THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CH. 19]

Order Adopting Amendments to Pa.R.A.P. 1925; No. 178 Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam

And Now, this 10th day of May, 2007, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 36 Pa.B. 5967 on September 30, 2006:

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rule of Appellate Procedure 1925 is amended in the following form.

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

Mr. Justice Fitzgerald did not participate in the consideration or decision of this matter.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1925. Opinion in Support of Order.

(a) *General rule.*—Upon receipt of the notice of appeal, the judge who entered the order **[appealed from] giving rise to the notice of appeal**, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief **[statement, in the form of an]** opinion**[,]** of the reasons for the order, or for the rulings or other **[matters] errors** complained of, or shall specify in writing the place in the record where such reasons may be found.

If the case appealed involves a ruling issued by a judge who was not the judge entering the order giving rise to the notice of appeal, the judge entering the order giving rise to the notice of appeal may request that the judge who made the earlier ruling provide an opinion to be filed in accordance with the standards above to explain the reasons for that ruling.

(b) *Direction to file statement of* ***[matters] errors*** *complained of* ***on appeal; instructions to the appellant and the trial court.***

[—The lower court forthwith] If the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the **[lower] trial** court and serve on the **[trial]** judge a concise statement of the **[matters] errors** complained of on **[the]** appeal **[no later than 14 days after entry of such order] ("Statement"). [A failure to comply with such direction may be considered by the appellate court as a waiver of all objections to the order, ruling or other matter complained of.]**

(1) *Filing and service.*—Appellant shall file of record the Statement and concurrently shall serve the judge. Filing of record and service on the judge shall be in person or by mail as provided in Pa.R.A.P. 121(a) and shall be complete on mailing if appellant obtains a United States Postal Service form in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c).

(2) *Time for filing and service.*—The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing and service of the Statement. Upon application of the appellant and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental Statement to be filed. In extraordinary circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement nunc pro tunc.

(3) *Contents of order.*—The judge's order directing the filing and service of a Statement shall specify:

(i) the number of days after the date of entry of the judge's order within which the appellant must file and serve the Statement;

(ii) that the Statement shall be filed of record;

(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);

(iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.

(4) *Requirements; waiver.*

(i) The Statement shall set forth only those rulings or errors that the appellant intends to challenge.

(ii) The Statement shall concisely identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge. The judge shall not require the citation to authorities; however, appellant may choose to include pertinent authorities in the Statement.

(iii) The judge shall not require appellant or appellee to file a brief, memorandum of law, or response as part of or in conjunction with the Statement.

(iv) The Statement should not be redundant or provide lengthy explanations as to any error. Where non-redundant, non-frivolous issues are set forth in an appropriately concise manner, the number of errors raised will not alone be grounds for finding waiver.

(v) Each error identified in the Statement will be deemed to include every subsidiary issue contained therein which was raised in the trial court; this provision does not in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal.

(vi) If the appellant in a civil case cannot readily discern the basis for the judge's decision, the appellant shall preface the Statement with an explanation as to why the Statement has identified the errors in only general terms. In such a case, the generality of the Statement will not be grounds for finding waiver.

(vii) Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.

(c) ***Remand.***

(1) An appellate court may remand in either a civil or criminal case for a determination as to whether a Statement had been filed and/or served or timely filed and/or served.

(2) Upon application of the appellant and for good cause shown, an appellate court may remand in a civil case for the filing nunc pro tunc of a Statement or for amendment or supplementation of a timely filed and served Statement and for a concurrent supplemental opinion.

(3) If an appellant in a criminal case was ordered to file a Statement and failed to do so, such that the appellate court is convinced that counsel has been per se ineffective, the appellate court shall remand for the filing of a Statement nunc pro tunc and for the preparation and filing of an opinion by the judge.

(4) In a criminal case, counsel may file of record and serve on the judge a statement of intent to file an *Anders/McClendon* brief in lieu of filing a Statement. If, upon review of the *Anders/McClendon* brief, the appellate court believes that there are arguably meritorious issues for review, those issues will not be waived; instead, the appellate court may remand for the filing of a Statement, a supplemental opinion pursuant to 1925(a), or both. Upon remand, the trial court may, but is not required to, replace appellant's counsel.

[(c)] (d) *Opinions in matters on petition for allowance of appeal.*—Upon receipt of notice of the filing of a petition for allowance of appeal under Rule 1112**[(b)] (c)** (appeals by allowance), the appellate court below which entered the order sought to be reviewed, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order.

