

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 81]

Amendment of Pennsylvania Rule of Professional Conduct 1.4; No. 50 Disciplinary Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 30th day of December, 2005, Pennsylvania Rule of Professional Conduct 1.4 is amended to read as set forth in Annex A.

This Order shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration. The amendments adopted hereby shall take effect on July 1, 2006.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

CLIENT-LAWYER RELATIONSHIP

Rule 1.4. Communication.

* * * * *

(c) A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

Comment:

* * * * *

Disclosures Regarding Insurance

(8) Paragraph (c) does not apply to lawyers in full-time government practice or full-time lawyers employed as in-house counsel and who do not have any private clients.

(9) Lawyers may use the following language in making the disclosures required by this rule:

(i) No insurance or insurance below required amounts when retained: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are therefore advised that (name of attorney or firm) does not have professional liability insurance coverage of at least \$100,000 per occurrence and \$300,000 in the aggregate per year."

(ii) Insurance drops below required amounts: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s professional liability insurance dropped below at least \$100,000 per occurrence and \$300,000 in the aggregate per year as of (date)."

(iii) Insurance terminated: "Pennsylvania Rule of Professional Conduct 1.4(c) requires that you, as the client, be informed in writing if a lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year and if, at any time, a lawyer's professional liability insurance drops below either of those amounts or a lawyer's professional liability insurance coverage is terminated. You are therefore advised that (name of attorney or firm)'s professional liability insurance has been terminated as of (date)."

(10) A lawyer or firm maintaining professional liability insurance coverage in at least the minimum amounts provided in paragraph (c) is not subject to the disclosure obligations mandated by the rule if such coverage is subject to commercially reasonable deductibles, retention or co-insurance. Deductibles, retentions or co-insurance offered, from time to time, in the marketplace for professional liability insurance for the size of firm and coverage limits purchased will be deemed to be commercially reasonable.

[Pa.B. Doc. No. 06-51. Filed for public inspection January 13, 2006, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1300]

Promulgation of New Rules 1326 through 1331 Governing a Proceeding to Compel Arbitration and Confirm an Arbitration Award in a Consumer Credit Transaction; No. 447 Civil Procedural Rules; Doc. No. 5

Amended Order

Per Curiam:

And Now, this 28th day of December, 2005, new Rules of Civil Procedure 1326 through 1331 are promulgated to read as follows.

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

Mr. Justice Nigro did not participate in the decision of this matter.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1300. COMPULSORY ARBITRATION

Subchapter A. RULES

PROCEEDING TO COMPEL ARBITRATION AND CONFIRM AN ARBITRATION AWARD IN A CONSUMER CREDIT TRANSACTION

Rule 1326. Definitions. Scope.

(a) As used in this chapter,

“arbitration” means statutory arbitration pursuant to Section 7301 et seq. of the Judicial Code, 42 Pa.C.S. § 7301 et seq., known as the Uniform Arbitration Act, or common law arbitration pursuant to Section 7341 et seq. of the Judicial Code, 42 Pa.C.S. § 7341 et seq;

“arbitrator” includes a board of arbitrators;

“consumer credit transaction” means a credit transaction in which the party to whom credit is offered or extended is a natural person and the money, property or services which are the subject of the transaction are primarily for personal, family or household purposes.

(b) The rules of this chapter shall govern proceedings to compel arbitration and confirm an arbitration award entered in a claim arising from a consumer credit transaction.

Rule 1327. Confirming Arbitration Award.

Any party may file a motion to confirm an arbitration award which was entered by an arbitrator only if

(1) the party against whom an arbitration award is sought to be confirmed either

(i) attended a hearing before the arbitrator, or

(ii) signed a writing after the claim that is the basis for the arbitration award was filed with the arbitrator, agreeing to submit the claim to the arbitrator, or

Official Note: The writing under subparagraph (1)(ii) may provide for the arbitrator to decide the claim in a proceeding that does not involve a personal appearance before the arbitrator, such as a proceeding in which the hearing before the arbitrator involves only a review of documents submitted by the parties.

See Rule 1328 for the procedure to confirm an arbitration award entered as provided by either subparagraph (1)(i) or (ii).

(2) the arbitration award was entered following a court order or docket entry staying proceedings pending arbitration as provided by Rule 1329.

Official Note: See Rule 1329 for the procedure to compel arbitration and to confirm the arbitration award.

Rule 1328. Motion to Confirm Arbitration Award as an Original Proceeding.

(a) Any party may file as an original proceeding a motion to confirm an arbitration award if the arbitration award was entered pursuant to Rule 1327(1). The motion to confirm such an award shall be filed in the county in which the defendant resides or has a place of business or, if there is no such county, then in the county in which the arbitration hearing was held.

(b) The motion shall begin with a notice substantially in the form prescribed by Rule 1331 and shall be served in the manner provided for service of original process in a civil action.

Official Note: Section 7317 of the Judicial Code, 42 Pa.C.S. § 7317, provides that, unless the parties otherwise agree, notice of an initial application for an order of court shall be served in the manner provided by law for the service of a writ of summons in a civil action.

(c) The motion shall contain factual allegations establishing that the arbitration award was entered pursuant to Rule 1327(1).

(d) A responding party who opposes the motion shall file an answer to the motion within thirty days after service of the motion.

(e) If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

(f) If the responding party files an answer, the motion shall be decided pursuant to the court’s procedures for deciding motions.

Rule 1329. Civil Action to Compel Arbitration. Motion to Confirm Arbitration Award as Ancillary to a Civil Action.

(a)(1) A plaintiff seeking to compel arbitration of a claim shall commence a civil action against the defendant. Except as otherwise provided by this rule, the procedure in the action shall be in accordance with the rules governing a civil action, including service of original process and venue.

Official Note: A defendant who seeks to compel arbitration of a claim for which a plaintiff is not seeking arbitration shall proceed by preliminary objection or a motion to compel arbitration.

(2) The complaint shall include an allegation that the claims raised in the complaint are subject to an agreement to submit these claims to arbitration.

(b) If the defendant fails to file a responsive pleading, the plaintiff may obtain a default judgment pursuant to Rules 237.1 and 1037.

(c)(1) If the defendant files an answer admitting that the claims are subject to arbitration, either party, within twenty days, may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

(2) If the defendant files either preliminary objections or an answer denying that the claims are subject to arbitration, the plaintiff may within twenty days file a motion for a rule to show cause why arbitration should not be compelled. Except as otherwise provided by subdivision (d), the motion shall be governed by Rule 208.1 et seq.

Official Note: Rule 208.1 et seq. governs motion practice.

(d)(1) The motion for a rule to show cause why arbitration should not be compelled shall begin with a notice substantially in the form prescribed by Rule 1330 and shall be served pursuant to Rule 440. In the absence of a court order otherwise, the timely filing of the motion stays proceedings pending resolution of the motion.

(2) A defendant shall file an answer to the motion within twenty days after service of the motion. The answer shall set forth all of the defendant's objections to the arbitration including absence of a valid agreement to arbitrate the claims, lack of jurisdiction over the person of the defendant, improper venue or improper service of original process.

(3) If the defendant does not file an answer to the motion, the plaintiff, after the answer was due, may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

(4) If the defendant files an answer, the motion shall be decided pursuant to the court's procedures for deciding motions. If the court grants the motion to compel arbitration, the court shall enter an order compelling the parties to proceed with arbitration and staying proceedings pending arbitration.

(e)(1) Any party may file a motion to confirm an arbitration award entered following a court order or docket entry staying proceedings pending arbitration. The motion to confirm shall be filed as an ancillary proceeding to the pending civil action.

Official Note: The motion to confirm will be filed with the court at the number of the action required by Rule 1329.

(2) The motion shall begin with a notice substantially in the form prescribed by Rule 1331 and shall be served pursuant to Rule 440.

(3) A responding party who opposes the motion shall file an answer to the motion within thirty days after service of the motion.

(4) If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

(5) If the responding party files an answer, the motion shall be decided pursuant to the court's procedures for deciding motions.

Rule 1330. Notice Required by Rule 1329(d)(1). Form.

The notice required by Rule 1329(d)(1) shall be substantially in the following form:

(Caption)

Notice to File Answer

The motion attached to this notice asks the court to enforce an agreement to submit claims to arbitration. If you oppose submission of this claim to arbitration, you must file an answer to the motion with the Prothonotary within thirty (30) days of mailing or other service of this notice. If you fail to respond, this case will proceed to arbitration and may result in the entry of a money judgment against you.

Official Note: A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Rule 1331. Notice Required by Rules 1328(b) and 1329(e)(2). Form.

The notice required by Rules 1328(b) and 1329(e)(2) shall be substantially in the following form:

(Caption)

Notice to File Answer

A party to these proceedings has filed a motion to confirm an arbitration award. If you oppose the motion, you are required to file an answer to the motion within thirty (30) days from the date below setting forth your objections to the motion. If you fail to file an answer, a money judgment based on the arbitration award may be entered against you without further notice. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. 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.

(Name)

(Address)

(Telephone Number)

Date of mailing or other service:

Party Filing Motion

Official Note: A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Explanatory Comment

The Supreme Court of Pennsylvania has promulgated new Rule of Civil Procedure 1326 et seq. to govern proceedings to compel arbitration and to confirm arbitration awards in consumer credit transactions.

