

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1300, 1350, 1400 AND 1480]

Designation of Chapters 1300, 1350, 1400 and 1480

The rules of civil procedure currently in Chapter 1300, Subchapters A—E, which appear at 231 Pa. Code pages 1300-1—1300-8.8 and 1300-9—1300-16, serial pages (136389)—(136404), (255251)—(255254) and (227319)—(227322), are being divided into separate chapters to more accurately reflect the subject matter of the rules. The new chapters are as follows.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1300. ARBITRATION

Subchapter A. COMPULSORY ARBITRATION

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- 1301. Scope.
 - 1302. List of Arbitrators. Appointment to Board. Oath.
 - 1303. Hearing. Notice.
 - 1304. Conduct of Hearing. Generally.
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 - 1312. Form of Oath. Award and Notice of Entry of Award.
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 - 1314. Suspension of Acts of Assembly. Abolition of Practice and Procedure under Repealed Statutes.

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

- Rule
- 1326. Definitions. Scope.
 - 1327. Confirming Arbitration Award.
 - 1328. Motion to Confirm Arbitration Award as an Original Proceeding.
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 - 1330. Notice Required by Rule 1329(d)(1). Form.
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CHAPTER 1350. FORMS

- Rule
- 1351. Form of Writ of Summons.
 - 1352. Form of Writ of Summons in Action of Ejectment.
 - 1353. Notice of Hearing for Seizure of Property.
 - 1354. Form of Writ of Seizure.
 - 1355. Abrogated, Effective October 5, 1971.

- 1356. (Rescinded).
- 1357. (Rescinded).
- 1361. Form of Notice to Plead.

CHAPTER 1400. ACTS OF ASSEMBLY

Subchapter A. ACTS OF ASSEMBLY NOT SUSPENDED

- Rule
- 1401. (Rescinded).
 - 1402. (Rescinded).
 - 1403. (Rescinded).
 - 1404. (Rescinded).
 - 1405. (Rescinded).
 - 1406. (Rescinded).
 - 1407. (Rescinded).
 - 1408. (Rescinded).
 - 1409. (Rescinded).
 - 1410. (Rescinded).
 - 1411. (Rescinded).
 - 1412. (Rescinded).

Subchapter B. ACTS OF ASSEMBLY SUSPENDED

- Rule
- 1451. (Rescinded).
 - 1452. (Rescinded).
 - 1453. (Rescinded).
 - 1454. (Rescinded).
 - 1455. (Rescinded).
 - 1456. (Rescinded).
 - 1457. (Rescinded).
 - 1458. (Rescinded).
 - 1459. (Rescinded).
 - 1460. (Rescinded).
 - 1461. (Rescinded).
 - 1461.1. (Rescinded).
 - 1462. (Rescinded).

CHAPTER 1480. ABOLITION OF SPECIAL ACTIONS

- Rule
- 1480. Domestic Attachment. (Rescinded).
 - 1481. Civil Arrest Before Judgment. (Rescinded).

[Pa.B. Doc. No. 06-214. Filed for public inspection February 10, 2006, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1930]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 78

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

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

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Friday, April 28, 2006 directed to:

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*By the Domestic Relations
 Procedural Rules Committee*

NANCY P. WALLITSCH, ESQ.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

**CHAPTER 1930. RULES RELATING TO DOMESTIC
 RELATIONS MATTERS GENERALLY**

Rule 1930.7. Status Conference.

At any time in the proceedings, the court, the court's designee or the master, sua sponte or upon application of any party, may hold a status conference, in person or by any other means permitted by these rules, with counsel or with counsel and the parties in order to review the case status and expedite the litigation.

[Pa.B. Doc. No. 06-215. Filed for public inspection February 10, 2006, 9:00 a.m.]

**Title 234—RULES OF
 CRIMINAL PROCEDURE**

[234 PA. CODE CHS. 1 AND 5]

**Order Promulgating New Rules 567, 568, and 569,
 and Amending Rules 119 and 573; No. 338
 Criminal Procedural Rules; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the January 27, 2006 promulgation of new Pa.Rs.Crim.P. 567 (Notice of Alibi Defense), 568 (Notice of Defense of Insanity or Mental Infirmary; Notice of Expert Evidence of Mental Condition) and 569 (Examination of Defendant by Mental Health Expert(s)), and amended Rules 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings) and 573 (Pretrial Discovery and Inspection). These changes establish uniform procedures governing the examination of the defendant by mental health experts, and provide for separate rules addressing notice of either alibi or of a defense of insanity or mental infirmity and expert evidence of mental condition. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 27th day of January, 2006, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 31 Pa.B. 2549 (May 19, 2001) and 31 Pa.B. 2554 (May 19,

2001) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 770), 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 Rules of Criminal Procedure 567, 568, and 569 are promulgated; and

(2) Rules of Criminal Procedure 119 and 573 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 A. Business of the Courts

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

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

- (1) preliminary hearings;
- (2) **proceedings pursuant to Rule 569(A)(2)(b);**
- (3) trials;

[(3)] (4) * * *

[(4)] (5) * * *

[(5)] (6) * * *

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Comment

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The paragraph (A)[(4)](5) reference to revocation hearings addresses *Gagnon* II-type probation (*Gagnon v. Scarpelli*, 411 U. S. 778 (1973)) and parole (*Morrissey v. Brewer*, 408 U. S. 471 (1972)) revocation hearings, and is not intended to prohibit the use of two-way simultaneous audio-visual communication in hearings to determine probable cause (*Gagnon* I).

Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003; renumbered Rule 119 and Comment revised June 30, 2005, effective August 1, 2006; **amended January 27, 2006, effective August 1, 2006.**

Committee Explanatory Reports:

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Final Report explaining the January 27, 2006 amendments adding Rule 569 proceedings as a proceeding for which ACT may not be used published with the Court's Order at 36 Pa.B. 700 (February 11, 2006).

**CHAPTER 5. PRETRIAL PROCEDURES IN
 COURT CASES**

**PART F. Procedures Following Filing of
 Information**

Rule 567. Notice of Alibi Defense.