***Official Note*: [Subdivisions (a) and (b) of this rule are based on former Supreme Court Rule 56 and eliminate the blanket requirement of the prior practice for a service of a statement of matters complained of. See also former Superior Court Rule 46 and former Commonwealth Court Rule 25. Subdivision (c) of this rule is intended to provide the Supreme Court and the parties with at least a brief informal memorandum of the reasons for the decision of the appellate court below. See In re Harrison Square Inc., 470 Pa. 246, 368 A.2d 285 (1977).]**

Subdivision (a) The 2007 amendments clarify that a judge whose order gave rise to the notice of appeal may ask a prior judge who made a ruling in question for the reasons for that judge's decision. In such cases, more than one judge may issue separate 1925(a) opinions for a single case. It may be particularly important for a judge to author a separate opinion if credibility was at issue in the pretrial ruling in question. See, e.g., *Commonwealth v. Yogel*, 307 Pa. Super. 241, 243-44, 453 A.2d 15, 16 (1982). At the same time, the basis for some pre-trial rulings will be clear from the order and/or opinion issued by the judge at the time the ruling was made, and there will then be no reason to seek a separate opinion from that judge under this rule. See, e.g., Pa.R.Crim.P. 581(I). Likewise, there will be times when the prior judge may explain the ruling to the judge whose order has given rise to the notice of appeal in sufficient detail that there will be only one opinion under 1925(a), even though there are multiple rulings at issue. The time period for transmission of the record is specified in Pa.R.A.P. 1931, and that rule was concurrently amended to expand the time period for the preparation of the opinion and transmission of the record.

Subdivision (b) This subdivision permits the judge whose order gave rise to the notice of appeal ("judge") to ask for a statement of errors complained of on appeal ("Statement") if the record is inadequate and the judge needs to clarify the errors complained of. The term "errors" is meant to encourage appellants to use the Statement as an opportunity to winnow the issues, recognizing that they will ultimately need to be refined to a statement that will comply with the requirements of Pa.R.A.P. 2116. Nonetheless, the term "errors" is intended in this context to be expansive, and it encompasses all of the reasons the trial court should not have reached its decision or judgment, including, for example, those that may not have been decisions of the judge, such as challenges to jurisdiction.

Paragraph (b)(1) This paragraph maintains the requirement that the Statement be both filed of record in the trial court and served on the judge. Service on the judge may be accomplished by mail or by personal service. The date of mailing will be considered the date of filing and of service upon the judge only if counsel obtains a United States Postal Service form from which the date of mailing can be verified, as specified in Pa.R.A.P. 1112(c). Counsel is advised to retain date-stamped copies of the postal forms (or pleadings if served by hand), in case questions arise later as to whether the Statement was timely filed or served on the judge.

Paragraph (b)(2) This paragraph extends the time period for drafting the Statement from 14 days to at least 21 days, with the trial court permitted to enlarge the time period or to allow the filing of an amended or supplemental Statement upon good cause shown. In *Commonwealth v. Mitchell*, 588 Pa. 19, 41, 902 A.2d 430, 444 (2006), the Court expressly observed that a Statement filed "after several extensions of time" was timely. An enlargement of time upon timely application might be warranted if, for example, there was a serious delay in the transcription of the notes of testimony or in the delivery of the order to appellate counsel. A trial

court should enlarge the time or allow for an amended or supplemental Statement when new counsel is retained or appointed. A supplemental Statement may also be appropriate when the ruling challenged was so non-specific—e.g., "Motion Denied"—that counsel could not be sufficiently definite in the initial Statement.

In general, nunc pro tunc relief is allowed only when there has been a breakdown in the process constituting extraordinary circumstances. See, e.g., *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 577 Pa. 231, 248-49, 843 A.2d 1223, 1234 (2004) ("We have held that fraud or the wrongful or negligent act of a court official may be a proper reason for holding that a statutory appeal period does not run and that the wrong may be corrected by means of a petition filed nunc pro tunc.") Courts have also allowed nunc pro tunc relief when "non-negligent circumstances, either as they relate to appellant or his counsel" occasion delay. *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999). However, even when there is a breakdown in the process, the appellant must attempt to remedy it within a "very short duration" of time. Id.; *Amicone v. Rok*, 839 A.2d 1109, 1113 (Pa. Super. 2003) (recognizing a breakdown in process, but finding the delay too long to justify nunc pro tunc relief).