Prior to the promulgation of these new rules, practice was based solely on the provisions of the Judicial Code governing statutory arbitration and common law arbitration which provide for the filing of an initial application to the court to compel arbitration (42 Pa.C.S. § 7304(a)) and a second application to the court to confirm an arbitration award (42 Pa.C.S. § 7313). These new rules create procedures that minimize court involvement and provide quicker and cheaper relief to the litigants. The rules are promulgated in response to the inclusion of an arbitration clause governing collection claims in consumer credit transactions.

There is no reason for a claim to be heard by an arbitrator pursuant to a motion to compel arbitration and to be returned to the court through a motion to confirm arbitration if the defendant will not be contesting the claim of the plaintiff. Thus, (1) new Rule 1329(a) provides for the plaintiff seeking to compel arbitration of a claim to commence a civil action against the defendant and to include in the complaint an allegation that the claims raised in the complaint are subject to an agreement to submit these claims to arbitration and (2) new Rule 1329(b) permits the plaintiff to obtain a default judgment pursuant to Rules 237.1 and 1037 if defendant fails to file a responsive pleading to the complaint.

If the defendant files an answer to the complaint admitting that the claims are subject to arbitration, new Rule 1329(c)(1) permits either party to file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

If the defendant files preliminary objections or an answer which does not admit that the claims are subject to arbitration, new Rule 1329(c)(2) provides for the plaintiff to file a motion for a rule to show cause why arbitration should not be compelled. New Rule 1329(d)(2) requires the defendant to file within twenty days an answer to the plaintiff's motion, and new Rule 1329(d)(3) provides that if the defendant does not file an answer to the motion, the plaintiff may file a praecipe directing the prothonotary to enter on the docket a stay of proceedings pending arbitration.

New Rules 1328(d) and (e) and 1329(e)(3) and (4) adopt similar procedures for the entry of a judgment based on an arbitration award by providing for the filing of a motion to confirm an award. A responding party who opposes the motion must file an answer within thirty days. If the responding party does not file an answer, the prothonotary, upon praecipe of the moving party filed after the answer was due, shall enter judgment upon the arbitration award.

New Rule 1326 et seq. applies only to consumer credit transactions because it is not anticipated that there will be an increasing number of other cases raising arbitration issues in which the courts will be involved. In addition, procedures that work for consumer credit transactions may not work for all types of matters involving statutory and common law arbitration.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 06-52. Filed for public inspection January 13, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 3000]

Promulgation of Rules 3301 et seq. Governing Attachment of Wages under Section 8127(a)(3.1) of the Judicial Code and Amendment of Rules 3101 and 3140; No. 446 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 21st day of December, 2005, the Pennsylvania Rules of Civil Procedure are amended as follows:

I. Rule 3101 and the Note to Rule 3140 are amended to read as follows.

II. New Rules 3301, 3302, 3303, 3304, 3311, 3312 and 3313 are promulgated to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective one month after the date of this Order.

Mr. Justice Castille dissents.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 3000. JUDGMENTS

Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY

Rule 3101. Definitions[; garnishee]. **Garnishee. Scope.**

* * * * *

(c) The rules of this chapter shall not apply to the attachment of wages, salary or commissions to satisfy a money judgment arising from a residential lease pursuant to Section 8127(a)(3.1) of the Judicial Code.

Official Note: For the attachment of wages under Section 8127(a)(3.1) of the Judicial Code, see Rule 3301 et seq.

Rule 3140. Notice by garnishee.

* * * * *

Official Note: Registered mail includes certified mail. See Definition Rule 76.

Attachment of wages, salary and commissions to satisfy a money judgment arising from a residential lease pursuant to Section 8127(a)(3.1) of the Judicial Code is governed by Rule 3301 et seq.

Subchapter F. ATTACHMENT OF WAGES, SALARY AND COMMISSIONS UNDER SECTION 8127(A)(3.1) OF THE JUDICIAL CODE

- Rule 3301. Scope. Definitions.
- 3302. Commencement. Notice.
- 3303. Exemption from Attachment. Procedure.
- 3304. Writ for the Attachment of Wages. Issuance. Service.

FORMS

- 3311. Praecipe for Notice of Intent to Attach Wages. Form.
- 3312. Notice of Intent to Attach Wages. Claim for Exemption from Wage Attachment. Notice of Claim for Exemption of Wages from Attachment. Forms.
- 3313. Writ of Attachment of Wages. Form.

Rule 3301. Scope. Definitions.

(a) The rules of this chapter govern an attachment of wages to satisfy a judgment pursuant to Section 8127(a)(3.1) of the Judicial Code.

Official Note: Section 8127(a)(3.1) of the Judicial Code provides for the attachment of wages for amounts awarded to a judgment creditor-landlord arising out of a residential lease upon which the court has rendered judgment which is final.

See subdivision (b) for the definition of "judgment."

Rule 3101 et seq. governing the enforcement of money judgments is not applicable to the attachment of wages under this chapter.

(b) As used in this chapter,

"defendant" means a judgment debtor-tenant,

"garnishee" means the employer of the defendant,

"judgment" means a judgment for amounts awarded to a plaintiff arising out of a residential lease, which has been entered in the court of common pleas or the Philadelphia Municipal Court and which shall have been entered originally in

(1) any civil action brought in the court of common pleas,

(2) the following actions brought before a magisterial district judge:

(i) a civil action pursuant to Pa.R.C.P.M.D.J. 301 et seq., or

(ii) an action for the recovery of possession of real property pursuant to Pa.R.C.P.M.D.J. 501 et seq. in which the defendant appeared or filed papers or in which the complaint was served by handing a copy to the defendant,

(3) the following actions brought in the Philadelphia Municipal Court:

(i) a civil action in which the defendant was served pursuant to Phila.M.C.R.Civ.P. No. 111(A) or (C), or

(ii) an action in which the defendant was served pursuant to Phila. M.C.R.Civ.P. No. 111(B) and in which the defendant appeared or filed papers,

"plaintiff" means a judgment creditor-landlord, and

"wages" includes salary and commissions.

Rule 3302. Commencement. Notice.

(a) The plaintiff shall commence an execution to attach wages by filing a praecipe with the prothonotary of a county in which judgment has been entered and in which the defendant resides, the defendant works or the residential real property which is the subject of the action is located. The praecipe shall be filed within five years of the date of the original judgment. The praecipe shall be in the form prescribed by Rule 3311.

(b) Upon the filing of the praecipe, the prothonotary shall issue a Notice of Intent to Attach Wages in the form prescribed by Rule 3312(a). The prothonotary shall attach to the notice a copy of both (1) the praecipe filed with the prothonotary for issuance of the Notice of Intent to Attach Wages and (2) the most recent poverty income guidelines issued by the Federal Department of Health and Human Services as they appear on the web site of the Civil Procedural Rules Committee.

Official Note: The web site of the Civil Procedural Rules Committee is part of the home page of the Administrative Office of Pennsylvania Courts at www.aopc.org.

The poverty income guidelines set forth on the Committee web site which are to be attached to the Notice of Intent to Attach Wages are stated in monthly amounts.

(c) The Notice of Intent to Attach Wages shall be served upon the defendant in the manner provided by Rule 400 et seq. for service of original process in a civil action.

Official Note: The notice shall be served

(1) by the sheriff in the manner prescribed by Rule 402(a) for the service of original process upon a defendant, or

(2) pursuant to special order of court as prescribed by Rule 430 if service cannot be made as provided in paragraph (1) of this note.

Rule 3303. Exemption from Attachment. Procedure.

(a) A defendant claiming an exemption from attachment based upon the federal poverty income guidelines shall file the claim for exemption with the prothonotary within thirty days of service of the Notice of Intent to Attach Wages.

Official Note: For the form of the claim for exemption, see Rule 3312(b).

(b)(1) If the defendant files a claim for exemption of wages from attachment either within thirty days as required by subdivision (a) of this rule or prior to the issuance of the writ of attachment, the prothonotary shall not issue the writ of attachment and shall send a notice of the claim for exemption of wages from attachment to the plaintiff or, if represented, to the plaintiff's attorney. The prothonotary shall attach a copy of the claim to the notice.

Official Note: For the form of the notice for exemption, see Rule 3312(c).

(2) If the defendant files a claim for exemption after the writ of attachment has been issued, the attachment of the defendant's wages shall continue unless the defendant obtains a court order staying or vacating the attachment.

(c) A plaintiff who wishes to challenge the claim of exemption shall file a motion requesting the court to direct the prothonotary to issue a writ for the attachment of wages. The motion shall set forth facts which establish that the plaintiff is entitled to attach wages pursuant to Section 8127(a)(3.1) of the Judicial Code. If the motion on its face sets forth such facts, the court shall set a hearing date or set forth another procedure provided by Rule 208.4 as may be appropriate.

Rule 3304. Writ for the Attachment of Wages. Issuance. Service.

(a) The prothonotary shall issue a writ for the attachment of wages upon

(1) praecipe of the plaintiff where the defendant has not timely filed a claim for exemption of wages from attachment, or

(2) order of the court entered upon motion pursuant to Rule 3303(c).

(b) The prothonotary shall by ordinary mail send the writ to the garnishee and to the defendant.

(c) The writ of attachment of wages shall be substantially in the form provided by Rule 3313.

Official Note: Section 8127(c)(1) of the Judicial Code provides that the employer shall send the attached wages to the prothonotary of the court of common pleas within

15 days from the close of the last pay period in each month. Upon receipt of the attached wages, the prothonotary of the court of common pleas shall record and send said wages to the judgment creditor-landlord.

FORMS

Rule 3311. Praecept for Notice of Intent to Attach Wages. Form.

