THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 5]

Promulgation of Rule 509 Governing Access to Financial Records; No. 303 Judicial Administration; Doc. No. 1

Order

Per Curiam:

And Now, this 14th day of May, 2007, Pennsylvania Rule of Judicial Administration 509 is promulgated to read as follows.

Whereas prior distribution and publication of this rule would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration. Pa.R.J.A. 103(a)(3).

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 2007.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 5. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Rule 509. Access to Financial Records.

(a) *General policy*. Financial records of the Unified Judicial System in the possession or control of the Administrative Office of Pennsylvania Courts are presumed to be open to any member of the public for inspection or copying during established business hours. The term "financial records" is defined as any account, contract, invoice or equivalent dealing with: 1) the receipt or disbursement of funds appropriated to the system; or 2) acquisition, use or disposal of services, supplies, materials, equipment or property secured through funds appropriated to the system.

Official Note: The powers and duties of the Court Administrator of Pennsylvania and Administrative Office of Pennsylvania Courts related to purchasing and financial activities are established under Rules 504 and 505.

(b) *Accessibility.* All financial records are accessible to the public except the following:

(1) any part of a record setting forth information to which access is otherwise restricted by federal law, state law, court rule, court order or court policy;

(2) any part of a record setting forth a person's social security number, home address, home telephone number, date of birth, operator's license number, e-mail address, or other personal information;

(3) any part of a record setting forth financial institution account numbers, credit card numbers, personal identification numbers (PINs) and passwords used to secure accounts;

(4) any part of a record setting forth information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice, as determined by the Court Administrator of Pennsylvania.

(c) *Procedure for requesting access.*

(1) A request to inspect or obtain copies of records accessible pursuant to this rule shall be made in writing to the AOPC records manager, as designated by the Court Administrator of Pennsylvania. A written request may be submitted in person, by mail, by e-mail, by facsimile, or, to the extent provided, any other electronic means, on a form provided by the Administrative Office.

Official Note: Information related to procedures applicable to written requests may be found on the UJS website, located at www.courts.state.pa.us.

(2) A request should identify or describe the records sought with sufficient specificity to enable the AOPC records manager to ascertain which records are being requested. A request need not include any explanation of the requester's reason for requesting or intended use of the records.

(3) The Administrative Office shall not be required to create financial records which do not currently exist or to compile, maintain, format or organize such records in a manner in which the Administrative Office does not currently compile, maintain, format or organize the records.

(4) Within 10 business days of receipt of a written request, the AOPC records manager shall respond in one of the following manners:

(i) fulfill the request, or if there are applicable fees and costs that must be paid by the requester, notify requester that the information is available upon payment of same;

(ii) notify the requester in writing that the requester has not complied with provisions in this rule and specifically identify the reason(s) why;

(iii) notify the requester in writing that the information cannot be provided and specifically identify the reason(s) why;

(iv) notify the requester in writing that the request has been received and the expected date that the information will be available, not to exceed 30 business days.

Official Note: This rule contemplates that bona fide reasons may impede the Administrative Office's ability to fulfill a records request within 10 business days (e.g., extensive redaction required of personal identifiers; retrieval of a record(s) stored in a remote location may be required; timely response cannot be accomplished due to staffing limitations; or the extent or nature of the request precludes a response within the requisite time period).

(5) If the AOPC records manager denies a written request for access, the denial may be appealed in writing to the Court Administrator of Pennsylvania or designee. The Court Administrator or designee shall make a determination and forward it in writing to the requester. This remedy need not be exhausted before other relief is sought. Any further appeal shall be subject to Chapter 15, Judicial Review of Governmental Determinations, of the Pennsylvania Rules of Appellate Procedure.

(d) *Fees*.

(1) The Administrative Office may charge reasonable costs incurred in providing public access to records pursu-

ant to this rule. Such costs may include, but are not limited to, postage, photocopying, copying onto electronic media, transmission by facsimile or other electronic means, and other means of duplication.

(2) Prior to granting a request for access in accordance with this rule, the Administrative Office may require a requester to prepay an estimate of the fees associated with the request, if the fees are expected to exceed $100.

[Pa.B. Doc. No. 07-960. Filed for public inspection June 1, 2007, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 9 AND 15]

Order Amending Pa.R.A.P. 901 and 1561; No. 181 Appellate Procedural Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 15th 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 Rules of Appellate Procedure 901 and 1561 are amended in the following form.

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

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 901. Scope of Chapter.

This chapter applies to all appeals from a trial court to an appellate court except:

* * * * *

(3) An appeal which may be taken by petition for review pursuant to Rule 1762**[(a)](b)**(2) **[(release prior to sentence)], which governs applications relating to bail when no appeal is pending**.

* * * * *

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1561. Disposition of Petition for Review.

* * * * *

(d) *Review of detention.*—Except as prescribed by Rule 1762**[(a)](b)**(2) **[(release in criminal matters)], which governs applications relating to bail when no appeal is pending,** or by Rule 3331 (review of special prosecutions or investigations), review in the nature of criminal habeas corpus or post conviction relief may not be granted under this chapter.

* * * * *

[Pa.B. Doc. No. 07-961. Filed for public inspection June 1, 2007, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. I]

Order Approving Revision of Comment to Rule 104; No. 416 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 15th day of May, 2007, upon the recommendation of the Committee on Rules of Evidence, this proposal having been published before adoption at 36 Pa.B., No. 30, page 3977 (July 29, 2006) and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of comment is hereby approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective June 15, 2007.

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

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE I. GENERAL PROVISIONS

Rule 104. Preliminary Questions.

* * * * *

Comment

* * * * *

In *Commonwealth v. Washington*, **554 Pa. 559,** 722 A.2d 643 (**[Pa.]** 1998), a case involving child witnesses, the Supreme Court created a per se **[error]** rule requiring competency hearings to be conducted outside the presence of the jury. In *Commonwealth v. Delbridge*, **578 Pa. 641,** 855 A.2d 27 (**[Pa.]** 2003), the Supreme Court held that a competency hearing is the appropriate way to explore an allegation that the **[testimony] memory** of a child has been **["impaired"] so corrupted** or "tainted" by **unduly** suggestive **or coercive** interview techniques**[, and that the burden is on a party alleging testimonial incompetency by reason of taint to prove it by clear and convincing evidence] as to render the child incompetent to testify**.

* * * * *

FINAL REPORT

Pa. R.E. 104: Preliminary Questions

Revision of Comment

In examining the effect of decisions of the Supreme Court on the Rules of Evidence, the Committee has

proposed certain refinements in the Comment to Pa. R.E. 104. In reviewing *Commonwealth v. Washington*, 554 Pa. 539, 722 A.2d 643 (1998), we decided to delete the word "error" from the per se rule language requiring a competency hearing to be held outside of the presence of the jury.

Turning to *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003), the effect of the opinion is that in the competency hearing it is whether the memory of the child, rather than the testimony of the child, has been "tainted" deleting the word "impaired." Reference to burden of proof is deleted as surplussage because the burden is always on the party challenging competency.

[Pa.B. Doc. No. 07-962. Filed for public inspection June 1, 2007, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1910 AND 1920]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 89

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, August 3, 2007 directed to:

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

By the Domestic Relations Procedural Rules Committee

NANCY P. WALLITSCH, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

(c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses and proof of medical coverage which they may have or have available to them. In addition, they shall provide copies of their Income and Expense Statements in the forms required by Rule 1910.27(c), completed as set forth below.

(1) For cases which can be determined according to the guideline formula, the Income Statement must be completed and the Expense Statement at Rule 1910.27(c)(2)(A) should be completed if a party is claiming unusual needs and unusual fixed expenses. **In a support case that can be decided according to the guidelines, even if the support claim is raised in a divorce complaint, no expense form is needed unless a party claims unusual needs or unusual fixed expenses or seeks apportionment of expenses pursuant to Rule 1910.16-6. However, in the divorce action, the Expense Statement at Rule 1910.27(c)(2)(B) may be required.**

* * * * *

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.