(A) NOTICE BY DEFENDANT

A defendant who intends to offer the defense of alibi at trial shall file with the clerk of courts not later than the time required for filing the omnibus pretrial motion provided in Rule 579 a notice specifying an intention to offer an alibi defense, and shall serve a copy of the notice and a certificate of service on the attorney for the Commonwealth.

(1) The notice and a certificate of service shall be signed by the attorney for the defendant, or the defendant if unrepresented.

(2) The notice shall contain specific information as to the place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses whom the defendant intends to call in support of the claim.

(B) FAILURE TO FILE NOTICE

(1) If the defendant fails to file and serve the notice of alibi as required by this rule, the court may exclude entirely any evidence offered by the defendant for the purpose of proving the defense, except testimony by the defendant, may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the defendant omits any witness from the notice of alibi, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the Commonwealth to investigate the witness, or may make such other order as the interests of justice require.

(C) RECIPROCAL NOTICE OF WITNESSES

Within 10 days after receipt of the defendant's notice of defense of alibi, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall file and serve upon defendant's attorney, or the defendant if unrepresented, written notice of the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of alibi.

(D) FAILURE TO FILE RECIPROCAL NOTICE

(1) If the attorney for the Commonwealth fails to file and serve a list of its witnesses required by this rule, the court may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi defense, may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the attorney for the Commonwealth omits a witness from the list of its witnesses required by paragraph (C), the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the defense to investigate the witness, or may make such other order as the interests of justice require.

(E) CONTINUING DUTY TO DISCLOSE

If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the notice furnished under paragraphs (A) or (C), the party promptly shall notify the other party's attorney, or if unrepresented, the party, of the existence and identity of such additional witness.

(F) FAILURE TO CALL WITNESSES

No adverse inference may be drawn against the defendant, nor may any comment be made concerning the defendant's failure to call available alibi witnesses, when such witnesses have been prevented from testifying by

reason of this rule, unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

(G) IMPEACHMENT

A defendant may testify concerning an alibi notwithstanding that the defendant has not filed notice, but if the defendant has filed notice and testifies concerning his or her presence at the time of the offense at a place or time different from that specified in the notice, the defendant may be cross-examined concerning such notice.

Comment

This rule, which is derived from paragraphs (C)(1)(a), (c)—(g), and (D) of Rule 573 (Pretrial Discovery and Inspection) and was made a separate rule in 2006, sets forth the notice procedures when a defendant intends to raise an alibi defense at trial.

The reference in paragraph (A) to Rule 579 (Time for Omnibus Pretrial Motion and Service) contemplates consideration of the exceptions to the time for filing set forth in Rule 579(A).

The notice-of-alibi provision is intended to comply with the requirement of *Wardius v. Oregon*, 412 U.S. 470 (1973), by the inclusion of reciprocal disclosure responsibilities placed upon the Commonwealth in paragraph (C). See also *Commonwealth v. Contakos*, 455 Pa. 136, 314 A.2d 259 (1974).

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

Official Note: Adopted January 27, 2006, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 567 governing notice of alibi defense published at 36 Pa.B. 700 (February 11, 2006).

Rule 568. Notice of Defense of Insanity or Mental Infirmity; Notice of Expert Evidence of a Mental Condition.

(A) NOTICE BY DEFENDANT

(1) Notice of Defense of Insanity or Mental Infirmity

A defendant who intends to offer at trial the defense of insanity or mental infirmity shall file with the clerk of courts not later than the time required for filing an omnibus pretrial motion provided in Rule 579 a notice of the intention to offer the defense of insanity or mental infirmity, and shall serve a copy of the notice and a certificate of service on the attorney for the Commonwealth.

(a) The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.

(b) The notice shall contain specific available information as to the nature and extent of the alleged insanity or mental infirmity, the period of time that the defendant allegedly suffered from such insanity or mental infirmity, and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call to establish such defense.

(2) Notice of Expert Evidence of Mental Condition

A defendant who intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing (1) on the issue of guilt, or (2) in a capital case, on the issue of punishment, shall file with the clerk of courts not later than the time required for filing an omnibus pretrial motion provided in Rule 579 a notice of the intention to offer this expert evidence, and shall serve a copy of the notice and a certificate of service on the attorney for the Commonwealth.

(a) The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.

(b) The notice shall contain specific available information as to the nature and extent of the alleged mental disease or defect or any other mental condition, the period of time that the defendant allegedly suffered from such mental disease or defect or any other mental condition, and the names and addresses of the expert witness(es) whose evidence the defendant intends to introduce.

(B) FAILURE TO FILE NOTICE

(1) If the defendant fails to file and serve a notice of insanity or mental infirmity defense, or a notice of expert evidence of a mental condition as required by this rule, the court may exclude entirely any evidence offered by the defendant for the purpose of proving the defense, except testimony by the defendant, may grant a continuance to enable the Commonwealth to investigate such evidence, or may make any other order as the interests of justice require.

(2) If the defendant omits a witness from the notice of insanity or mental infirmity defense or a notice of expert evidence of a mental condition, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the Commonwealth to investigate such evidence, may grant a continuance to enable the Commonwealth to investigate the witness, or may make any other order as the interests of justice require.

(C) RECIPROCAL NOTICE OF WITNESSES

Within 10 days after receipt of the defendant's notice of the insanity or mental infirmity defense, or notice of expert evidence of a mental condition, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall file and serve upon defendant's attorney, or the defendant if unrepresented, written notice of the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of insanity or mental infirmity, or mental disease, defect, or other mental condition.

(D) FAILURE TO SUPPLY RECIPROCAL NOTICE

(1) If the attorney for the Commonwealth fails to file and serve a list of its witnesses as required by this rule, the court may exclude any evidence offered by the Commonwealth for the purpose of disproving the insanity or mental infirmity defense, may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the attorney for the Commonwealth omits a witness from the list of its witnesses required by this rule, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the defense to investigate the witness, or may make such other order as the interests of justice require.

