

THE COURTS

Title 207—JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

[207 PA. CODE CH. 21]

Amendment to the Internal Operating Procedures of the Court of Judicial Discipline; Doc. No. 1 JD 94

Order

Per Curiam

And Now, this 2nd day of August, 2006, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having adopted a new Section 103 and the renumbering of present Sections 103-110 of the Internal Operating Procedures, as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That said amendments of the Internal Operating Procedures shall become effective immediately.

Annex A

TITLE 207. JUDICIAL CONDUCT

PART IV. COURT OF JUDICIAL DISCIPLINE

ARTICLE IV. INTERIM OPERATING PROCEDURES

CHAPTER 21. INTERNAL OPERATING PROCEDURES

GENERAL PROVISIONS

§ 103. Findings of Panel.

When the trial of a case is conducted by a Panel appointed pursuant to C.J.D.R.P. No. 501, findings of fact made by the Panel shall be accepted by the full Court so long as sufficient evidence exists in the record which is adequate to support the findings of the Panel. Thus will proper deference be paid to the fact-finders who heard the witnesses testify and were in the sole position to observe their demeanor and assess their credibility.

§ [103] 104. Location of Proceedings.

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§ [104] 105. Duty Month Judges.

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§ [105] 106. Conducting Conferences by Telephone.

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§ [106] 107. Opinions and Orders of Court.

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§ [107] 108. Judicial Conferences.

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§ [108] 109. Adoption of Rules of Procedure.

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§ [109] 110. Confidentiality.

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§ [110] 111. Recusal.

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[Pa.B. Doc. No. 06-1594. Filed for public inspection August 18, 2006, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 5]

Proposed Amendments to Pa.Rs.Crim.P. 121 and 590

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 121 and 590 to emphasize the minimum areas of inquiry that are required for colloquies into waiver of counsel and entry of pleas of guilty or nolo contendere. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes to Rules 121 and 590 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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no later than Friday, September 22, 2006.

By the Criminal Procedural Rules Committee

NICHOLAS T. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

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

PART B. Counsel

Rule 121. Waiver of Counsel.

(A) GENERALLY.

(1) The defendant may waive the right to be represented by counsel.

(2) To ensure that the defendant's waiver of the right to counsel is knowing, voluntary, and intelligent, the judge or issuing authority, at a minimum, shall elicit the following information from the defendant:

(1) That the defendant understands that he or she has the right to be represented by counsel, and the right to have free counsel appointed if the defendant is indigent.

(2) That the defendant understands the nature of the charges against the defendant and the elements of each of those charges.

(3) That the defendant is aware of the permissible range of sentences and/or fines for the offenses charged.

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

(5) That the defendant understands that there are possible defenses to these charges which counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently.

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

(3) The judge or issuing authority may permit the attorney for the Commonwealth or defendant's attorney to conduct the examination of the defendant pursuant to paragraph (A)(2). The judge or issuing authority shall be present during this examination.

* * * * *

Comment

Paragraph (A) recognizes that the right to self-representation is guaranteed by the sixth amendment to the Federal Constitution when a valid waiver is made, *Faretta v. California*, 422 U.S. 806 (1975).

Court decisions contain broad language in referring to the areas and matters to be encompassed in determining whether the defendant understands the full impact and consequences of his or her waiver of the right to counsel, but is nevertheless willing to waive that right. The appellate courts require, however, that at a minimum, the judge or issuing authority ask questions to elicit the information set forth in paragraph (A)(2).

Although it is advisable that the judge or issuing authority conduct the examination of the defendant, the rule does not prevent the attorney for the Commonwealth or an already-appointed or retained defense counsel from conducting all or part of the examination of the defendant as permitted by the judge or issuing authority. See *Commonwealth v. McDonough*, 571 Pa. 232, 812 A.2d 504.

On the issue of waiver of counsel in general, see, e.g., *Commonwealth v. Tyler*, 468 Pa. 193, 360 A.2d 617 (1976); *Commonwealth ex rel. Fairman v. Cavell*, 423 Pa. 138, 222 A.2d 722 (1966) (mere execution of a waiver of counsel form, without more, is insufficient to establish a valid waiver); *Commonwealth ex rel. McCray v. Rundle*, 415 Pa. 65, 202 A.2d 303

(1964); *Commonwealth ex rel. O'Lock v. Rundle*, 415 Pa. 515, 204 A.2d 439 (1964).

In referring to summary cases, paragraph (B) refers only to those summary cases in which there exists a right to counsel. See Rule 122.

While the rule continues to require a written waiver of counsel incorporating the contents specified in paragraph (B), in proceedings before an issuing authority, the form of waiver was deleted in 1985 because it is no longer necessary to control the specific form of written waiver by rule.

[In the state of the law existing at the time this rule was drafted, it is difficult to formulate a comprehensive list of questions which must be asked of the defendant in determining whether the defendant's tendered waiver of counsel is knowing, intelligent, and voluntary. Court decisions contain broad language in referring to the areas and matters to be encompassed in determining whether the defendant understands the full impact and consequences of his waiver of the right to counsel, but is nevertheless willing to waive that right. It is recommended, however, that at a minimum, the judge or issuing authority ask questions to elicit the following information:

(1) That the defendant understands that he or she has the right to be represented by counsel, and the right to have free counsel appointed if the defendant is indigent.

(2) That the defendant understands the nature of the charges against the defendant and the elements of each of those charges.

(3) That the defendant is aware of the permissible range of sentences and/or fines for the offenses charged.

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

(5) That the defendant understands that there are possible defenses to these charges which counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently.