(a)(1) Within thirty days after the service of the pleading or petition containing a claim for **[child or spousal support,]** alimony, alimony pendente lite or counsel fees, costs and expenses, each party shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months, a completed Income Statement in the form required at Rule 1910.27(c)(1) and a completed Expense Statement in the form required by Rule 1910.27(c)(2)(B). **If a claim for child or spousal support is raised in a divorce complaint, no expense form is needed in a support action that can be decided pursuant to the guidelines unless a party claims unusual needs or unusual fixed expenses or seeks apportionment of expenses pursuant to Rule 1910.16-6.**

* * * * *

[Pa.B. Doc. No. 07-963. Filed for public inspection June 1, 2007, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1915]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 88

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, August 3, 2007 directed to:

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

By the Domestic Relations Procedural Rules Committee

NANCY P. WALLITSCH, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.4-1. Alternative Hearing Procedures for Partial Custody or Visitation Actions.

(a) **[Except as provided in subdivision (b),] A custody action shall proceed as prescribed by Rule 1915.4-3 unless the court, by local rule, adopts the alternative hearing procedure authorized by Rule 1915.4-2 pursuant to which** an action for partial custody or visitation may be heard by a hearing officer **[as prescribed by Rule 1915.4-2], except as provided in subdivision (b) below**.

(b) Promptly after the parties' initial contact with the court as set forth in Rule 1915.4(a) **[above]**, a party may move the court for a hearing before a judge, rather than a hearing officer, in an action for partial custody or visitation where**:**

(1) there are complex questions of law, fact or both, or

(2) the parties certify to the court that there are serious allegations affecting the child's welfare.

(c) The president judge or the administrative judge of the family division of each county shall certify that custody proceedings generally are conducted in accordance with either Rule 1915.4-2 or Rule 1915.4-3. The certification shall be filed with the Domestic Relations Procedural Rules Committee of the Supreme Court of Pennsylvania and shall be substantially in the following form:

I hereby certify that _____ County conducts its custody proceedings in accordance with Rule _____ .

_____ _____
(President Judge) (Administrative Judge)

Official Note: **Pursuant to Rule 1915.4-1, the following counties have certified to the Domestic Relations Procedural Rules Committee that their custody proceedings generally are conducted in accordance with the rule specified below:**

Adams
Allegheny
Armstrong
Beaver
Bedford
Berks
Blair
Bradford
Bucks
Butler
Cambria
Cameron
Carbon
Centre
Chester
Clarion
Clearfield
Clinton
Columbia
Crawford
Cumberland
Dauphin
Delaware
Elk
Erie
Fayette
Forest
Franklin
Fulton
Greene
Huntingdon
Indiana
Jefferson
Juniata
Lackawanna
Lancaster
Lawrence
Lebanon
Lehigh
Luzerne
Lycoming
McKean
Mercer
Mifflin
Monroe
Montgomery
Montour
Northampton
Northumberland
Perry
Philadelphia
Pike
Potter
Schuylkill
Snyder
Somerset
Sullivan
Susquehanna
Tioga
Union
Venango
Warren
Washington
Wayne
Westmoreland
Wyoming
York

Explanatory Comment—1994

These new rules provide an optional procedure for using hearing officers in partial custody and visitation cases. The procedure is similar to the one provided for support cases in Rule 1910.12: a conference, record hearing before a hearing officer, and argument on exceptions before a judge. The terms "conference officer" and "hearing officer" have the same meaning here as in the support rules.

It is important to note that use of the procedure prescribed in Rules 1915.4-1 and 1915.4-2 is optional rather than mandatory. Counties which prefer to have all partial custody and visitation cases heard by a judge may continue to do so.

These procedures are not intended to replace or prohibit the use of any form of mediation or conciliation. On the contrary, they are intended to be used in cases which are not resolved through use of less adversarial means.

Explanatory Comment—2007

The intent of the amendments to Rules 1915.4-1 and 1915.4-2, and new Rule 1915-4.3, is to clarify the procedures in record and non-record custody proceedings. When the first proceeding is non-record, no exceptions are required and a request for a de novo hearing may be made.

Rule 1915.4-2. **Partial Custody. Visitation.** Office Conference. Hearing. Record. Exceptions. Order.

(a) ***Office Conference.***

(1) The office conference shall be conducted by a conference officer.

(2) **[The hearing shall be conducted by a hearing officer. A hearing officer who is a lawyer employed by a judicial district shall not practice family law before a conference officer, hearing officer or permanent or standing master employed by the same judicial district.**

(b)] If the respondent fails to appear at the conference before the **conference** officer as directed by the court, the conference may proceed without the respondent.

[(c)] (3) The conference officer may make a recommendation to the parties relating to partial custody or visitation of the child or children. If an agreement for partial custody or visitation is reached at the conference, the conference officer shall prepare a written order in conformity with the agreement for signature by the parties and submission to the court together with the officer's recommendation for approval or disapproval. The court may enter an order in accordance with the agreement without hearing the parties.

[(d)] (4) At the conclusion of the conference**,** if an agreement relating to partial custody or visitation has not been reached, the parties shall be given notice of the date, time and place of a hearing **before a hearing officer**, which may be the same day, but in no event shall be more than forty-five days from the date of the conference.

(b) ***Hearing.***

(1) The hearing shall be conducted by a hearing officer who must be a lawyer, and a record shall be made of the testimony. **A hearing officer who is a lawyer employed by a judicial district shall not practice family law before a conference officer, hearing officer or permanent or standing master employed by the same judicial district.**

[(e)] (2) The hearing officer shall receive evidence and hear argument. The hearing officer may recommend to the court that the parties and/or the subject child or children submit to examination and evaluation by experts pursuant to Rule 1915.8.

[(f)] (3) Within ten days of the conclusion of the hearing, the hearing officer shall file with the court and serve upon all parties a report containing a recommendation with respect to the entry of an order of partial custody or visitation. The report may be in narrative form stating the reasons for the recommendation and shall include a proposed order, including a specific schedule for partial custody or visitation.

[(g)] (4) Within twenty days after the date the hearing officer's report is mailed or received by the parties, whichever occurs first, any party may file exceptions to the report or any part thereof, to rulings on objections to evidence, to statements or findings of fact, to conclusions of law, or to any other matters occurring during the hearing. Each exception shall set forth a separate objection precisely and without discussion. Matters not covered by exceptions are deemed waived unless, prior to entry of the final order, leave is granted to file exceptions raising those matters. If exceptions are filed, any other party may file exceptions within twenty days of the date of service of the original exceptions.

[(h)] (5) If no exceptions are filed within the twenty-day period, the court shall review the report and, if approved, enter a final order.

[(i)] (6) If exceptions are filed, the court shall hear argument on the exceptions within forty-five days of the date the last party files exceptions, and enter an appropriate final order within fifteen days of argument. No motion for Post-Trial Relief may be filed to the final order.

[Explanatory Comment—1994

These new rules provide an optional procedure for using hearing officers in partial custody and visitation cases. The procedure is similar to the one provided for support cases in Rule 1910.12: a conference, record hearing before a hearing officer and argument on exceptions before a judge. The terms "conference officer" and "hearing officer" have the same meaning here as in the support rules.

It is important to note that use of the procedure prescribed in Rules 1915.4-1 and 1915.4-2 is optional rather than mandatory. Counties which prefer to have all partial custody and visitation cases heard by a judge may continue to do so.

These procedures are not intended to replace or prohibit the use of any form of mediation or conciliation. On the contrary, they are intended to be used in cases which are not resolved through the use of less adversarial means.]

Explanatory Comment—2006

The time for filing exceptions has been expanded from ten to twenty days. The purpose of this amendment is to provide ample opportunity for litigants and counsel to receive notice of the entry of the order, to assure commonwealth-wide consistency in calculation of time for filing and to conform to applicable general civil procedural rules.

Rule 1915.4-3. Non-Record Proceedings. Trial.

(a) *Non-Record Proceedings.* In those jurisdictions which utilize an initial non-record proceeding such as a conciliation conference or office conference, if no agreement is reached at the conclusion of the proceeding, the conference officer or conciliator shall promptly notify the court that the matter should be listed for trial.

(b) *Trial.* The trial before the court shall be de novo. The court shall hear the case and render a decision within the time periods set forth in Rule 1915.4.

