioned action upon **[the]** Defendant by handing the papers to _____ at the following address: _____ on the _____ day of _____, **[19] 20**_____ at approximately _____ o'clock _____ .m.

I verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.**A.** § 4904, relating to unsworn falsification to authorities.

(Signature)
(Title)
(Address)
(Date)

(e) The Final Order of Court entered pursuant to the Act shall be substantially in the following form:

(Caption)
FINAL ORDER OF COURT

Defendant's Name: _____

Defendant's Date of Birth: _____

Defendant's Social Security Number: _____

Names and Dates of Birth of All Protected Persons, including Plaintiff and minor children:

Names	Dates of Birth
_____	_____
_____	_____
_____	_____

CHECK ALL THAT APPLY:

Plaintiff or Protected Person(s) is/are:

[ ] spouse or former spouse of Defendant

[ ] parent of a common child with Defendant

[ ] current or former sexual or intimate partner with Defendant

[ ] child of Plaintiff

[ ] child of Defendant

[ ] family member related by blood (consanguinity) to Defendant

[ ] family member related by marriage or affinity to Defendant

[ ] sibling (person who shares biological parenthood) of Defendant

[ ] current or former cohabitant (person who lives with) Defendant

Defendant was served in accordance with Pa.R.C.P. 1930.4 and provided notice of the time, date and location of the hearing scheduled in this matter.

AND NOW, this _____ day of _____, 20 _____, the court having jurisdiction over the parties and the subject-matter, it is ORDERED, ADJUDGED **[and] AND** DECREED as follows:

Note: Space is provided to allow for 1) the court's general findings of abuse; 2) inclusion of the terms under which the order was entered (e.g., that the order was entered with the consent of the parties, or that the defendant, though properly served, failed to appear for the hearing, or the reasons why **the** plaintiff's request for a final PFA order was denied); and/or 3) information that may be helpful to law enforcement **or the sheriff** (e.g. whether a **firearm or other** weapon was involved in the incident of abuse and/or whether the defendant is believed to be armed and dangerous).

☐ Plaintiff's request for a final protection order is denied.

OR

☐ Plaintiff's request for a final protection order is granted.

☐ 1. Defendant shall not abuse, stalk, harass, threaten or attempt to use physical force that would reasonably be expected to cause bodily injury to **[the]** Plaintiff or any other protected person in any place where they might be found.

☐ 2. Defendant is completely evicted and excluded from the residence at (NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED) or any other residence where Plaintiff or any other person protected under this **[Order] order** may live. Exclusive possession of the residence is granted to Plaintiff. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this **[Order] order**.

☐ On [insert date and time], Defendant may enter the residence to retrieve his/her clothing and other personal effects, provided that Defendant is in the company of a law enforcement officer **or sheriff** when such retrieval is made and [insert any other conditions] _____

_____

_____

☐ 3. Except as provided in **[Paragraph] paragraph** 5 of this **[Order] order**, Defendant is prohibited from having ANY CONTACT with **[the]** Plaintiff, **either directly or indirectly,** or any other person protected under this **[Order] order**, at any location, including but not limited to any contact at **[the]** Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this **[Order] order**: _____

_____

_____

☐ 4. Except as provided in **[Paragraph] paragraph** 5 of this **[Order] order**, Defendant shall not contact **[the]** Plaintiff, or any other person protected under this **[Order] order**, by telephone or by any other means, including through third persons.

☐ 5. Custody of the minor children, [NAMES OF THE CHILDREN SUBJECT TO THE PROVISION OF THIS PARAGRAPH] shall be as follows: [STATE TO WHOM PRIMARY PHYSICAL CUSTODY **IS** AWARDED; STATE TERMS OF PARTIAL CUSTODY OR VISITATION, IF ANY.]

☐ **THIS ORDER SUPERSEDES ANY PRIOR ORDER RELATING TO CUSTODY.**

☐ 6. **[Defendant shall immediately turn over to the Sheriff's Office, or to a local law enforcement agency for delivery to the Sheriff's office, the following weapons used or threatened to be used by Defendant in an act of abuse against Plaintiff and/or the minor child/ren:**

_____

_____ **]**

Defendant is prohibited from possessing, transferring or acquiring any firearms for the duration of this order.

Check all that apply:

☐ **Defendant shall relinquish to the sheriff all firearms and firearm licenses owned or possessed by Defendant.**

☐ **Defendant is directed to relinquish to the sheriff any firearm, other weapon or ammunition listed in Petitioner's Attachment A, and any firearms license Defendant may possess.**

Defendant may relinquish any firearms, other weapons or ammunition to the sheriff. As an alternative, Defendant may relinquish firearms, other weapons and ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit. Defendant must relinquish any firearm, other weapon, ammunition or firearms license ordered to be relinquished no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. § 6105

☐ 7. **[Defendant is prohibited from possessing, transferring or acquiring any other weapons for the duration of this Order.]** Any **[weapons] firearm** delivered to the sheriff **[under Paragraph 6 of this Order or under Paragraph 6 of the Temporary Order] or transferred to a licensed firearm dealer, or a qualified third party who satisfies the procedural and substantive requirements to obtain a safekeeping permit issued under 23 Pa.C.S.A. § 6108.3 pursuant to this order or the temporary order** shall not be returned **to Defendant** until further order of court.

☐ 8. The following additional relief is granted as authorized by § 6108 of the Act:

_____

_____

_____

_____

_____

☐ 9. Defendant is directed to pay temporary support for: [INSERT THE NAMES OF THE PERSONS FOR WHOM SUPPORT IS TO BE PAID] as follows: [INSERT AMOUNT, FREQUENCY AND OTHER TERMS AND CONDITIONS OF THE SUPPORT ORDER]. This order for support shall remain in effect until a final order is entered by this **[Court] court**. However, this order shall lapse automatically if **[the]** Plaintiff does not file a complaint for support with the Domestic Relations Section of the court within two weeks of the date of this order. The amount of this temporary order does not necessarily reflect Defendant's correct support obligation, which shall be determined in accordance with the guidelines at the support hearing. Any adjustments in the final amount of support shall be credited, retroactive to this date, to the appropriate party.

[☐ **]** 10. ☐ **(a)** The costs of this action are **[waived as to the Plaintiff and]** imposed on Defendant.

☐ **(b) Because this order followed a contested proceeding, Defendant is ordered to pay an additional $100 surcharge to the court, which shall be distributed in the manner set forth in 23 Pa.C.S.A. § 6106(d).**

☐ 11. Defendant shall pay $ _____ to Plaintiff **by** _____ **(insert date)** as compensation for **[plaintiff's]** Plaintiff's out-of-pocket losses, which are as follows:

OR

☐ Plaintiff is granted leave to present a petition, with appropriate notice to Defendant, to [INSERT THE NAME OF THE JUDGE OR COURT TO WHICH THE PETITION SHOULD BE PRESENTED] requesting recovery of out-of-pocket losses. The petition shall include an exhibit itemizing all claimed out-of-pocket losses, copies of all bills and estimates of repair, and an order scheduling a hearing. No fee shall be required by the **[Prothonotary's] prothonotary's** office for the filing of this petition.

12. THIS ORDER SUPERSEDES

[☐ **]** ANY PRIOR **[PFA] PROTECTION FROM ABUSE** ORDER

[☐ **ANY PRIOR ORDER RELATING TO CHILD CUSTODY]**.

13. All provisions of this order shall expire in **[eighteen months] three years**, on [INSERT EXPIRATION DATE].

NOTICE TO THE DEFENDANT

VIOLATION OF THIS ORDER MAY RESULT IN YOUR ARREST ON THE CHARGE OF INDIRECT CRIMINAL CONTEMPT WHICH IS PUNISHABLE BY A FINE OF UP TO $1,000 AND/OR A JAIL SENTENCE OF UP TO SIX MONTHS. 23 PA.C.S.**A.** § 6114. VIOLATION MAY ALSO SUBJECT YOU TO PROSECUTION AND CRIMINAL PENALTIES UNDER THE PENNSYLVANIA CRIMES CODE. **A VIOLATION OF THIS ORDER MAY RESULT IN THE REVOCATION OF THE SAFEKEEPING PERMIT, WHICH WILL REQUIRE THE IMMEDIATE RELINQUISHMENT OF YOUR FIREARMS, OTHER WEAPONS AND AMMUNITION TO THE SHERIFF.**

THIS ORDER IS ENFORCEABLE IN ALL FIFTY (50) STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, U.S. TERRITORIES AND THE COMMONWEALTH OF PUERTO RICO UNDER THE VIOLENCE AGAINST WOMEN ACT, 18 U.S.C. § 2265. IF YOU TRAVEL OUTSIDE OF THE STATE AND INTENTIONALLY VIOLATE THIS ORDER, YOU MAY BE SUBJECT TO FEDERAL CRIMINAL PROCEEDINGS UNDER THAT ACT, 18 U.S.C. §§ 2261—2262. IF YOU POSSESS A FIREARM OR ANY AMMUNITION WHILE THIS ORDER IS IN EFFECT, YOU MAY BE CHARGED WITH A FEDERAL OFFENSE EVEN IF THIS PENNSYLVANIA ORDER DOES NOT EXPRESSLY PROHIBIT YOU FROM POSSESSING FIREARMS OR AMMUNITION. 18 U.S.C. § 922(g)(8).

NOTICE TO **SHERIFF, POLICE AND** LAW ENFORCEMENT OFFICIALS

The police **and sheriff** who have jurisdiction over **[the plaintiff's] Plaintiff's** residence OR any location where a violation of this order occurs OR where **[the defendant] Defendant** may be located, shall enforce this order. **The court shall have jurisdiction over any indirect criminal contempt proceeding, either in the county where the violation occurred or where this protective order was entered.** An arrest for violation of **[Paragraphs] paragraphs** 1 through 7 of this order may be without warrant, based solely on probable cause, whether or not the violation is committed in the presence of the police **or any sheriff**. 23 Pa.C.S.**A.** § 6113.

Subsequent to an arrest, **and without the necessity of a warrant,** the police officer **or sheriff** shall seize all **firearms, other** weapons **and ammunition in Defendant's possession that were** used or threatened to be used during the violation of the protection order or during prior incidents of abuse. The [INSERT THE APPROPRIATE NAME OR TITLE] shall maintain possession of the **firearms, other** weapons **or ammunition** until further order of this **[Court] court**.

When **[the defendant] Defendant** is placed under arrest for violation of the order, **[the defendant] Defendant** shall be taken to the appropriate authority or authorities before whom **[defendant] Defendant** is to be arraigned. A "Complaint for Indirect Criminal Contempt" shall then be completed and signed by the police officer**, sheriff** OR **[the plaintiff] Plaintiff**. Plaintiff's presence and signature are not required to file this complaint.

If sufficient grounds for violation of this order are alleged, **[the defendant] Defendant** shall be arraigned, bond set and both parties given notice of the date of hearing.