(E) CONTINUING DUTY TO DISCLOSE

If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the notice furnished under paragraphs (A) or (C), the party shall promptly notify the other party's attorney, or if unrepresented, the other party, of the existence and identity of such additional witness.

(F) FAILURE TO CALL WITNESSES

No adverse inference may be drawn against the defendant, nor may any comment be made concerning the defendant's failure to call available witnesses with regard to the insanity or mental infirmity defense, when such witnesses have been prevented from testifying by reason of this rule, unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

Comment

This rule, which is derived from paragraphs (C)(1)(b), (c)—(f), and (D) of Rule 573 (Pretrial Discovery and Inspection) and was made a separate rule in 2006, sets forth the notice procedures when a defendant intends to raise a defense of insanity or mental infirmity, or introduce evidence relating to a mental disease or defect or any other mental condition at trial.

The reference in paragraph (A) to Rule 579 (Time for Omnibus Pretrial Motion and Service) contemplates consideration of the exceptions to the time for filing set forth in Rule 579(A).

See Rule 569 (Examination of Defendant by Mental Health Expert) for the procedures for the examination of the defendant by the Commonwealth's expert when the defendant provides notice of an intention to raise a defense of insanity or mental infirmity or an intention to introduce expert evidence concerning his or her mental condition.

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

Official Note: Adopted January 27, 2006, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 568 governing notice of insanity or mental infirmity defense and notice of expert evidence of a mental condition published at 36 Pa.B. 700 (February 11, 2006).

Rule 569. Examination of Defendant By Mental Health Expert.

(A) EXAMINATION OF DEFENDANT

(1) BY AGREEMENT

(a) The defendant, defendant's counsel, and the attorney for the Commonwealth may agree to an examination of the defendant by the mental health expert(s) designated in the agreement.

(b) The agreement shall be in writing and signed by the defendant, defendant's counsel, and the attorney for the Commonwealth, or made orally on the record.

(c) Unless otherwise agreed, the mental health expert(s) promptly shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

(2) BY COURT ORDER

(a) Upon motion of the attorney for the Commonwealth, if the court determines the defendant has provided notice of an intent to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant pursuant to Rule 568, the court shall order that the defendant submit to an examination by one or more mental health experts specified in the motion by the Commonwealth for the purpose of determining the mental condition put in issue by the defendant.

(b) When the court orders an examination pursuant to this paragraph, the court on the record shall advise the defendant in person and in the presence of defendant's counsel:

(i) of the purpose of the examination and the contents of the court's order;

(ii) that the information obtained from the examination may be used at trial; and

(iii) the potential consequences of the defendant's refusal to cooperate with the Commonwealth's mental health expert(s).

(c) The court's order shall:

(i) specify who may be present at the examination; and

(ii) specify the time within which the mental health expert(s) must submit the written report of the examination.

(d) Upon completion of the examination of the defendant, the mental health expert(s), within the time specified by the court as provided in paragraph (A)(2)(c)(ii), shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

(B) DISCLOSURE OF REPORTS BETWEEN PARTIES

(1) The mental health experts' reports shall be confidential, and not of public record.

(2) Any mental health expert whom either party intends to call to testify concerning the defendant's mental condition must prepare a written report. No mental health expert may be called to testify concerning the defendant's mental condition until the expert's report has been disclosed as provided herein.

(3) The court shall set a reasonable time after the Commonwealth's expert's examination for the disclosure of the reports of the parties' mental health experts.

(C) PROTECTIVE ORDERS

Upon a sufficient showing, the court may at any time order that the disclosure of a report or reports be restricted or deferred for a specified time, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made in camera.

(D) SANCTIONS FOR NON-COMPLIANCE

At any time during the course of the proceedings, upon motion or sua sponte, if the court determines there has been a failure to comply with this rule, the court may order compliance, may grant a continuance, or may grant other appropriate relief. Upon motion, any hearing to determine if there has been a failure to comply may be held in camera and the record sealed until after disposition of the case.

(E) This rule does not apply to competency proceedings.

Comment

This rule establishes the procedures for the examination of the defendant by a mental health expert(s) retained by the prosecution pursuant to an agreement by the parties, see paragraph (A)(1), or a court order, see paragraph (A)(2).

"Mental Health Expert," as used in this rule, includes a psychiatrist, a licensed psychologist, a physician, or any other expert in the field of mental health who will be of substantial value in the determination of the issues raised by the defendant concerning his or her mental condition.

Examination of Defendant

Paragraph (A)(1) is intended to encourage the defendant, defendant's counsel, and the attorney for the Commonwealth to agree to an examination of the defendant by the Commonwealth's mental health expert(s).

When the defendant, defendant's attorney, and the attorney for the Commonwealth agree that the defendant will be examined under this rule, at a minimum, the agreement should specify the time, place, and conditions of the examination, who may be present during the examination, and the time within which the parties will disclose the reports of their experts.

For the procedures when the Commonwealth files a motion pursuant to paragraph (A)(2)(a), see Rules 575 (Motions and Answers), 576 (Filing and Service by Parties), 577 (Procedures Following Filing of Motion).

It is intended that the examining mental health expert(s), whether appointed pursuant to the agreement of the parties or a Commonwealth's motion, have substantial discretion in how to conduct an examination. The conduct of the examination, however, must conform to generally recognized and accepted practices in that profession. Therefore, the examination of the defendant may consist of such interviewing, clinical evaluation, and psychological testing as the examining mental health expert(s) considers appropriate, within the limits of non-experimental, generally accepted medical, psychiatric, or psychological practices.

Nothing in this rule is intended to limit the number of examining experts the defense may use, nor is it to be construed as a limitation on any party with regard to the number of other expert or lay witnesses they may call to testify concerning the defendant's mental condition.

The court is required in paragraph (A)(2)(b) to inform the defendant, in person on the record, about the request for a compelled examination. See Rule 118 (Use of Two-Way Simultaneous Audio-Video Communication in Criminal Proceedings). The court is to explain that the examination is being conducted at the request of the attorney for the Commonwealth and that the purpose of the examination is to obtain information about defendant's mental condition. In addition, the court should explain the procedures for the examination that are included in the court's order as set forth in paragraph (A)(2)(b), and explain the potential consequences of the defendant's failure to cooperate with the examination.