[Pa.B. Doc. No. 07-964. Filed for public inspection June 1, 2007, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Order Adopting New Rule 559, Amending Rules 509, 510, 511, 512, 542, 543, 547, and 571, and Approving the Revision of Rule 536; Criminal Procedural Rules No. 357; Doc. No. 2

Amended Order

Per Curiam:

Now, this 1st day of May, 2007, upon the recommendation of the Criminal Procedural Rules Committee; this proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice and efficient administration, and a Final Report to be published with this *Order*:

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

(1) New Rule 559 is hereby promulgated; and

(2) Rules of Criminal Procedure 509, 510, 511, 512, 542, 543, 547, and 571 are hereby amended; and

(3) the revision of the Comment to Rule of Criminal Procedure 536 is hereby approved, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective September 4, 2007.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(1). Complaint Procedures

Rule 509. Use of Summons or Warrant of Arrest in Court Cases.

If a complaint charges an offense that is a court case, the issuing authority with whom it is filed shall:

(1) issue a summons and not a warrant of arrest in cases in which the most serious offense charged is a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802, except as set forth in paragraph (2);

(2) issue a warrant of arrest when:

(a) one or more of the offenses charged is a felony or murder; or

(b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons; or

(c) the issuing authority has reasonable grounds for believing that the defendant poses a threat of physical harm to any other person or to himself or herself; or

(d) the summons **was mailed pursuant to Rule 511(A) and** has been returned undelivered; or

(e) **[a summons has been served and disobeyed by a defendant; or**

(f)] the identity of the defendant is unknown**;** or

(3) issue a summons or a warrant of arrest, within the issuing authority's discretion, when the offense charged does not fall within any of the categories specified in paragraphs (1) or (2).

Comment

This rule provides for the mandatory use of a summons instead of a warrant in court cases except in the special circumstances enumerated in paragraphs (2) and (3).

Before a warrant may be issued pursuant to paragraph (2)(d) when a summons is returned undelivered, the summons must have been served **upon the defendant by both first class mail and certified mail, return receipt requested** as provided in Rule 511(A), and both the certified mail and the first class mail must have been returned undelivered. **"Undelivered" includes a return receipt that is signed by someone other than the defendant.**

Pursuant to Rule 511, a return receipt signed by the defendant or a notation on the transcript that the first class mailing was not returned within 20 days is proof that the defendant received notice of the summons for purposes of paragraph (2)(d). See also Rule 543(D)(1).

When a defendant has been released pursuant to Rule 519(B), the issuing authority must issue a summons.

See Rule 1003 (Procedure in Non-Summary Municipal Court Cases), paragraph (C), for the procedures for issuing a summons and a warrant in Philadelphia.

It is expected when a case meets the requirements for the issuance of a summons, the police officer will proceed during the normal business hours of the proper issuing authority except in extraordinary circumstances. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

The procedure in paragraph (3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, etc. However, in all cases in which the defendant has been released pursuant to Rule 519(B), a summons shall be issued.

Official Note: Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; Comment revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001; Comment revised August 24, 2004, effective August 1, 2005; amended June 30, 2005, effective August 1, 2006**; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007**.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

Final Report explaining the August 24, 2004 Comment revision adding a new second paragraph elaborating on paragraph (2)(c) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the June 30, 2005 amendments concerning in which cases a summons or a warrant are issued published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the May 1, 2007 amendments amending paragraph (2)(d) and the Comment and deleting paragraph (2)(e) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

PART B(2). Summons Procedures

Rule 510. Contents of Summons; Notice of Preliminary Hearing.

(A) Every summons in a court case shall command the defendant to appear before the issuing authority for a preliminary hearing at the place and on the date and at the time stated on the summons. The date set for the preliminary hearing shall be not less than 20 days from the date of mailing the summons unless the issuing authority fixes an earlier date upon the request of the defendant or the defendant's attorney with the consent of the affiant.

(B) The summons shall give notice to the defendant:

(1) of the right to secure counsel of the defendant's choice and, for those who are without financial resources, of the right to assigned counsel in accordance with Rule 122;

(2) that bail will be set at the preliminary hearing; and

(3) that if the defendant fails to appear on the date, and at the time and place specified on the summons, the case will proceed in the defendant's absence, and a **bench** warrant will be issued for the defendant's arrest.

(C) A copy of the complaint shall be attached to the summons.

Comment

For the summons procedures in non-summary cases in the Municipal Court of Philadelphia, see Rule 1003(C).

When a defendant appears for a preliminary hearing pursuant to a summons under this rule and is held for court, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. It is suggested that these processing procedures be made a condition of bail or release. See Criminal History Record Information Act, 18 Pa.C.S. § 9112.

See Rule 511 for service of the summons and proof of service.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing.

For the consequences of defects in a summons in a court case, see Rule 109.

Official Note: Original Rule 109**[,]** adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007**.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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 August 24, 2004 amendments concerning notice that case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments paragraph (B)(3) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Rule 511. Service of Summons; Proof of Service.

(A) The summons shall be served upon the defendant by both first class mail and certified mail, return receipt requested. A copy of the complaint shall be served with the summons.

(B) Proof of service of the summons by mail shall include:

(1) a return receipt signed by the defendant; or

(2) **[if the certified mail is returned for whatever reason, the returned summons with the notation that the certified mail was undelivered and evidence that the first class mailing of the summons was not returned to the issuing authority within 15 days after mailing.] the returned summons showing that the certified mail was not signed by the defendant and a notation on the transcript that the first class mailing of the summons was not returned to the issuing authority within 20 days after the mailing.**

Comment

This rule was amended in 2004 to require that the summons be served by both first class mail and certified mail, return receipt requested.

Paragraph (B) sets forth what constitutes proof of service of the summons by mail in a court case for purposes of these rules.

Official Note: Original Rule 111, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 111 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 112 September 18, 1973, effective January 1, 1974; renumbered Rule 511 March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 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).

Final Report explaining the August 24, 2004 amendments adding new paragraph (B) concerning proof of service published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments amending paragraph (B)(2) concerning proof of service published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Rule 512. Procedure in Court Cases Following Issuance of Summons.

The defendant shall appear before the issuing authority for a preliminary hearing on the date, and at the time and place specified in the summons. If the defendant fails to appear, the issuing authority shall **[issue a warrant for the arrest of the defendant and]** proceed as provided in Rule 543(D).

Comment

For the proper time for the preliminary hearing, see Rule 510.

When a defendant appears for a preliminary hearing pursuant to a summons and is held for court, the issuing authority should require that the defendant submit to administrative processing and identification procedures (fingerprinting, for example) as authorized by law. It is recommended that this requirement be made a condition of bail or release. See Criminal History Record Information Act, 18 Pa.C.S. § 9112.

For the procedures in non-summary cases in the Municipal Court, see Chapter 10.

Official Note: Rule 113 adopted September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 512 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007**.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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 August 24, 2004 amendments cross-referencing Rule 543(D) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments deleting the warrant language published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

PART C(2). General Procedures In All Bail Cases

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

* * * * *

Comment

This rule does not apply when a defendant has been arrested pursuant to extradition proceedings. See generally Uniform Criminal Extradition Act, 42 Pa.C.S. §§ 9121—9148, and particularly Section 9139 concerning forfeiture proceedings in such cases. See also the Crimes Code, 18 Pa.C.S. § 5124, which imposes criminal sanctions for failing to appear in a criminal case when required.

Paragraph (A)(1)(b) was amended and paragraph (A)(1)(d) was deleted in 2005 to make it clear that a warrant for the arrest of the defendant for failure to comply with a condition of bail is a bench warrant. For the procedures when a paragraph (A)(1)(b) bench warrant is executed, see Rule 150 (Bench Warrants). **For the procedures for issuing a bench warrant when a defendant fails to appear for a preliminary hearing, see paragraph (D) of Rule 543 (Disposition of Case at Preliminary Hearing).**

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

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

Paragraph (A)(2)(c) provides an automatic 20-day stay on the execution of the forfeiture to give the surety time to produce the defendant or the defendant time to appear and comply with the conditions of bail.

"Conditions of the bail bond" as used in this rule include the conditions set forth in Rule 526(A) and the conditions of release defined in Rules 524, 527, and 528.

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

2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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

Final Report explaining the March 3, 2004 rule changes deleting "show cause" published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

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

Final Report explaining the May 1, 2007 Comment revision concerning bench warrants following a failure to appear at a preliminary hearing published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

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 for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

(a) The notice shall be in writing.

(b) Notice shall be served on the defendant either in person or by **[both]** first class mail **[and certified mail, return receipt requested]**.