Paragraph (b)(3) This paragraph specifies what the judge must advise appellants when ordering a Statement.

Paragraph (b)(4) This paragraph sets forth the parameters for the Statement and explains what constitutes waiver. It should help counsel to comply with the concise-yet-sufficiently-detailed requirement and avoid waiver under either *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006) or *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). The paragraph explains that the Statement should be sufficiently specific to allow the judge to draft the opinion required under 1925(a), and it provides that the number of issues alone will not constitute waiver—so long as the issues set forth are non-redundant and non-frivolous. It allows appellants to rely on the fact that subsidiary issues will be deemed included if the overarching issue is identified and if all of the issues have been properly preserved in the trial court. This provision has been taken from the United States Supreme Court rules. See Sup. Ct. R. 14(1). This paragraph does not in any way excuse the responsibility of an appellant who is raising claims of constitutional error to raise those claims with the requisite degree of specificity. This paragraph also allows—but does not require—an appellant to state the authority upon which the appellant challenges the ruling in question, but it expressly recognizes that a Statement is not a brief and that an appellant shall not file a brief with the Statement. This paragraph also recognizes that there may be times that a civil appellant cannot be specific in the Statement because of the non-specificity of the ruling complained of on appeal. In such instances, civil appellants may seek leave to file a supplemental Statement to clarify their position in response to the judge's more specific Rule 1925(a) opinion.

Subdivision (c) The appellate courts have the right under the Judicial Code to "affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances." 42 Pa.C.S. § 706. The following additions to the rule are based upon this statutory authorization.

Paragraph (c)(1) This paragraph applies to both civil and criminal cases and allows an appellate court to seek additional information—whether by supplementation of the record or additional briefing—if it is not apparent whether an initial or supplemental Statement was filed and/or served or timely filed and/or served.

Paragraph (c)(2) This paragraph allows an appellate court to remand a civil case to allow an initial, amended, or supplemental Statement and/or a supplemental opinion. See also 42 Pa.C.S. § 706.

Paragraph (c)(3) This paragraph allows an appellate court to remand in criminal cases only when the appellant has completely failed to respond to an order to file a Statement. It is thus narrower than (c)(2), above. Prior to these amendments of this rule, the appeal was quashed if no timely Statement was filed or served; however, because the failure to file and serve a timely Statement is a failure to perfect the appeal, it is presumptively prejudicial and "clear" ineffectiveness. See, e.g., *Commonwealth v. Halley*, 582 Pa. 164, 172, 870 A.2d 795, 801 (2005); *Commonwealth v. West*, 883 A.2d 654, 657 (Pa. Super. 2005). Direct appeal rights have typically been restored through a post-conviction relief process, but when the ineffectiveness is apparent and per se, the court in *West* recognized that the more effective way to resolve such per se ineffectiveness is to remand for the filing of a Statement and opinion. See *West*, 883 A.2d at 657. The procedure set forth in *West* is codified in paragraph (c)(3). As the *West* court recognized, this rationale does not apply when waiver occurs due to the improper filing of a Statement. In such circumstances, relief may occur only through the post-conviction relief process and only upon demonstration by the appellant that, but for the deficiency of counsel, it was reasonably probable that the appeal would have been successful. An appellant must be able to identify per se ineffectiveness to secure a remand under this section, and any appellant who is able to demonstrate per se ineffectiveness is entitled to a remand. Accordingly, this paragraph does not raise the concerns addressed in *Johnson v. Mississippi*, 486 U.S. 578, 588-89 (1988) (observing that where a rule has not been consistently or regularly applied, it is not—under federal law—an adequate and independent state ground for affirming petitioner's conviction.)

Paragraph (c)(4) This paragraph clarifies the special expectations and duties of a criminal lawyer. Even lawyers seeking to withdraw pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967) and *Commonwealth v. McClendon*, 495 Pa. 467, 434 A.2d 1185 (1981) are obligated to comply with all rules, including the filing of a Statement. See *Commonwealth v. Myers*, 897 A.2d

493, 494-96 (Pa. Super. 2006); *Commonwealth v. Ladamus*, 896 A.2d 592, 594 (Pa. Super. 2006). However, because a lawyer will not file an *Anders/McClendon* brief without concluding that there are no non-frivolous issues to raise on appeal, this amendment allows a lawyer to file, in lieu of a Statement, a representation that no errors have been raised because the lawyer is (or intends to be) seeking to withdraw under *Anders/McClendon*. At that point, the appellate court will reverse or remand for a supplemental Statement and/or opinion if it finds potentially non-frivolous issues during its constitutionally required review of the record.