Paragraph (A)(2)(d) requires that the examining mental health expert(s) promptly prepare a written report and sets forth the minimum contents of that report. It is intended that the scope of the mental health expert's report be limited in the court's order to matters related to the defendant's mental condition at the time put into issue by the defendant.

Disclosure of Reports

After the examination of the defendant by the Commonwealth's mental health expert(s) is completed and the mental health expert's report has been prepared, the defendant and the Commonwealth are required in paragraph (B) to disclose the reports that are made by any experts either party intends to call to testify concerning the defendant's mental condition. The reports must be in writing, and should comply with the content requirements in paragraph (A)(2)(d). An expert witness cannot testify until the report is disclosed as provided in paragraph (B)(2) and (3). There may be situations in which the court would have to call a short recess to permit the expert to complete a written report and to give the parties an opportunity to review the report, such as when a mental health expert(s) is observing the defendant during the trial and will be called to testify on these observations.

When the parties agree to the examination, the time for the disclosure of the reports should be set by the agreement of the parties. The agreement should permit adequate time to review the reports and prepare for the proceeding. If the parties cannot agree, in cases proceeding pursuant to court order under paragraph (A)(2), the court should set the time for the disclosure of reports, which should afford the parties adequate time to review the reports and prepare for the proceeding.

Establishing a reasonable time frame and providing for the reciprocal disclosure are intended to further promote the fair handling of these cases. In no case should the disclosure occur until after the defendant has been examined by the Commonwealth's mental health expert(s) and the mental health expert(s) has prepared and submitted a written report. When the defendant intends to introduce an expert's psychiatric findings at the penalty phase of a death penalty case only, the disclosure may not take place until the penalty phase. See *Commonwealth v. Sartin*, 561 Pa. 522, 751 A.2d 1140 (2000) (the results of any examinations of the defendant by a Commonwealth's expert must be sealed "until such time as the penalty phase commences and the defendant declares his intent to present his own psychiatric evidence in mitigation.")

There may be cases in which, although proceeding pursuant to a court order, the parties, with the court's approval, agree to an earlier time for disclosure consistent with the purposes of this rule. This rule would not preclude such an agreement.

The procedures in paragraph (C) are similar to the existing procedures for protective orders in Rule 573(F).

Use of Information Obtained Under This Rule

Information obtained from the examination of a defendant by a Commonwealth's expert is not to be disclosed or used except as permitted by case law, which is evolving. See, e.g., *Commonwealth v. Santiago*, 541 Pa. 188, 662 A.2d 610 (1995), *Commonwealth v. Morley*, 545 Pa. 420, 681 A.2d 1254 (1996), *Commonwealth v. Szuchon*, 548 Pa. 37, 693 A.2d 959 (1997), *Commonwealth v. Karenbauer*, 552 Pa. 420, 715 A.2d 1086 (1998), and *Commonwealth v. Sartin*, 561 Pa. 522, 751 A.2d 1140 (2000).

See the Pennsylvania Rules of Evidence concerning the admissibility of the experts' reports and information from any examinations of the defendant by an expert.

Sanctions

The sanctions authorized by paragraph (D) may be imposed on any person who has failed to comply with any of the provisions of this rule, including the attorney for the Commonwealth, the defendant, defendant's counsel, or an expert.

When the defendant has refused to cooperate in the examination by the Commonwealth's mental health expert(s), before imposing a sanction, the court should consider whether the defendant's failure to cooperate (1) was intentional, (2) was the result of the defendant's mental illness, and (3) will have an adverse and unfair impact on the Commonwealth's ability to respond to the defendant's claim. The court also should consider whether ordering the defendant to resubmit to the examination would result in the defendant's cooperation. See ABA Criminal Justice Mental Health Standards, Std. 7-3.4(c), for examples of possible sanctions to impose on a defendant.

Mental Health Procedures Act

Section 7402 (Incompetence to Proceed on Criminal Charges and Lack of Criminal Responsibility as Defense) of the Mental Health Procedures Act, 50 P.S. § 7402, prescribes, inter alia, procedures for conducting court-ordered examinations of a defendant when the defendant's competency is an issue. The procedures in Section 7402 related to competency are distinct from the procedures set forth in this rule.

Official Note: Adopted January 27, 2006, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 569 governing the examination of the defendant by mental health experts published with the Court's Order at 36 Pa.B. 700 (February 11, 2006).

Rule 573. Pretrial Discovery and Inspection.

* * * * *

(C) DISCLOSURE BY THE DEFENDANT

[(1) MANDATORY:

(a) Notice of Alibi Defense:

A defendant who intends to offer the defense of alibi at trial, within the time required for filing the omnibus pretrial motion under Rule 579, shall file with the clerk of courts notice specifying the intention to claim the defense of alibi, and a certificate of service on the attorney for the Commonwealth. The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented. Such notice shall contain specific information as to the place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of witnesses whom the defendant intends to call in support of such claim.

(b) Notice of Insanity Defense or Mental Infirmity Defense:

A defendant who intends to offer at trial the defense of insanity, or a claim of mental infirmity, within the time required for filing an omnibus pretrial motion under Rule 579, shall file with the clerk of courts notice specifying the intention to claim the defense of insanity or of mental infirmity, and a certificate of service on the attorney for the Commonwealth. The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented. Such notice shall contain specific available information as to the nature and extent of the alleged insanity or claim of mental infirmity, the period of time that the defendant allegedly suffered from such insanity or men-

tal infirmity, and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call at trial to establish such defense.

(c) Disclosure of Reciprocal Witnesses:

Within 7 days after service of notice of alibi defense or of insanity or claim of mental infirmity defense, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall disclose to the defendant the names and addresses of all persons the Commonwealth intends to call as witnesses to disprove or discredit the defendant's claim of alibi or of insanity or mental infirmity.