(c) Notice shall be served on defendant's attorney of record and the attorney for the Commonwealth either by personal delivery, or by leaving a copy for or mailing a copy to the attorneys at the attorneys' offices.

Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

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

Former paragraph (D) concerning the procedures when a prima facie case is found was deleted in 2004 as unnecessary because the same procedures are set forth in Rule 543 (Disposition of Case at Preliminary Hearing).

For the procedures when a defendant fails to appear for the preliminary hearing, see Rule 543(D).

[The proof of service by mail on the defendant of the notice of the continued preliminary hearing is comparable to proof of service under Rule 511(B), and must include:

(1) a return receipt signed by the defendant, or

(2) if the certified mail is returned for whatever reason, the returned notice with the notation that the certified mail was undelivered and evidence that the first class mailing of the notice was not returned to the issuing authority within 15 days after mailing.]

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

For the contents of the transcript, see Rule 135.

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

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining new Rule 141 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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

Final Report explaining the August 24, 2004 amendments concerning notice published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the March **[3] 9**, 2006 amendments to paragraph (D) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 1, 2007 amendments deleting the certified mail service requirement from paragraph (D)(2)(b) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Rule 543. Disposition of Case at Preliminary Hearing.

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

(B) If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged.

(C) When the defendant **has appeared and** has been held for court, the issuing authority shall:

(1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 529.

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

(1) if the issuing authority finds that the defendant did not receive notice**[, or] of the preliminary hearing by a summons served pursuant to Rule 511, a warrant of arrest shall be issued pursuant to Rule 509(2)(d).**

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

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

(a) **In these cases, the issuing authority shall** proceed with the case in the same manner as though the defendant were present**[;].**

(b) **[if] If** the preliminary hearing is conducted**[,] and the case held for court, the issuing authority shall**

(i) give the defendant notice by first class mail of the results of the preliminary hearing **and that a bench warrant has been requested**; and

(ii) pursuant to Rule 547, transmit the transcript to the clerk of courts with a request that a bench warrant be issued by the court of common pleas.

(c) **[if the case is held for court or if the preliminary hearing is continued, issue a bench warrant for the arrest of the defendant.] If the preliminary hearing is conducted and the case is dismissed, the issuing authority shall give the defendant notice by first class mail of the results of the preliminary hearing.**

(d) If a continuance is granted, the issuing authority shall give the parties notice of the new date and time as provided in Rule 542(E)(2), and may issue a bench warrant. If a bench warrant is issued and the warrant remains unserved for the continuation of the preliminary hearing, the issuing authority shall vacate the bench warrant. The case shall proceed as provided in paragraphs (D)(3)(b) or (c).

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

(a) the arraignment occurs; or

(b) the defendant fails to appear for the arraignment and the common pleas judge issues a bench warrant for the defendant.

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

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

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

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

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

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

Comment

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

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. See Rule 571.

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540(F)(2) or

in a summons served as provided in Rule 511, and (2) whether the defendant had good cause explaining the absence.

If the issuing authority determines that the defendant did not receive notice **[or], the issuing authority must issue an arrest warrant as provided in Rule 509, and the case will proceed pursuant to Rules 516 or 517. See paragraph (D)(1).**

If the issuing authority determines that there is good cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. See paragraph **[(E)(1)] (D)(2)**. For the procedures when a preliminary hearing is continued, see Rule 542**[(D)] (E)**.

If the issuing authority determines that the defendant received **[notice] service of the summons as defined in Rule 511** and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without good cause, paragraph (D)**[(2)](3)**(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 542(A), (B), (C) and Rule 543(A), (B), **[and]** (C)**, and (D)(3)(b) or (c)**; or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 542(E); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority **[still should] may issue a bench warrant as provided in paragraph (D)(3)(d), and must** send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)**[(2)(c)] (3)(b)(ii)** requires the issuing authority to **include with the Rule 547 transmittal a request that the court of common pleas** issue a bench warrant if the case is held for court **[or when the preliminary hearing is continued]**.

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

In addition to the paragraph (D)(3)(b) notice requirements, the notice may include the date of the arraignment in common pleas court.

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

See Rule 571 (Arraignment) for notice of arraignment requirements.

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

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

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

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

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

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

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; amended May 19, 2006, effective August 1, 2006**; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007**.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published **with the Court's Order** at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the October 8, 1999 renumbering of Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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

Final Report explaining the August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

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

Final Report explaining the March **[3] 9**, 2006 amendments adding new paragraphs (E) and (F) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

Final Report explaining the May 1, 2007 changes clarifying the procedures when a defendant fails to appear published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Rule 547. Return of Transcript and Original Papers.

(A) When a defendant is held for court, the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required by these rules to be recorded on the transcript. It shall be signed by the issuing authority, and have affixed to it the issuing authority's seal of office.

(B) The issuing authority shall transmit the transcript to the clerk of the proper court within 5 days after holding the defendant for court.

(C) In addition to this transcript the issuing authority shall also transmit the following items:

(1) the original complaint;

(2) the summons or the warrant **[or] of** arrest and its return;

(3) all affidavits filed in the proceeding; **[and]**

(4) the appearance or bail bond for the defendant, if any, or a copy of the order committing the defendant to custody**[.]; and**

(5) a request for the court of common pleas to issue a bench warrant as required in Rule 543(D)(3)(b).

Comment

See Rule 135 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. See, e.g., Rules 542 and 543.

When the case is held for court pursuant to Rule 543(D)(3), the issuing authority must include with the transcript transmittal a request for the court of common pleas to issue a bench warrant.

Official Note: Formerly Rule 126, 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 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1982, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005**; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 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. 1478 (March 18, 2000).

Final Report explaining the August 24, 2004 changes published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments concerning the request for a bench warrant published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

PART E. [Informations] Procedures Following a Case Held for Court

Rule 559. Request for Bench Warrant.

In any case held for court following a preliminary hearing conducted in the defendant's absence pursuant to Rule 543(D), upon receipt of a request by the issuing authority for the common pleas court to issue a bench warrant, the court promptly shall act upon the request.

Comment

For the requirement that the issuing authority request a bench warrant from the court of common pleas in cases in which the defendant has failed to appear for the preliminary hearing, see Rule 543(D)(3)(b)(i) and (ii). See also Rule 547(C)(5) that requires the issuing authority to transmit the request for a bench warrant with the transcript of the proceedings before the issuing authority.

Official Note: Adopted May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.

Committee Explanatory Reports:

Final Report explaining new Rule 559 published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

PART F. Procedures Following Filing of Information

Rule 571. Arraignment.

* * * * *

[(E) At the conclusion of the arraignment, or after the common pleas judge issues a bench warrant because the defendant fails to appear for the arraignment, in cases held for court following a preliminary hearing in the defendant's absence, the clerk of courts promptly shall notify the issuing authority that the arraignment has occurred or a bench warrant has been issued.]

Comment

The main purposes of arraignment are: to ensure that the defendant is advised of the charges; to have counsel enter an appearance, or if the defendant has no counsel, to consider the defendant's right to counsel; and to commence the period of time within which to initiate pretrial discovery and to file other motions. Although the specific form of the arraignment is not prescribed by this

rule, judicial districts are required to ensure that the purposes of arraignments are accomplished in all court cases.

Concerning the waiver of counsel, see Rule 121.

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. See Rule 543.

Under paragraph (A), in addition to other instances of "cause shown" for delaying the arraignment, the arraignment may be delayed when the defendant is unavailable for arraignment within the 10-day period after the information is filed.

Within the meaning of paragraph (B), counsel is present when physically with the defendant or with the judicial officer presiding over the arraignment.

Under paragraph (B), the court has discretion to order that a defendant appear in person for the arraignment.

Under paragraph (B), two-way simultaneous audio-visual communication is a form of advanced communication technology.

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule 114.

[In cases that are held for court following a preliminary hearing in the defendant's absence, paragraph (E) requires that, following the arraignment or the issuance of a bench warrant, the clerk of courts must inform the issuing authority in the most expedient manner, such as by telephone, or by facsimile or electronic transmission. In addtiion, the clerk should complete and return the notification form provided by the issuing authority. See Rule 543(D) (Disposition of Case at Preliminary Hearing).]

Official Note: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005**; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007**.

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the May 1, 1995 changes published with the Court's Order at 25 Pa.B. 1944 (May 20, 1995).