BY THE COURT:

_____

Judge

_____

Date

If entered pursuant to the consent of plaintiff and defendant:

_____ _____

(Plaintiff's signature) (Defendant's signature)

Explanatory Comment—1977

The use of standardized forms provides uniformity and is also critical to the enforcement of protection orders both inside and outside of the commonwealth. These forms are substantially based on those proposed by members of the Pennsylvania Coalition Against Domestic Violence and have been further refined to accommodate the litigants' need for simplicity, the court's need for flexibility and law enforcements' need for certain identifying information necessary to enforce the protection order.

The forms must be used so that all protection orders can be properly registered with the statewide PFA Registry and the federal Protection Order File (POF) established by the National Crime Information Center (NCIC) for the collection of information that is necessary for nationwide enforcement of protection orders. Entering a protection order into the Registry and NCIC file enables law enforcement to immediately verify the existence and terms of the order. It is important, therefore, that all protection orders be registered with these two files. To this end, the forms capture all of the information that is required for data entry and the form orders are further structured to present that information in the order and sequence that is most helpful to the various law enforcement agencies responsible for entering the information into the files. Once the information reaches the Registry and is accepted by the NCIC file, it becomes immediately accessible to law enforcement agencies, dispatchers and courts throughout the country.

The provisions in the form petition and orders reflect the most common forms of relief available under the Protection from Abuse Act. Plenty of space, however, is provided for the plaintiff to request additional relief, and for courts to fashion appropriate relief, based on the individual circumstances of the litigants. Since all of the provisions will not necessarily apply in every case, the forms adopt a checkbox method that requires the user to affirmatively check only those provisions which are applicable to his or her situation.

In cases where a provision is generally applicable but its terms do not correspond precisely to the relief being requested or granted, the user should not check the standard provision but instead should use the blank spaces provided in the forms to specify the relief. For example, while the final order contains a standard provision permitting the defendant to retrieve personal belongings only in the company of a police officer, there may be more suitable methods of retrieval available in some cases. If so, then the plaintiff or court should use the blank spaces provided in the form petition or order (rather than the standard provision) to specify the alternative manner of retrieval.

Explanatory Comment—2000

Paragraph 2 of the final order has been amended to enable courts to include additional conditions for the retrieval of personalty by the defendant in a section of the final order which permits arrest without a warrant if the conditions are violated. Paragraph 9 of the final order has been amended to require the filing of a support complaint within two weeks, rather than fifteen days, of the entry of a final order under the Protection from Abuse Act to prevent the automatic lapse of any temporary support provisions included in the order. This change is consistent with the statutory provisions at 23 Pa.C.S.A. § 6108(a)(5).

Explanatory Comment—2006

The Notice to Defend in subdivision (a) was amended to include three notice requirements of the 2005 Protection from Abuse amendments, Act 66 of 2005. 23 Pa.C.S.A. § 6107 (a). The amendments provide that sheriffs may arrest defendants for violations of protective orders. In addition, defendants have the option to turn firearms, other weapons and ammunition over to a qualified third party instead of the sheriff, and federal firearms prohibitions and penalties are more clearly stated.

The 2005 amendments to the Protection From Abuse Act require several changes to the form petition at subdivision (b). The plaintiff is required to inform the court if the defendant works in a job that requires the handling of firearms. 23 Pa.C.S.A. § 6106 (a.2). This provision was included to allow courts to exercise appropriate discretion when a defendant is exempt from federal firearm prohibitions and penalties. Federal law prohibits possession of firearms and penalizes defendants who possess them if they are subject to an order prohibiting abuse, stalking or harassment. However, certain law enforcement officials are exempt from this prohibition and penalty. Under 18 U.S.C. § 925(a)(1), a person performing an official duty on behalf of the federal, state or local law enforcement agency may possess a firearm as long as the officer is required to possess the firearm in his or her official capacity. The Bureau of Alcohol, Tobacco and Firearms requires the official possession of the firearm to be authorized by statute, regulation or official department policy.

Paragraph 14 of the form petition was amended to address the manner in which the firearms and other weapons were used against the plaintiff or minor children and to remove the listing of firearms in the petition itself. The amended statute prohibits public access to any list or inventory of the defendant's firearms. Thus, a separate Attachment A is included at the end of the petition for purposes of listing the firearms at issue. This will allow the prothonotary to more easily redact the list from public access, while at the same time permitting the court, the parties and law enforcement agencies to enforce the order. 23 Pa.C.S. § 6108 (a)(7)(v).

The form petition also was amended to address the court's authority to order the defendant to relinquish any and all firearms, other weapons and ammunition, whether they were used or threatened to be used in an act of abuse or not. Any one of several circumstances authorizes the court to grant this relief, including, but not limited to, abuse involving a firearm or weapon or an immediate and present danger of abuse. The amended statute provides the court with multiple examples of what may constitute proof of immediate and present danger for the purposes of ordering the relinquishment of any or all of the defendant's firearms. 23 Pa.C.S.A. § 6107 (b)(3).

In subdivisions (c) and (e), paragraph three in the form temporary and final orders is amended to clarify that even indirect contact with a protected person may be prohibited. This clarification reflects the Pennsylvania Supreme Court's holding in Commonwealth v. Baker, 564 Pa. 192, 766 A.2d 328 (2001), that the order must be "definite, clear, specific and leave no doubt or uncertainty in the mind of the person to whom it was addressed of the prohibited conduct."

The 2005 amendments to the Protection from Abuse Act provide that the court may order the defendant to relinquish ammunition and firearm licenses, in addition to firearms and other weapons. 23 Pa.C.S.A. § 6108(a)(7). These items were added to paragraph six of the temporary and final order forms, the notices to the defendant and the notices to the sheriff, police and law enforcement.

The amendments to paragraph six of the form orders also provide the court with two options if firearms, weapons or ammunition are prohibited. The court may order only certain firearms, weapons and ammunition to be relinquished as listed by Plaintiff on Attachment A, or the court may order that all firearms, weapons and ammunition be relinquished. The amended paragraphs and the notices to the defendant inform the parties that if the defendant is ordered to relinquish firearms, weapons or ammunition, they must be relinquished to the sheriff or, in the alternative, they may be relinquished to a third party who complies with the substantive and procedural requirements for a third party safekeeping permit. 23 Pa.C.S.A. § 6107(a). No matter which option Defendant chooses, if firearms and weapons are ordered to be relinquished, any firearm license possessed must be relinquished to the sheriff. The aforementioned items may be relinquished at the time of service, but no later than 24 hours after service. 23 Pa.C.S.A. § 6108 (a)(7)(i). The notice to the defendant in the final order was expanded to advise the defendant that violation of the order may result in the revocation of the third-party safekeeping permit.

Paragraph seven of the final order form was amended to reflect 23 Pa.C.S.A. § 6108.1(a). The process for return of firearms is within the discretion of the court in each judicial district.

Paragraph ten of the final order form was amended to reflect the statute's prohibition against charging the plaintiff fees or costs related to filing, service, registration or appeal in any Protection from Abuse matter. A new subparagraph (b) in paragraph ten of the final order reflect the 2005 amendments to the Protection from Abuse Act which increased the surcharge a court may order a defendant to pay when an action is contested and directs the disbursement of the collected surcharges. 23 Pa.C.S.A. § 6106(d).

Paragraph fourteen of the final order form was amended to reflect the increased period of protection the court may grant. The maximum period of protection was increased from eighteen months to three years.

The amended notice to the sheriff, police and law enforcement in the final order clarifies that the defendant may be arrested anywhere a violation occurs, and that the court has jurisdiction to hear the issue of indirect criminal contempt either where the order was issued or where the violation occurred. 23 Pa.C.S.A. § 6114(a.1). The notice also makes it clear that a search and seizure of firearms may occur without a warrant when incident to arrest. 23 Pa.C.S.A. § 6113(b) and 6121.

Other amendments to the order forms reflect that the sheriff is authorized to arrest for violations of the order under the Protection from Abuse Act. 23 Pa.C.S.A. § 6113. The references to a protective order superseding provisions of a prior custody order were moved to paragraph five, which deals with custody, in both the temporary and final orders.

[Pa.B. Doc. No. 06-479. Filed for public inspection March 24, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 80

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, May 12, 2006 directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
FAX (717) 795-2175
E-mail: patricia.miles@pacourts.us

By the Domestic Relations Procedural Rules Committee

NANCY P. WALLITSCH, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.13-1. Failure or Refusal to Appear Pursuant to Order of Court. Bench Warrant.

(a) If a party fails to appear at a conference and/or hearing as directed by order of court, the court may issue a bench warrant for the arrest of the party if it finds

(1) following a hearing on the record that the party had actual notice that the party was **[required] ordered** to attend the conference and/or hearing, or

(2) upon the affidavit of a hearing officer or conference officer that

(i) the order of court scheduling the conference and/or hearing was served by ordinary mail with the return address of the domestic relations section appearing thereon, that the mail was not returned to the domestic relations section within fifteen days after mailing, and that, at a date after the order of court was mailed, the United States Postal Service has verified that mail for the party was being delivered at the address to which the court order was mailed; or

(ii) the party signed a receipt indicating acceptance of a copy of the court order; or

(iii) an employee of the court handed a copy of the order to the party; or

(iv) a competent adult handed a copy of the court order to the party, and filed an affidavit of service.

Official Note: See Rule 76 for the definition of "competent adult."

(b) The request for a bench warrant shall be made by the domestic relations office within sixty days following the party's failure to appear. The request shall be in the form provided by Rule 1910.13-2(b), and shall include the hearing officer or conference officer's certification that the party has not appeared for any domestic relations matter involving the same parties since the date the party failed to appear.

(c) Upon appearance in court by a party on the matter underlying the bench warrant, the bench warrant shall be vacated forthwith and the notice shall be given to all computer networks into which the bench warrant has been entered.

(d) **[The bench warrant shall direct that if the court is unavailable at the time of the party's arrest, the party shall be lodged in the county jail until such time as court is opened for business. The authority in charge of the county jail must promptly notify the sheriff's office and the director of the domestic relations section that defendant is being held pursuant to the bench warrant. Under no circumstances shall the party remain in the county jail longer than seventy-two hours prior to hearing.] When a bench warrant is executed, the case is to proceed in accordance with the following procedures.**

(1) When an individual is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee to conduct bench warrant hearings. As used in this rule, "judicial officer" is limited to the common pleas court judge who issued the bench warrant, or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings.

(2) In the discretion of the judicial officer, the bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(3) When the individual is arrested in the county of issuance, and the bench warrant hearing cannot be conducted promptly after the arrest, the individual shall be lodged in the county jail pending the hearing. The authority in charge of the county jail promptly shall notify the sheriff's office and the director of the domestic relations section that the individual is being held pursuant to the bench warrant.