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

This area is presently one of some flux in the law; therefore, it is intended that what is set out above is only a beginning and, depending on the circumstances of the particular case, may not necessarily be sufficient to assure a valid waiver of counsel. On the issue in general, see, e.g., *Commonwealth v. Tyler*, 360 A.2d 617 (1976); *Commonwealth ex rel. Fairman v. Cavell*, 222 A.2d 722 (1966) (mere execution of a waiver of counsel form, without more, is insufficient to establish a valid waiver); *Commonwealth ex rel. McCray v. Rundle*, 202 A.2d 303 (1964); *Commonwealth ex rel. O'Lock v. Rundle*, 204 A.2d 439 (1964).]

* * * * *

[Although it is advisable that the judge or issuing authority should conduct the examination of the defendant, the rule does not prevent the attorney for the Commonwealth or an already-appointed or retained defense counsel from conducting all or part of the examination of the defendant as permitted by the judge or issuing authority.]

With respect to trials in court cases, when the defendant waives the right to counsel and elects to proceed pro se, it is generally advisable that standby counsel be appointed to attend the proceedings and be available to the defendant for consultation and advice. See *Commonwealth v. Africa*, 353 A.2d 855 (1976). This is particularly true in cases expected to be long or complicated, or in which there are multiple defendants. See ABA Standards, The Function of the Trial Judge § 6.7 (Approved Draft 1972). The ability of standby counsel to assume control of the defense will minimize delay and disruption of the proceedings in the event that the defendant's self-representation terminates, e.g., either because such termination becomes necessary as a result of the defendant's unruly behavior, or because the defendant seeks to withdraw the waiver and be represented by counsel. With respect to pretrial proceedings or summary case trials it is intended that standby counsel may be appointed at the discretion of the presiding judicial officer.

Official Note: Rule 318 adopted October 21, 1977, effective January 1, 1978; amended November 9, 1984, effective January 2, 1985; renumbered Rule 121 and amended March 1, 2000, effective April 1, 2001; **amended** , 2006 effective , 2006.

Committee Explanatory Reports:

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

Report explaining the proposed changes to paragraph (A) published at 36 Pa.B. 4600 (July 19, 2006).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART G. Plea Procedures

RULE 590. Pleas and Plea Agreements.

(A) GENERALLY.

* * * * *

(3) Guilty Pleas.

(a) The judge may refuse to accept a plea of guilty or nolo contendere, and shall not accept it unless the judge determines after inquiry of the defendant that the plea is voluntarily and understandingly tendered. [Such inquiry shall appear on the record.]

(b) To ensure that the defendant understands the full impact and consequences of the plea, but is nevertheless willing to enter that plea, the judge on the record shall, at a minimum, elicit the following information from the defendant:

(i) That the defendant understands the nature of the charges to which he or she is pleading guilty or nolo contendere.

(ii) That there is a factual basis for the plea.

(iii) That the defendant understands that he or she has the right to trial by jury.

(iv) That the defendant understands that he or she is presumed innocent until found guilty beyond a reasonable doubt.

(v) That the defendant is aware of the permissible range of sentences and/or fines for the offenses charged.

(vi) That the defendant is aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement.

(c) The judge may permit the attorney for the Commonwealth or defendant's attorney to conduct the examination of the defendant pursuant to paragraph (A)(3)(b). The judge shall be present during this examination.

* * * * *

Comment

The purpose of paragraph (A)(2) is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea or plea of nolo contendere is voluntarily and understandingly tendered. On the mandatory nature of this practice, see *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 ([Pa.] 1974); *Commonwealth v. Campbell*, 451 Pa. 465, 304 A.2d 121 ([Pa.] 1973); *Commonwealth v. Jackson*, 450 Pa. 417, 299 A.2d 209 ([Pa.] 1973).

It is difficult to formulate a comprehensive list of questions a judge must ask of a defendant in determining whether the judge should accept the plea of guilty or a plea of nolo contendere. Court decisions may add areas to be encompassed in determining whether the defendant understands the full impact and consequences of the plea, but is nevertheless willing to enter that plea. At a minimum the judge should ask questions to elicit the [following information:] information set forth in paragraph (A)(3)(b).

[(1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or nolo contendere?

(2) Is there a factual basis for the plea?

(3) Does the defendant understand that he or she has the right to trial by jury?

(4) Does the defendant understand that he or she is presumed innocent until found guilty?

(5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?

(6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?]

Inquiry into the [above] six areas set forth in paragraph (A)(3)(b) is mandatory during a guilty plea colloquy under *Commonwealth v. Willis*, 471 A.2d 50, 369 A.2d 1189 ([Pa.] 1977), and *Commonwealth v. Dilbeck*, 466 Pa. 543, 353 A.2d 824 ([Pa.] 1976).

Many, though not all, of the areas to be covered by such questions are set forth in a footnote to the Court's opinion in *Commonwealth v. Martin*, 445 Pa. 49, 282 A.2d 241, 244-245 ([Pa.] 1971), in which the colloquy conducted by the trial judge is cited with approval. See also *Commonwealth v. Minor*, 467 Pa. 230, 356 A.2d 346 ([Pa.] 1976), and *Commonwealth v. Ingram*, 455 Pa.

198, 316 A.2d 77 ([Pa.] 1974). As to the requirement that the judge ascertain that there is a factual basis for the plea, see *Commonwealth v. Maddox*, 450 Pa. 406, 300 A.2d 503 ([Pa.] 1973) and *Commonwealth v. Jackson*, 450 Pa. 417, 299 A.2d 209 ([Pa.] 1973).