Subdivision (d) was formerly (c). The text has not been revised, except to update the reference to Pa.R.A.P. 1112(c).

The 2007 amendments attempt to address the concerns of the bar raised by cases in which courts found waiver: (a) because the Statement was too vague; or (b) because the Statement was so repetitive and voluminous that it did not enable the judge to focus on the issues likely to be raised on appeal. See, e.g., *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006); *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). Courts have also cautioned, however, "against being too quick to find waiver, claiming that Rule 1925(b) statements are either too vague or not specific enough." *Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006).

While conciseness and vagueness are very case-specific inquiries, certain observations may be helpful. First, the Statement is only the first step in framing the issues to be raised on appeal, and the requirements of Pa.R.A.P. 2116 are even more stringent. Thus, the Statement should be viewed as an initial winnowing. Second, when appellate courts have been critical of sparse or vague Statements, they have not criticized the number of issues raised but the paucity of useful information contained in the Statement. Neither the number of issues raised nor the length of the Statement alone is enough to find that a Statement is vague or non-concise enough to constitute waiver. See *Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006). The more carefully the appellant frames the Statement, the more likely it will be that the judge will be able to articulate the rationale underlying the decision and provide a basis for counsel to determine the advisability of appealing that issue. Thus, counsel should begin the winnowing process when preparing the Statement and should articulate specific rulings with which the appellant takes issue and why. Nothing in the rule requires an appellant to articulate the arguments within a Statement. It is enough for an appellant—except where constitutional error must be raised with greater specificity—to have identified the rulings and issues that comprise the putative trial court errors.

[Pa.B. Doc. No. 07-925. Filed for public inspection May 25, 2007, 9:00 a.m.]

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 19]

Order Adopting Amendments to Pa.R.A.P 1931; No. 179 Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 10th day of May, 2007, upon the recommendation of the Appellate Court Procedural Rules Committee, this recommendation having been submitted without publication in the interest of justice, pursuant to Pa.R.J.A. 103(a)(3):

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rule of Appellate Procedure 1931 is amended in the following form.

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

Mr. Justice Fitzgerald did not participate in the consideration or decision of this matter.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1931. Transmission of the Record.

(a) *Time for transmission*.—The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within **[40] 60** days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by Rule 1122 (allowance of appeal and transmission of record) or by Rule 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this subdivision **for a class or classes of cases**.

* * * * *

(d) *Service of the* **[*List of Record Documents*] *list of record documents***.—The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

* * * * *

Explanatory Comment—2007

The 2007 amendment expands the time period for the trial court to transmit the certified record, including any opinions drafted pursuant to Pa.R.A.P. 1925(a), from forty to sixty days. The

appellate court retains the ability to establish a shorter (or longer) period of time for the transmittal of the record in any class or classes of cases.

[Pa.B. Doc. No. 07-926. Filed for public inspection May 25, 2007, 9:00 a.m.]

PART I. RULES OF APPELLATE PROCEDURE
[210 PA. CODE CH. 21]
Order Adopting Amendments to Pa.R.A.P. 2111; No. 180 Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam

And Now, this 10th day of May, 2007, upon the recommendation of the Appellate Court Procedural Rules Committee, this recommendation having been submitted without publication in the interest of justice, pursuant to Pa.R.J.A. 103(a)(3):

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rule of Appellate Procedure 2111 is amended in the following form.

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

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 21. BRIEFS AND REPRODUCED RECORD

CONTENT OF BRIEFS

Rule 2111. Brief of the Appellant.

(a) *General rule.*—The brief of the appellant, except as otherwise prescribed by these rules, shall consist of the following matters, separately and distinctly entitled and in the following order:

* * * * *

(10) In the Superior Court, a copy of the statement of **[the matters] errors** complained of on appeal**,** filed with the trial court pursuant to Rule 1925(b), or an averment that no order requiring a **[Rule 1925(b)]** statement **of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b)** was entered.