(4) When the individual is arrested outside the county of issuance, the authority in charge of the county jail promptly shall notify the proper authorities in the county of issuance that the individual is being held pursuant to the bench warrant.

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the jail of the county of issuance of that bench warrant. The individual shall not be detained without a hearing on the bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant.

(7) If a bench warrant hearing is not held within the time limits in paragraph (d)(5), the bench warrant shall expire by operation of law.

Explanatory Comment—1994

In 1988, Section 4342 of the Domestic Relations Code, 23 Pa.C.S. § 4342, was amended to require establishment of procedures for expedited contempt in support. Those procedures are set forth in new Rules 1910.13-1, 1910.13-2, and 1910.21-1 through 1910.21-7.

Former Rule 1910.13 provided for the issuance of a bench warrant for failure of a person to obey a court order other than an order for support. It is replaced with new Rule 1910.13-1 which sets forth detailed procedures for the issuance of a bench warrant, and new Rule

1910.13-2 which provides the associated forms. The new rules apply only to a party who fails to appear at a support conference or hearing as directed by an order of court.

An individual arrested pursuant to a bench warrant can be incarcerated for a period not to exceed seventy-two hours prior to hearing as set forth in new Rule 1910.13-1(d). Under the old rules, if the court was unavailable at the time of arrest, the individual could not be held. Therefore, law enforcement officials were unable to execute bench warrants in the evenings or on weekends, when their efforts were most likely to be successful. By limiting the possible period of incarceration to seventy-two hours, new Rule 1910.13-1(d) balances the need to bring parties before the court with the desire to avoid lengthy pre-hearing detention. Bail can be set by the court where appropriate, providing additional protection for the respondent.

[Former Rule 1910.21 is replaced by new Rules 1910.21 through 1910.21-7. New Rule 1910.21-1 replaces the notice to appear before the court with a court order, thus eliminating the need for two essentially identical documents attached to a single petition. It also eliminates the old requirement that a copy of the support order underlying the contempt petition and an "official statement" of support arrearages be attached to the petition. Instead, the petition need only set forth the amount of the arrearages, as well as any other allegations which constitute the alleged failure to comply with the support order. As with a support complaint, an answer is permitted, but not required, unless specially ordered by the court.

Former Rule 1910.21(c) provided for service of a contempt petition only by regular mail. If the respondent failed to appear for the conference or hearing, the matter had to be continued for personal service or issuance of a bench warrant, sometimes creating lengthy delays. New Rule 1910.21-1(d) permits service of the contempt petition by first class mail. If the respondent fails to appear, the domestic relations section can request issuance of a bench warrant after certifying that the order was not returned by the post office within fifteen days, and that the postal authorities verified that the party was receiving mail at the address to which the order was sent on a date after the order was mailed. Thus, under the new rule, service can be accomplished with relative ease and little expense, but also with reasonable certainty that the respondent actually received notice of the proceedings.

New Rule 1910.21-1 addresses situations both where the payor is chronically a few dollars short, or a few days late by requiring that contempt proceedings be initiated when arrearages in any amount have existed for fifteen days.

The procedures for expedited contempt after service of the petition are set forth in new Rules 1910.21-2 through 1910.21-7. Pursuant to new Rule 1910.21-2, the respondent can be required to attend a conference, or can go directly before a judge for hearing, if the court permits. In all cases where the respondent does not go directly before a judge, there is an office conference as set forth in new Rule 1910.21-3. If an agreement is reached, the court may then enter the order without hearing on the basis of the conference officer's recommendation. If no agreement is reached, the matter proceeds as described in new Rule 1910.21-4 or, if an individual county adopts it by local rule, as set forth in new Rule 1910.21-5.

If no agreement is reached, new Rule 1910.21-4 requires the conference officer to prepare a summary of the conference. Upon consideration of the conference summary, the court may enter an order without hearing the parties. Either party has the right to file a written request for a de novo hearing within ten days after the order is mailed. If the court does not enter an order within five days, a de novo hearing is automatically scheduled before the court. The contempt order is stayed if either party demands a de novo hearing. The hearing de novo must be held no later than seventy-five days after the date the petition for contempt was filed. The time limitation is for the benefit of the plaintiff, and is intended to ensure speedy resumption of support payments.

New Rule 1910.21-5 provides the alternative procedure where no agreement is reached at the office conference. At the conclusion of a conference, the hearing officer must file a report containing a proposed order and the hearing officer's recommendations. If either party files exceptions within ten days, the court must either hear argument on the exceptions or hold a hearing de novo within seventy-five days. If no exceptions are filed within ten days, the court may enter an order on the basis of the hearing officer's report.

New Rule 1910.21-4 makes clear that a respondent cannot be incarcerated without a full evidentiary hearing before a judge. The court's order committing the respondent to jail must name the conditions that the respondent must fulfill in order to be released.

Pursuant to new Rule 1910.21-7, motions for post trial relief are not permitted to be filed to any order entered under new Rules 1910.21-1 through 1910.21-6.]

Explanatory Comment—1999

The rules of civil procedure governing service of original process and other legal papers have used the term "competent adult." In certain circumstances, the term has been used with the restrictive language "who is not a party to the action."

The Supreme Court of Pennsylvania has amended Definition Rule 76 by adding the following definition: "'competent adult' means an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party." In view of this new definition, the rules of civil procedure which used the term "competent adult who is not a party to the action" have been amended by deleting as unnecessary the restrictive language "who is not a party to the action." These rules using the term "competent adult" will be governed by the new definition. The rules which used the term "competent adult" without the restrictive language have been amend by deleting the word "competent," thus continuing to permit service by an adult without further restriction.

Explanatory Comment—2006

Beginning in 2006, bench warrants issued for failure to obey a court order to appear in a support matter will be available through the Judicial Net-

work ("JNET") system. JNET expands the capacity of law enforcement officers throughout the commonwealth to be informed of outstanding bench warrants issued by both the criminal and civil courts. The Supreme Court of Pennsylvania has promulgated new Pa. R.Crim. P. 150, effective August 1, 2006, which sets forth the procedure related to criminal bench warrants. The amendments to Rule 1910.13-1 and 1910-13-2 track the new criminal procedural rule so that bench warrant procedures will be uniform throughout the commonwealth. For additional information see the Criminal Procedural Rules Committee's Final Report explaining new Pa. R.Crim.P. 150, published with the promulgation order at 36 Pa. B. 184, 2006 (January 14, 2006).

Rule 1910.13-2. Form of Request for Bench Warrant and Supporting Affidavit. Form of Bench Warrant.

(a) Request for a bench warrant pursuant to Rule 1910.13-1 shall be in substantially the following form and shall be attached to the Bench Warrant form set forth in subdivision (b) of this rule:

[CAPTION]
REQUEST FOR BENCH WARRANT AND
SUPPORTING AFFIDAVIT

1. _____ did not appear for a conference and/or hearing in the Court of Common Pleas of _____ County on the _____ day of _____, 20 _____, which was scheduled by an order of court compelling this person's appearance, a copy of which is attached to this request.

2. The party received the order of court scheduling the conference and/or hearing in the following manner:

☐ (a) The order of court (i) was served upon the party by ordinary mail with the return address of the court thereon; (ii) the mail was not returned to the court within fifteen (15) days after mailing; and (iii) at a date after the order of court was mailed, the United States Postal Service has verified that mail for the party was being delivered at the address to which the court order was mailed.

☐ (b) The party signed a receipt indicating acceptance of the court order.

☐ (c) An employee of the court handed a copy of the court order to the party. The employee's affidavit of service is attached.

☐ (d) A competent adult handed a copy of the court order to the party. The adult's affidavit of service is attached.

3. ☐ This request for Bench Warrant is made within sixty days following the party's failure to appear for the conference and/or hearing; and

☐ I have reviewed the records of the Court and the Domestic Relations Office concerning this case, and attest that the party has not appeared for any domestic relations matter involving the same parties since the date upon which the party failed to appear in violation of the attached order of court.

4. In my capacity as hearing officer or conference officer, I request that the attached Bench Warrant be issued against the party named on account of the party's failure to appear for a scheduled conference and/or hearing in violation of an order of court.

[5. I recommend that bail in this matter be set as follows:

☐ **No bail.**

☐ **Bail to be set in the amount of _____ .**

☐ **Bail to be determined by the magisterial district judge.**

***Note:* The following information should be supplied where the magisterial district judge is given discretion in setting bail.]**

The records of the Domestic Relations Section show that:

☐ the party owes support arrearages in the amount of $ _____ .

☐ the party has failed to appear for _____ hearings relating to this case.

I verify that the statements made in this affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

DATE: _____ _____
NAME/OFFICIAL TITLE

(b) The Bench Warrant entered by a court pursuant to Rule 1910.13-1 shall be in substantially the following form, and shall be attached to the Request for Bench Warrant form set forth in subdivision (a) of this rule:

[CAPTION]
BENCH WARRANT

AND NOW, this _____ day of _____, 20 ___, the Sheriff of _____ County, or any constable, or police officer, or other law enforcement officer is hereby ordered to take _____, residing at _____, into custody for appearance before this Court.

This bench warrant is issued because it appears that the (plaintiff) (defendant) has failed to appear, after notice, before the court for a scheduled conference and/or hearing.

We command you, the arresting officer, forthwith to convey and deliver the party into the custody of the Court of Common Pleas of _____ County, at

_____, _____
(address) (city)

Pennsylvania, for a hearing.

DESCRIPTIVE INFORMATION

Social Security #_____ Sex ___ D.O.B. _____ Age ___

Height ____ Weight ____ Race ____ Eyes ____ Hair ____

Distinguishing features (scars, tattoos, facial hair, disability, etc.) _____

_____

Alias _____

Telephone # _____

You are further commanded that if the court is unavailable, the party may be held in the County Jail until the court is opened for business, at which time the party shall be promptly conveyed and delivered into the custody of the court at

_____ , _____ ,
(address) (city)

Pennsylvania, for hearing.

The authority in charge of the county jail shall notify the sheriff's office and the director of the domestic relations section forthwith that the party is being held pursuant to the bench warrant.

Under no circumstances may the party be held in the county jail **of the county that issued this bench warrant** for more than seventy-two hours **[prior to hearing] or the close of the next business day if the 72 hours expires on a non-business day**. **See Pa. R.Crim.P 150(A)(5)**.

Bail in this matter shall be set as follows:

☐ No bail.

☐ Bail to be set in the amount of _____ .

[☐ Bail to be determined by the magisterial district judge.

Official Note: **Standards for setting bail are set forth in Rule of Criminal Procedure 525.]**

BY THE COURT: _____
JUDGE

Official Note: **Standards for setting bail are set forth in Rule of Criminal Procedure 525.**

Explanatory Comment—2005

Act 207-2004 amended numerous titles of the Pennsylvania Consolidated Statutes changing the title of "district justice" to "magisterial district judge." The amendments to Rule 1910.13-2 reflect the change in title.