* * * * *

The “terms” of the plea agreement, referred to in paragraph (B)(1), frequently involve the attorney for the Commonwealth—in exchange for the defendant’s plea of guilty or nolo contendere, and perhaps for the defendant’s promise to cooperate with law enforcement officials—promising concessions such as a reduction of a charge to a less serious offense, the dropping of one or more additional charges, a recommendation of a lenient sentence, or a combination of these. In any event, paragraph (B) is intended to insure that all terms of the agreement are openly acknowledged for the judge’s assessment. See, e.g., *Commonwealth v. Wilkins*, 442 Pa. 524, 277 A.2d 341 ([Pa.] 1971).

* * * * *

When a guilty plea, or plea of nolo contendere, includes a plea agreement, the 1995 amendment to paragraph (B)(2) requires that the judge conduct a separate inquiry on the record to determine that the defendant understands and accepts the terms of the plea agreement. See *Commonwealth v. Porreca*, 528 Pa. 46, 595 A.2d 23 ([Pa.] 1991).

Former paragraph (B)(3) was deleted in 1995 for two reasons. The first sentence merely reiterated an earlier provision in the rule. See paragraph (A)(3). The second sentence concerning the withdrawal of a guilty plea was deleted to eliminate the confusion being generated when that provision was read in conjunction with Rule 591. As provided in Rule 591, it is a matter of judicial discretion and case law whether to permit or direct a guilty plea or plea of nolo contendere to be withdrawn. See also *Commonwealth v. Porreca*, 528 Pa. 46, 595 A.2d 23 ([Pa.] 1991) (the terms of a plea agreement may determine a defendant’s right to withdraw a guilty plea).

* * * * *

Official Note: Rule 319(a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective 30 days hence; specific areas of inquiry in Comment deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraph (c) added and Comment revised May 22, 1978, effective July 1, 1978; Comment revised November 9, 1984, effective January 2, 1985; amended December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 590 and Comment revised March 1, 2000, effective April 1, 2001; **amended** , 2006, effective , 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).

Report explaining the proposed changes to subparagraph (A)(3) published at 36 Pa.B. 4600 (July 19, 2006).

REPORT

**Amendments to Pa.Rs.Crim.P. 121 and 590
Waiver of Counsel and Guilty Plea Colloquies**

I. INTRODUCTION

As part of the Committee’s continuing review of the rules and case law, the Committee examined the status of colloquies required when (1) a defendant wants to waive the right to proceed with counsel, Rule 121 (Waiver of Counsel), and (2) a defendant wishes to enter a plea of guilty or nolo contendere, Rule 590 (Pleas and Plea Agreements). The Comments to both rules set forth six areas of inquiry that, at a minimum, a court must investigate before accepting a counsel waiver or a guilty plea. These areas of inquiry are derived from early case law. See, e.g., *Commonwealth v. Tyler*, 360 A.2d 617 (Pa. 1976); *Commonwealth v. Martin*, 282 A.2d 241 (Pa 1971). Reflecting that from the case law it appears the lower courts continue to omit from these colloquies one or more of the areas of inquiry, the Committee has concluded that the mandatory nature of these areas of inquiry should be reinforced and is proposing to move the six mandatory areas of inquiry from the Comments to the text of the rules.

At the time these rules were promulgated,¹ the listed areas of inquiry were placed in the Comments rather than the text of the rules because the state of the law for each procedure was in flux. The Committee at the time thought it best to allow precedent to develop rather than attempting to codify all possible areas of inquiry. Subsequently, the requirements became firmer as case decisions reinforced the six areas of inquiry as the mandatory minimum requirements for the colloquies.

During the Committee’s discussion of *Commonwealth v. Payson*, 723 A.2d 695 (Pa. Super. 1999), which held that the waiver of counsel colloquy was inadequate, in part, because the trial court did not follow the requirement to inquire into the six areas listed in the Rule 121 Comment, the members considered whether, given the mandatory nature of the six areas of inquiry, the list of the six areas more appropriately belonged in the text of the rule.

The Committee concluded that the mandatory nature of the areas of inquiry needed to be reemphasized and that the best way of accomplishing this is by placing the list in the text of Rule 121 instead of the current location in the Comment.

While examining the issue in connection with Rule 121, the Committee recognized that a similar problem exists for Rule 590—the Comment sets forth the list of six areas of inquiry for entry of pleas of guilty or nolo contendere. Here, as well, recent case law suggests that, despite the mandatory nature of this list, some courts still do not undertake the required inquiries. For example, the Superior Court opinion in *Commonwealth v. Fowler*, 893 A.2d 758 (2006), discussed the contents of a guilty plea colloquy that are necessary for the plea to be accepted as voluntary. In a concurring opinion, Judge Klein criticizes the majority for not enforcing the requirement, derived from *Commonwealth v. Willis*, 369 A.2d 1189 (Pa. 1977), that the colloquy include the six areas of inquiry listed in the Rule 590 Comment.

The Committee concluded that both rules are similar in the mandatory nature of the areas of inquiry and in the lack of compliance by certain courts with those requirements and therefore is proposing that both Rules be amended to emphasize the mandatory nature of the inquiry requirements.

¹ Rule 121 was promulgated in 1977 and Rule 590 was promulgated in 1973.

II. DISCUSSION OF RULE CHANGES

Rule 121

The Committee is proposing that the six areas of inquiry in the Rule 121 Comment be moved into paragraph (A), which is the general application provision, as new paragraph (A)(2).

In addition, in view of the Supreme Court's decision in *Commonwealth v. McDonough*, 571 Pa. 232, 812 A.2d 504 (Pa 2002), clarifying that someone other than the judge, such as the attorney for the Commonwealth or defense counsel, may conduct the colloquy so long as the judge was present, the Committee agreed to add as new paragraph (A)(3) a provision making the rule clear that the attorney for the Commonwealth or the defendant's attorney may conduct the examination and that the judge still must be present.