(d) Failure to File Notice:

If the defendant fails to file and serve notice of alibi defense or insanity or mental infirmity defense as required by this rule, or omits any witness from such notice, the court at trial may exclude the testimony of any omitted witness, or may exclude entirely any evidence offered by the defendant for the purpose of proving the defense, except testimony by the defendant, or may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

(e) Failure to Supply Reciprocal Notice:

If the attorney for the Commonwealth fails to file and serve a list of its witnesses as required by this rule, or omits any witness therefrom, the court at trial may exclude the testimony of any omitted witness, or may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi, insanity, or mental infirmity defense, or may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

(f) Failure to Call Witnesses:

No adverse inference may be drawn against the defendant, nor may any comment be made concerning the defendant's failure to call available alibi, insanity, or mental infirmity witnesses, when such witnesses have been prevented from testifying by reason of this rule unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

(g) Impeachment:

A defendant may testify concerning an alibi notwithstanding that the defendant has not filed notice, but if the defendant has filed notice and testifies concerning his or her presence at the time of the offense at a place or time different from that specified in the notice, the defendant may be cross-examined concerning such notice.

(2) DISCRETIONARY WITH THE COURT:

(a)] (1) * * *

[(i)] (a) * * *

[(ii)] (b) the names and addresses of eyewitnesses whom the defendant intends to call in its **[case in chief] case-in-chief**, provided that the defendant has previously requested and received discovery under paragraph (B)(2)(a)(i).

[(b)] (2) * * *

* * * * *
Comment
 * * * * *

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

See Rule 569 (Examination of Defendant by Mental Health Expert) for the procedures for the examination of the defendant by the mental health expert when the defendant has given notice of an intention to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant.

Included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

Pursuant to paragraphs (B)(2)(b) and (C)(2)[(b)], the trial judge has discretion, upon motion, to order an expert who is expected to testify at trial to prepare a report. However, these provisions are not intended to require a prepared report in every case. The judge should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

* * * * *

[The notice-of-alibi provision of this rule contained in paragraph (C)(1)(a) is intended to comply with the requirement of *Wardius v. Oregon*, 412 U. S. 470 (1973), by the inclusion of reciprocal disclosure responsibilities placed upon the Commonwealth in paragraph (C)(1)(c). See also *Commonwealth v. Contakos*, 314 A.2d 259 (Pa. 1974). The provision requiring a notice of insanity defense, paragraph (C)(1)(b), has not previously been included in these rules, but the safeguards surrounding them have been made identical to those protecting the defendant under the notice-of-alibi provision.

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.]

Paragraph (C)(1), which provided the requirements for notice of the defenses of alibi, insanity, and mental infirmity, was deleted in 2006 and moved to Rules 567 (Notice of Alibi Defense) and 568 (Notice of Defense of Insanity or Mental Infirmity).

* * * * *

Official Note: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or

information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004; **amended January 27, 2006, effective August 1, 2006.**

Committee Explanatory Reports:

* * * * *

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

* * * * *

Final Report explaining the January 27, 2006 changes to paragraph (C) deleting the notice of defenses of alibi, insanity, and mental infirmity published with the Court's Order at 36 Pa.B. 700 (February 11, 2006).

FINAL REPORT¹

New Pa.Rs.Crim.P. 567, 568, and 569, Amendments to Pa.Rs.Crim.P. 119 and 573

Notice of Defenses; Examination of Defendant by Mental Health Expert(s)

On January 27, 2006, effective August 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Pa.Rs.Crim.P. 567 (Notice of Alibi Defense), 568 (Notice of Defense of Insanity or Mental Infirmity; Notice of Expert Evidence of Mental Condition) and 569 (Examination of Defendant by Mental Health Expert(s)), and amended Rules 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings) and 573 (Pretrial Discovery and Inspection). These changes establish uniform procedures governing the examination of the defendant by mental health experts, and provide for separate rules addressing notice of either alibi or of a defense of insanity or mental infirmity and expert evidence of mental condition.

I. INTRODUCTION

In 1996, the Supreme Court decided *Commonwealth v. Morley*, 545 Pa. 420, 681 A.2d 1254 (1996), holding, *inter alia*, that "where the defendant has raised a defense based on mental infirmity, the defendant may not refuse to allow the Commonwealth psychiatrist to examine him or her on the basis that it violates the defendant's privilege against self-incrimination." In view of this opinion and several other similar cases,² the Committee agreed that the Rules of Criminal Procedure should provide uniform procedures for a defendant's examination by the Commonwealth's mental health expert(s), noting that uniformity in this area is important both to safeguard the defendants' rights and for the efficient administration of the criminal justice system. The Committee also agreed the new procedures would apply at any stage of the proceedings when the defendant has provided notice of an intent to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert

evidence relating to a mental disease or defect or any other mental condition of the defendant. In addition, the new rule provides for the examination of the defendant either by agreement of the parties or by order of the court.

When developing the uniform procedures for the examination of a defendant by a mental health expert, the Committee examined Rule 573 (Pretrial Discovery and Inspection), as well as the Federal Rules of Criminal Procedure and similar rules in other jurisdictions. As part of that examination, we noted that, unlike the Pennsylvania Rules, the Federal Rules and many other jurisdictions have separate rules setting forth the defendant's requirements for giving notice of defenses, in particular alibi and insanity, rather than combining the notices in the discovery rule. The Committee concluded from its review of F.Rs.Crim.P. 12.1 (Notice of Alibi) and 12.2 (Notice of Insanity Defense or Expert Testimony of Defendant's Mental Condition) and the other jurisdictions' rules that the federal approach makes sense and provides a clearer distinction between discovery procedures and notice procedures.

The following discussion is divided into two sections: Section (A) explains the separate rules governing the notice of alibi and notice of insanity or mental infirmity currently in Rule 573 and Section (B) explains the procedures governing examinations of the defendant by mental health experts. The new rules have been numbered Rules 567, 568, and 569, the first rules in Chapter 5, Part F (Procedures Following the Filing of Information).

II. NEW RULES 567 AND 568

(A) Discussion of Rules 567 and 568

Except as otherwise noted below, new Rules 567 and 568 carry over verbatim the text of Rule 573(C)(1). The Committee used the opportunity of moving this text into separate rules to make some editorial and technical changes, as well as some changes that make the notice rules clearer.