[Pa.B. Doc. No. 06-480. Filed for public inspection March 24, 2006, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 3—6 AND 10]

Order Promulgating New Rule 589; Amending Rules 502, 542, 543, 546, 551, 622, and 648; and Approving the Revision of the Comments to Rules 313, 400, 504, 560, 585, 586, 587, and 1010; No. 342 Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 9th day of March, 2006, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 29 Pa.B. 2444 (May 8, 1999), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 727), 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 589 is promulgated;

(2) Rules of Criminal Procedure 502, 542, 543, 546, 551, 622, and 648 are amended;

(3) the revision of the Comments to Rules of Criminal Procedure 313, 400, 504, 560, 585, 586, 587, and 1010 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 September 1, 2006.

Madame Justice Baldwin did not participate in the decision of this matter.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 3. ACCELERATED REHABILITATIVE DISPOSITION (ARD)

PART B. Court Cases

Rule 313. Hearing, Manner of Proceeding.

* * * * *

Comment

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In any case in which a summary offense has been joined with the misdemeanor or felony charges that have been disposed of by the defendant's acceptance into an ARD program, if the summary offense has not been disposed of prior to the ARD hearing, the trial judge may not remand the summary offense to the issuing authority for disposition, but must dispose of the summary offense at the ARD hearing. The Crimes Code § 110, 18 Pa.C.S. § 110, *Commonwealth v. Caufman*, 541 Pa. 299, 662 A.2d 1050 (1995), and *Commonwealth v. Campana*, 455 Pa. 622, 304 A.2d 432 (1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 454 Pa. 233, 314 A.2d 854 (1974), may require in a particular case that the trial judge have the defendant execute a "*Campana*" waiver prior to disposing of the summary offense at the ARD hearing.

When bail is terminated upon acceptance of the defendant into the ARD program, such action constitutes a "full and final disposition" for purposes of Rule 534 (Duration of Obligation) and Rule 535 (Receipt of Deposit; Return of Deposit).

Official Note: Rule 179 approved May 24, 1972, effective immediately; amended April 10, 1989, effective July 1, 1989; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered 313 and amended March 1, 2000, effective April 1, 2001**; Comment revised March 3, 2006, effective September 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 March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor or felony charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART A. Instituting Proceedings

Rule 400. Means of Instituting Proceedings In Summary Cases.

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Comment

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If one or more of the offenses charged is a misdemeanor, felony, or murder, the case is a court case (see Rule 103) and proceeds under Chapter 5 of the rules. **[Any] Ordinarily, any** summary offenses in such a case, if known at the time, must be charged in the same complaint as the higher offenses and must be disposed of as part of the court case. See **[Crimes Code § 110, 18 Pa.C.S. § 110, and]** *Commonwealth v. Campana***, 455 Pa. 622**, 304 A.2d 432 (**[Pa.]** 1973), vacated and remanded, 414 U.S. 808 (1973), on remand**, 454 Pa. 233, 314 A.2d 854 ([Pa.]** 1974) **(compulsory joinder rule) and Crimes Code § 110, 18 Pa.C.S. § 110. [But see *Commonwealth v. Beatty*, 455 A.2d 1194 (Pa. 1983); *Commonwealth v. Taylor*, 522 A.2d 37 (Pa. 1987); and *Commonwealth v. Kresge*, 464 A.2d 384 (Pa. Super. Ct. 1983) (no Section 110 violation when separate prosecutions involve offenses "not within the jurisdiction of a single court"). See also *Commonwealth v. Geyer*, 687 A.2d 815 (Pa. 1996) (Section 110 applies to separate prosecution of two summary offenses within the jurisdiction of a single court).] See also *Commonwealth v. Caufman*, 541 Pa. 299, 662 A.2d 1050 (1995).**

In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 275 Pa. Super. 166, 418 A.2d 664 (1980).

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Official Note: Previous Rule 51 adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001; Comment revised February 6, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005**; Comment revised March 3, 2006, effective September 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the March 3, 2006 Comment revision concerning summary motor vehicle offenses published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B. Instituting Proceedings

Rule 502. Instituting Proceedings in Court Cases.

Criminal proceedings in court cases shall be instituted by:

(1) filing a written complaint; or

(2) an arrest without a warrant:

(a) when the offense is a **murder,** felony**,** or misdemeanor committed in the presence of the police officer making the arrest; or

(b) upon probable cause when the offense is a felony **or murder**; or

* * * * *

Comment

Criminal proceedings in court cases are instituted by 1) the filing of a complaint, followed by the issuance of a summons or arrest warrant; or by 2) a warrantless arrest, followed by the filing of a complaint. **For the definition of "court case," see Rule 103.**

If the defendant is held for court, the attorney for the Commonwealth submits an information to the court (see Rule 225). See Section 8931(d) of the Judicial Code, 42 Pa.C.S. § 8931(d).

There are only a few exceptions to this rule regarding the instituting of criminal proceedings in court cases. There are, for example, special proceedings involving a coroner or medical examiner. See *Commonwealth v. Lopinson***, 427 Pa. 552,** 234 A.2d 552 (**[Pa.]** 1967), and *Commonwealth v. Smouse*, **406 Pa. Super. 369,** 594 A.2d 666 (**[Pa. Super.]** 1991).

Whenever a misdemeanor **[or],** felony**, or murder** is charged, even if **[a] the** summary offense is also charged in the same complaint, the case should proceed as a court case under Chapter 5. See ***Commonwealth v. Caufman*, 541 Pa. 299, 662 A.2d 1050 (1995), and** *Commonwealth v. Campana***, 455 Pa. 622**, 304 A.2d 432 (**[Pa.]** 1973)**, vacated and remanded, 414 U.S. 808 (1973), on remand, 454 Pa. 233, 314 A.2d 854 (1974)**. In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and ***Commonwealth v. Masterson*, 275 Pa. Super. 166, 418 A.2d 664 (1980).**

[Subsection] Paragraph (2)(c) is intended to acknowledge those specific instances wherein the General Assembly has provided by statute for arrest without a warrant for a misdemeanor not committed in the presence of the arresting officer. It in no way attempts to modify the law of arrest where no specific statutory provision applies.

For institution of criminal proceedings in summary cases, see Rule 400.

Official Note: Original Rule 102(1), (2), and (3), adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 102 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 101, and made applicable to court cases only, September 18, 1973, effective January 1, 1974; Comment revised February 15, 1974, effective immediately; amended June 30, 1975, effective September 1, 1975; Comment amended January 4, 1979, effective January 9, 1979; paragraph (1) amended October 22, 1981, effective January 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; amended August 9, 1994, effective January 1, 1995; Comment revised January 16, 1996, effective immediately; renumbered Rule 502 and amended March 1, 2000, effective April 1, 2001; **Comment revised March 3, 2006, effective September 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 March 3, 2006 changes to the third paragraph of the Comment published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

PART B(1). Complaint Procedures

Rule 504. Contents of Complaint.

* * * * *

Comment

This rule sets forth the required contents of all complaints whether the affiant is a law enforcement officer, a police officer, or a private citizen. When the affiant is a private citizen, the complaint must be submitted to an attorney for the Commonwealth for approval. See Rule 506. When the district attorney elects to proceed under Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth), the police officer must likewise submit the complaint for approval by an attorney for the Commonwealth.

Ordinarily, whenever a misdemeanor, felony, or murder is charged, any summary offense in such a case, if known at the time, should be charged in the same complaint, and the case should proceed as a court case under Chapter 5 Part B. See *Commonwealth v. Caufman*, 541 Pa. 299, 662 A.2d 1050 (1995) and *Commonwealth v. Campana*, 455 Pa. 622, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 454 Pa. 233, 314 A.2d 854 (1974) (compulsory joinder rule). In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 275 Pa. Super. 166, 418 A.2d 664 (1980).

Paragraph (8) requires the affiant who prepares the complaint to indicate on the complaint whether criminal laboratory services are requested in the case. This information is necessary to alert the **[district justice] magisterial district judge**, the district attorney, and the court that the defendant in the case may be liable for a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 **[, which] that** requires **[that]** a defendant **to** be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

Official Note: Original Rule 104 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 504 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised March 3, 2006, effective September 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 March 3, 2006 Comment revision published with the Court's Order at 36 Pa.B. 1392 (March 25 , 2006).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 542. Preliminary Hearing; Continuances.

* * * * *

(D) **In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, the issuing authority shall not proceed on the summary offense except as provided in Rule 543(F).**

(E) CONTINUANCES

* * * * *

Comment

* * * * *

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, **460 Pa. 336,** 333 A.2d 755 (**[Pa.]**1975). This amendment was made to preserve the limited function of a preliminary hearing.

* * * * *

In cases in which summary offenses are joined with misdemeanor, felony, or murder charges, pursuant to paragraph (D), during the preliminary hearing, the issuing authority is prohibited from proceeding on the summary offenses, including the taking of evidence on the summary offenses, or adjudicating or disposing of the summary offenses except as provided in Rule 543(F).

For the contents of the transcript, see Rule 135.

Official Note: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; amended March 3, 2006, effective September 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the March 3, 2006 amendments to paragraph (D) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Rule 543. Disposition of Case at Preliminary Hearing.

* * * * *

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

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

* * * * *

(E) If the Commonwealth does not establish a prima facie case of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the issuing authority shall dismiss the complaint.

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

(1) If the Commonwealth establishes a prima facie case pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

(2) If the Commonwealth does not establish a prima facie case pursuant to paragraph (B), upon the request of the Commonwealth, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(3) If the Commonwealth withdraws all the misdemeanor, felony, and murder charges, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

Comment

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

* * * * *

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

* * * * *

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

* * * * *

Rule 542(D) specifically prohibits an issuing authority at a preliminary hearing from proceeding on any summary offenses that are joined with misdemeanor, felony, or murder charges, except as provided in paragraph (F) of this rule. Paragraph (F) sets forth the procedures for the issuing authority to handle these summary offenses at the preliminary hearing. These procedures include the issuing authority (1) forwarding the summary offenses together with the misdemeanor, felony, or murder charges held for court to the court of common pleas, or (2) disposing of the summary offenses as provided in Rule 454 by accepting a guilty plea or conducting a trial whenever (a) the misdemeanor, felony, and murder charges are withdrawn, or (b) a prima facie case is not established at the preliminary hearing and the Commonwealth requests that the issuing authority proceed on the summary offenses.

Under paragraph (F)(2), in those cases in which the Commonwealth does not intend to refile the misdemeanor, felony, or murder charges, the Commonwealth may request that the issuing authority dispose of the summary offenses. In these cases, if all the parties are ready to proceed, the issuing authority should conduct the summary trial at that time. If the parties are not prepared to proceed with the summary trial, the issuing authority should grant a continuance and set the summary trial for a date and time certain.