To conform with these proposed changes to paragraph (A), the Comment would be reorganized by moving to the beginning of the Comment the provisions that address the areas of inquiry and the conduct of the colloquy. A cross-reference to the Supreme Court's decision in *Commonwealth v. McDonough* would be added to the new third paragraph of the Comment.

Rule 590

Similarly, the Committee is proposing that, the six areas of inquiry to determine if a plea of guilty or nolo contendere is knowing and voluntary in Rule 590 be moved into paragraph (A), which is the general application provision, as new paragraph (A)(3). To match the format of Rule 121(A)(2), the language of the list of the areas of the inquiries would be changed, from questions to direct statements of the defendant's understanding of the effects of the plea. The Comment to Rule 590 would be reorganized by removing the list of the six areas and adding minor modifications to the existing cross-references to the cases of *Commonwealth v. Willis*, 369 A.2d 1189 (Pa. 1977), and *Commonwealth v. Dilbeck*, 353 A.2d 824 (Pa. 1976) that established the six areas of inquiry.

[Pa.B. Doc. No. 06-1595. Filed for public inspection August 18, 2006, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ADAMS COUNTY

Adams County Rule 150; AD-19-06, Administrative Order No. 19 of 2006

Order of Court

And Now, 24th day of July, 2006, this Court does hereby adopt Adams County Criminal Rule 150, as follows:

1. This Rule shall apply to all bench warrants subject to the provisions of Pa.R.Crim.P. 150.
2. Individuals taken into custody as a result of the service of a criminal bench warrant shall be immediately transported and committed to the Adams County Adult Correctional Complex.
3. Upon commitment to the county prison, the Warden, or designated officer, shall determine the nature of and source of the bench warrant.

a. If the warrant was issued by a judicial officer of another county, the Warden, or designated officer, shall promptly notify proper authorities in the jurisdiction which issued the warrant.

b. If the warrant was issued by a Magisterial District Judge from Adams County, the individual shall be promptly produced before the on-call Magisterial District Judge. If the matter is not resolved at that time, the individual shall be produced before the Magisterial District Judge who issued the warrant within 72 hours of commitment to the prison.

c. If the warrant was issued by a Judge of the Court of Common Pleas of Adams County, the procedure set forth below shall be followed.

4. On or before 8:30 A.M. of the business day immediately following commitment to the prison, the Warden, or designated officer, shall notify the District Court Administrator of the commitment. The District Court Administrator shall make arrangements for the individual to be produced before the Court no later than 72 hours after commitment to the prison.

5. Any proceeding scheduled pursuant to this Rule may be conducted by video-conferencing. When video-conferencing is used, the judicial officer shall promptly provide appropriate written notice to the prison to either retain or release the individual.

6. This Rule shall be effective for all persons served, detained, or committed on or after July 28, 2006.

Comment:

This Rule is designed to address those situations where an individual has been taken into custody as a result of the issuance of a criminal bench warrant in a court case (see Pa.R.Crim.P. 103). The Rule is not intended to address i) those situations where an individual voluntarily appears before the Court prior to service of the warrant, ii) those circumstances where the individual is taken into custody in or about the Adams County Courthouse, the Court is open for business, and it would be impracticable or unreasonable to transport him/her to the prison in accordance with this Rule, or iii) those situations where the Sheriff of Adams County, in the exercise of his discretion, directs an individual to appear before the Court on a date and time certain (which shall customarily be the next regularly scheduled Bench Warrant court.) Except in the first circumstance, the Sheriff shall promptly notify the District Court Administrator of such apprehension or arrangement for the purpose of providing notification to appropriate persons.

This Rule does not apply to warrants issued in civil matters, i.e. Domestic Relations, Protection From Abuse. In those situations, it is expected that the individual will be promptly produced before the judge who issued the warrant or such other judge who may be designated by the President Judge. However, when a warrant is issued for failure to appear for an indirect criminal contempt proceeding in a Protection From Abuse matter, it is advisable to follow the procedure set forth in this Rule.

Notice to the District Court Administrator required by Paragraph 4 shall include, but not be limited to, the identity of the person committed, the docket number(s), the date the warrant was issued, and the date and time of commitment.

In scheduling a bench warrant hearing, the District Court Administrator shall follow local practice. Generally, the hearing will be scheduled for 1:00 P.M. on the next available criminal court day, i.e., Arraignment, Plea Day, Criminal Business, Bench Warrant Court (Monday and Wednesday.) However, if the warrant was issued for the person's failure to appear at a revocation proceeding, the hearing shall be held on the next regularly scheduled Revocation Court day.

By the Court

JOHN D. KUHN,
President Judge

[Pa.B. Doc. No. 06-1596. Filed for public inspection August 18, 2006, 9:00 a.m.]

BUCKS COUNTY

Order Promulgating Rule of Criminal Procedure *117 Regarding Magisterial District Judge Coverage

Order of Court

And Now, this 31st day of July, 2006, Bucks County Rule of Criminal Procedure *117 is hereby promulgated as follows:

Rule 117 On-Call Coverage

(A) Regular office hours of the magisterial district courts shall be weekdays from 8:00 AM to 5:00 PM.

(B) The President Judge or his representative shall designate a magisterial district judge or judges to be available at pre-set intervals of four hours during the following periods:

- (1) 5:00 PM until 8:00 AM weekdays;
- (2) 5:00 PM on Friday until 8:00AM Monday on weekends; and
- (3) 5:00 PM at the close of business the day preceding a holiday until 8:00 AM the first business day after a holiday.