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 November 17, 2000 amendments concerning a defendant's waiver of appearance at arraignment published with the Court's Order at 30 Pa.B. 6184 (December 2, 2000).

Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions **[rule] rules** published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the August 24, 2004 addition of paragraph (E) and the **[Correlative] correlative** Comment provisions published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 deletion of paragraph (E) and the correlative Comment provisions published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

FINAL REPORT[1]

New Pa.R.Crim.P. 559; Amendments to Pa.Rs.Crim.P. 509, 510, 511, 512, 542, 543, 547, and 571; and Revision of the Comment to Pa.R.Crim.P. 536

Procedures when Defendant Fails to Appear for Preliminary Hearing

On May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule of Criminal Procedure 559, amended Rules 509, 510, 511, 512, 542, 543, 547, and 571, and approved the revision of the Comment to Rule 536.[2] These rule changes address several issues that have arisen since August 2005 when the new uniform procedure for handling court cases in which a defendant has failed to appear for the preliminary hearing became effective.

I. INTRODUCTION

Following the August 2005 effective date of the rule changes that established the procedures governing when a defendant fails to appear for the preliminary hearing, the Committee received a number of inquiries about the new procedures. The communications (1) asked for clarification of some of the procedures, (2) noted problems with the implementation by the Magisterial District Judges Computer System (MDJS), and (3) requested changes to some of the procedures. Following a full review of the concerns raised with the Committee,[3] the members reaffirmed what we explained in our original proposal in

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

[2] The May 1, 2007 Order was amended on May 15, 2007 to reflect in bold and brakcets language that was being deleted from the eighth paragraph of the Rule 543 Comment.

[3] The Committee convened an Ad Hoc Subcommittee of individuals familiar with the issues and with the MDJS to assist the Committee in addressing the problems. The Ad Hoc Subcommittee included members of the Criminal Procedural Rules Committee and the Minor Courts Rules Committee; representatives from the Administrative Offices of Pennsylvania Courts legal and computer staff; Magisterial District Judges; and District Court Administrators.

2005[4] that the procedural linchpin to conduct the preliminary hearing in the defendant's absence is that the defendant has received notice of the preliminary hearing. Under the rules, notice of a preliminary hearing is given to the defendant either in person at the time of a preliminary arraignment following an arrest pursuant to Rule 540 or by a summons that is served on the defendant by both first class mail and certified mail, return receipt requested as required by Rule 511(A). When the case proceeds by summons, Rule 511(B) provides that proof of service of the summons by mail is shown either by a return receipt signed by the defendant or evidence that the first class mailing was not returned if the certified mail is returned undelivered or the return receipt is signed by someone other than the defendant. Using these rule provisions, an issuing authority is able to make the Rule 543 determination whether the defendant has received notice of the preliminary hearing. At the same time, the members acknowledged that the existing rules should be modified to respond to the questions that have continued to come to our attention. Accordingly, the rules governing the procedures when a defendant fails to appear for a preliminary hearing have been modified as follows:

- What constitutes good service has been more clearly explained in Rules 509, 511, 542, and 543.

- The rules more clearly distinguish when a warrant being issued is a bench warrant and when the warrant is a Rule 509 warrant, see Rules 510, 536, and 543.

- Rule 543(D) more clearly distinguishes between the procedures when an issuing authority (1) finds the defendant did not receive notice, paragraph (D)(1), or (2) finds the defendant did receive notice but has good cause for not appearing, paragraph (D)(2), or (3) finds the defendant received notice and does not have good cause for failing to appear, paragraph (D)(3).

- The procedure when an issuing authority finds the defendant did not receive notice of the summons has been amended to provide that an arrest warrant is issued as provided in Rule 509 and the case proceeds with a preliminary arraignment following an arrest.

- The procedures when the preliminary hearing is continued have been amended by providing that (1) when the issuing authority finds the defendant received notice and does not have good cause for failing to appear, the issuing authority may issue a bench warrant and must give the defendant notice of the date for the continued preliminary hearing, and (2) when the issuing authority finds the defendant received notice and has good cause for failing to appear, the issuing authority must give notice of the date for the continued preliminary hearing but may not issue a bench warrant.

- The notice of a continued preliminary hearing is to be served by first class mail only, see Rule 542.

- The procedure for issuing a warrant following a preliminary hearing that is conducted in the defendant's absence has been modified to provide that the bench warrant is to be issued by a judge of the court of common pleas rather than by the issuing authority.

II. DISCUSSION OF RULE CHANGES

A. *Rule 543 (Disposition of Case at Preliminary Hearing)*

Rule 543(A) and (B) set forth the general procedures governing the disposition of a case at the preliminary hearing. Paragraph (C) sets forth the procedures when the defendant has appeared for the preliminary hearing, and paragraph (D) sets forth the procedures when the defendant has not appeared. In order to more clearly distinguish between the procedures in paragraph (C) and in paragraph (D), paragraph (C) has been amended by the addition of "has appeared and" before "has been held for court" in the first line.

The amendments to paragraph (D) elaborate on the distinction between the three procedural scenarios when a defendant fails to appear for the preliminary hearing:

- when the defendant has failed to appear and the issuing authority determines the defendant did not receive notice;

- when the defendant has failed to appear and the issuing authority finds that the defendant received notice and had good cause explaining the failure to appear;

- when the defendant has failed to appear and the issuing authority finds that the defendant received notice and did not have good cause to explain the failure to appear.

Paragraph (D)(1) now addresses only those cases in which the issuing authority finds the defendant did not receive notice. New paragraph (D)(2), which is taken from current paragraph (D)(1), and new paragraph (D)(3), which is taken from current paragraph (D)(2), both address the cases in which the issuing authority finds the defendant received notice of the preliminary hearing; that is, the defendant received notice of the preliminary hearing either in person at the preliminary arraignment or by receipt of a summons that was served as provided by Rule 511.

Paragraph (D)(1)

The Committee received numerous communications expressing concern about the impact on the criminal justice system of continuing preliminary hearings when a defendant has failed to appear in cases in which the summons that was served upon the defendant by both first class mail and certified mail, return receipt requested as provided in Rule 511(A) is returned undelivered. These communications noted that, in most of these cases, the notice of the continued preliminary hearing also is returned undelivered, thereby causing additional delays and continuances because the defendant continues to fail to appear. The Committee agreed this was a significant problem and concluded the only way to stop the cycle of continuances and failures to appear when there is no proof of service of the summons is to require that the magisterial district judge issue a warrant pursuant to Rule 509(2)(d). When the defendant is located, a preliminary arraignment is conducted and the defendant is given notice of the preliminary hearing in person.

Paragraph (D)(2)

New paragraph (D)(2) recognizes that there may be valid reasons for a defendant's failure to appear, such as when the magisterial district judge finds the defendant is in a hospital or incarcerated elsewhere. In other words, the defendant had good cause for failing to appear. In these cases, the preliminary hearing is continued, notice of the new date and time for the rescheduled preliminary is mailed pursuant to Rule 542(E)(2), and no warrant may be issued.

Paragraph (D)(3)

New paragraph (D)(3), which is taken from current paragraph (D)(2), addresses those cases in which the issuing authority finds the defendant had notice and the

[4] See Committee's explanatory Final Report at 34 Pa.B. 5025 (September 11, 2004).

failure to appear is without good cause. In these cases, the defendant is deemed to have waived the preliminary hearing and the case is to proceed in the same manner as though the defendant was present.

Paragraph (D)(3)(b) sets forth the procedures when the preliminary hearing is conducted and the case is held for court. A major concern about the new procedures raised with the Committee concerned the warrant requirements in current paragraph (D)(2)(c) and (D)(3). There was a great deal of confusion about how to proceed when the magisterial district judge issues a bench warrant after the case is held for court because the case is no longer within his or her jurisdiction, particularly with regard to bail. After a good deal of discussion, the Committee settled on a new procedure that requires, when the issuing authority transmits the case to the common pleas court pursuant to Rule 547, that the issuing authority must also request that a bench warrant be issued by the court of common pleas. This new procedure, which is set forth in Rule 543(D)(3)(b)(ii) and Rule 547(C)(5), is more efficient because, by having the bench warrant issued by the court of common pleas, the defendant, when arrested, will be taken before the common pleas court judge who will address any bail questions pursuant to Rule 536. In addition, by requiring the request to be forwarded when the case is forwarded to the court, the attorney for the Commonwealth will have an opportunity to review the matter and make recommendations to the common pleas court judge.