The Praecept for Notice of Intent to Attach Wages shall be substantially in the following form:

(Caption)

Praecept for Notice of Intent to Attach Wages

To the Prothonotary:

Issue a Notice of Intent to Attach Wages in the above matter

- (1) against _____, defendant,
- (2) against _____, employer of the defendant.

Date: _____

 Attorney for Judgment
 Creditor-Landlord or
 Judgment
 Creditor-Landlord if
 unrepresented

 Address

 Telephone number

Certification by Judgment Creditor—Landlord

I certify that

- 1. The plaintiff judgment-creditor is _____
 Name _____
 Address _____
- 2. The defendant judgment-debtor is _____
 Name _____
 Address _____
- 3. The employer garnishee is _____
 Name _____
 Address _____
- 4. The judgment arises out of a residential lease for the premises at _____ (address).
- 5. (a) The amount of the judgment is \$ _____ .
 (b) A security deposit in the amount of \$ _____ is being held by the judgment creditor-landlord. This security deposit _____ has been applied _____ has not been applied to payment of rent due on the same premises for which the judgment has been entered. (Any security deposit that has not already been applied to rent will be deducted by the Prothonotary from the amount of the judgment in determining the amount to be attached.)

(c) The amount of \$ _____ has been paid toward satisfaction of the judgment. (Do not include the security deposit.)

6. This praecipe is filed within five years of the date of the original judgment upon which execution is sought.

7. The judgment was entered (check one):

- _____ in a civil action commenced in the court of common pleas.
- _____ in an action brought before a magisterial district judge.
- _____ in an action commenced in the Philadelphia Municipal Court.

8. Check the appropriate paragraph and attach the required documents:

- (a) If the judgment was entered in a civil action (Pa.R.C.P.M.D.J. 301 et seq.) before a magisterial district judge, a copy of the complaint filed with the magisterial district judge is attached to this Notice, showing that the action arose from a residential lease.
- (b) If the judgment was entered in an action for the recovery of possession of real property (Pa.R.C.P.M.D.J. 501 et seq.) before a magisterial district judge, copies of the appropriate magisterial district judge records are attached showing that the action arose from a residential lease and that the defendant appeared or filed papers in the action or that the complaint was served by handing a copy to the defendant.
- (c) If the judgment was entered in an action in the Philadelphia Municipal Court in which the defendant was served pursuant to Phila.M.C.R.Civ.P. No. 111(A) or (C), a copy of the complaint filed with the Philadelphia Municipal Court is attached to this Notice, showing that the action arose from a residential lease.
- (d) If the judgment was entered in an action in the Philadelphia Municipal Court in which the defendant was served pursuant to Phila.M.C.R.Civ.P. No. 111(B), copies of the appropriate Philadelphia Municipal Court records are attached showing that the action arose from a residential lease and that the defendant appeared or filed papers in the action.

I certify that the statements made in this Certification 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: _____
 Judgment Creditor-Landlord

Rule 3312. Notice of Intent to Attach Wages. Claim for Exemption from Wage Attachment. Notice of Claim for Exemption of Wages from Attachment. Forms.

(a) The notice of attachment of wages required by Rule 3302(b) shall be substantially in the following form:

(CAPTION)

NOTICE OF INTENT TO ATTACH WAGES, SALARY OR COMMISSIONS

Date of service of this Notice: _____ (Date to be inserted by the Sheriff)

A judgment has been entered against you in court for nonpayment of rent for, or damage to, residential property that you rented. The judgment creditor-landlord has begun proceedings to attach 10% of your net wages, salary or commissions for each pay period until the judgment is satisfied.

The following exception will prevent your wages from being attached:

Poverty Guidelines—Your wages may not be attached if your net income is below the poverty income guidelines as provided annually by the Federal Department of Health and Human Services or if the amount of the attachment would cause your net income to fall below the poverty income guidelines. A copy of the guidelines is attached to this notice.

If this exemption is applicable to you, you must return the claim for exemption of wages which is attached to the prothonotary within 30 days of the date of service of this notice upon you. The date of service of this notice is set forth above. If you return the form claiming this exemption within 30 days, your wages will not be attached without subsequent court proceedings.

There may be other legal grounds for opposing the wage attachment that you may be able to raise by filing a motion with the court. For example, your wages may not be attached if you are an abused person or victim as set forth in Section 8127(f) of the Judicial Code when the attachment is to satisfy a judgment for physical damages to the leased premises.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. 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.

(Name)

(Address)

(Telephone Number)

(b) The claim for exemption from wage attachment shall be substantially in the following form:

(CAPTION)

CLAIM FOR EXEMPTION FROM WAGE ATTACHMENT

Notice

This Claim for Exemption must be filed with the Prothonotary of the Court within 30 days of service upon you of the Notice of Intent to Attach Wages.

To the Prothonotary:

I, the above-named defendant, claim exemption of my wages, salary or commissions from attachment on the following ground:

_____ My net monthly income is below the poverty income guidelines as provided by the Federal Department of Health and Human Services.

OR

_____ The amount of wages to be attached would place my net income below the poverty income guidelines as provided annually by the Federal Department of Health and Human Services.

I have _____ dependents.
(Number)

My net monthly income is \$ _____ .

(Net monthly income is your total monthly wages less (1) any support payments made to the court, (2) federal, state and local income taxes, (3) F.I.C.A. payments and nonvoluntary retirement payments. (4) union dues and (5) health insurance premiums.)

I certify that the statements made in this Claim for Exemption 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: _____
Defendant

This claim shall be delivered or mailed to

Office of the Prothonotary
Court of Common Pleas

Address

Telephone Number

(c) The notice of claim of exemption required by Rule 3303(b) shall be substantially in the following form:

(CAPTION)

NOTICE OF CLAIM OF EXEMPTION OF WAGES FROM ATTACHMENT

To the above-named plaintiff:

The defendant in the above-captioned matter has filed a claim for exemption from attachment of his or her wages, salary or commissions. A copy of the claim is attached. If you wish to challenge the claim for exemption, you should file with the court a motion setting forth facts which show that the defendant's net income is not below the Federal Department of Health and Human Services poverty income guidelines or that the attachment will not cause the defendant's net income to fall below those poverty income guidelines.

Date: _____
Prothonotary

Rule 3313. Writ of Attachment of Wages. Form.

The writ of attachment of wages shall be substantially in the following form:

(Caption)

Writ of Attachment of Wages, Salary or Commissions

Commonwealth of Pennsylvania :
County of _____ :
To _____
Employer of Defendant _____
Name

You have been identified as the employer of the above-named defendant.

You are directed to withhold the wages, salary and commissions of the defendant in your possession to satisfy the judgment against the defendant.

You are notified that

1. an attachment of wages, salary and commissions has been issued;
2. you are ordered to withhold from the wages, salary and commissions of the defendant an amount per pay period which does not exceed ten (10) percent of the defendant's net wages, salary and commissions; Net wages are all wages paid less only the following items: (1) any support payments made to the court, (2) federal, state and local income taxes, (3) F.I.C.A. payments and nonvoluntary retirement payments, (4) union dues and (5) health insurance premiums.
3. the total amount attached is \$ _____ and the withholding must continue until the amount of the attachment is satisfied;
4. the attached wages shall be sent to the prothonotary of the court of common pleas within 15 days from the close of the last pay period in each month. The check must
 - a. contain the name of the employee whose wages are being withheld,
 - b. be made payable to the Prothonotary, and
 - c. be sent to
 Prothonotary
 Court of Common Pleas
 Wage Attachment Remittance

 Address

 Telephone Number

5. you are entitled to deduct each pay period from the money collected from the defendant employee the costs incurred from the extra bookkeeping necessary to record the transaction, not exceeding \$5.00 of the amount of money so collected.
6. by law, you may not take any adverse action against the defendant because his or her wages, salary or commissions have been attached.
7. you shall send the following notice to the prothonotary if the defendant has never been or is no longer an employee:

I have received a Writ of Attachment in the following case:

_____ v. _____, No. _____ of _____.
Plaintiff Defendant Year

The following person, _____, has never been
Name

(___) or is no longer an employee (___).

Date: _____
Employer

Prothonotary

* * * * *

Seal of the Court

By _____
Deputy

Explanatory Comment

The Supreme Court of Pennsylvania has promulgated a new chapter of rules, Rule 3301 et seq., to govern the attachment of wages, salary and commissions pursuant to Section 8127(a)(3.1) of the Judicial Code in actions or proceedings for "amounts awarded to a judgment creditor-landlord arising out of a residential lease." Rule 3101 et seq. governing the enforcement of judgments for the payment of money will not apply to a wage attachment under this provision of the Judicial Code.

Pursuant to the definition of the term "judgment" in Rule 3301(b), wages may be attached to satisfy a judgment for rent or physical damage to a leased premises entered in a "civil action" whether in a court of common pleas or before a magisterial district judge or in the Philadelphia Municipal Court. However, if the money judgment sought to be enforced is entered in an action for recovery of possession of real property before a magisterial district judge pursuant to Pa.R.C.P.M.D.J. 501 et seq. or in an action in the Philadelphia Municipal Court in which service is made pursuant to Phila.M.C.R.Civ.P. 111(B), a writ of attachment of wages may issue only if the defendant appeared or filed papers in the action or if the complaint was handed to the defendant (judgment debtor-tenant). In addition, the courts of common pleas and the Philadelphia Municipal Court may issue a writ of attachment of wages to enforce a judgment entered in those courts. However, a judgment entered by a magisterial district judge must be entered in the court of common pleas for the writ of attachment to issue on that judgment.