In those cases in which a prima facie case is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the defendant unless there are outstanding detainers against the defendant that would prevent the defendant's release.

Nothing in this rule would preclude the refiling of one or more of the charges, as provided in these rules.

See Rule 313 for the disposition of any summary offenses joined with misdemeanor or felony charges when the defendant is accepted into an ARD program on the misdemeanor or felony charges.

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

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006**; amended March 3, 2006, effective September 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the March 3, 2006 amendments adding new paragraphs (E) and (F) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Rule 546. Dismissal Upon Satisfaction or Agreement.

When a defendant is charged **[with a misdemeanor] in a case in which the most serious offense charged is a misdemeanor(s)**, the issuing authority may dismiss the case upon a showing that:

* * * * *

Comment

* * * * *

A dismissal of the case pursuant to this rule is a dismissal of all the charges, including any summary offenses that have been joined with the misdemeanor(s) and are part of the case. See the Comment to Rule 502 (Instituting Proceedings In Court Cases) (when a misdemeanor, felony, or murder is charged with a summary offense in the same complaint, the case should proceed as a court case under Chapter 5 Part B). See also Rule 551 (Withdrawal Of Charges Pending Before Issuing Authority) that permits the attorney for the Commonwealth to withdraw one or more of the charges.

For dismissal upon satisfaction or agreement in summary cases, see Rule 458.

For court dismissal upon satisfaction or agreement, see Rule 586.

Official Note: Formerly Rule 121, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 145 and amended September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended April 18, 1997, effective July 1, 1997; renumbered Rule 546 and amended March 1, 2000, effective April 1, 2001**; amended March 3, 2006, effective September 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the March 3, 2006 amendments to the first paragraph and the Comment published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Rule 551. Withdrawal of **[Prosecution] Charges Pending** Before Issuing Authority.

In any court case pending before an issuing authority, the attorney for the Commonwealth, or his or her designee, may withdraw **[the prosecution] one or more of the charges**. The withdrawal shall be in writing.

Comment

This rule was amended in 1995 to make it clear that only the attorney for the Commonwealth or a designee has the authority to withdraw a prosecution.

In any case in which a summary offense is joined with the misdemeanor, felony, or murder charges:

(1) if only some of the charges are withdrawn, and the remainder are held for court, the joined summary offense, unless withdrawn, must be forwarded to the court of common pleas as required by Rule 543(F); and

(2) if all of the misdemeanor, felony, and murder charges are withdrawn pursuant to this rule, the issuing authority must dispose of the summary offense as provided in Rule 454 (Trial in Summary Cases).

Official Note: Rule 151 adopted September 18, 1973, effective January 1, 1974; amended August 14, 1995, effective January 1, 1996; renumbered Rule 551 March 1, 2000, effective April 1, 2001**; amended March 3, 2006, effective September 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 March 3, 2006 amendments to the title and rule published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

PART E. Informations

Rule 560. Information: Filing, Contents, Function.

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Comment

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In any case in which there are summary offenses joined with the misdemeanor, felony, or murder charges that are held for court, the attorney for the Commonwealth must include the summary offenses in the information. See *Commonwealth v. Hoffman*, 406 Pa. Super. 583, 594 A.2d 772 (1991).

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

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

Official Note: Rule 225 adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised April 23, 2004, effective immediately; **Comment revised August 24, 2004, effective August 1, 2005; Comment revised March 3, 2006, effective September 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 March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

PART F(1). Motion Procedures

Rule 585. Nolle Prosequi.

* * * * *

Comment

Section 8932 of the Judicial Code, 42 Pa.C.S. § 8932, prohibits the district attorney from entering a nolle prosequi without court approval at any time after the filing of an information.

Before an information is filed, the attorney for the Commonwealth may withdraw one or more of the charges by filing a notice of withdrawal with the clerk of courts. See Rule 561(A). Upon the filing of an information, any charge in the complaint not listed on the information will be deemed withdrawn by the attorney for the Commonwealth. See Rule 561(B). After the information is filed, court approval is required before a nolle prosequi may be entered on a charge listed therein. See 42 Pa.C.S. § 8932.

In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge: (1) the judge may order a nolle prosequi on all the charges including the summary offense; and (2) if the judge has ordered a nolle prosequi on all the misdemeanor, felony, or murder charges pursuant to this rule, the judge may not remand the summary offense to the issuing authority for disposition, but must dispose of the summary offense in the court of common pleas as required by Rule 589 (Pretrial Disposition of Summary Offenses Joined With Misdemeanor, Felony, or Murder Charges).

Official Note: Rule 314 adopted June 30, 1964, effective January 1, 1965; Comment revised February 15, 1974, effective immediately; renumbered Rule 313 and Comment revised June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978 **[,];** Comment revised January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; amended August 14, 1995, effective January 1, 1996; renumbered Rule 585 and amended March 1, 2000, effective April 1, 2001**; Comment revised March 3, 2006, effective September 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 March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Rule 586. Court Dismissal Upon Satisfaction or Agreement.

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Comment

This rule applies only to courts of common pleas. Neither justices of the peace, **[district justices] magisterial district judges**, Philadelphia Municipal Court judges, **[Pittsburgh Police Magistrates,]** nor any other issuing authority may dismiss a case under this rule, but rather only as provided in Rule 546.

This rule sets forth concisely the criteria a defendant must satisfy before the court has the discretion to order dismissal under this rule.

If a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, a dismissal of the case pursuant to this rule may include a dismissal of the summary offense. See the Comment to Rule 502 (Instituting Proceedings in Court Cases).

Official Note: Rule 315 adopted June 30, 1964, effective January 1, 1965; amended September 18, 1973, effective January 1, 1974; renumbered Rule 314 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended January 28, 1983, effective July 1, 1983; renumbered Rule 586 and amended March 1, 2000, effective April 1, 2001**; Comment revised March 3, 2006, effective September 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 March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Rule 587. Motion for Dismissal.

* * * * *

Comment

Cf. Pa.R.J.A. 1901 concerning termination of inactive cases.

See Rule 575 for the procedures governing motions and answers.

In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, a dismissal of the prosecution pursuant to paragraph (A) would include the dismissal of the summary offense. See the Comment to Rule 502 (Instituting Proceedings in Court Cases).

Official Note: **[Rule] Rule** 316 adopted June 30, 1964, effective January 1, 1965; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; renumbered Rule 315 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; renumbered Rule 587 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004**; Comment revised March 3, 2006, effective September 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 March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25 2006).

Rule 589. Pretrial Disposition of Summary Offenses Joined with Misdemeanor, Felony, or Murder Charges.

(A) In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, when there is a dismissal of all misdemeanor, felony, and murder charges, unless the Commonwealth appeals the disposition, the trial judge shall dispose of the summary offense.

(B) In no event shall the trial judge remand the summary offense to the issuing authority for disposition.

Comment

In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, when an appeal of a pretrial disposition of the misdemeanor, felony, or murder charge is taken, disposition of the summary offense should be delayed pending the appeal. See Rules of Appellate Procedure 311 (Interlocutory Appeals as of Right), 903 (Time for Appeal), and 1701 (Effect of Appeal Generally).

Notwithstanding the provisions of this rule, a dismissal of the prosecution pursuant to Rule 586 (Court Dismissal Upon Satisfaction or Agreement) may include the dismissal of the summary offense.

For the procedures for nolle prosequi see Rule 585 (Nolle Prosequi).

Official Note: Adopted March 3, 2006, effective September 1, 2006.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART B. Non-Jury Procedures

Rule 622. Time for Court Action Following Non-Jury Trial.

(A) A verdict shall be rendered in all non-jury cases within 7 days after trial.

(B) In any case in which a summary offense is joined with the misdemeanor, felony, or murder charges that were tried before the trial judge, the trial judge shall render a verdict on the summary offense, and impose sentence if the judge finds the defendant guilty of the summary offense, even in cases in which the judge has dismissed or found the defendant not guilty on the misdemeanor, felony, or murder charges.

Comment

The 1993 amendment to this rule was prompted by the general revision of post-trial procedures reflected in large part by Rule 720 (Post-Sentence Procedures; Appeal). Before this amendment, Rule 622 was a hybrid. It contained time limits for decisions on several types of motions, and also contained a time limit for verdict in non-jury trials. As a result of the adoption of Rule 720, post-verdict motions for a new trial, for judgment of acquittal, and motions in arrest of judgment were moved to post-sentence under Rule 720. The procedures for a motion for judgment of acquittal after the jury is discharged without agreeing on a verdict were amended in 1993 and moved to Rule 608. Rule 622, as amended, only provides the time limit for verdict in a non-jury case.

Pursuant to Rule 543 (Disposition of Case at Preliminary Hearing), in cases in which there are summary offenses that are joined with the misdemeanor, felony, or murder charges, the issuing authority is prohibited from adjudicating or disposing of the summary offenses, and must forward the summary offenses to the court of common pleas for disposition with the charges held for court. Therefore, when a judge is the trier of fact as to the misdemeanors, felonies, or murder pursuant to this rule, the judge may not remand the summary offense to the issuing authority, but must dispose of the summary offense together with the misdemeanor, felony, and murder.

Official Note: Formerly Rule 302 adopted June 30, 1964, effective January 1, 1965; renumbered Rule 1122 and moved to Chapter 1100, June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended January 28, 1983, effective July 1, 1983; amended March 22, 1993, effective as to cases in which trial commences on or after January 1, 1994; renumbered Rule 622 and Comment revised March 1, 2000, effective April 1, 2001; **amended March 3, 2006, effective September 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 March 3, 2006 amendments concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

PART C(2). Conduct of Jury Trial

Rule 648. Verdicts.

* * * * *

(F) **If there is a summary offense joined with the misdemeanor, felony, or murder charge that was tried before the jury, the trial judge shall not remand the summary offense to the issuing authority. The summary offense shall be disposed of in the court of common pleas, and the verdict with respect to the summary offense shall be recorded in the same manner as the verdict with respect to the other charges.**

(G) Before a verdict, whether oral or sealed, is recorded, the jury shall be polled at the request of any party. Except where the verdict is sealed, if upon such poll there is no concurrence, the jury shall be directed to retire for further deliberations.

Comment

Paragraph (A) of the rule replaces the practice of automatically appointing the first juror chosen as foreman of the jury. Paragraphs (C), (D), and (E) serve only to codify the procedure where conviction or acquittal of one offense operates as a bar to a later trial on a necessarily included offense. Similarly, the rule applies to situations of merger and autrefois convict or acquit. No attempt is made to change the substantive law which would operate to determine when merger or any of the other situations arise. See, e.g., *Commonwealth v. Comber***, 374 Pa. 570,** 97 A.2d 343 (**[Pa.]** 1953).

Paragraph (F) provides for the disposition in the court of common pleas of any summary offense that is joined with the misdemeanor, felony, or murder charges that were tried before the jury. Under no circumstances may the trial judge remand the summary offense to the issuing authority, even in cases in which the defendant is found not guilty by the jury. See also Rule 543 (Disposition of Case at Preliminary Hearing).