In addition to the new procedure requiring the magisterial district judge to request a bench warrant from the court of common pleas, the issuing authority must include with the notice to the defendant of the results of the preliminary hearing required by paragraph (D)(3)(b)(i) of Rule 543 notice that the bench warrant has been requested. This notice provides the defendant with the opportunity to appear before the warrant is executed. Correlative to these changes, the provisions in current paragraph (D)(3) and Rule 571(E) concerning the duration and withdrawal of the warrant have been deleted.

Paragraphs (D)(3)(c) and (D)(3)(d) are new. Paragraph (D)(3)(c) provides, when the defendant has failed to appear without good cause, that the preliminary hearing is conducted and the case is dismissed. In these cases, the issuing authority must give the defendant notice of the results of the preliminary hearing. Although a dismissal in these circumstances is not likely to occur, the Committee agreed the procedure should be included in Rule 543 to avoid any confusion.

Paragraph (D)(3)(d) sets forth the procedure when the defendant has failed to appear without good cause and the preliminary hearing is continued. The possibility of this scenario occurring is referenced in the sixth paragraph of the Comment, but there is no guidance in the rule about how to proceed. The Committee agreed that, in these cases, the issuing authority may issue a bench warrant for the arrest of the defendant and must provide the parties with notice of the date and time for the continued preliminary hearing. If the issuing authority issues a bench warrant, the bench warrant would be effective only until the commencement of the continued preliminary hearing.

During the Committee's discussions, some members pointed out that in some judicial districts, the date of the arraignment in the common pleas court is provided to the defendant at the conclusion of the preliminary hearing. They suggested it would be helpful if the rules recognized this practice. Accordingly, the Rule 543 Comment explains that

> Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. See Rule 571.

The same language has been added to the Rule 571 Comment with a cross-reference to Rule 543.

B. *Correlative Changes*

1. *Rule 509 (Use of Summons or Warrant of Arrest in Court Cases)*

Rule 509(2)(d) has been amended to reflect more accurately that an arrest warrant issues when the summons was mailed pursuant to Rule 511(A) and the summons was returned undelivered or the return receipt card was returned signed by someone other than the defendant. In both these situations, the defendant did not receive notice of the summons. This provision is further explained in the second paragraph of the Rule 509 Comment as follows:

> Before a warrant may be issued pursuant to paragraph (2)(d) when a summons is returned undelivered, the summons must have been served *upon the defendant by both first class mail and certified mail, return receipt requested* as provided in Rule 511(A), and both the certified mail and the first class mail must have been returned undelivered. *"Undelivered" includes a return receipt that is signed by someone other than the defendant.*

In addition, current paragraph (2)(e) has been deleted because a bench warrant not a warrant instituting proceedings would be issued when a summons has been delivered; that is, the defendant has notice of the summons and the defendant fails to appear.

2. *Rule 510 (Contents of Summons; Notice of Preliminary Hearing)*

Rule 510(B)(3) has been amended to conform with new Rule 150 (Bench Warrants) by the addition of "bench" before "warrant" in the last line.

3. *Rule 511 (Service of Summons; Proof of Service)*

Because of the confusion expressed by the correspondents about proof of service, Rule 511(B)(2) has been amended to clarify what constitutes proof of service of the summons—a returned summons showing the certified mail was not signed by the defendant and a notation on the transcript that the first class mail was not returned within 20 days. The time for the return has been increased from 15 to 20 days thereby more accurately reflecting the time required by the postal service.

4. *Rule 512 (Procedure in Court Cases Following Issuance of Summons)*

Rule 512 has been amended by the deletion of the phrase "issue a warrant for the arrest of the defendant and" because a warrant is not always issued in Rule 543(D) cases.

5. *Rule 536 (Procedures Upon Violation of Conditions: Revocation of Release and forfeiture; Bail Pieces; Exoneration of Surety)*

The second paragraph of the Comment to Rule 536 has been revised to include a cross-reference to the Rule 543(D) requirements for the issuance of bench warrants.

This cross-reference is intended to alert the bench to the need to address bail when a bench warrant is executed in the failures to appear cases.

6. *Rule 542 (Preliminary Hearing; Continuance)*

An ongoing concern expressed by some magisterial district judges and district court administrators is the costs they incur for the certified mailings. Although reaffirming the need for both certified and first class mailing for service of the summons pursuant to Rule 511, the Committee noted that when a preliminary hearing is going to be continued, there is the presumption that the address information for the defendant is correct. In view of this, the requirement for service of the continuance notice by both certified and first class mail is unnecessary, and first class mailing is sufficient. Accordingly, the certified mail provision in Rule 542(E)(2)(b) has been deleted, and the correlative provision in the Rule 542 Comment has been revised so that preliminary continuance notices will be mailed by first class mail only.

7. *New Rule 559 (Request for Bench Warrant)*

As the Committee discussed the new procedures in Rule 543(D)(3) with regard to the issuance of a bench warrant by the court of common pleas, some members expressed concern that, without a specific requirement in the rules that the common pleas court take action on the magisterial district judge's request, there could be delays in the issuance of the bench warrant or no action. In view of these concerns, new Rule 559 has been adopted. Rule 559 provides:

> In any case held for court following a preliminary hearing conducted in the defendant's absence pursuant to Rule 543(D), upon receipt of a request by the issuing authority for the common pleas court to issue a bench warrant, the court promptly shall act upon the request.

New Rule 559 has been placed in Chapter 5 Part E, preceding Rule 560 (Information: Filing, Contents, Function), because, procedurally, the request from the magisterial district judge will occur after the case is held for court but before the information is prepared. To accommodate this new rule and because Part E addresses matters other than informations, the title to Part E has been amended to read "Procedures Following a Case Held for Court."

[Pa.B. Doc. No. 07-965. Filed for public inspection June 1, 2007, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 5]

Order Amending Rule 512 and Adopting New Rule 520; No. 417 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

Now, this 17th day of May, 2007, upon the recommendation of the Juvenile Court Procedural Rules Committee and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Rule 520 and the amendments to Rule 512 of the Rules of Juvenile Court Procedure are approved in the following form.

To the extent that prior distribution and publication of this rule would otherwise be required, it has been determined that immediate promulgation is required in the interest of justice and efficient administration. Pa.R.J.A. 103(a)(3).

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective August 20, 2007.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

* * * * *

C. *Duties of the court.* The court shall determine on the record that the juvenile has been advised of the following:

1) the right to file a post-dispositional motion;

2) the right to file an appeal;

3) the time limits for a post-dispositional motion and appeal;

4) the right to counsel to prepare the motion and appeal;

5) the time limits within which the post-dispositional motion shall be decided; and

6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

Comment

Under paragraph (A)(2), for victim's right to be heard, *see* Victim's Bill of Rights, 18 P. S. § 11.201 *et seq.*

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

***Official Note*: Rule 512 adopted April 1, 2005, effective October 1, 2005; amended May 17, 2007, effective August 20, 2007.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2509 (June 2, 2007).

PART C. POST-DISPOSITIONAL MOTIONS

Rule 520. Post-Dispositional Motions

A. *Optional Post-Dispositional Motion.*

1) The parties shall have the right to make a post-dispositional motion. All requests for relief from the court shall be stated with specificity and particularity, and shall be consolidated in the post-dispositional motion.

2) Issues raised before or during the adjudicatory hearing shall be deemed preserved for appeal whether or not the party elects to file a post-dispositional motion on those issues.

B. *Timing.*

1) If a post-dispositional motion is filed, it shall be filed no later than ten days after the imposition of disposition.

2) If a timely post-dispositional motion is filed, the notice of appeal shall be filed:

a) within thirty days of the entry of the order deciding the motion;

b) within thirty days of the entry of the order denying the motion by operation of law in cases in which the judge fails to decide the motion; or

c) within thirty days of the entry of the order memorializing the withdrawal in cases in which a party withdraws the motion.

3) If a post-dispositional motion is not timely filed, a notice of appeal shall be filed within thirty days of the imposition of disposition.

C. *Court Action.*

1) *Briefing Schedule and Argument.* Within ten days of the filing of the post-dispositional motion, the court shall:

a) determine if briefs, memoranda of law, or oral arguments are required; and

b) set a briefing schedule and dates for oral argument, if necessary.