The on-call magisterial district judge or judges shall also be available to process emergency applications from law enforcement agencies at times other than the pre-set intervals set forth above.

(C) The on-call magisterial district judge shall be vested with county-wide jurisdiction to initiate, conduct or issue the following:

- (1) Summary trials or the setting of collateral in summary cases following arrests with a warrant issued pursuant to Rule 430(A) as provided in Rule 431(B)(3) and following arrests without a warrant as provided in Rule 441(C);
- (2) Arrest warrants, bench warrants, and hearings thereon;
- (3) Preliminary arraignments;
- (4) Search warrants; and
- (5) Actions for protection from abuse, including any related contempt proceedings.

(D) Arraignments, issuance of warrants and conferences may be conducted in person or by means of two-way simultaneous audio-video communications.

(E) On-call coverage shall be conducted in accordance with the policies of this court in its Policy for On-call Services, or any revision thereof approved by the President Judge.

By the Court

DAVID W. HECKLER,
President Judge

[Pa.B. Doc. No. 06-1597. Filed for public inspection August 18, 2006, 9:00 a.m.]

BUCKS COUNTY

Order Promulgating Rule of Criminal Procedure 520 Regarding After Hours Bail

Order of Court

And Now, this 31st day of July, 2006, Bucks County Rule of Criminal Procedure No. 520 is hereby amended as follows:

Rule 520 Acceptance of Bail Pursuant to Pennsylvania Rule of Criminal Procedure No. 117

(A) Pursuant to Pennsylvania Rule of Criminal Procedure No. 117, all after-hours court case criminal bails for both magisterial district judges and common pleas judges shall be accepted and posted at the Bucks County Correctional Facility in accordance with the following procedures:

- (1) Bail previously set by magisterial district judges or common pleas judges shall be posted with a correctional officer deputized by the Clerk of Courts/Criminal Division at the Bucks County Correctional Facility.
- (2) This rule does not pertain to summary cases.
- (3) "After-hours" is deemed to be after regular office hours on weekdays, and on weekends or holidays. During regular business office hours, bail set by magisterial district judges shall be accepted and posted at the magisterial district judge offices and bail set by common pleas judges shall be accepted at the Clerk of Courts/Criminal Division.
- (4) Magisterial district judges shall hand serve all defendants who are committed to prison the following notice of where and how to post bail:

NOTICE TO PERSONS WISHING TO POST BAIL SET BY MAGISTERIAL DISTRICT JUDGE

If you wish to post bail you may do so at the following times and places:

DAYTIME—8:00 a.m. until 5:00 p.m.

At the office of the magisterial district judge (or final issuing authority) where your preliminary hearing was held or scheduled to be held during daytime office hours only.

AFTER-HOURS, WEEKENDS & HOLIDAYS

All bail after-hours will be accepted at the Bucks County Correctional Facility, (215) 345-3800, located at 1730 S. Easton Road near the village of Edison, 3 miles south of Doylestown.

Administrative Order No. 39 is hereby rescinded.

By the Court

DAVID W. HECKLER,
President Judge

[Pa.B. Doc. No. 06-1598. Filed for public inspection August 18, 2006, 9:00 a.m.]

BUTLER COUNTY

Local Rules of Court; CP-10-AD-2-20-06

Administrative Order of Court

And Now, this 1st day of August, 2006, it is hereby ordered and decreed that the Butler County local rules of criminal procedure (L117 & L520) are hereby approved and adopted and are herewith made a part of the Butler County Local Rules of Criminal Procedure for use in the Court of Common Pleas of Butler County, Pennsylvania, the 50th Judicial District of Pennsylvania, effective thirty (30) days after the publication of the rule in the *Pennsylvania Bulletin*.

It is further ordered and decreed that the Court Administrators Office of Butler County shall:

1. File seven (7) certified copies of this Administrative Order & Local Rule with the Administrative Office of the Pennsylvania Courts.

2. File two (2) certified copies of this Administrative Order & Local Rule and one (1) diskette in the required format with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy of this Administrative Order & Local Rule with the Pennsylvania Criminal Procedural Rules Committee.

4. Forward one (1) copy of this Administrative Order to the administrative office of the *Butler County Legal Journal* for publication.

5. Keep continuously available for public inspection copies of this Administrative Order in the Office of the Butler County Clerk of Courts, in the Office of the Court Administrator and the Butler County Law Library.

By the Court

THOMAS J. DOERR,
President Judge

Rule L117 Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.

(a) After hours coverage shall be provided via a traditional "on-call system" wherein each Magisterial District Judge, who has county-wide jurisdiction, will operate between the hours of 4:30 P.M. to 8:30 A.M. Monday through Friday, including holidays and weekends on a rotational schedule as adopted by Administrative Order on an annual basis. Said Administrative Order shall be filed with the Prothonotary of Butler County and shall be posted on the Butler County website at www.co.butler.pa.us;

on each of the bulletin boards located in the Butler County Courthouse, maintained by the Court Administrator's office; at the Butler County Communications Center; with each Magisterial District Judge and the Butler County Court Administrator's Office

(1) The "on call" Magisterial District Judge may hold court by any approved advanced communication technology as provided by Butler County. The Magisterial District court office will remain closed to the public during after hours coverage except at the discretion of the Magisterial District Judge.

(2) In the event a Magisterial District Judge is needed when the court is not scheduled for after hours coverage for issuance of a search or arrest warrant, a Protection From Abuse Petition or other emergency matter, the "on call" Magisterial District Judge will be contacted through the Butler County Communications Center.