Section 8127 of the Judicial Code imposes certain requirements upon the attachment of wages.

Security Deposit.—

Section 8127(a)(3.1) provides for the deduction of a security deposit from the attachment under circumstances set forth in the Code. Rule 3311 prescribes a form of Praeceptum for Notice of Intent to Attach Wages which requires the plaintiff (judgment creditor-landlord) to execute a Certification as to the status of the security deposit.

Exemptions from Attachment.—

1. Poverty Guidelines. Section 8127(a)(3.1) requires that the "sum attached shall be no more than 10% of the net wages per pay period of the judgment debtor-tenant or a sum not to place the debtor's net income below the poverty income guidelines as provided annually by the Federal Office of Management and Budget, whichever is less." First, the employer-garnishee will determine the ten

percent limit of the net wages to be attached. Second, since the defendant (judgment debtor-tenant) is the only person who has knowledge whether the attachment will bring his or her net income below the poverty level, the rules require the defendant to assert this objection to the attachment by filing a claim for exemption which is attached to the Notice of Intent to Attach Wages served upon the defendant. Third, Rule 3302(b) requires the prothonotary to attach to the Notice a copy of the most recent federal poverty income guidelines of the Federal Department of Health and Human Services as set forth on the web site of the Civil Procedural Rules Committee.

2. Other Exemptions. The Notice of Intent to Attach Wages advises the defendant that there may be other exemptions available, giving the example of an abused person or victim, and that these exemptions are to be claimed by filing a motion with the court.

Withholding of Wages.—

Section 8127(c) sets forth duties of the employer-garnishee with respect to the withholding of wages. The form of the writ of attachment set forth in Rule 3313 advises the employer of these statutory duties.

Prohibition against Discharge.—

Section 8127(e) provides that the “employer shall not take any adverse action against any individual solely because his wages, salaries or commissions have been attached.” The form of the writ of attachment advises the employer of this obligation as well.

The new rules require the intervention of the court in two circumstances. First, if the defendant files a claim for exemption on the ground that his or her income is below the federal poverty income guidelines or that the attachment will bring his or her income below the federal poverty income guidelines, the plaintiff may dispute the claim by filing a motion requesting the court to direct the prothonotary to issue a writ of attachment of wages. The motion must set forth facts which establish that the plaintiff is entitled to attach wages pursuant to Section 8127(a)(3.1) of the Judicial Code. Second, the defendant may file a motion to stay or vacate the attachment on other grounds of exemption from attachment, including the ground of being an abused person or victim.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 06-53. Filed for public inspection January 13, 2006, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 5]

**Order Promulgating New Rule 150 and Amending
Rules 536 and 543; No. 335 Criminal Procedural
Rules; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the December 30, 2005 promulgation of new Rule of Criminal Procedure 150 and the amendments to Rules of Criminal Procedure 536 and 543. The changes, which will be effective August 1, 2006,

establish the procedures to be followed after a bench warrant is executed in a court case. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 30th day of December, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 34 Pa.B. 1429 (March 13, 2004) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 841), 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 150 is promulgated; and

(2) Rules of Criminal Procedure 536 and 543 are amended, all in the following form.

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

Mr. Justice Nigro did not participate in the decision of this matter.

Annex A

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

PART E. Miscellaneous Warrants

Rule 150. Bench Warrants.

(A) In a court case when a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When a defendant or witness 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.

(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, if the bench warrant hearing cannot be conducted promptly after the arrest, the defendant or witness shall be lodged in the county jail pending the hearing. The authority in charge of the county jail promptly shall notify the court 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 on that bench warrant.

(a) When the bench warrant is issued by the supervising judge of a “multi-county” investigating grand jury, the individual shall be detained only until the supervising judge is available to conduct the bench warrant hearing.

(b) In all other cases, the individual shall not be detained without a bench warrant hearing on that 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 (A)(5)(b), the bench warrant shall expire by operation of law.

(B) As used in this rule, "judicial officer" is limited to the magisterial district judge or common pleas court judge who issued the bench warrant, or the magisterial district judge or common pleas court judge designated by the president judge or by the president judge's designee to conduct bench warrant hearings, or in Philadelphia, trial commissioners.

Comment

This rule addresses only the procedures to be followed after a bench warrant is executed, and does not apply to execution of bench warrants outside the Commonwealth, which are governed by the extradition procedures in 42 Pa.C.S. § 9101 et seq., or to warrants issued in connection with probation or parole proceedings.

Paragraph (A)(2) permits the bench warrant hearing to be conducted using two-way simultaneous audio-visual communication, which is a form of advanced communication technology. See Rule 103. Utilizing this technology will aid the court in complying with this rule, and in ensuring individuals arrested on bench warrants are not detained unnecessarily.

Once a bench warrant is executed and the defendant is taken into custody, the bench warrant no longer is valid.

To ensure compliance with the prompt bench warrant hearing requirement, the president judge or the president judge's designee may designate only a magisterial district judge to cover for magisterial district judges or a common pleas court judge to cover for common pleas court judges. See also Rule 132 for the temporary assignment of magisterial district judges. In Philadelphia, the current practice of designating trial commissioners to conduct bench warrant hearings is acknowledged in paragraph (B).

It is expected that the practices in some judicial districts of a common pleas court judge (1) indicating on a bench warrant the judge has issued that the bench warrant is a "judge only" bench warrant, or (2) who knows he or she will be unavailable asking another common pleas court judge to handle his or her cases during the common pleas court judge's absence, would continue.

Paragraph (A)(5)(a) recognizes the procedural and substantive differences between "multi-county" investigating grand jury proceedings and all other proceedings in the court of common pleas, including a county investigating grand jury, by eliminating the time limit for conducting the bench warrant hearing when the bench warrant is issued by the multi-county investigating grand jury supervising judge. See Rules 240—244 and 42 Pa.C.S. § 4544. When the supervising judge issues a bench warrant, the bench warrant hearing must be conducted expeditiously when the supervising judge is available.

Paragraph (A)(6) requires the judicial officer to vacate the bench warrant at the conclusion of the bench warrant hearing. The current practice in some judicial districts of having the clerk of courts cancel the bench warrant upon receipt of a return of service is consistent with this paragraph, as long as the clerk of courts promptly provides notice of the return of service to the issuing judge.

It is incumbent upon the president judge or the president judge's designee to establish procedures for the monitoring of the time individuals are detained pending their bench warrant hearing.

For the procedures concerning violation of the conditions of bail, see Chapter 5 Part C.

As used in this rule, "court" includes magisterial district judge courts.

For the bench warrant procedures in summary cases, see Rules 430(B) and 431(C).

For the arrest warrants that initiate proceedings in court cases, see Chapter 5, Part B(3)(a), Rules 513, 514, 515, 516, 517, and 518. For the arrest warrants that initiate proceedings in summary cases, see Chapter 4, Part D(1), Rules 430(A) and 431(B).

Official Note: Adopted December 30, 2005, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining new Rule 150 providing procedures for bench warrants published with the Court's Order at 36 Pa.B. 184, 2006 (January 14, 2006).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

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

Rule 536. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

(A) SANCTIONS

(1) Revocation of Release

* * * * *

(b) When a violation of a condition occurs, the bail authority may issue a **bench warrant** for the defendant's arrest. **When the bench warrant is executed, the bench warrant proceedings shall be conducted pursuant to Rule 150.**

* * * * *

(d) [**When the arrest warrant issued pursuant to paragraph (A)(1)(b) is executed, the defendant shall not be released except upon order of the person who issued the warrant, or, if that person is unavailable, upon order of the president judge of the judicial district or a judge designated by the president judge.**

(e)] When the bail authority changes the conditions of the bail bond and/or revokes the defendant's release, the bail authority shall state in writing or on the record the reasons for so doing.

(2) Forfeiture

* * * * *

(e) When a [**district justice**] **magisterial district judge** orders bail forfeited pursuant to this rule, the [**district justice**] **magisterial district judge** shall generate a check in the amount of the bail monies he or she has on deposit in the case, and shall send the check and a copy of the docket transcript to the clerk of courts for processing and disbursement as provided by law.

* * * * *

Comment

* * * * *

Paragraph (A)(1)(b) was amended and paragraph (A)(1)(d) was deleted in 2005 to make it clear that a warrant for the arrest of the defendant for failure to comply with a condition of bail is a bench warrant. For the procedures when a paragraph (A)(1)(b) bench warrant is executed, see Rule 150 (Bench Warrants).

Once bail has been modified by a common pleas judge pursuant to Rule 529, only the common pleas judge subsequently may change the conditions of release, even in cases that are pending before a [**district justice**] **magisterial district judge**. See Rules 543 and 529.

* * * * *

Official Note: Former Rule 4016 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 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 536 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised August 24, 2004, effective August 1, 2005; **amended December 30, 2005, effective August 1, 2006.**

Committee Explanatory Reports:

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

* * * * *

Final Report explaining the December 30, 2005 amendments concerning bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 543. Disposition of Case at Preliminary Hearing.

* * * * *

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

* * * * *

(2) If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the issuing authority shall:

* * * * *

(c) if the case is held for court or if the preliminary hearing is continued, issue a **bench** warrant for the arrest of the defendant.

(3) When the issuing authority issues a **bench** warrant pursuant to paragraph (D)(2)(C), the issuing authority retains jurisdiction to dispose of the warrant until:

* * * * *

Upon receipt of notice that the arraignment has occurred or a bench warrant has been issued, the issuing authority promptly shall recall and cancel the issuing authority's **bench** warrant.