Paragraph **[(F)] (G)** provides for the polling of the jury and requires the judge to send the jury back for deliberations in accordance with *Commonwealth v. Martin***, 379 Pa. 587,** 109 A.2d 325 (**[Pa.]** 1954). With respect to the procedure upon non-concurrence with a sealed verdict, see Rule 649(C).

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

Official Note: Rule 1120 adopted January 24, 1968, effective August 1, 1968; amended February 13, 1974, effective immediately; paragraph (E) amended to correct printing error June 28, 1976, effective immediately; paragraph (F) amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 648 and amended March 1, 2000, effective April 1, 2001**; amended March 3, 2006, effective September 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 March 3, 2006 amendments concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

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

PART A. Philadelphia Municipal Court Procedures

Rule 1010. Procedure on Appeal.

* * * * *

Comment

In any case in which there are summary offenses joined with the misdemeanor charges that are the subject of the appeal, the attorney for the Commonwealth must include the summary offenses in the information. See *Commonwealth v. Speller*, 311 Pa. Super. 569, 458 A.2d 198 (1983).

Official Note: Rule 6010 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended August 28, 1998, effective immediately; renumbered Rule 1010 March 1, 2000, effective April 1, 2001**; Comment revised March 3, 2006, effective September 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 March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

FINAL REPORT[1]

New Pa.R.Crim.P. 589 (Pretrial Disposition of Summary Offenses Joined with Misdemeanor or Felony Charges); amendments to Pa.Rs.Crim.P. 502, 542, 543, 546, 551, 622, and 648; and revision of the Comments to Pa.Rs.Crim.P. 313, 400, 504, 560, 585, 586, 587, and 1010

Joinder of Summary Offenses with Misdemeanor, Felony, or Murder Charges

On March 9, 2006, effective September 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Pa.R.Crim.P. 589, amended Rules of Criminal Procedure 502, 542, 543, 546, 551, 622, and, 648, and approved the revision of the Comments to Rules of Criminal Procedure 313, 400, 504, 560, 585, 586, 587, and 1010. These rule changes, which are the culmination of a number of years of work by the

[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.

Committee, clarify the procedures for handling cases in which a summary offense is joined with misdemeanor, felony, or murder charges both when the case is before the issuing authority and after the case is held for court.

I. INTRODUCTION

The question of how to handle cases in which a summary offense is joined with misdemeanor, felony, or murder charges ("joined summary offense") has been raised a number of times with the Committee in correspondence from members of the bench and bar, and more recently in inquiries the Committee is receiving from the Common Pleas Case Management System (CPCMS). The correspondents have indicated that there is a great deal of diversity statewide in the procedures employed for handling summary offenses that are joined with misdemeanor, felony, or murder charges, even among judges and magisterial district judges within the same judicial districts, and that this lack of uniformity is confusing for members of the bench and bar. According to the correspondents, the problems with the lack of uniformity arise throughout the criminal justice process—in the context of an accelerated rehabilitative disposition ("ARD") program; when a case is within the jurisdiction of the minor judiciary, both at and following the preliminary hearing; and after a case is held for court in pretrial and trial proceedings. The correspondents asked the Committee to consider specifically (1) the impact that the joined summary offenses might have on the defendant's eligibility for ARD, and (2) whether there should be one uniform procedure for handling the summaries (a) when a defendant is accepted into an ARD program; (b) at the preliminary hearing; and (c) when the case is held for court.

The Committee reviewed the rules, the various procedures being used statewide, and the case law. The Committee's research, as well as the members' experiences, confirmed what the correspondents had noted—there are widespread variations in the procedures from judicial district to judicial district, and even from judge to judge within judicial districts, and this lack of uniformity is creating a great deal of confusion for members of the minor judiciary, the judges and clerks in the courts of common pleas, members of the bar, and defendants. Furthermore, the obvious cause of this lack of uniformity is that there are no statewide rules that establish clear procedures, and the case law offers little guidance. In view of these considerations, the Committee agreed that the criminal justice system would be benefited by rules that establish a uniform procedure for handling these joined cases.

In developing the proposal, the Committee noted that, pursuant to the Rule 103 definition of "court case,"[2] once a summary offense is joined with misdemeanor, felony, or murder charges, the joined summary offense becomes part of the "court case," and, therefore, the joined summary offense should remain with and be treated as part of the "court case." In addition, the Committee agreed that to promote judicial economy and the efficient administration of justice, when the case is before the minor judiciary and the circumstances warrant the disposition of the summary offense alone, the issuing authority should be responsible for the disposition. However, once a case that includes a joined summary offense has been held for court and has been forwarded to the court of common pleas, when the circumstances warrant the disposition of the summary offense alone, it makes no sense to return the summary offense to the minor judiciary, and therefore the judge in the court of common pleas ("CP judge") should dispose of the summary offense. These points formed the Committee's guiding principles as we worked through the rules.

[2] Rule 103 defines "court case" as "a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree."

II. DISCUSSION OF RULE CHANGES

The Committee approached this project by examining the rules in groupings consistent with the "chapter" organization of the rules: ARD; preliminary proceedings when the case is before the minor judiciary; pretrial proceedings after the case is held for court; trial procedures in the court of common pleas; and procedures in Philadelphia Municipal Court.

A. *ARD Cases: Rule 313*

A number of the questions posed to the Committee concerned the handling of joined summary offenses in court cases in which the defendant is potentially eligible for ARD, and seem to fall into two broad categories. First, if the defendant is going to be admitted into ARD on the misdemeanor or felony charge, how should the summary offense be handled? Second, what is the effect of the joined summary offense on ARD eligibility if the defendant pleads guilty to the summary offense or if the CP judge finds the defendant guilty of the summary offense. Would these "convictions" be considered by the district attorney as a bar to admitting the defendant into ARD? We also considered whether these "convictions" would be a bar to future prosecution if the defendant failed to complete the ARD program.

Proceeding with the Committee's basic premise that cases with joined summary offenses are "court cases" within the Rule 103 definition, the Committee reached the following conclusions. First, there would be no reason why a CP judge could not include the summary offense in the ARD disposition. Second, if the summary offense is not included in the ARD disposition, and the summary offense has not been disposed of prior to the ARD hearing, the CP judge may not remand the summary offense to the issuing authority for disposition, but must dispose of the summary offense at the ARD hearing. Third, by virtue of the charging function and the broad discretion given to district attorneys in deciding ARD eligibility, see, e.g., *Commonwealth v. Benn*, 544 Pa. 144, 675 A.2d 261 (1996), the district attorney has discretion to determine which offenses may be considered for ARD. The district attorney may nolle pros or withdraw the summary offense, or may recommend the inclusion of the summary offense in the ARD program. Fourth, if the summary offense is disposed of by a guilty plea or a guilty verdict, there may be a "*Campana*" or Crimes Code Section 110 issue that should be addressed.

Based on these considerations, the Committee ultimately agreed that the ARD issue should be addressed by revising the Comment to Rule 313 (Hearing, Manner of Proceeding) to make it clear that if the summary offense has not been disposed of by the time of the ARD hearing, then the CP judge may not remand the summary offense to the issuing authority, but must dispose of the summary offense at the ARD hearing, and that it may be necessary for the CP judge to have the defendant execute a "*Campana*" waiver prior to disposing of the summary offense to avoid any problems should the defendant fail to complete the ARD program on the misdemeanor or felony charge.

B. *Proceedings Before Issuing Authority*

1. *Preliminary Hearings: Rules 542 and 543*

The second consideration for the Committee concerned how the joined summary offenses should be handled at the preliminary hearing. The Committee examined Rules 542 (Preliminary Hearing; Continuances) and 543 (Disposition of Case at Preliminary Hearing), and agreed that to further the "court case" premise, the issuing authority should dispose of the joined summary offense only in those cases in which the Commonwealth fails to establish a prima facie case and the Commonwealth requests that the issuing authority dispose of the summary offense. This would occur, for example, when the Commonwealth does not intend to refile the misdemeanor, felony, or murder charge; or the Commonwealth withdraws all the misdemeanor, felony, and murder charges. To accomplish this, a new paragraph (D) has been added to Rule 542 that provides:

> In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, the issuing authority shall not proceed on the summary offense except as provided in Rule 543(F).

Correlative to the new Rule 542(D) provision, a new paragraph (F) has been added to Rule 543. Paragraph (F)(1) implements the joined summary offense policy by providing that in any case in which the Commonwealth establishes a prima facie case, the issuing authority is to forward the summary offense to the court of common pleas with the other charges held for court. Paragraphs (F)(2) and (F)(3) set forth the two exceptions noted above: when the Commonwealth does not intend to refile the misdemeanor, felony, or murder charge; or the Commonwealth withdraws all the misdemeanor, felony, and murder charges. The Rule 543 Comment has been revised to amplify these changes.

In addition, a new paragraph (E) has been added to Rule 543 to address cases in which the Commonwealth does not establish a prima facie case. A new Comment provision makes it clear that, when the complaint is dismissed, (1) the issuing authority should discharge the defendant unless there are outstanding detainers preventing the defendant's release, and (2) the Commonwealth may refile some or all of the charges, including the summary offense.

2. *Dismissal or Withdrawal of Charges: Rules 546 and 551*

Two other issues arose concerning the joined summary offenses when the case is before the issuing authority. First, how should the joined summary be handled when the case is going to be dismissed pursuant to Rule 546 (Dismissal Upon Satisfaction or Agreement)? The Committee agreed that, in this situation, the joined summary offense is part of the court case and should be dismissed with the misdemeanor. Although this reasoning seems apparent on the face of the rule, in view of the ongoing confusion in this area, the introductory paragraph to the rule has been amended to make the "same case" concept clear, with further explanation in the Rule 546 Comment. The Comment also has been revised by the addition of a cross-reference to Rule 551 alerting the parties and the courts that there is another option besides dismissing the entire case.

Rule 551 (Withdrawal of Prosecution Before Issuing Authority), which provides the Commonwealth with the option to withdraw some or all of the charges, presents a slightly different issue. The Committee reasoned that, if only some of the charges are withdrawn and the remainder are held for court, the joined summary offense, unless withdrawn, would be forwarded to the court of common pleas as required by Rule 543(F). However, if all the misdemeanor, felony, and murder charges are withdrawn and only the summary offense remains, the Committee did not see any utility in requiring the summary offense to be forwarded to the court of common pleas, and agreed that the issuing authority should dispose of the summary offense in the same manner that any summary offense is disposed of pursuant to Rule 454 (Trial in Summary Cases). To make this concept clear, the Rule 551 Comment has been revised by the addition of a paragraph explaining the process and cross-referencing Rule 543(F).