(3) Procedures for executed summary warrants shall be pursuant to Pa.R.Crim.P.431.

(b) Monetary bond may be posted outside of normal business hours with the Magisterial District Judge, the Clerk of Courts or the Warden of the Butler County Prison with the following provisions:

(1) Summary Bonds required prior to the verdict or other case disposition in the amount of FIVE HUNDRED (\$500.00) DOLLARS and NO CENTS or less shall be posted with the Warden at the Butler County Prison.

(2) Summary Bonds required prior to verdict or other case disposition in the amount of FIVE HUNDRED (\$500.00) DOLLARS and NO CENTS or more shall be posted with "on-call" Magisterial District Judge.

(3) All Property Bonds must be posted during regular business hours with the Clerk of Courts of Butler County.

Rule L520 Bail Before Verdict

Monetary bond may be posted outside of regularly scheduled work hours with a Magisterial District Judge, the Clerk of Courts or the Warden of the Butler County Prison with the following provisions:

(1) Summary Bonds required prior to the verdict or other case disposition in the amount of FIVE HUNDRED (\$500.00) DOLLARS and NO CENTS or less shall be posted with the Warden at the Butler County Prison.

(2) Summary Bonds required prior to verdict or other case disposition in the amount of FIVE HUNDRED (\$500.00) DOLLARS and NO CENTS or more shall be posted with "on-call" Magisterial District Judge.

(3) All Property Bonds must be posted during regular business hours with the Clerk of Courts of Butler County.

Comment: This rule is intended to ensure compliance with the statewide Rules of Criminal Procedure to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority. Police officers, constables and other law enforcement personnel who are obtaining and serving said warrants should do so during normal business hours and, if not, should provide written statements indicating good cause for not being able to do so upon request of the issuing authority.

[Pa.B. Doc. No. 06-1599. Filed for public inspection August 18, 2006, 9:00 a.m.]

DELAWARE COUNTY

**Monetary Bail Acceptance at Correctional Facility;
No. 05-0193****Order**

And Now, this 26th of July, 2006, it is hereby *Ordered* and *Decreed* that the enclosed Local Rule 117 is effective thirty (30) days from date of publication in the PA Bulletin:

1. Magisterial District Judges shall provide continuous coverage for issuance of search warrants pursuant to Pa.R.Crim.P. 203, arrest warrants pursuant to Pa.R.Crim.P. 513 and for the acceptance of deposits of bail.

2. Magisterial District Judges shall also provide coverage to conduct preliminary arraignments, conduct summary trials or set collateral in summary cases following arrests with a warrant issued pursuant to Pa.R.Crim.P. 430(A), set bail whenever an out-of-county warrant of arrest is executed within the Judicial District, accept complaints and provide such other services as may be required by Pa.R.Crim.P. 117(A) (2) (a), (b), (c) and (d).

3. In Order to provide after hours coverage for the services set forth in paragraphs 1 and 2, Magisterial District Judges shall rotate evenings, weekends, and holidays according to the provisions of the previous Orders of this Court establishing the Duty Groups within the Judicial District.

4. The Duty Magisterial District Judge shall provide after hours coverage in accordance with the long-standing hearing schedules set forth in the previous Orders of this Court establishing the Duty Groups within this Judicial District.

5. The Duty Magisterial District Judge shall be continuously available during his or her regular after hours coverage for the issuance of search warrants pursuant to Pa.R.Crim.P. 203, arrest warrants pursuant to Pa.R.Crim.P. 513 and to accept deposits of bail as further provided for in paragraph 8 of this Order.

6. In the event a Magisterial District Judge is needed for the issuance of a search or arrest warrant or other emergency matter when the Court is not scheduled for after hours coverage, the Duty Magisterial District Judge will be contacted as provided for in paragraph 7 of this Order.

7. The Duty Magisterial District Judge shall be contacted by either the Delaware County Emergency Services Center (911), the local law enforcement agency or the Pennsylvania State Constable when it becomes necessary to hold a preliminary arraignment or summary trial, issue a search warrant or warrant of arrest, set or accept bail or provide the other services set forth in paragraphs 1 and 2 of this Order.

8. All Magisterial District Court offices shall be open for normal business on Monday through Friday between the hours of 8:30 A.M. to 4:30 P.M. except that Magisterial District Court 32-2-40 shall be open between the hours of 2:00 P.M. and 10:00 P.M. on Monday through Thursday and between the hours of 11:00 A.M. and 7:00 P.M. on Friday for the purpose of conducting normal business and to act as the "Duty Court" for the Folcroft Duty Group on Monday through Thursday.

9. Monetary bail may be accepted by the issuing authority between the hours of 8:30 A.M. and 4:30 P.M. on Monday through Friday, by the Duty Magisterial District Judge during his or her regular after hours coverage, and by the Warden of the George Hill Correctional Facility (or his designee) between the hours of 8:00 P.M. and 8:30 A.M. daily. If the issuing authority is unavailable to accept deposits of bail to illness, vacation, or continuing education, the Magisterial District Judge covering for the issuing authority may accept the bail.

By the Court

KENNETH A. CLOUSE,
President Judge

[Pa.B. Doc. No. 06-1600. Filed for public inspection August 18, 2006, 9:00 a.m.]

GREENE COUNTY

**Pennsylvania Rule of Criminal Procedure 117;
Misc. No. 59 of 2006****Order**

And Now, this 31st day of July, 2006, pursuant to Pennsylvania Rule of Criminal Procedure 117, effective August 1, 2006, it is *Ordered* that the on-call District Judge shall provide continuous coverage for the purpose of executing Pennsylvania Rule of Criminal Procedure 117 as has been the established procedure, and further, that in the event an incarcerated defendant and/or a person acting in his behalf wishes to post bail, the Warden of the Greene County Prison or his designated agent shall immediately contact the on-call District Judge in order that bail may be posted without undue delay.