Comment

* * * * *

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540 [**(E)**] **(F)(2)** or in a summons served as provided in Rule 511, and (2) whether the defendant had good cause explaining the absence.

* * * * *

Paragraph (D)(2)(c) requires the issuing authority to issue [**an arrest**] a **bench** warrant if the case is held for court or when the preliminary hearing is continued.

Pursuant to paragraph (D)(3), the defendant must be taken before the issuing authority for resolution of the **bench** warrant, counsel, and bail in those cases in which a defendant is apprehended on the issuing authority's **bench** warrant prior to the arraignment or the issuance of a common pleas judge's bench warrant. **See Rule 150 for the procedures in a court case after a bench warrant is executed.**

* * * * *

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.**

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 December 30, 2005 changes adding references to bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

FINAL REPORT¹

New Pa.R.Crim.P. 150, Amendments to Pa.Rs.Crim.P. 536 and 543

Procedures when Bench Warrant is Issued

On December 30, 2005, effective August 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Pa.R.Crim.P. 150 (Bench Warrants) and amended Pa.Rs.Crim.P. 536 (Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety) and 543 (Disposition of Case at Preliminary Hearing). The changes establish the procedures to be followed after a bench warrant is executed in a court case.

I. INTRODUCTION

The Criminal Procedural Rules Committee undertook consideration of a separate bench warrant rule in response to the Committee's review of the bench warrant and arrest warrant forms being developed for use by the Common Pleas Case Management System (CPCMS) and some questions from the CPCMS Staff concerning bench warrants. In particular, they asked whether there should be a time limit on how long a defendant may be confined after being arrested on the bench warrant before being brought before a judge for a bench warrant hearing similar to what is occurring in some judicial districts. During this consideration, the members opined, based on their own experiences representing clients who have been the subject of bench warrants, that bench warrant practice is one area of criminal practice that is fraught with abuses, particularly with regard to the time the arrested individual spends in custody pending a bench warrant hearing. They have found that frequently the judge who issues the bench warrant is not given notice that the individual has been arrested on that bench warrant, there does not appear to be a procedure for scheduling the bench warrant hearing, and if there is a scheduling procedure, rarely does it provide for a prompt hearing. The members also noted because there are no statewide bench warrant rules, there has been a proliferation of local bench warrant rules and practices.²

The Committee also researched other states' rules and statutes to see whether there are any "model" bench warrant rules and what provisions these rules or statutes include. We found very few rules or statutes governing bench warrants specifically, with most only providing procedures for arrest warrants in general. The Committee also reviewed all the Pennsylvania Rules of Procedure and found that only Pa.R.C.P. 1910.13-1 (Failure or Refusal to Appear Pursuant to Order of Court. Bench Warrant) sets forth procedures following the issuance of a bench warrant.³

After completing our review and thoroughly discussing the issue, the Committee agreed there should be a new Rule of Criminal Procedure governing the procedures

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

² In many of these cases, in implementing the local rules and practices, the judicial districts have not complied with Rule 105 (Local Rules) making the local rules difficult to find and monitor.

³ Rule 1910.13-1 provides, *inter alia*,

(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.

following the issuance of a bench warrant. The members also agreed the proposed new rule, as more fully explained below, should:

- apply both to defendants and witnesses, including investigating grand jury witnesses;
- make clear that magisterial district judges would proceed under this new rule only when handling court cases, otherwise they would proceed under the summary case bench warrant rule procedures, Rules 430 and 431;
- ensure the court receives notice when an individual is arrested on a bench warrant;
- require that the magisterial district judge or common pleas court judge who issued the bench warrant is the judicial officer before whom the defendant or witness should be taken when arrested;
- provide a procedure for coverage when these "issuing authorities" are unavailable, and that should be accomplished by the president judge or the president judge's designee designating another magisterial district judge or common pleas court judge to provide coverage;
- make clear that only another magisterial district judge may cover for a magisterial district judge and only another common pleas court judge may cover for a common pleas court judge;
- require that individuals arrested on a bench warrant must be brought before the issuing magisterial district judge or common pleas court judge or designated magisterial district judge or common pleas court judge as soon as reasonably possible following the arrest and establish time limits on the detention of an individual without a bench warrant hearing;
- encourage the use of advanced communication technology for the bench warrant hearing, a tool that will be helpful in ensuring prompt bench warrant hearings;
- provide that the bench warrant be vacated at the conclusion of the bench warrant hearing;
- not address when bench warrants may be issued.⁴

II. DISCUSSION

A. Placement

The new bench warrant rule was placed in the general provisions section of the rules, Chapter 1, because the rule applies to bench warrants issued by both judges of the common pleas court in court cases and magisterial district judges when handling a court case. In order to accommodate warrants in this Chapter, a new subsection, Part E, has been created. This new subsection is titled "Miscellaneous Warrants." The Committee reasoned the new section should not be limited to bench warrants, but should be broad enough in scope to address procedures related to other types of warrants that are not for instituting proceedings,⁵ if such other rule procedures become necessary or desirable. The new bench warrant rule is the first rule in this new subsection, numbered Rule 150.

⁴ In discussing this issue, the members noted there are so many instances when the judiciary issue bench warrants that it would be impossible to adequately address this in a rule. At the same time, some members expressed concerns that in some cases, bench warrants are being issued in inappropriate situations. Ultimately, after concluding that with the time limits being built into the new rule, judges will pay more attention to when they issue bench warrants, the Committee agreed the new rule should cover only the procedures once a bench warrant has been executed.

⁵ The procedures for instituting criminal proceedings by arrest warrant are governed by Rules 430 and 431 in summary cases and Rules 513-518 in court cases.

B. *New Pa.R.Crim.P. 150*

1. *Scope*

New Rule 150 applies to warrants in court cases that do not institute proceedings, called “bench warrants,” and sets forth the procedures to follow after a bench warrant is executed.⁶ In addition, the rule applies to bench warrants for both defendants and witnesses, including investigating grand jury witnesses. The rule, however, does not apply to bench warrants executed outside the Commonwealth, which are covered by the extradition procedures in 42 Pa.C.S. § 9101 et seq., or to warrants issued in probation and parole proceedings.

2. *Terminology*

The Committee discussed, in the context of a bench warrant proceeding, how to refer to the magisterial district judges and common pleas court judges who would issue bench warrants and preside at bench warrant hearings. We considered and rejected using “issuing authority,” because this term has a long history in the rules as being applicable to the judicial officer who either issues process to institute proceedings, issues search warrants, or presides over summary proceedings. Because some members expressed concern about the potential confusion using “issuing authority” in the Rule 150 bench warrant context would cause, the Committee agreed instead to use “judicial officer” to encompass the presiding magisterial district judge or common pleas court judge who issued the bench warrant or the magisterial district judge or common pleas court judge designated by the president judge to conduct the bench warrant hearings when either the presiding magisterial district judge or the presiding common pleas court judge is unavailable. The use of “judicial officer” in Rule 150 is explained in paragraph (B).

3. *Paragraph (A)*

Paragraph (A) establishes the scope of the rule “when a bench warrant is executed,” and enumerates the procedures to follow after the execution of the bench warrant.

Paragraph (A)(1) requires that the individual arrested on a bench warrant be taken without unnecessary delay for a bench warrant hearing before the judicial officer who issued the bench warrant. To ensure there are prompt bench warrant hearings, paragraph (A)(1) also includes the requirement that the president judge, or the president judge’s designee, designate a “replacement” judicial officer to conduct the hearing if the issuing judicial officer is unavailable. The fifth paragraph of the Comment favorably acknowledges the practice in some judicial districts of permitting a judge who will be unavailable to make arrangements with another judge to handle his or her cases while the judge is unavailable.

Paragraph (A)(2) encourages the use of “two-way simultaneous audio-visual communication” to conduct the bench warrant hearing. This technology is another means of ensuring prompt bench warrant hearings, especially in situations in which an individual is arrested on a bench warrant in another county. The second paragraph of the Comment explains the two-way simultaneous audio-visual communication is a form of “advanced communication technology” as defined in Rule 103.

Paragraphs (A)(3) and (A)(4) set forth procedures when the individual is arrested on the bench warrant. When the arrest is made in the county of issuance, paragraph (A)(3) requires that the arrested individual be lodged in

the county jail pending the hearing and the authority in charge of the jail promptly must notify the court of the arrest and detention. If the individual is arrested outside the county of issuance, paragraph (A)(4) requires that the authority in charge of the county jail in which the individual is lodged promptly notify the proper authorities in the county of issuance. Although ideally all bench warrant hearings should be conducted promptly after the individual is arrested, the Committee recognized the demands on the courts do not always afford this opportunity. At the same time, the Committee noted that, under current practices, frequently, when a hearing cannot be conducted “promptly after the arrest,” arrested individuals remain incarcerated for long periods of time without receiving a bench warrant hearing. Based on our research, the members’ own experiences in practice, and the other information we gathered, the Committee concluded that some time limits on the post-bench warrant arrest detention should be established. In considering what kind of time limits to establish, the Committee extensively debated the impact of any time limits on these cases, noting in particular the differences between cases in which the individual is arrested within the county of issuance and cases in which the individual is arrested outside the county of issuance. Taking note of the scheduling demands in the judicial districts, as well as the fact that the 72-hour time limit in Pa.R.C.P. 1910.13-1(d), to our knowledge, has not created an undue burden on the judicial districts, the Committee agreed this time limit is reasonable in the cases in which the individual is arrested within the county of issuance. The Committee also discussed at length whether to accommodate the scenario in which the 72 hours ends on a holiday or weekend. Although concerned about building into the rule any unnecessary delay, the Committee realized judicial resources would not be able to provide adequate coverage during these time periods, and ultimately agreed the 72-hour limit would be extended to the next business day when the 72 hours expires on a non-business day. See paragraph (A)(5)(b).