2) *Failure to Set Schedule.* If the court fails to act according to paragraph (C)(1), briefs and oral arguments are deemed unnecessary.

3) *Transcript.* If the grounds asserted in the post-dispositional motion do not require a transcript, neither the briefs nor arguments on the post-dispositional motion shall be delayed for transcript preparation.

D. *Time Limits for Decision on Motion.* The judge shall not vacate disposition pending the decision on the post-dispositional motion, but shall decide the motion as provided in this paragraph.

1) Except as provided in paragraph (D)(2), the judge shall decide the post-dispositional motion as soon as possible but within thirty days of the filing of the motion. If the judge fails to decide the motion within thirty days, or to grant an extension as provided in paragraph (D)(2), the motion shall be deemed denied by operation of law.

2) Upon motion of a party within the 30-day disposition period, for good cause shown, the judge may grant one 30-day extension for decision on the motion. If the judge fails to decide the motion within the 30-day extension period, the motion shall be deemed denied by operation of law.

3) When a post-dispositional motion is denied by operation of law, the clerk of courts shall forthwith enter an order on behalf of the court, and, as provided pursuant to Rule 167, forthwith shall serve a copy of the order on each attorney and the juvenile, if unrepresented, that the post-dispositional motion is deemed denied. This order is not subject to reconsideration.

4) If the judge denies the post-dispositional motion, the judge promptly shall issue an order and the order shall be filed and served as provided in Rule 167.

5) If a party withdraws a post-dispositional motion, the judge promptly shall issue an order memorializing the withdrawal, and the order shall be filed and served as provided in Rule 167.

E. *Contents of order.* An order denying a post-dispositional motion, whether issued by the judge pursuant to paragraph (D)(4) or entered by the clerk of courts pursuant to paragraph (D)(3), or an order issued following a party's withdrawal of the post-dispositional motion pursuant to paragraph (D)(5), shall include notice to the party of the following:

1) the right to appeal;

2) the time limits within which the appeal shall be filed; and

3) the right to counsel in the preparation of the appeal.

F. *After-discovered evidence.* A motion for a new adjudication on the grounds of after-discovered evidence shall be filed in writing promptly after such discovery. If an appeal is pending, the judge may grant the motion only upon remand of the case.

Comment

The purpose of this rule is to promote the fair and prompt disposition of all issues relating to admissions, adjudication, and disposition by consolidating all possible motions to be submitted for court review, and by setting reasonable but firm time limits within which the motion is to be decided. Because the post-dispositional motion is optional, a party may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

OPTIONAL POST-DISPOSITIONAL MOTION

See In re Brandon Smith, 393 Pa. Super. 39, 573 A.2d 1077 (1990), for motions on ineffective assistance of counsel.

Under paragraph (A)(2), any issue raised before or during adjudication is deemed preserved for appeal whether a party chooses to raise the issue in a post-dispositional motion. It follows that the failure to brief or argue an issue in the post-dispositional motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during adjudication. Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. *See Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (1998) (any issues not raised in a 1925(b) statement will be deemed waived).

Under paragraph (B)(1), if a party chooses to file a post-dispositional motion, the motion is to be filed within ten days of imposition of disposition. The filing of the written post-dispositional motion triggers the time limits for decision on the motion. *See* paragraph (D)(1).

TIMING

Paragraph (B) contains the timing requirements for filing the optional post-dispositional motion and taking an appeal. Under paragraph (B)(1), the post-dispositional motion is to be filed within ten days of imposition of disposition. Supplemental motions may be filed but the time requirements of paragraph (B)(1) are to be followed.

When a party files a timely post-dispositional motion, the 30-day period for the juvenile's direct appeal on all matters in that case is triggered by the judge's decision on the post-dispositional motion, the denial of the motion by operation of law, or the withdrawal of the post-dispositional motion. The appeal period runs from the

entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. No direct appeal may be taken by the party while the post-dispositional motion is pending. *See* paragraph (B)(2).

If no timely post-dispositional motion is filed, the party's appeal period runs from the date disposition is imposed. *See* paragraph (B)(3).

BRIEFS; TRANSCRIPTS; ARGUMENT

Under paragraph (C)(1), the judge should determine, on a case-by-case basis, whether briefs, memoranda of law, or arguments are required for a fair resolution of the post-dispositional motion. If they are not needed, or if a concise summary of the relevant law and facts is sufficient, the judge should so order. Any local rules requiring briefs or oral argument are inconsistent with this rule. *See* Rule 121(C).

Under paragraph (C)(3), the judge, in consultation with the attorneys, should determine what, if any, portions of the notes of testimony are to be transcribed so that the post-dispositional motion can be resolved. The judge should then set clear deadlines for the court reporter to insure timely disposition of the motion. Nothing in this rule precludes the judge from ordering the transcript or portions of it immediately after the conclusion of the adjudicatory hearing or the entry of an admission.

For the recording and transcribing of court proceedings generally, see Rule 127. The requirements for the record and the writing of an opinion on appeal are set forth in the Pennsylvania Rules of Appellate Procedure.

There is no requirement that oral argument be heard on every post-dispositional motion. When oral argument is heard on the post-dispositional motion, the juvenile need not be present.

DISPOSITION

Under paragraph (D), once a party makes a timely written post-dispositional motion, the judge retains jurisdiction for the duration of the disposition period. The judge may not vacate the order imposing disposition pending decision on the post-dispositional motion.

Paragraph (D)(2) permits one 30-day extension of the 30-day time limit, for good cause shown, upon motion of a party. In most cases, an extension would be requested and granted when new counsel has entered the case. Only a party may request such an extension. The judge may not, *sua sponte*, extend the time for decision: a congested court calendar or other judicial delay does not constitute "good cause" under this rule.

The possibility of an extension is not intended to suggest that thirty days are required for a decision in most cases. The time limits for disposition of the post-dispositional motion are the outer limits. Easily resolvable issues, such as a modification of disposition or an admission challenge, should ordinarily be decided in a much shorter period of time.

If the judge decides the motion within the time limits of this rule, the judge may grant reconsideration on the post-dispositional motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701(b)(3), but the judge may not vacate the disposition pending reconsideration. The reconsideration period may not be used to extend the timing requirements set forth in paragraph (D) for decision on the post-dispositional motion: the time limits imposed by paragraphs (D)(1) and (D)(2) continue to run from the date the post-dispositional motion was originally filed. The judge's reconsideration, therefore, is to be resolved within the 30-day decision period of paragraph (D)(1) or the 30-day extension period of paragraph (D)(2), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-dispositional motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (D)(3).

Under paragraph (D)(1), on the date when the court disposes of the motion, or the date when the motion is denied by operation of law, the judgment becomes final for the purposes of appeal. *See* Judicial Code, 42 Pa.C.S. §§ 102, 722, 742, 5105(a) and *Commonwealth v. Bolden*, 472 Pa. 602, 373 A.2d 90 (1977). *See* Pa.R.A.P. 341.

An order entered by the clerk of courts under paragraph (D)(3) constitutes a ministerial order and, as such, is not subject to reconsideration or modification pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.

If the motion is denied by operation of law, paragraph (D)(3) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorneys, or the juvenile, if unrepresented, that the motion has been denied. This notice is intended to protect the party's right to appeal. The clerk of courts also is to comply with the filing, service, and docket entry requirements of Rule 167.

CONTENTS OF ORDER

Paragraph (E) protects a party's right to appeal by requiring that the judge's order denying the motion, the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a party's withdrawal of a post-dispositional motion, contain written notice of the party's appeal rights. This requirement ensures adequate notice to the party, which is important given the potential time lapse between the notice provided at disposition and the resolution of the post-dispositional motion. *See also Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. Ct. 1998), concerning the contents of the order memorializing the withdrawal of a post-dispositional motion.

When a party withdraws a post-dispositional motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the party notice of the information required by paragraph (E). *See Commonwealth v. Miller*, *supra*.

MISCELLANEOUS

Under paragraph (A)(1), the grounds for the post-dispositional motion should be stated with particularity. Motions alleging insufficient evidence, for example, are to specify in what way the evidence was insufficient, and motions alleging that the court's findings were against the weight of the evidence are to specify why the findings were against the weight of the evidence.

Because the post-dispositional motion is optional, the failure to raise an issue with sufficient particularity in the post-dispositional motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during adjudication. *See* paragraph (A)(2).