Rules 567(A) and 568(A)(1) carry over the provisions from Rule 573(C)(1)(a) and (b) respectively. The Committee has reorganized the wording and broken the paragraph into subparagraphs dealing with (1) signing and filing the notice, and (2) the contents of the notice. In addition, because the defendant should give this notice as early as possible rather than after the arraignment as currently provided in Rule 573(C)(1) and Rule 579, the rules have been modified to provide for the filing of the notices to be "*no later* than the time required for filing the omnibus pretrial motion provided in Rule 579." In response to concerns whether the exceptions to the time for filing the omnibus pretrial motion enumerated in Rule 579 applied to the notice rules' time limits, both Comments include explanations that the reference in paragraph (A) to the Rule 579 time requirements contemplates consideration of the exceptions to the time for filing set forth in Rule 579.

Rule 568(A)(2), which is new to Pennsylvania procedure and is comparable to Federal Criminal Rule 12.2(b), adds the requirement that a defendant who intends to introduce expert evidence relating to a mental disease or defect or any other mental condition must provide notice of this intention. As explained more fully below in the discussion of new Rule 569, this new notice provision is required as one of the triggers for a Rule 569 examination of the defendant.

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 See, e.g., *Commonwealth v. Santiago*, 541 Pa. 188, 662 A.2d 610 (1995), *Commonwealth v. Karenbauer*, 552 Pa. 420, 715 A.2d 1086 (1998), and *Commonwealth v. Sartin*, 561 Pa. 522, 751 A.2d 1140 (2000).

For purposes of organizational clarity, the order of paragraphs (C)(1)(c) and (d) when moved from Rule 573 has been reversed. Therefore, in the new notice rules, the defendant's notice requirement is followed by the procedures governing the defendant's failure to give the notice. See Rules 567(B) and 568(B). Similarly, the provisions for the Commonwealth to give notice of the names of witnesses he or she intends to call to disprove or discredit the defendant's claim, Rules 567(C) and 568(C), will be followed by the procedures governing the Commonwealth's failure to give the notice, Rules 567(D) and 568(D).

In addition to the reorganization of these paragraphs, paragraph (C) concerning the Commonwealth's obligation to give notice has been modified. First, the title of the paragraph has been changed from "Disclosure of Reciprocal Witnesses," Rule 573(C)(1)(c), to "Reciprocal Notice of Witnesses" to more accurately represent the content of the provision and tie it to the purpose of the rule. In addition, the time within which the Commonwealth must give the notice has been increased from 7 days to 10 days. The 10-day time limit is in conformity with other time limits in the Criminal Rules and is more realistic. Finally, the provision in Rule 573(C)(1)(c) has been changed from "disclosure to the defendant" to "shall serve . . . written notice of the names and addresses. . . ." Requiring these notices to be in writing avoids the confusion that sometimes arises when there is only oral notice.

The provisions in Rule 573(C)(1)(d) and (e), now Rules 567(B) and (D) and 568(B) and (D), have been reorganized into subparagraphs. The first subparagraph sets forth the sanctions for failing to file and serve the notice. The second subparagraph sets forth the sanctions for omitting a witness' name from the notice. Although many of the suggested sanctions are the same for both types of failure to comply, the rules are clearer with the provisions separated.

Rules 567(E) and 568(E) are taken from Rule 573(D). Although Rule 573(D) is not specifically included in the notice section of Rule 573, there is a continuing duty to disclose witnesses whom the party intends to call in the notice context.

The first paragraph of the Comments to Rules 567 and 568 provide a history of the source of the new rules, cross-referencing Rule 573. In addition, the Rule 567 Comment carries over the Rule 573 Comment provision citing *Wardius v. Oregon*, 412 U. S. 470 (1973), and the Rule 568 Comment includes a cross-reference to the new examination rule, Rule 569.

(B) *Conforming changes to Rule 573*

Rule 573 has been amended by deleting the alibi and insanity notice provisions in Rule 573(C)(1)(a)-(g) and the corresponding Comment provision concerning notice of alibi to conform with the new rules. The paragraph (C)(2) caption "Discretionary with the Court" has been deleted as unnecessary now that all of the mandatory section under paragraph (C) has been deleted.

III. NEW RULE 569

(A) *Discussion of rule*

(1) *Examination of Defendant by Agreement*

Recognizing the benefits for the defendant and to the criminal justice system of a less adversarial process for determining whether a case is appropriate for the examination of the defendant by a mental health expert, and of encouraging cooperation among legal professionals and mental health professionals in these cases, new Rule 569

includes a procedure for an examination by the agreement of the parties.³ To make it clear that obtaining the agreement of the parties is the preferable procedure, these procedures for the agreement of the parties are set forth first. See paragraph (A)(1).

Paragraph (A)(1)(a) provides that the agreement designate the mental health expert. If the parties agree to have the defendant examined, the parties also should have the ability to agree to and designate the examining mental health expert, rather than leave that decision to the judge.

Other than requiring the parties to designate the mental health expert in the agreement, the rule requirements for the agreement are minimal, giving the parties discretion about how much detail they want to put in the agreement. The Comment sets forth the minimum contents that should be provided in the agreement as an aid to the parties in preparing their agreement.

Paragraph (A)(1)(b) requires the agreement to be in writing, and either signed by the defendant, defendant's counsel, and the attorney for the Commonwealth, or made orally on the record. The rule specifies "defendant, defendant's counsel, and the attorney for the Commonwealth" instead of "parties" to emphasize that the defendant and the defendant's attorney have to agree. There was some concern about the requirement that the defendant sign the agreement, because when mental condition is the issue, some defendants would not understand the nature of the agreement, or would not sign the agreement because of their mental condition. Notwithstanding these concerns, the requirement for the defendant's signature has been included, because, if a defendant is so mentally ill that he or she does not know what he or she is doing, then you would not have an agreement, and the parties would have to proceed by obtaining a court order. Furthermore, if the attorneys agree, but the defendant does not have the capacity to agree, the attorneys could file a stipulated motion explaining to the court the reasons for the defendant's failure to sign the agreement.