A more complicated issue concerned the situation when the individual is arrested outside the judicial district of issuance. The members expressed concern that the 72-hour time limit was unrealistic given the difficulties in some cases of retrieving an individual from another judicial district, particularly when the judicial district of arrest is a great distance away from the judicial district of issuance. Initially, the Committee considered a 144-hour time limit would be reasonable and would provide sufficient time for the judicial district of issuance to make arrangements for the individual’s return without unnecessarily prolonging the individual’s detention. Ultimately, after a lengthy debate and after reviewing the publication responses questioning the practicality of such a provision, the Committee determined that the 72-hour time-limit should apply to both in-county and out-of-county bench warrant arrests, but in out-of-county bench warrant arrests, the time would begin to run from the time the individual is lodged in the jail of the county of issuance. See paragraph (A)(5)(b).

In response to some publication comments, the Committee examined the practices of the multi-county and statewide investigating grand juries. The correspondents had noted that the supervising judge is rarely available when the grand jury is not in session and rarely is from the judicial district in which the grand jury is convened. In addition, given the nature of the investigating grand jury and the confidentiality of its proceedings, it would be inappropriate to have a substitute judge designated the

⁶ See Rules 430(B) and 431(C) for the procedures for bench warrants in summary cases.

judge to conduct these bench warrant hearings. In view of these considerations, the Committee agreed to exempt the multi-county and statewide investigating grand juries from the 72-hour time limit in Rule 150, but to require that the bench warrant hearing be conducted expeditiously after the supervising judge is available. See paragraph (A)(5)(a). Further elaboration concerning grand juries and bench warrants is set forth in the sixth paragraph of the Comment.

Paragraph (A)(6) is taken from Civil Rule 1910.13-1(c), and requires that the bench warrant be vacated at the conclusion of the bench warrant hearing following the disposition of the matter. The Committee agreed a comparable provision in the Criminal Rules' bench warrant rule that would require the judicial officer to dispose of the bench warrant proceeding as well as vacate the warrant makes sense in view of the ongoing problems concerning adequate warrant controls and ensuring defunct warrants are removed from the national computer systems. The Comment reiterates that once the bench warrant is executed and the individual is taken into custody, the bench warrant is no longer valid. In addition, the Comment recognizes the existing practice in some judicial districts of having the clerk of courts cancel the bench warrant when he or she receives a return of service, but cautions in these circumstances, the clerk promptly must provide notice of the return of service to the judge who issued the warrant.

Another issue the Committee had some difficulty with concerned what should occur when the time limits in paragraph (A)(5)(b) expire. The Committee majority agreed that, to have any "teeth," the rule should include an automatic release from custody at the expiration of the time limit, and to accomplish this, the rule should provide that the bench warrant expires by operation of law. See paragraph (A)(7). A related issue that concerned the members was how to ensure the court knows the individual is eligible for release and is released promptly when the time limit expires. The Committee agreed it is the responsibility of someone in the court system—judge, court administrator, clerk of courts, or even counsel—to monitor the time and make sure the jail is told to release the individual. This point is emphasized in the eighth paragraph of the Comment.

Finally, the Comment also includes (1) cross-references to the summary case bench warrant rules, Rules 430(B) and 431(C); to the summary case and court case rules governing arrest warrants that initiate proceedings to clearly distinguish those procedures from the new bench warrant procedures; and to Chapter 5 Part B concerning violation of the conditions of bail; and (2) an explanation that "court" as used in Rule 150 is not limited to courts of record but also includes magisterial district judge courts.

III. CORRELATIVE CHANGES

A. Rule 536

As the Committee was working on Rule 150, the issue of bail frequently arose, with the members concerned about how Rule 150 would work in conjunction with Rule 536 (Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety). Of particular concern was Rule 536(A)(1)(b) and (d), which provide, inter alia, that the bail authority may issue a warrant for the defendant's arrest and the defendant would not be released except upon order of the issuing bail authority or, if unavailable, the order of the president judge or the president judge's designee. The

Committee reviewed the rule history. In the January 1973 Submission Statement to the Court, the Committee explained

Rule 4016 [now 536] authorizes the issuing authority or court to issue "appropriate process" e.g.; a warrant, to bring the defendant before it, an aspect of procedure entirely overlooked by the present Rules. The term "bench warrant" was explicitly avoided by your Committee and use made of "appropriate process" because it was felt that the term "bench warrant" might be thought by some as applicable only to the power of judges of courts of record. This is only a point of nomenclature, however, and there is no question that the effect of any such warrant or process would be the same.

In view of this rule history and the fact that Rule 150 makes it clear the bench warrant may be issued by both magisterial district judges and judges of the courts of common pleas in court cases, Rule 536(A)(1)(b) has been amended to make it clear that the warrant being issued is a bench warrant. In addition, a second sentence has been added to paragraph (A)(1)(b) explaining that "when the bench warrant is executed, the bench warrant proceedings shall be pursuant to Rule 150."

Because Rule 150(A)(1) sets forth the requirements that the issuing judge or a designated issuing judge must conduct the bench warrant hearing, Rule 536(A)(1)(d) has been deleted as no longer necessary.

B. Rule 543

Rule 543 provides the procedures when a defendant fails to appear for a preliminary hearing. Paragraph (D)(2)(c) requires the issuing authority to "issue a warrant for the arrest of the defendant." This warrant is a bench warrant within the context of Rule 150. Accordingly, all the references to "warrants" in Rule 543 have been changed to "bench warrants." In addition, a cross-reference to Rule 150 has been added to the Rule 543 Comment.

[Pa.B. Doc. No. 06-54. Filed for public inspection January 13, 2006. 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 3, 6 AND 8]

Order Approving Changes to Rules of Juvenile Court Procedure, Rules 120, 160, 373, 610, and 800; No. 381 Supreme Court Rules; Doc. No. 1

The Supreme Court of Pennsylvania has adopted a few minor technical changes to the Rules of Juvenile Court Procedure—Delinquency Matters. These changes are explained in the Explanatory Report, which follows the Court's Order.

Order

Per Curiam:

And Now, this 30th day of December, 2005, upon the recommendation of the Juvenile Court Procedural Rules Committee and an Explanatory Report to be published with this *Order*:

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

Rules of Juvenile Court Procedure, Rules 120, 160, 373, 610, and 800 are approved in the following form.

To the extent that prior distribution and publication of these amendments would otherwise be required, it has been determined that immediate promulgation of the amendments is required in the interests of justice and efficient administration.

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

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

* * * * *

VERIFICATION is a written statement made by a person that the information provided is true and correct to that person's personal knowledge, information, or belief and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

* * * * *

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 160. Inspection of Juvenile File/Records.

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

* * * * *

10) the State Sexual Offenders Assessment Board for use in completing assessments; and

11) with leave of court, any other person, agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

* * * * *

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART E. CONSENT DECREE

Rule 373. Conditions of Consent Decree.

* * * * *

Comment

* * * * *

Paragraph (B) [departs from the Juvenile Act, 42 Pa.C.S. § 6340(c), in that an agreement for a consent decree of less than six months is allowed] requires a motion to be filed for early dismissal from consent decree. The procedures of Rule 344 are to be followed to ensure all parties are properly notified of the request and appropriate objections can be made. Rule 800 suspends 42 Pa.C.S. § 6340(c) only to the extent that there is an additional requirement that a motion is to be filed. See Rule 800.

* * * * *

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

Rule 610. Dispositional and Commitment Review.

* * * * *

Comment

Under paragraph (A), the court may hold a review hearing at any time; however, if the juvenile is removed from the home, the court is to conduct a hearing at least every six months. See Rule 800.

* * * * *

CHAPTER 8. SUSPENSIONS

Rule 800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

* * * * *

13) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

14) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

15) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months when a juvenile is removed from the home.

* * * * *

Recommendation No. 1 Juvenile Rules 2005 Explanatory Report

The following changes to the Rules of Juvenile Court Procedure are technical or were unintentional omissions.

I. RULE 120 ADDITION

In Rules 232(10) and 330(10), the Committee uses the term "verification." Once the Rules were published, the Committee was asked by several practitioners and organizations what was meant by verification. The Committee has now defined verification in Rule 120.

II. RULE 160 ADDITION

After the Committee had sent its initial recommendation to the Court for the Rules of Juvenile Court Procedure, the Juvenile Act was amended in 2004 to allow the State Sexual Offenders Assessment Board access to juvenile records. Because the Committee followed the Juvenile Act in determining who has access to juvenile records, the Committee has now added this Board to the list of enumerated persons having access to juvenile records.

III. RULES 373 AND 800 CHANGES

The Committee unintentionally left out a suspension of Act of Assembly which was the result of Rule 373. The Committee has clarified the suspension in the Comment to this Rule. The Committee also has added this suspension to Rule 800.

IV. RULES 610 AND 800 CHANGES

The Committee unintentionally left out a suspension of Act of Assembly which was the result of Rule 610. The Committee has added the additional suspension to Rule 800 and a reference to the suspension was added to the Comment of Rule 610.