Issues properly preserved at the dispositional hearing need not, but may, be raised again in a motion to modify disposition in order to preserve them for appeal. In deciding whether to move to modify disposition, counsel carefully is to consider whether the record created at the dispositional hearing is adequate for appellate review of the issues, or the issues may be waived. *See Commonwealth v. Jarvis*, 444 Pa. Super. 295, 663 A.2d 790 (1995).

As a general rule, the motion to modify disposition under paragraph (A)(1) gives the dispositional judge the earliest opportunity to modify the disposition. This procedure does not affect the court's inherent powers to correct an illegal disposition or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. *See, e.g., Commonwealth v. Jones*, 520 Pa. 385, 554 A.2d 50 (1989) (court can, *sua sponte*, correct an illegal sentence even after the defendant has begun probation or placement) and *Commonwealth v. Cole*, 437 Pa. 288, 263 A.2d 339 (1970) (inherent power of the court to correct obvious and patent mistakes).

Once a disposition has been modified or reimposed pursuant to a motion to modify disposition under paragraph (A)(1), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify disposition in order to preserve an issue for appeal, as long as the issue was properly preserved at the time disposition was modified or reimposed.

Official Note: Rule 520 adopted May 17, 2007, effective August 20, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 520 published with the Court's Order at 37 Pa.B. 2509 (June 2, 2007).

PART **[C] D.** INTER-STATE TRANSFER OF DISPOSITION

Rule **[520] 530.** Transfer of Disposition and Supervision of Juvenile to Another State (Reserved).

Rule **[521] 531.** Disposition and Supervision of a Juvenile Received From Another State (Reserved).

EXPLANATORY REPORT
MAY 2007

INTRODUCTION

The Supreme Court of Pennsylvania has adopted the proposed changes to Rule 512 and a new Rule 520.

Rule 512—Dispositional Hearing

At the dispositional hearing, the court is to determine on the record if the juvenile has been advised of the right to file a post-dispositional motion, the right to file an appeal, the time limits for a post-dispositional motion and appeal, the right to counsel to prepare the post-dispositional motion and appeal, the time limits within which the post-dispositional motion must be decided, and that issues raised before and during adjudication shall be deemed preserved for appeal whether the juvenile elects to file a post-dispositional motion.

In some counties, the District Attorney advises the juvenile of these rights on the record. In other counties, the juvenile's attorney advises the juvenile of these rights. Under the rule addition, any person can advise the juvenile of these rights. It is the court's duty to ensure that someone has spoken to the juvenile about these rights.

Rule 520—Post-Dispositional Motions

The amended rule gives the parties the option to file a post-dispositional motion. A motion may include, but is not limited to, a motion challenging the validity of an admission pursuant to Rule 407 or a motion to withdraw the admission, a motion for reconsideration of findings, a motion for a new adjudication, a motion to modify disposition, or a motion of ineffective assistance of counsel.

See In re Brandon Smith, 393 Pa. Super. 39, 573 A.2d 1077 (1990), for a matter of first impression when the Superior Court sitting *en banc* held that a post-dispositional motion is the appropriate means for alleging ineffective assistance of counsel.

Under paragraph (B)(1), a supplemental motion may be filed but it must be filed within the ten-day limit. Because of the urgency of moving the juvenile case through the system and the judge has only thirty days to respond to the motion pursuant to paragraph (D)(1), no supplemental motions can be filed after the original ten-day time frame. Pursuant to paragraph (A)(2), issues raised before or during the adjudicatory hearing are deemed preserved regardless of whether the party elects to file a post-dispositional motion. *See also* Rule 512 (C)(6).

Paragraph (B)(2) sets forth the time clock for when an appeal must be taken. If a post-dispositional motion is not filed, a notice of appeal must be filed within thirty days of the imposition of disposition. *See* paragraph (B)(3).

Under paragraph (C), the judge shall determine within ten days of the filing of a post-dispositional motion, if briefs, memoranda of law, or arguments are necessary. If they are deemed necessary, the judge is to set a briefing and argument schedule.

Paragraph (D) sets forth the time limits for the decision on the post-dispositional motion. If the court fails to respond to the motion, the motion is denied by operation of law pursuant to paragraph (D)(3). The clerk of courts shall forthwith enter an order denying the motion on behalf of the judge.

[Pa.B. Doc. No. 07-966. Filed for public inspection June 1, 2007, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LEHIGH COUNTY

Administrative Order for Amendment of Local Rule of Civil Procedure 3129.2 Pertaining to Notice of Sale—Real Property; No. 07-J-49

Order

And Now, this 10th day of April, 2007, *It Is Ordered* that the following Lehigh County Rule of Civil Procedure 3129.2 relating to Notice of Sale—Real Property be amended as hereinafter set forth, said amendment to become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator of Lehigh County is directed to:

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

2. File two (2) certified copies and one disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee.

4. File one (1) copy with the Clerk of Courts of the Lehigh County Court of Common Pleas.

5. Forward one (1) copy for publication in the *Lehigh County Law Journal*.

Rule 3129.2 Notice of Sale—Real Property.

The brief description of the property required to be set forth pursuant to Pa.R.C.P. 3129.2(b)(1) need not include the metes and bounds description set forth in the last recorded deed as long as the description sets forth the location of the property by street address and by reference to the parcel identifier number (PIN).

By the Court

ALAN M. BLACK,
President Judge

[Pa.B. Doc. No. 07-967. Filed for public inspection June 1, 2007, 9:00 a.m.]

LYCOMING COUNTY

Amendments to the Rules of Civil Procedure; Doc. No. 07-01074

Order

And Now, this 14th day of May, 2007, it is hereby *Ordered and Directed* that Lyc. Co. R.C.P. L1007C is amended as set forth as follows.

The Prothonotary is directed as follows:

1. Seven certified copies of this order shall be filed with the Administrative Office of Pennsylvania Courts.

2. Two certified copies of this order and a computer diskette containing the text of the order shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The diskette must (1) be formatted in one of the following formats: MSDOS, ASCII, Microsoft Word, or WordPerfect, (2) contain the local rule text as reflected in the "hard copy" version of the rule, and (3) be labeled with court's name and address and computer file name.

3. One certified copy of the this order shall be filed with the Pennsylvania Civil Procedural Rules Committee.

4. The local rule shall be kept continuously available for public inspection and copying in the office of the prothonotary. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary shall furnish to any person a copy of any local rule.

5. One copy of this order shall be sent to the *Lycoming Reporter* for publication therein.

6. One copy of this order shall be sent to the chairman of the Lycoming County Customs and Rules Committee.

The rule changes approved by this order shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

KENNETH D. BROWN,
President Judge

C. The form of the scheduling order shall be one page (captions may be abbreviated) and shall be substantially as follows:

Plaintiff : IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
vs. : NO.
:
Defendant : CIVIL ACTION

SCHEDULING ORDER

It is ORDERED AND DIRECTED as follows:

1. This is a _____ JURY _____ NON-JURY _____ ARBITRATION LIMITS case.

2. Case monitoring track:
___ NORMAL, ___ COMPLEX, ___ ADMINISTRATIVE

3. (a) Trial term dates: _____ .
(b) Jury selection dates: _____ .
(c) Pretrial conference dates: _____ .
The deputy court administrator will schedule the exact date and time by future notice.

(d) Settlement conference dates, if needed: _____
_____ .

(e) Counsel are attached for the above dates and shall immediately notify parties and witnesses to be available.

4. List for arbitration on or after: _____ .

5. Cut-off date for completion of discovery: _____ .

6. Cut-off dates for filing expert reports:
(a) By plaintiff(s) - _____ .
(b) By defendant(s) - _____ .

7. Cut-off date for filing dispositive motions, including motions to exclude expert testimony under PA.R.C.P. 207.1: _____
_____ .

8. **Mediation**: The parties agree to use alternative dispute resolution (ADR) as follows:

(a) Specify: _____ _____ Yes _____ No

(b) Above ADR is: ____ Binding ____ Non-Binding

9. This Order cancels the case scheduling conference, which had previously been scheduled for the date of _____ .

10. Other: _____ .

_____ _____
Judge Date

cc: Deputy court administrator
List all parties—if pro se or out of County, include address

[Pa.B. Doc. No. 07-968. Filed for public inspection June 1, 2007, 9:00 a.m.]