Paragraph (A)(1)(c) requires the mental health expert promptly to prepare a report of the examination unless the parties otherwise agree, thereby providing the parties with the option to set forth in the agreement the time for the report to be prepared, the contents of the report, and any other report-related matters. However, the rule makes it clear that, unless the agreement provides otherwise, the expert must prepare a standard report and this must be done promptly after the completion of the examination. The general type of information to include in the report set forth in the rule are similar to the provisions of Rule 573(B)(2)(b).

(2) *Examination of Defendant By Court Order*

Paragraph (A)(2) of Rule 569 establishes the procedures for court-ordered examinations when the parties do not agree to an examination of the defendant.

The triggering mechanism for a court-ordered examination is the defendant's notice of the intention to raise issues related to the defendant's mental condition. In researching this issue, the Committee learned that many jurisdictions provide for the procedure to be triggered at the earliest possible time affording the Commonwealth's expert the ability to examine the defendant in these cases at the time closest to the actual commission of the crime, which is beneficial to all parties. In addition, a number of

³ This procedure for the agreement of the parties is consistent with what appears to be the approach being followed in some judicial districts in Pennsylvania, as well as in other jurisdictions.

jurisdictions follow the procedures set forth in Federal Rule of Criminal Procedure 12.2 that uses the notice of an insanity defense or the notice of expert evidence of a mental condition as the triggering mechanisms for an examination of the defendant.⁴ Agreeing that the best approach for new Rule 569 would be a combination of these different jurisdictions' procedures, the Committee incorporated into paragraph (A)(2)(a) that before ordering an examination, the court must determine that the defendant "has provided notice of an intent to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant." Because the notice provisions are distinct from the examination procedures in the Criminal Rules, in addition to the Rule 569(A)(2)(a) provisions concerning when the examination by a Commonwealth expert would be authorized, the new concept of "notice of an intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on either (1) the issue of guilt or (2) the issue of punishment in a capital case" has been added to new Rule 568, and a cross-reference to Rule 568 is included in Rule 569(A)(2)(a).

Paragraph (A)(2)(a) requires the attorney for the Commonwealth to file a motion requesting an order for the examination and to designate in the motion the mental health expert(s) he or she has selected for the examination. The court must determine whether the defendant has given notice pursuant to Rule 568. If the judge determines the defendant has given notice, the judge must order the examination. The Rule 569 Comment includes cross-references Rules 575 (Motions and Answers), 576 (Filing and Service by Parties), and 577 (Procedures Following Filing of Motion) as a reminder that when a motion is filed pursuant to this paragraph, the procedures in these motions rules apply.

Paragraph (A)(2)(b) requires the judge to advise the defendant on the record about the examination, and to explain that the information received in the examination may be used at trial and the potential consequences for failing to cooperate in the examination. The rule requires the judge to advise the defendant both in person and in the presence of counsel. Although there has been a recent expansion of the use of advanced communication technology (ACT) for the conduct of criminal proceedings, the Committee felt strongly, given the nature of the proceeding involving an individual with a potentially serious mental illness or other mental conditions, it is imperative that the defendant appear in person rather than via ACT. Having the judge speak to the defendant in person in these cases will ensure the defendant understands what is going on, as well as emphasize for the defendant the nature of the examination and the importance of coopera-

tion.⁵ These requirements also are explained in the eighth paragraph of the Comment.

Paragraph (A)(2)(c) sets forth the required contents of the court's order. The order must indicate who may be present at the examination. The Committee agreed this was the judge's decision, rather than the decision of one of the parties or the mental health expert. By leaving the decision to the judge on a case-by-case basis, we intend to accommodate other persons besides counsel, such as a parent if the issue is a juvenile decertification hearing. See paragraph (A)(2)(c)(i). In addition, the judge in his or her order must establish the time frame for the submission of the expert's written report.

Paragraph (A)(2)(d), which is similar to paragraph (A)(1)(c) with regard to what the expert must include in the report, requires the expert to prepare a written report within the time specified in the order.

(3) *Disclosure of Reports Between Parties*

Paragraph (B) sets forth the procedures governing the disclosure of all reports of all mental health experts either party intends to call to testify. The Committee debated at length the issues related to the public's access to the experts' reports, concluding, as set forth in paragraph (B)(1), that the reports are confidential and should not be public records.

Paragraph (B)(2) and the Comment make it clear that any mental health expert who will be called to testify must prepare a written report. The rule also prohibits an expert who has not prepared a report as required by the rule from being called to testify. The Committee included in the Comment a suggestion that, in the appropriate situation, such as when the expert is observing the defendant during the trial, the court would have to call a short recess to permit the expert to complete a report before the expert would be permitted to testify.

Paragraph (B)(3) makes it clear that the court must set the time for the disclosure of reports, and the time must be a reasonable time *after* the Commonwealth's expert's examination. In developing this provision, the Committee considered whether this rule provision would conflict with *Commonwealth v. Sartin*, 561 Pa. 522, 751 A.2d 1143 (2000). We concluded the requirement that the judge set a reasonable time for disclosure was broad enough to encompass *Sartin*. However, to ensure the lower courts understand the application of this general disclosure requirement to the specifics of *Sartin*, a reference to *Sartin* has been added to the Comment explanation of the disclosure provisions of the rule; the explanation makes it clear that in death penalty cases in which the defendant only intends to introduce evidence of mental condition at the penalty phase, the disclosure is restricted until the penalty phase.

The Comment also explains that the parties in their agreement may set the time for disclosure, but if they cannot agree to the time, the court should set the time. In setting the time for disclosure, the parties or court should afford adequate time for the parties to review the reports and prepare for the proceeding. The Comment includes a proviso that even when proceeding pursuant to a court order, the parties may agree to an earlier time for disclosure consistent with the rule.

⁵ The Committee also noted there will not be many of these proceedings, so requiring the defendant to appear in person is not going to present an undue burden on the system.