[Pa.B. Doc. No. 06-55. Filed for public inspection January 13, 2006, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Philadelphia Traffic Court Local Rule No. 1036; Administrative Order 01 of 2006

Order

And Now, this 3rd day of January, 2006, pursuant to Pa.R.Crim.P. 105 and Pa.R.Crim.P. 1030 et seq., Philadelphia Traffic Court Local Rule No. 1036, which follows this order, is adopted, and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The original Administrative Order shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the Administrative Judge of the Philadelphia Traffic Court, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau, the Criminal Procedures Rules Committee, and the Minor Court Rules Committee. Copies of the Order shall also be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania.

By the Court

BERNICE DEANGELIS,
*Administrative Judge
Traffic Court*

LOCAL RULE 1036. TRAFFIC COURT HEARING OFFICERS

(a) Qualifications. Traffic Court Hearing Officers shall be knowledgeable with the Pennsylvania Motor Vehicle Code and the Pennsylvania Rules of Criminal Procedure, and any other rules or laws which control the issuance, processing and disposition of citations issued pursuant to the Motor Vehicle Code, including these Local Rules, shall complete an initial course of training and instruction of not less than thirty-five (35) hours as may be established from time to time by the Administrative Judge of the Traffic Court, shall possess such experience and educational requirements as may be established from time to time by the Administrative Judge of the Traffic Court, and must pass a written examination and be certified by the Administrative Office of Pennsylvania Courts prior to assuming office. Attendance at training courses conducted by or on behalf of the Minor Judiciary Education Board may satisfy the training and instructional requirements.

(b) Continuing Education. Traffic Court Hearing Officer shall complete a continuing education program each year equivalent to not less than twenty (20) hours per year in such courses or programs as may be established from time to time by the Administrative Judge of the Traffic Court. Attendance of continuing education courses conducted by or on behalf of the Minor Judiciary Education Board may satisfy the continuing education requirement. Failure to meet the continuing education requirements on a yearly basis shall result in the Hearing Officer being suspended, without pay, until such time as the continuing education requirements are met.

(c) Duties. As authorized by Pa.R.Crim.P. 1036 (A), Traffic Court Hearing Officers are authorized to perform the following duties:

(1) set collateral consistent with Pa.R.Crim.P. 452 and 1034;

(2) establish or re-establish payment plans consistent with Pa.R.Crim.P. 456;

(3) conduct warrant hearings as provided in Local Rule 1033. At the conclusion of the warrant hearing, the Hearing Officer shall:

(i) if it appears that a summary trial can be held immediately, forward the case to a Traffic Court judge for an immediate summary trial;

(ii) if it appears that a summary trial cannot be held immediately, schedule a summary trial date and serve the notice on the defendant and determine whether collateral must be posted by the defendant to secure defendant's release pending the summary trial. The Scheduling Orders shall be substantially as set forth in Local Rule 1033;

(iii) release the defendant unless collateral has been ordered and is not posted. If collateral is ordered and is not posted, the defendant shall be brought to the county prison and held pending the summary trial or hearing. However, the defendant shall be released at any time before the summary trial or hearing when the collateral is posted; and

(iv) direct that all outstanding Traffic Court warrants against the defendant be withdrawn.

(4) such other duties as may, from time to time, be designed by the Administrative Judge of the Philadelphia Traffic Court through an amendment to this Local Rule.

COMMENT: The Traffic Court Hearing Officer shall set collateral, pursuant to Pa.R.Crim.P. 1034, in a reasonable amount, i.e. an amount which upon consideration of the defendant's income and the defendant's expenses may be reasonably posted by the defendant. It is the intention of the court that most, if not all, defendants arrested pursuant to Traffic Court warrants will be released pending the date of the summary trial or hearing. However, should Traffic Court records disclose that the defendant has a history of failure to appear for Traffic Court summary trials or hearings, especially after personal service of the notice of trial or scheduling order, the defendant may be held until the summary trial or hearing date and may be released only upon payment of the full amount of collateral or outstanding fines. Should the defendant be ordered held until the date of the summary trial or hearing, the summary trial or hearing should be scheduled as soon as practical.

[Pa.B. Doc. No. 06-56. Filed for public inspection January 13, 2006, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Amended/Adopted Civil Rules of Procedure; S-2555 2005

Order of Court

And Now, this 27th day of December, 2005 at 1:15 p.m., the Court hereby approves and adopts Schuylkill County Civil Rules of Procedure No. 1915.4; hereby amends Schuylkill County Rules of Civil Procedure Nos. 1915.3, 1915.5, 1915.7, 1915.8, 1915.15; and hereby rescinds Schuylkill County Rules of Civil Procedure Nos. 1915.3A and 1915.3B. The rules are adopted and amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania (21st Judicial District) and shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

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

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

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

By the Court

WILLIAM E. BALDWIN,
President Judge

Rule 1915.3 Commencement of Action. Complaint. Order.

(a) The moving party shall file in the office of the Prothonotary an original and one (1) copy of all pleadings involving custody issues, including complaints, petitions for modifications, special relief or contempt and preliminary objections. The Prothonotary shall immediately transmit the original and copy to the Civil Court Administrator for assignment and scheduling. The Court Administrator will return the original to the Prothonotary and give the copy to the Conciliation Office, which will send to the moving party a copy of the scheduling order and a conciliation questionnaire. The moving party shall be responsible for service of a copy of the pleading, scheduling order and conciliation questionnaire upon all other parties pursuant to Pa.R.C.P. 402.

(b) If a custody claim is asserted in a divorce complaint, the moving party shall, after filing the divorce with the Prothonotary, provide two (2) copies, with the appropriate order attached as per Sch.R.C.P. 1915.15, to the Civil Court Administrator for assignment and scheduling. Thereafter the pleading will be processed and served as in subsection (a) hereof.

Rule 1915.4 Prompt Disposition of Custody Cases.

(a) The Court shall appoint one or more person(s) as Court Conciliation Officer(s) to:

- (1) conciliate custody cases filed with the Court;
- (2) recommend to the Court interim Orders in appropriate custody cases which shall be in the best interest of the child;
- (3) recommend appointment of counsel for the child;
- (4) recommend the ordering of home studies, psychologicals, or other evaluations by expert witnesses.

(b) All custody matters not specifically reserved to the Court shall be promptly scheduled for a conference before the Custody Conciliation Officer. All parties shall complete the Court's custody conciliation questionnaire and attend such conference. Failure of a party to appear at the conference may provide grounds for the entry of an Interim Order.

(c) To facilitate the conciliation process and encourage frank, open, and meaningful exchanges between the parties and their respective counsel, statements made by the parties, or their witnesses shall not be admissible as evidence in Court. The Custody Conciliation Officer may not be a witness for any party.

(d) More than one (1) conciliation conference may be scheduled by the Custody Conciliation Officer, as that Officer deems necessary to conciliate the matter.

(e) If the parties are able to reach an agreement during the conciliation conference, the Conciliation Officer will prepare a stipulation and submit it to the parties for their signature. Upon execution of the stipulation by all parties, the Conciliation Officer will also sign indicating his or her review and shall transmit the stipulation and a proposed order to the Court for approval.

(f) If at the conclusion of the conciliation process the case remains contested, the Custody Conciliation Officer shall transfer the case to the Court for assignment to a Judge. As part of that transfer, the Custody Conciliation Officer shall prepare and file a report to the Court, with copies to the parties. The report shall include such information about the case as shall be directed by the Court. Any report by the Conciliation Officer will be filed with the Prothonotary, who shall seal the report to all except the Court and the parties.

(g) If after receiving the Conciliation Officer's report, the Court orders the parties to submit to evaluations and/or studies, the parties shall promptly comply with the Court's direction regarding the payment for and scheduling of the evaluations and studies. Following receipt of the report(s) from the expert(s), the Court will promptly schedule another conference for the parties with the Conciliation Officer. If the parties reach an agreement at this conference, they may proceed in accordance with subsection (e) hereof. If no agreement is achieved, the Conciliation Officer will proceed pursuant to subsection (f) hereof and provide the Court and parties with a supplemental report.

(h) Unless the Conciliation Officer's report is recommending further expert evaluations, within twenty (20) days after receiving a copy of the Conciliation Officer's report to the Court, each party shall file a pretrial memorandum, which shall include the following:

- (1) a list of all fact witnesses;
- (2) a list of all expert witnesses;
- (3) issues for resolution;

- (4) estimated length of trial;
- (5) documentary reports from appropriate agencies;
- (6) reports of experts intended to be called as witnesses which the Custody Conciliation Officer did not previously have in Officer's possession; and
- (7) the manner to be utilized in presentation of expert witnesses or expert reports (i.e. stipulation of parties or presentation of testimony).

If the Conciliation Officer's report recommends further expert evaluations, the parties' pretrial memoranda shall be filed within twenty (20) days after receiving a copy of the Conciliation Officer's supplemental report. Failure to provide the information requested timely and completely prior to trial may be grounds for excluding the evidence or witnesses at trial.

(i) The Court will notify the parties of the time and date for trial or may elect to first schedule a pretrial conference.

Rule 1915.5 Question of Jurisdiction or Venue. No Responsive Pleading by Defendant Required. Counterclaim.

(a) Only the issues set forth in Pa.R.C.P. 1915.5(a) may be raised by way of preliminary objections. Filing of preliminary objections shall be as set forth in Sch.R.C.P. 1915.3, and thereafter shall be governed by Sch.R.C.P. 1028(c).