By the Court

H. TERRY GRIMES,
President Judge

[Pa.B. Doc. No. 06-1601. Filed for public inspection August 18, 2006, 9:00 a.m.]

JEFFERSON COUNTY

**Repeal, Amendment, and Adoption of Rules of
Civil Procedure; No. 15-2006 OC****Order**

And Now, this 1st day of August 2006, it is hereby *Ordered* and *Decreed* that,

The following designated Jefferson County Rules of Civil Procedure (Jeff. Co. R.C.P.), a copy of which is attached hereto, are amended as follows, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

1. Existing Local Rules 210, 233, 300, 303, 1053, and 1064 are hereby rescinded.

2. Existing Local Rule 305 shall be incorporated into existing Local Rule 227.1, the text of L305 to precede that of L227.1. The new consolidated Rule shall be renamed "Post-Trial Relief."

3. Existing Local Rule 313 shall be incorporated into existing Local Rule 1037, the text of L313 to precede that of L1037.

4. The following Local Rules shall be renamed and/or renumbered in order to conform more closely to the *Pennsylvania Rules of Civil Procedure*:

- (a) L220 shall become L220.1 and be renamed "Voor Dire."
- (b) L306 shall become L440 and be renamed "Service of Legal Papers Other Than Original Process. Notice."
- (c) L316 shall become L1037.1 and retain its existing name.
- (d) L315 shall become L1037.2 and retain its existing name.
- (e) L317 shall become L1037.3 and retain its existing name.
- (f) L314 shall become L2059-2060 and retain its existing name.

It is further *Ordered* and *Decreed* that,

The following designated Jefferson County Rules of Civil Procedure (Jeff. Co. R.C.P.) are adopted as rules of this Court, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

Jeff. Co. R.C.P. 1042.50 Medical Professional Liability Actions. Motion for Mediation

- (a)(1) Upon agreement that mediation would be appropriate for resolution of a case, a "Stipulation for Mediation" signed by all of the parties and requesting a mediation conference, shall be submitted to the Court.
- (2) The Stipulation shall specify that all parties involved agree to the mediation and believe that there is a realistic possibility of settlement.
- (3) The Court shall request the appointment of a senior judge to act as mediator.
- (4) The parties shall obtain copies of and be bound by the terms and conditions of Jefferson County's Mediation Agreement.

Jeff. Co. R.C.P. 1920.51 Appointment of Family Law Master in Divorce and Annulment of Marriage and Ancillary Proceedings

a(1) When each divorce case or subsequent petition raising a claim for equitable distribution is filed with the Prothonotary, a \$50.00 surcharge will be collected and deposited with the Prothonotary's office for Family Law Master costs. The Prothonotary shall forthwith refer the case to the Jefferson County Family Law Master. When a party files a Praeceptum to request the appointment of the Family Law Master, the Praeceptum must include the names and addresses of both parties and their attorneys. As soon as the parties receive the Order appointing the Master, the moving party shall deposit the sum of \$300.00 with the Master. Within thirty (30) days thereafter, the Master shall schedule a pre-hearing conference with the parties and their counsel to explore the possibility of resolving the issues in dispute without further litigation.

a(2) The \$300.00 deposit will be full payment for the Family Law Master's attendance at the pre-hearing conference. The Master shall have the authority at the conclusion of the conference to recommend that the non-moving party pay one-half of the \$300.00, or \$150.00. If a second pre-hearing conference is requested by either party, a second fee may be imposed by the Family Law Master, at his or her discretion, or the fees may be billed against the maximum payment per case.

a(3) If the case is not settled during or after the pre-hearing conference, a full hearing shall be scheduled and the Court Reporter shall be utilized unless the Master and both attorneys deem a transcript unnecessary. From the fund generated by the surcharge on each divorce case filed, the Master shall utilize up to a maximum of \$1,000.00 per case to be used toward the cost of the transcript and the Master's fees at his usual billable hourly rate.

b(1) The Family Law Master has the discretion per the *Pennsylvania Rules of Civil Procedure*, to apportion all Master's fees and other costs between the parties and set requirements as to a deposit from the parties before conducting a hearing if there are significant marital assets and/or complex issues that will require work in excess of the \$1,000.00 maximum.

b(2) If the parties are indigent, the Master has the discretion to determine that the case cannot be heard and have an Order issued at a cost less than \$1,000.00. The case shall then be referred to the Judge, who shall determine whether to hear the case personally or have the Court assume any costs exceeding \$1,000.00, to be paid from the fund for the Family Law Master's fees.

(c) Before setting the time and place of taking testimony, the Master shall examine the pleadings and determine the formal sufficiency and regularity of the proceedings and the question of jurisdiction. If defective in any fatal particular, the Master shall so report to the Court and at the same time notify counsel. If defective in a particular curable by amendment, the Master shall notify counsel and suspend further action for a reasonable period of time to enable the necessary correction(s) to be made. If no corrections are forthcoming, the Master shall make a report to the Court, applying for instructions as to further action on his or her part. When satisfied of the formal sufficiency and regularity of the proceedings and the existence of jurisdiction, or when directed by the Court to proceed, the Master shall appoint the time and place of taking testimony and proceed with action.

(d) Before proceeding to take testimony with respect to a contested claim for divorce and/or a question of distribution of marital property, the Master shall verify that the fees specified in subsection (b) of this Rule have been paid into the Court, unless the Master determines that the payment of said fees is not necessary before holding the hearing.