* * * * *

(d) *Brief of the Appellant.*—In the Superior Court, there shall be appended to the brief of the appellant a copy of the statement of **[matters] errors** complained of on appeal, filed with the trial court pursuant to Pa.R.A.P. 1925(b). If the trial court has not entered an order directing the filing of such a statement, the brief shall contain **[a statement] an averment** that no order to file a statement **of errors complained of on appeal** pursuant to Pa.R.A.P. 1925(b) was entered by the trial court.

* * * * *

[Pa.B. Doc. No. 07-927. Filed for public inspection May 25, 2007, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 5]
Proposed Amendments to Pa.Rs.Crim.P. 106 and 542

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 106 (Continuances in Summary and Court Cases) and 542 (Preliminary Hearing; Continuances) to clarify that the notice of a continuance must include the date, time, and place of the new hearing, and that Rule 106 applies to all criminal proceedings, not just trials. 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 amendments precedes the Report.

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
5035 Ritter Road, Suite 100
Mechanicsburg, PA 17055
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no later than Friday, June 22, 2007.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,
Chair

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 106. Continuances in Summary and Court Cases.

* * * * *

(B) When the matter is before an issuing authority, the issuing authority shall record on the transcript the identity of the moving party and the reasons for granting or denying the continuance. When the matter is in the court of common pleas, the judge shall on the record

identify the moving party and state of record the reasons for granting or denying the continuance. **When a continuance is granted, the notice of the new date, time, and location of the proceeding shall be served on the parties as provided in these rules.**

(C) A motion for continuance on behalf of the defendant shall be made not later than 48 hours before the time set for the **[trial] proceeding**. A later motion shall be entertained only when the opportunity therefor did not previously exist, or the defendant was not aware of the grounds for the motion, or the interests of justice require it.

Comment

For the procedures for filing and service of court orders and notices in general, see Rule 114. For the procedures for service of the continuance of a preliminary hearing, see Rule 542(E)(2).

Official Note: Rule 301 adopted June 30, 1964, effective January 1, 1965; amended June 8, 1973, effective July 1, 1973**;** 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; renumbered Rule 106 and amended March 1, 2000, effective April 1, 2001**; amended , 2007, effective , 2007**.

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 paragraphs (B) and (C) published with the Court's Order at 37 Pa.B. 2410 (May 26, 2007).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 542. Preliminary Hearing; Continuances.

* * * * *

(E) CONTINUANCES

* * * * *

(2) The issuing authority shall give notice of the new date **[and],** time**, and place** for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

* * * * *

Official Note: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007**; amended , 2007, effective , 2007**.

Committee Explanatory Reports:

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Report explaining the proposed amendment to paragraph (E)(2) adding place of hearing to information required in notice published at 37 Pa.B. 2410 (May 26, 2007).

REPORT

Proposed amendments to Pa.Rs.Crim.P. 106 and 542

Continuances

The Criminal Procedural Rules Committee is proposing amendments to Pa.Rs.Crim.P. 106 (Continuances in Summary and Court Cases) and 542 (Preliminary Hearing; Continuances) that would clarify that (1) Rule 106 applies to all criminal proceedings, not just trials, and (2) the notice of the continuance must include the date, time, and location of the rescheduled proceeding.

The Committee, as part of its ongoing review of case law, considered the Superior Court Judge Popovich's suggestion in *Commonwealth v. Panto*, 913 A.2d 292 (Pa. Super. 2006), that Rule 106 should include a requirement that the notice of the continuance set forth the date, time, and place of the continued proceeding. Judge Popovich remarks in footnote 5 of *Commonwealth v. Panto* at 297:

> The Criminal Procedural Rules Committee may want to examine the disparity between the notice required for a preliminary hearing (listing the place, date and time a defendant is to appear before the issuing authority, see Pa.R.Crim.P. 510(A), 512), the notice granting a continuance of a preliminary hearing (listing the new date and time, with notice provided to the defendant, see Pa.R.Crim.P. 542(D)(2)(a), (b)), and the notice of the grant of a continuance in the case at bar, which "Application for Continuance" form merely made provision for listing the new date without any mention of the concomitant time and/or place for the trial de novo. Provision for inclusion of these temporal and physical elements could be in the form of amendments to Pa.R.Crim.P. 106 ("Continuances in Summary and Court Cases"). This would provide the party's attorney or, if unrepresented, the party with sufficient notice of the date, time and place of the continuance with a cross-reference to Pa.R.Crim.P. 114 regarding the methodology by which notice is to be served upon the parties.