As part of the discussion of Rule 551, some members commented that the provision "may withdraw the prosecution" in the text of the rule could be confusing since the Commonwealth is not required to withdraw all the charges, but may withdraw some of the charges and proceed on the rest of the charges. In view of this, the phrase "the prosecution" has been replaced with "one or more of the charges" in the text of the rule and with "charges pending" in the title to the rule.

C. *Pretrial Proceedings After Case Held for Court*

1. *Filing Information: Rule 560*

When the case is held for court and the case includes a joined summary offense, the Committee agreed that the summary offense should be charged in the information. Although there is case law on point, see *Commonwealth v. Hoffman*, 406 Pa. Super. 583, 594 A.2d 772 (1991), some members suggested that because the rule does not specifically require this procedure even though paragraph (5) requires a statement of the elements of the offense charged, the joined summary offense is not uniformly being included in the information. To ensure the joined summary offenses are properly included in the information, a short cautionary explanation with a citation to *Hoffman*, supra, has been added to the Rule 560 Comment.

2. *Pretrial Disposition of Joined Summary: New Rule 589, and Rules 585, 586, and 587*

The Committee next considered the handling of the joined summary offense in the context of the pretrial proceedings under Chapter 5, after the case is held for court and the information is filed. The handling of the joined summary offense only becomes an issue when there is a dismissal or a nolle prosequi of all the misdemeanor, felony, or murder charges. We agreed that, consistent with the "court case" concept and to promote judicial economy, the CP judge must dispose of the remaining joined summary offense, and may not return the summary offense to the issuing authority for disposition. However, the Committee noted that none of the existing rules provide an appropriate place to clarify the procedures for the pretrial handling of joined summary offenses. Accordingly, new Rule 589 (Pretrial Disposition of Summary Offenses Joined with Misdemeanor or Felony Charges) has been adopted to specifically address this matter. The new rule is divided into two paragraphs. Paragraph (A) provides that "when there is a dismissal of all the misdemeanor, felony, and murder charges, unless the Commonwealth appeals the disposition, the trial judge shall dispose of the summary offense." Paragraph (B) makes it clear that the judge may not remand the summary offense.

In discussing this new rule and the treatment of joined summary offenses, several members expressed concern about the potential for double jeopardy issues or conflicts with the Rules of Appellate Procedure if the summary offense is disposed of in cases in which the Commonwealth appeals the pretrial disposition of any of the misdemeanor, felony, or murder charges. From the Committee's review of the Appellate Rules of Procedure, the members agreed that, pursuant to Rule of Appellate Procedure 1701 (Effect of Appeal Generally), any appeal by the Commonwealth of a pretrial disposition postpones further action on the case pending the appeal, and this postponement would include the disposition of any joined summary offenses. The Committee also noted that there are several pretrial proceedings from which the Commonwealth would be permitted to appeal, such as a granting of a suppression motion. Although none of the Criminal Rules addressing pretrial court case procedures set forth procedures for the time period pending an appeal, the members opined that the bench and bar are cognizant of these procedures. Notwithstanding this generally accepted knowledge, the Committee agreed the addition to the Rule 589 Comment of a cross-reference to Rules of Appellate Procedure 311, 903, and 1701 with a further elaboration that the disposition of the joined summary offenses would be delayed pending the Commonwealth's appeal would aide the bench and bar. The Comment also includes cross-references to Rules 585 (Nolle Prosequi) and 586 (Court Dismissal Upon Satisfaction or Agreement).

Correlative revisions have been made to the Comments to Rules 585, 586, and 587 (Motion for Dismissal) providing clarifications about the handling of the joined summary offense within the context of each rule. The Rule 585 Comment revision explains that (1) the CP judge may order a nolle prosequi on all the charges including the joined summary offense, and (2) when the nolle prosequi is of all the misdemeanor, felony, or murder charges, the CP judge must dispose of the joined summary offense. The Rule 586 Comment revision explains that the dismissal of the case may include a dismissal of the joined summary offense. Finally, the Rule 587 Comment revision explains that a dismissal of the prosecution includes a dismissal of the joined summary offense.

D. *Trial Procedures: Rules 622 and 648*

The last procedural area concerning joined summary offenses the Committee discussed was trials in the court of common pleas, both when there is a jury and when the judge is the trier of fact. Again reaffirming the principle that, consistent with the "court case" concept and to promote judicial economy, the joined summary offense should be handled by the CP judge and not remanded to the issuing authority the Committee looked at Rules 622 (Time for Court Action Following Non-Jury Trial) and 648 (Verdicts). Although neither rule specifically addresses the handling of the joined summary offense, the Committee thought that these rules are the best place in Chapter 6 to clarify the procedure. Accordingly, Rule 622 has been amended by adding a new paragraph (B) that requires the CP judge to dispose of the joined summary offense. Similarly, Rule 648 has been amended by adding a new paragraph (F) that specifically prohibits the CP judge from remanding the joined summary offense to the issuing authority, no matter how the misdemeanor, felony, or murder charges are disposed, and requires that the summary offense be disposed of in the court of common pleas. Finally, a cross-reference to Rule 543 has been added to the Comments of both rules.

E. *Correlative Changes*

1. *Summary Motor Vehicle Offenses: Rules 400, 502, and 504*

During the Committee's consideration of the issue of joined summary offenses, several members questioned whether summary motor vehicle offenses in jurisdictions with traffic courts would be treated in the same manner as other summary offenses. This issue generated a great deal of discussion, particularly following the 2002 changes to 18 Pa.C.S. § 110(1)(ii).[3] As initially developed, the Committee had proposed the Comments to Rules 400 (Means of Instituting Proceedings in Summary Cases), 502 (Instituting Proceedings in Court Cases), and 504 (Contents of Complaint) be revised to provide direction with regard to the charging of summary motor vehicle offenses when there are other summary offenses or misdemeanor, felony, or murder charges arising from the same criminal episode in jurisdictions that have traffic courts. Upon further reflection, the Committee agreed this proposal could be mischievous given the uncertainty created by the amendments to Section 110. Accordingly, the Comments to Rules 400, 502, and 504 have been revised merely to refer to the traffic court enabling statutes, 42 Pa.C.S. §§ 1301—1342, and to *Commonwealth v. Masterson*, 275 Pa. Super. 166, 418 A.2d 664 (1980), (a disposition in the Philadelphia Traffic Court is not a bar to a subsequent prosecution on a related misdemeanor or felony in common pleas court because, relying on the exclusive jurisdiction, there is no single court that could try both offenses).[4] This approach (1) alerts the bench and bar to the distinction between (a) the charging of summary vehicle code offenses that arise in the same criminal episode as other summary offenses or misdemeanor, felony, or murder charges in jurisdictions that have traffic courts established pursuant to 42 Pa.C.S. §§ 1301—1342 and (b) the charging of these summary vehicle code offenses in all other jurisdictions, (2) recognizes the current state of the law, and (3) leaves the implications of the amendments to Section 110 as applied to traffic court jurisdiction to the interpretation of the courts.

2. *Philadelphia Municipal Court: Rule 1010*

As a result of the Committee's research into joinder, we noted that the Superior Court in *Commonwealth v. Speller*, 311 Pa. Super. 569, 458 A.2d 198 (1983), held that when there is a non-traffic summary offense joined with a misdemeanor in a Philadelphia Municipal Court case, upon appeal of the disposition in the Municipal Court, the district attorney is required to include the summary offense in the information the district attorney is required to prepare pursuant to Rule 1010 (Procedure on Appeal). Because the joined summary is coming to the Court of Common Pleas in a slightly different manner than the

[3] Act 82 of 2002 amended Section 110 by deleting the words "jurisdiction of a single court" and replacing them with "same judicial district as the former prosecution." The Committee also reviewed, in the context of the March 3, 2006 rule changes in general, the changes to 18 Pa.C.S. § 110 and the principle joinder cases that relied upon the phrase "jurisdiction of a single court" as the legal basis for determining that disposition of a summary offense by a magisterial district judge did not preclude the trial in a court of common pleas of a misdemeanor, felony, or murder charge arising from the same criminal episode because the summary offense and the court case were not within the "jurisdiction of a single court." See, for example, *Commonwealth v. Geyer*, 546 Pa. 586 , 687 A.2d 815 (1996). The Committee concluded the 2002 changes to Section 110 do not create a problem. However, the "but see" reference to the string of cases cited in the Rule 400 Comment addressing Section 110 and the "within the jurisdiction of a single court" language in addition to the compulsory joinder rule has been deleted as no longer necessary.

[4] Rule 502(2)(a) and (2)(b) also have been amended by the addition of "murder" to the references to misdemeanor and felony to conform to the Rule 103 definition of "court case."

joined summaries in other court cases, the Rule 1010 Comment has been revised to include a cross-reference to *Speller*, supra, to acknowledge this variation.

[Pa.B. Doc. No. 06-481. Filed for public inspection March 24, 2006, 9:00 a.m.]

[234 PA. CODE CHS. 4 AND 7]

Order Approving the Revision of the Comments to Rules 431 and 706; No. 341 Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 9th day of March, 2006, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of efficient administration because the proposed changes are perfunctory in nature, 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 Comments to Rules of Criminal Procedure 431 and 706 are approved 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.

Madame Justice Baldwin did not participate in the decision of this matter.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 431. Procedure When Defendant Arrested With Warrant.

* * * * *

Comment

For the procedure in court cases following arrest with a warrant initiating proceedings, see Rules 516, 517, and 518. **See also the Comment to Rule 706 (Fines or Costs) that recognizes the authority of a common pleas court judge to issue a bench warrant for the collection of fines and costs and provides for the execution of the bench warrant as provided in either paragraphs (C)(1)(c) or (C)(1)(d) and (C)(2) of this rule.**

* * * * *

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**; Comment revised March 9, 2006, effective August 1, 2006**.

Committee Explanatory Reports:

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Final Report explaining the March 9, 2006 Comment revision adding the cross-reference to Rule 706 published with the Court's Order at 36 Pa.B. 1396 (March 25, 2006).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART A. Sentencing Procedures

Rule 706. Fines or Costs.

* * * * *

Comment

See generally *Commonwealth ex rel. Benedict v. Cliff***, 451 Pa. 427**, 304 A.2d 158 (**[Pa.]** 1973).

Under this rule, when a defendant fails to pay the fine and costs, the common pleas court judge may issue a bench warrant for the collection of the fine and costs. When a "failure to pay" bench warrant is issued, the bench warrant must be executed by a police officer following the procedures set forth in Rule 431(C)(1)(c) and (C)(2), or, if the defendant is unable to pay, the police officer must proceed as provided in Rule 150 (Bench Warrants).

* * * * *

Official Note: Rule 1407 approved July 23, 1973, effective 90 days hence; renumbered Rule 706 and amended March 1, 2000, effective April 1, 2001**; Comment revised March 9, 2006, 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).