(b) If a question of jurisdiction or venue is raised prior to the conciliation conference, such objections shall be referred by the Custody Conciliation Officer to the Court for disposition.

(c) Counterclaims, crossclaims or answers shall be filed with the Prothonotary prior to the conciliation conference, and a copy provided to the Custody Conciliation Officer.

Rule 1915.7 Consent Order.

(a) If the parties are able to reach an agreement prior to the conciliation conference, they may file a petition requesting that a consent order be entered and include a proposed order. The order shall be substantially in the form of the custody stipulation utilized pursuant to Sch.R.C.P. 1915.4. The parties may be required to complete a questionnaire. The Court may, in its discretion, enter an order without taking testimony.

Rule 1915.8 Physical and Mental Examination of Persons.

(a) The Custody Conciliation Officer shall maintain and, on request, provide counsel and the parties with a list of psychiatrists, psychologists, social workers, counselors, and the like, who are available for consultation, evaluation, and testimony in custody matters.

(b) In the event that psychological studies, home studies or other evaluations are deemed necessary to a proper disposition of the matter and ordered by the Court, the cost of such studies may be assessed against the parties in a manner as determined by the Court after reviewing the report of the Custody Conciliation Officer following the conciliation conference. Such assessment will be based on what the Court believes to be in the best interest of the child and what will best facilitate the timely resolution of the matter, taking into consideration the parties' ability to pay.

Rule 1915.15 Form of Complaint. Caption. Order. Petition to Modify a Partial Custody or Visitation Order.

(a) In addition to the information required by Pa.R.C.P. 1915.15(a) and (b), each complaint or petition relating to

child custody or visitation shall have attached to its front an order in substantially the following form:

COURT OF COMMON PLEAS OF SCHUYLKILL COUNTY
TWENTY-FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

Plaintiff : S _____
: CIVIL ACTION - LAW
vs. :
:
Defendant : CUSTODY

ORDER OF COURT

AND NOW, this _____ day of _____ 20 __, at __ m., it is hereby ORDERED as follows:

You have been sued in Court to obtain Custody, Partial Custody or Visitation of the child(ren) named in the Complaint. You are ordered to appear in person at the *Custody Conciliation Office*, Schuylkill County Courthouse, on _____ at _____ o'clock .m. for a Custody Conciliation Conference.

You are further ordered to bring with you the fully completed conciliation questionnaire provided by the Court.

If you fail to appear as provided by this Order, an Order of Custody, Partial Custody or Visitation may be entered against you or the Court may issue a Warrant for your arrest.

YOU SHOULD TAKE THIS PAPER (and the attached papers) TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Pennsylvania Bar Association Lawyer Referral Service
100 South Street, P. O. Box 186, Harrisburg PA 17108
1-800-692-7375

Counsel and litigants without counsel are ORDERED to *immediately* consult their schedules for conflicts and to promptly request a continuance where necessary because of a prior attachment or emergency situation. All requests for a continuance of a Custody Conciliation Conference must be made on the APPLICATION FOR CONTINUANCE form available from the offices of the Court Administrator, Custody Conciliator or Prothonotary in the Schuylkill County Courthouse. The application must be filed in the Custody Conciliation Office. A continuance will be granted only upon good cause shown.

The moving party shall immediately serve on all interested parties a copy of the original pleading, this order and a custody conciliation questionnaire; and shall further file an affidavit verifying service.

Americans With Disabilities Act of 1990: The Court of Common Pleas of Schuylkill County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

BY THE COURT
_____ J.

[Pa.B. Doc. No. 06-57. Filed for public inspection January 13, 2006, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Alan Lee Gallagher, having been disbarred from the practice of law in the State of Oregon by Order of the Supreme Court of the State of Oregon dated October 14, 2004, the Supreme Court of Pennsylvania issued an Order on December 22, 2005, disbaring Alan Lee Gallagher from the Bar of this Commonwealth, effective January 21, 2006. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 06-58. Filed for public inspection January 13, 2006, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Merri R. Lane having been suspended from the practice of law in the State of New Jersey for a period of three months by Order of the Supreme Court of New Jersey dated April 5, 2005, the Supreme Court of Pennsylvania issued an Order dated December 29, 2005, suspending Merri R. Lane from the practice of law in this Commonwealth for a period of three months. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 06-59. Filed for public inspection January 13, 2006, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Joel D. Tenenbaum having been suspended from the practice of law in the State of Delaware for a period of three years by Opinion and Order of the Supreme Court of the State of Delaware decided August 5, 2005, the Supreme Court of Pennsylvania issued an Order dated December 22, 2005, suspending Joel D. Tenenbaum from the practice of law in this Commonwealth for a period of three years, effective January 21, 2006. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 06-60. Filed for public inspection January 13, 2006, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Richard R. Thomas, II, having been suspended from the practice of law in the State of New Jersey for a period of three years by Order of the Supreme Court of New Jersey dated May 3, 2005, the Supreme Court of Pennsylvania issued an Order dated December 29, 2005, suspending Richard R. Thomas, II, from the practice of law in this Commonwealth consistent with the Order of the Supreme Court of New Jersey dated May 3, 2005, to run concurrent with the suspension imposed by this Court on April 27, 2005. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 06-61. Filed for public inspection January 13, 2006, 9:00 a.m.]

Notice of Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated November 29, 2005, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective December 29, 2005 for Compliance Group 1 due April 30, 2005.

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.

Abbingtion, Brian
Las Vegas, NV
Amidon, Daniel W.
Wheeling, WV
Damaso, Ivan V.
Long Island City, NY
DeFranceschi, Gary M.
Bridgewater, NJ
Duncan, Michael
Houston, TX
Fleisig, Brian Elliot
Pine Brook, NJ
Gosse, Thomas J.
Haddon Heights, NJ
Healey-Smith, Lizanne
Jackson, NJ
Hitson, Charles Peter
Hartford, Ct
Houser, Janet Phinney
Endicott, NY
Howe, Patricia L.
Phoenix, AZ

Kauffman, Richard Scott
Whitehouse Station, NJ

Kaufman, James Benjamin
Greenwood Village, CO

Kincaid, Brian W.
Parsippany, NJ

Koury, Kristy Kathleen
Wellington, FL

Lane, Merri R.
Washington, DC

Malatesta Jr., David Charles
Wilmington, DE

Matos-Manon, Dinorah
New York, NY

Maziarz, Jeffrey C.
Hamilton, NJ

Nwamu, Fidel D.
Berkeley, CA

Parker, Phillip G.
Cherry Hill, NJ

Perez, Elayne Marie
Celebration, FL

Plivelic, Karyn Lynn
San Marcos, CA

Purtell, Thomas W. J.
San Francisco, CA

Sadler, Linda Carol
Arlington, VA

Schrader, Patricia L.
St. Croix, USVI

Shahan, Steven C.
Syracuse, NY

Shuster, Scott Lawrence
Cherry Hill, NJ

Simpson Jr., Edward Bell
San Francisco, CA

Stahl, Caroline Krastek
Medford, NJ

Tarpine III, Joseph Charles
Baltimore, MD

Trachtman, Gary Stewart
Linwood, NJ

Waitz-Moskowitz, Rachelle
Cherry Hill, NJ

Weber, Andrew
Mount Laurel, NJ

Wheatcroft, Melissa
Cherry Hill, NJ

Wright, Lynn
New York, NY

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

[Pa.B. Doc. No. 06-62. Filed for public inspection January 13, 2006, 9:00 a.m.]

SUPREME COURT

**Schedule of Holidays for Year 2007 for Staffs of
the Appellate Courts and the Administrative Of-
fice of Pennsylvania Courts; No. 281 Judicial
Administration; Doc. No. 1**

Order

Per Curiam:

And Now, this 28th day of December, 2005 it is hereby ordered that the following paid holidays for calendar year 2007 will be observed on the dates specified below by all employees of the appellate courts and the Administrative Office of Pennsylvania Courts:

January 1, 2007	New Year's Day
January 15, 2007	Martin Luther King, Jr. Day
February 19, 2007	Presidents' Day
April 6, 2007	Good Friday
May 28, 2007	Memorial Day (Observed)
July 4, 2007	Independence Day
September 3, 2007	Labor Day
October 8, 2007	Columbus Day (Observed)
November 6, 2007	Election Day
November 12, 2007	Veterans Day (Observed)
November 22, 2007	Thanksgiving Day
November 23, 2007	Day After Thanksgiving
December 25, 2007	Christmas Day

[Pa.B. Doc. No. 06-63. Filed for public inspection January 13, 2006, 9:00 a.m.]

**Sessions of the Supreme Court of Pennsylvania
for the Year 2007; No. 171 Appellate Court
Rules; Doc. No. 1**

Order

Per Curiam:

And Now, this 28th day of December, 2005 it is ordered that the argument/administrative sessions of the Supreme Court of Pennsylvania shall be held in the year 2007 as follows:

Pittsburgh (Administrative Session)	January 10
Philadelphia (Administrative Session)	February 7
Pittsburgh	March 5 through March 9
Philadelphia	April 16 through April 20
Harrisburg	May 14 through May 18
Pittsburgh (Administrative Session)	June 6
Pittsburgh	September 10 through September 14
Philadelphia	October 15 through October 19
Harrisburg	November 27 through November 30

Additional argument/administrative sessions may be scheduled as the Court deems necessary.

[Pa.B. Doc. No. 06-64. Filed for public inspection January 13, 2006, 9:00 a.m.]