The Committee agreed a uniform requirement for all continuance notices concerning the information about the rescheduled proceeding makes sense. Accordingly, we are proposing that Rule 106 be amended by the addition of a sentence at the end of paragraph (B) that requires, when a continuance is granted, the notice of the continuance include the new date, time, and location of the proceeding. In addition, the Committee is proposing a conforming amendment to Rule 542(E)(2) that adds "place" to the information contained in the notice of continuance of the preliminary hearing.

The Committee also agreed that the manner of service of continuance notices should be addressed in Rule 106 to avoid the type of issues that arose in the Panto case. To accomplish this, we are proposing Rule 106(B) include the requirement that the notice of the continuance is to be served on the parties as provided in the rules. A cross-reference to Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries) would be added in the Rule 106 Comment to emphasize that the provisions of Rule 114 govern the method of service of the continuance notices. Because Rule 542(E)(2)(b) and (c) provide the method of service of the notice of the continuance of the preliminary hearing that are different from the provisions in Rule 114, we also are proposing the Rule 106 Comment include a cross-reference to the service provisions in Rule 542(E).

Finally, the Committee considered the scope of the application of Rule 106. We agreed that Rule 106 applies to continuances in all criminal proceedings, but noted this is not clear in Rule 106 because of the use of the word "trial" in paragraph (C). Accordingly, the Committee is proposing the word "trial" be changed to "proceeding" in paragraph (C).

[Pa.B. Doc. No. 07-928. Filed for public inspection May 25, 2007, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Rules of the Court of Common Pleas; No. CP-02-AD-1-2007 Rules Doc.

Order of Court

And Now, to wit, this 9th day of May, 2007, pursuant to action to the Board of Judges, the following revised local Rule 523.1 affecting the Criminal Division of the Court of Common Pleas is adopted, effective thirty (30) days after Publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH M. JAMES,
President Judge

Rule 523.1 Behavior Clinic Evaluation as Condition of Bail

(a) In any court case where the defendant is preliminarily arraigned and the issuing authority has a good faith concern as to the defendant's adjudicative competency, or has reason to believe that the defendant is severely mentally disabled and may be in need of eventual court-ordered treatment upon a determination of clear and present danger pursuant to the definitions in the Mental Health Procedures Act (50 P. S. § 7101, et seq.), the issuing authority may make it a condition of bail that the defendant be examined by the Behavior Clinic within forty-eight (48) hours if the preliminary arraignment occurs on Monday through Friday, otherwise within seventy-two (72) hours.

(b) In any court case, at the time of the preliminary hearing, if the issuing authority has a good faith concern as to the defendant's adjudicative competency, or has reason to believe that the defendant is severely mentally disabled and may be in need of eventual court-ordered treatment upon a determination of clear and present danger pursuant to the definitions in the Mental Health Procedures Act (50 P. S. § 7101, et seq.), the issuing authority, when permitted by the Pennsylvania Rules of Criminal Procedure, may make it a condition of bail that the defendant be examined by the Behavior Clinic within seventy-two (72) hours of preliminary hearing.

[Pa.B. Doc. No. 07-929. Filed for public inspection May 25, 2007, 9:00 a.m.]

ALLEGHENY COUNTY

Rules of the Court of Common Pleas; No. CP-02-AD-2-2007 Rules Doc.

Order of Court

And Now, to wit, this 9th day of May, 2007, pursuant to action to the Board of Judges, the following revised local Rule 570.3 affecting the Criminal Division of the Court of Common Pleas is adopted, effective thirty (30) days after Publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH M. JAMES,
President Judge

Rule 570.3 Behavior Clinic Orders and Records

In any court case, the facilities and staff of the Behavior Clinic shall be available for the examination of a defendant upon the order of a judge of this Court. The records and reports of the Behavior Clinic are confidential records of the court to be used only as directed by the court. In the event, however, that either the reports of the Behavior Clinic or the testimony of any representative thereof are to be used by the court, such reports shall be made available to counsel for both sides.

[Pa.B. Doc. No. 07-930. Filed for public inspection May 25, 2007, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Philip John Moran having been suspended from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated November 6, 2006; the Supreme Court of Pennsylvania issued an Order dated May 8, 2007 suspending Philip John Moran from the practice of law in this Commonwealth consistent with the Order of the Supreme Court of New Jersey. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 07-931. Filed for public inspection May 25, 2007, 9:00 a.m.]