It is further *Ordered* and *Decreed* that,

The following designated Jefferson County Rule is adopted as rules of this Court, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

**Local Rules of the Court of Common Pleas of
Jefferson County**

**Supplementing the Pennsylvania Rules of Conduct,
Office Standards and Civil Procedure for
Magisterial District Judges**

**Jeff. Co. P.C.P.M.D.J. 112—Availability and Tem-
porary Assignments of Magisterial District
Judges**

As is Jefferson County's current practice for criminal matters, at least one magisterial district judge shall be available at all times to handle matters requiring immediate attention in civil and possessory matters. During non-business hours, the magisterial district judge on-call shall be available to hear such matters. (See the Jefferson County Court Calendar for a schedule of district judges on-call.)

By the Court

JOHN H. FORADORA,
President Judge

[Pa.B. Doc. No. 06-1602. Filed for public inspection August 18, 2006, 9:00 a.m.]

PIKE COUNTY

**Promulgation of Local Rule L.Civ.P. 1301.1; No.
1058-2006-Civil**

Order

And Now, this 4th day of August, 2006, the Court *Orders* the following:

1. Local Rule of Civil Procedure 1301.1 is hereby adopted effective thirty (30) days after publication in the *Pennsylvania Bulletin*;

2. The Court Administrator of the 60th Judicial District is hereby *Ordered* to do the following:

a. File seven (7) certified copies of this ORDER and the pertinent Rules with the Administrative Office of Pennsylvania Courts;

b. File two (2) certified copies and a computer diskette containing this ORDER and the pertinent Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. File one (1) certified copy of this ORDER and the pertinent Rule with the Civil Procedural Committee;

d. Provide one (1) copy of this ORDER and the Local Rule to each member of the Pike County Bar Association who maintain an active practice in Pike County; and

e. Keep continuously available for public inspection, copies of this ORDER and the Local Rules.

By the Court

JOSEPH F. KAMEEN,
President Judge

**Rule 1301.1 Compulsory Arbitration. Cases for Sub-
mission**

Compulsory arbitration of matters as authorized by Section 7361 of the Judicial Code, 42 Pa.C.S. § 101, et seq. shall apply to all cases at issue where the amount in controversy shall be Forty-Thousand Dollars (\$40,000) or less. The amount in controversy shall be determined from the pleadings or by an agreement of reference filed by the attorneys. The amount in controversy, when determined

from the pleadings, shall be the largest amount claimed by any one party. In the event that a case within arbitration limits is consolidated with a case involving more than arbitration limits after the former has been referred to a board of arbitrators, the order of consolidation will remove the same from jurisdiction of the board of arbitrators.

[Pa.B. Doc. No. 06-1603. Filed for public inspection August 18, 2006, 9:00 a.m.]

WESTMORELAND COUNTY

**Rescission of Rule of Criminal Procedure WC542;
Adoption of New Rule WC542; No. 2 Civil of
2006**

Order

And Now This 30th day of July 2006, it is hereby Ordered that Westmoreland County Rule of Criminal Procedure WC542 is rescinded, and that new Westmoreland County Rule of Criminal Procedure WC542 is adopted. This Order is effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

DANIEL J. ACKERMAN,
President Judge

Rule WC542 Preliminary Hearings

(a) Audio Tapes of Testimony from Preliminary Hearings

(1) The magisterial district judge shall record testimony at preliminary hearings when requested by the district attorney or defendant's counsel.

(2) The magisterial district judge shall forward the recording to the clerk of courts with the docket transcript.

(3) The district attorney or defendant's counsel may obtain a copy of the recording from the court administrator by applying in writing within thirty days of the defendant's formal arraignment.

(4) If no request for a duplicate of the recording is received within 180 days of the preliminary hearing, the clerk of courts will destroy the recording pursuant to administrative procedure.

(b) Scheduling Court Arraignment

(1) The court administrator shall assign and promulgate arraignment dates, judges and courtrooms. The magisterial district judge shall set as the date for court arraignment the next scheduled court arraignment date which falls no sooner than the eighth Friday following the preliminary hearing or waiver of the same. Arraignment shall be scheduled for 8:30 a.m. If the preliminary hearing or waiver occurs on a Friday, that Friday shall be counted as the first Friday.

(2) The magisterial district judge shall:

A. advise the defendant and counsel of the time, date, and place of arraignment, and that failure to appear at arraignment may result in the defendant's arrest and forfeiture of bond;

B. complete a court arraignment form;

C. require the defendant to sign the court arraignment form indicating that the defendant is aware of the time and place of arraignment and the obligation to appear; and

D. provide the defendant with a copy of the court arraignment form, retain a copy; and forward the original with the official record to the clerk of courts as required by Pa.R.Crim.P. 547.

[Pa.B. Doc. No. 06-1604. Filed for public inspection August 18, 2006, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that George D. Harwood having been disbarred from the practice of law in the State of Vermont by Order of the Supreme Court of Vermont filed February 3, 2006, the Supreme Court of Pennsylvania issued an Order on August 2, 2006, disbaring George D. Harwood from the Bar of this Commonwealth, effective September 1, 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. 06-1605. Filed for public inspection August 18, 2006, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that George E. Tillerson, III, having been disbarred from the practice of law in the District of Columbia by Opinion of the District of Columbia Court of Appeals decided June 16, 2005, the Supreme Court of Pennsylvania issued an Order on August 2, 2006, disbaring George E. Tillerson, III, from the Bar of this Commonwealth, effective September 1, 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. 06-1606. Filed for public inspection August 18, 2006, 9:00 a.m.]