⁴ Federal Rule of Criminal Procedure 12.2 provides, *inter alia*,

(a) *Notice of an Insanity Defense.* A defendant who intends to assert a defense of insanity, or a claim of mental infirmity, at the time of the alleged offense shall provide notice as set forth in Rule 573(C)(1)(b) (Notice of Insanity Defense or Mental Infirmity Defense).

(b) *Notice of Expert Evidence of a Mental Condition.* If a defendant intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on either (1) the issue of guilt or (2) the issue of punishment in a capital case, the defendant, no later than the time required for filing an omnibus pretrial motion under Rule 579, shall file with the clerk of courts notice specifying the intention to introduce expert evidence, and a certificate of service on the attorney for the Commonwealth. The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.

(c) *Mental Examination.*

(B) If the defendant provides notice under paragraph (a), the court, upon the motion of the attorney for the Commonwealth, shall order the defendant to be examined under 18 U.S.C. § 4242. If the defendant provides notice under Rule 12.2(b) the court may, upon the government's motion, order the defendant to be examined under procedures ordered by the court.

Another issue considered by the Committee was the Commonwealth's expert's access to information other than the defendant's experts' reports, such as school records or certain test results. The Committee agreed not to address this in the rule, observing that the Commonwealth may ask the defendant to provide this information, and if the defendant does not comply, the Commonwealth may request the court to order the defendant to comply.

(4) *Protective Orders*

Paragraph (C) is similar to the provisions in Rule 573(F) (Protective Orders). After a lengthy discussion concerning public access to the reports, and whether portions of the reports could be sealed or the hearing on the protective order request be held in camera, the Committee agreed there may be cases when this would be appropriate to protect the parties and should be permitted.

(5) *Sanctions for Non-compliance*

Paragraph (D) (Sanctions for Non-compliance) is similar to Rule 573(E) (Remedy). Paragraph (D) has a more general application than Rule 573(E), so, as explained in the Comment, the court may impose sanctions on counsel, the defendant, or an expert for non-compliance with any provisions of Rule 569. The rule permits the court to hear a motion on sanctions in camera, and requires that the hearing be on the record.

(6) *Use of Information Obtained Under the Rule*

The Committee considered at length how to address the use of information obtained under the rule. We noted the law addressing the use of information obtained from the Commonwealth's mental health expert's examination of the defendant is evolving and the permitted uses are not fully defined. In view of this, the Committee agreed that citing to the relevant case law in this area in the Comment would be helpful to the bench and bar.

(7) *Mental Health Procedures Act*

As the Committee developed new Rule 569, we reviewed the provisions of the Mental Health Procedures Act, 50 P.S. § 7101 et seq. The Act sets forth the procedures for determining competency issues, as well as limited procedures concerning the lack of criminal responsibility as a defense. The Committee concluded that new Rule 569 does not apply in the context of competency proceedings under the Act. Accordingly, paragraph E specifically states that the rule does not apply to competency proceedings.

Because the statutory provisions concerning lack of criminal responsibility may be construed as applying to cases that would come within the scope of Rule 569, to avoid any confusion, the Comment makes it clear that the rule and Act are distinct with regard to competency, but with regard to the lack of criminal responsibility of the defendant, the rule takes precedence.

(B) *Conforming Change to the Comment to Rule 573 (Pretrial Discovery and Inspection) and to Rule 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings)*

The Rule 573 Comment has been revised by the addition of a cross-reference to new Rule 569.

Rule 119 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings) has been amended by the addition of the Rule 569 hearings to the list of proceedings in which ACT may not be used.

[Pa.B. Doc. No. 06-216. Filed for public inspection February 10, 2006, 9:00 a.m.]

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Notice of Public Hearing on the Proposed Public Access Policy Concerning Electronic Case Records of the Unified Judicial System

The Administrative Office of Pennsylvania Courts' Public Access Ad Hoc Committee (Committee) will conduct a public hearing on March 2, 2006, regarding the proposed public access policy concerning electronic case records of the Unified Judicial System (proposed policy). Chief Justice Emeritus Stephen A. Zappala will preside.

On September 17, 2005, the proposed policy was published for a 60-day public comment period (See 35 Pa.B. 5097 (September 17, 2005) or <http://www.pabulletin.com/secure/data/vol35/35-38/1709.html>). In light of the comments received, the Committee is especially interested in receiving the views of individuals and organizations with regard to the following issues:

1. Whether electronic case record information concerning preconvictions should be available to the public?
2. Whether providing electronic case record information that contains a party's full date of birth will sufficiently ensure that the "right" party is matched with the "right" case?
3. What specific amendments should be made to Section 6.00 (Correcting Data Errors) to delineate the procedure that an individual must follow to correct an error in an electronic case record?

The hearing will begin at 9 a.m. on March 2, 2006, at the Commonwealth Court Courtroom 1, Irvis Office Building, 5th Floor, Harrisburg, PA.

Persons interested in testifying shall register by February 22, 2006, that they would like to participate by e-mail at publicaccesscomments@pacourts.us or by contacting Cynthia Screen at (215) 560-6300, Ext. 6236. Prior to the hearing, the person will receive a time for testimony. Comments should be limited to 10 minutes, but the Committee welcomes written submissions. Persons who are unable to attend the hearing but are interested in providing their views may do so by e-mail or by mailing comments no later than February 27, 2006 to:

David S. Price, Esq.
Chair, Public Access Ad Hoc Committee
Administrative Office of Pennsylvania Courts
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055
publicaccesscomments@pacourts.us

ZYGMONT A. PINES,
Court Administrator of Pennsylvania

[Pa.B. Doc. No. 06-217. Filed for public inspection February 10, 2006, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Michael David Rostoker having been disbarred from the practice of law in the Commonwealth of Massachusetts by Order of the Supreme Judicial Court of Massachusetts, Suffolk County, entered July 6, 2005, the Supreme Court of Pennsylvania issued an Order on January 26, 2006, disbaring Michael David Rostoker from the Bar of this Commonwealth, retroactive to March 24, 2005. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 06-218. Filed for public inspection February 10, 2006, 9:00 a.m.]