Final Report explaining the March 9, 2006 Comment revision concerning fine and cost warrants published with the Court's Order at 36 Pa.B. 1396 (March 25, 2006).

FINAL REPORT[1]

Revision of the Comments to Pa.Rs.Crim.P. 431 and 706

"Fine and Costs" Bench Warrants Issued by Judges of the Courts of Common Pleas

On March 9, 2006, effective August 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comments to Rules of Criminal Procedure 431 (Procedure When Defendant Arrested with a Warrant) and 706 (Fine and Costs) clarifying that judges of the Courts of Common Pleas are permitted to issue "fine and costs" bench warrants in court cases in the same manner that magisterial district court judges do pursuant to Rule 431.

The proposal evolved from the Committee's review of the arrest warrant forms that were under consideration for inclusion on the Common Pleas Case Management System (CPCMS).[2] The AOPC's CPCMS staff asked the Committee whether common pleas court judges are au-

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

[2] The Committee, as part of our ongoing work with the AOPC's Common Pleas Case Management System (CPCMS) staff, which includes review of all the forms being incorporated into the system, has been addressing numerous questions, such as these form questions, that are raised by the CPCMS staff.

thorized to issue "fine and cost" warrants similar to the "fine and cost" warrants issued by magisterial district court judges pursuant to Rule 431.

Rule 431(C) provides, inter alia, that

(C) *Bench Warrants*

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

* * * * *

(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.

Although there is no comparable rule in the rules governing court cases, the Committee noted that Rule 706, which provides the procedures in a court case for handling failures to pay fines and costs, is comparable to Rule 456 (Default Procedures: Restitution, Fines, and Costs) governing the procedures in summary cases for handling failures to pay fines and costs. In view of this, and because the Committee was unable to find any Committee rule history to the contrary,[3] the Committee reasoned that there is nothing in the rules precluding Common Pleas Court Judges when issuing warrants for failure to pay fines and costs to authorize the police officer executing the warrant to accept the fines and costs in lieu of taking the defendant into custody. The Committee also agreed, because of the questions from the CPCMS staff, a provision in the rules making this clear would be beneficial to the members of the bench and bar.

The Committee discussed whether a separate rule that would be comparable to Rule 431 should be added to the court case rules. We decided, because the warrant forms will be available on the CPCMS and the procedures for execution of fine and cost warrants are enumerated in Rule 431, that a Comment provision alerting the Common Pleas Court Judges to this procedure would be sufficient.

Accordingly, the Rule 706 Comment has been revised by the addition of a cross-reference to Rule 431. Because Rule 431 is an "execution of warrant" rule, the Rule 706 Comment language first notes that common pleas court judges may issue a "failure to pay warrant." The remainder of the Comment provision explains that the "failure to pay warrant" must be executed by a police officer following the provisions in Rule 431(C)(1)(c) and (C)(2). If the defendant is unable to pay at the time of the execution of the warrant, the police officer must follow the procedures in Rule 150 (Bench Warrants).

[3] For a discussion about fine and costs warrants in the summary case context, see the Committee's explanatory Report at 13 Pa.B. 2948, 2964, 2965 (10/1/1983).

A clarifying paragraph also has been added to the Rule 431 Comment explaining that the application of the Rule 431 procedures in court cases is limited to the procedures in paragraphs (C)(1)(c) and (C)(2). The other Rule 431 provisions do not apply in the context of a common pleas court case.

[Pa.B. Doc. No. 06-482. Filed for public inspection March 24, 2006, 9:00 a.m.]

[234 PA. CODE CH. 5]

Order Amending Rule 535; No. 340 Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 9th day of March, 2006, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 33 Pa.B. 6408 (December 27, 2003) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 835), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 535 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective August 1, 2006.

Madame Justice Baldwin did not participate in the decision of this matter.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

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

Rule 535. Receipt for Deposit; Return of Deposit.

(A) 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.

* * * * *

(4) At the time bail is being deposited, no inquiry shall be made of the depositor whether he or she consents to have the deposit retained to be applied toward the defendant's fines, costs, or restitution, if any.

* * * * *

Comment

[This rule is not intended to change current practice.]

* * * * *

[A] Paragraph (A) was amended in 2006 to make it clear that the clerk of courts or other official accepting a deposit of cash bail is not permitted to

request that the depositor agree to have the cash bail deposit retained after the full and final disposition of the case to be applied toward the payment of the defendant's fines, costs, or restitution, if any. See, e.g., *Commonwealth v. McDonald*, 476 Pa. 217, 382 A.2d 124 (1978), which held that 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 (1978).]**

* * * * *

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 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**; amended March 9, 2006, effective August 1, 2006**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 9, 2006 changes to paragraph (A) concerning deposits of bail published with the Court's Order at 36 Pa.B. 1398 (March 25, 2006).

FINAL REPORT[1]

Amendments to Pa.R.Crim.P. 535 (Receipt for Deposit; Return of Deposit)

Application of Bail Deposit to Fines, Costs, Restitution

On March 9, 2006, effective August 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Pa.R.Crim.P. 535 (Receipt for Deposit; Return of Deposit) to make it clear that the clerk of courts or other individual accepting a deposit of bail may not ask the depositor to consent to have the bail money applied toward fines and costs.

I. INTRODUCTION

The amendments to Pa.R.Crim.P. 535 (Receipt for Deposit; Return of Deposit) provide in the text of the rule the specific prohibition that, at the time bail is deposited, the court official who accepts a deposit of bail may not inquire of the depositor whether the depositor consents to have the cash bail deposit retained to be applied toward the defendant's fines, costs, or restitution, if any. This amendment is not a change to the current law concerning the use of bail money deposits, but rather is a clarification of the provision in the Rule 535 Comment that cross-references *Commonwealth v. McDonald*, 476 Pa. 217, 382 A.2d 124 (1978), in which the Court held that "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."[2]

The Committee undertook a review of the issue of using monetary bail deposits to pay a defendant's court costs and fines following an inquiry from the Common Pleas Case Management System (CPCMS) staff whether the monetary bail deposit may be retained to offset the defendant's fines, costs, restitution, and attorney's fees. The CPCMS staff noted monetary bail deposits are being retained for this purpose in some judicial districts notwithstanding the language in the Rule 535 Comment, and these judicial districts asked that the CPCMS be designed to accommodate the practice.

II. DISCUSSION

The Committee approached the issue from two perspectives: (1) whether the practice in some judicial districts of using bail deposits to offset fines, costs, and restitution is permissible under the rules and (2) if not, whether the Criminal Rules should be amended to permit the practice. From a review of the Criminal Rules, the Constitution, and case law, the members concluded that the practice is contrary to the purpose of bail, which is to ensure a defendant's appearance at all court proceedings, and conflicts with Rule 535(D), which provides that "the deposit *shall* be returned to the depositor, less any *bail-related* fees or commissions authorized by law, and the reasonable *costs*, if any, *of administering* the percentage cash bail program." (Emphasis added.)

In considering whether Rule 535 should be amended to permit a court official at the time bail is deposited to ask a bail depositor to agree to the use of the bail deposit to offset fines, costs, and restitution, in addition to being contrary to the purpose of bail, the members identified a number of practical concerns about such a practice:

(1) requesting the depositor to agree may be coercive on and confusing to the bail depositor, who frequently will not fully understand the nature and consequences of the agreement he or she is being asked to make;

(2) requesting the defendant's agreement easily could become an improper condition of release on bail;

(3) permitting the practice could lead to the unintended and unacceptable collateral consequences of police officers no longer releasing defendants pursuant to Rule 519(B) or bail authorities no longer utilizing ROR or conditional release in order to ensure the collection of fines and costs; and

(4) such a practice is inequitable and unfair because, for example, some defendants are given ROR and others are required to post a monetary condition of bail for the same offenses, such as when you have a resident defendant and a non-resident defendant.

In view of these considerations, the Committee agreed the rules should not be amended to permit the practice; rather, the rules should be amended to include a specific prohibition against the practice. The Committee further agreed the amendment should be incorporated into the text of Rule 535 and should be limited to a prohibition on the request for consent to use the bail deposit to offset fines, costs, and restitution at the time the monetary bail

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

[2] This provision was added to the bail rules in 1995 as part of the general reorganization and revision of the bail rules. See Committee explanatory Final Report, 35 Pa.B. 4116 (September 30, 1995).

deposit is made, leaving the questions about when, if ever, the bail deposits may be used to offset fines, costs, and restitution to the courts.

The new language has been added as new paragraph (A)(4), with a correlative explanatory paragraph added to the current provision in the Comment that cites to *Commonwealth v. McDonald*. In addition, although the provision in new paragraph (A)(4) is not a change in the law or what has been the intent of the rules, because it is a change in what is the current practice in some judicial districts, the first sentence of the Comment that provides "this rule is not intended to change current practice" has been deleted.

[Pa.B. Doc. No. 06-483. Filed for public inspection March 24, 2006, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; (Amending 1793 S 1989); No. 0091-4 MD 2006

Order

And Now, this 2nd day of March, 2006, Dauphin County Local Rule of Criminal Procedure 106 is amended as follows:

Rule 106. Continuances Where Case Set For Jury Trial

(a) All motions for a continuance shall be in writing and filed with the Clerk of Courts no later than 4:00 p.m. on the **[Wednesday] Tuesday** prior to the week of criminal jury trials during which the case is scheduled for trial. A copy of the motion shall be served on opposing counsel by the same deadline.

The motion shall contain a procedural history of the case, beginning with date of filing of the criminal complaint, and a recitation of any prior continuances sought. The motion shall aver whether opposing counsel has been contacted concerning the motion and shall state counsel's position thereon.

In cases which have been permanently **attached or temporarily** assigned **for disposition**, the motion shall be addressed to the assigned judge. All other cases shall be referred to the motions judge.

* * * * *

COMMENT: Subsection (a)'s language that the "motion shall contain a procedural history of the case, beginning with the date of filing of the criminal complaint, and a recitation of any prior continuances sought" establishes the Court's expectation that the motion contain dates of previously-sought continuances. Furthermore, if a case is not called during a particular term of court without a formal motion being made and granted, its rescheduling to the next term of court is a de facto continuance which should be disclosed as part of the procedural history of the case.

This subsection's language also requires that a continuance motion will include any limiting or scheduling provisions previously dictated. For example, provisions in a prior court order that no further continuances will be granted or that trial will commence on a certain date/time must be disclosed.

This rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 06-484. Filed for public inspection March 24, 2006, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer of Attorney to Inactive Status

Notice is hereby given that Barry Ira Bank of North Potomac, Maryland, has been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated January 26, 2006, pursuant to Pennsylvania Rules of Disciplinary Enforcement 219 which requires that all attorneys admitted to practice in any court of this Commonwealth must pay an annual assessment of $175.00. The Order became effective February 25, 2006.

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

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

[Pa.B. Doc. No. 06-485. Filed for public inspection March 24, 2006, 9:00 a.m.]