

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE OF LAW [204 PA. CODE CH. 71]

Amendment of Rules 321 and 322 of the Pennsylvania Bar Admission Rules; No. 406 Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 2nd day of January, 2007, Rules 321 and 322 of the Pennsylvania Bar Admission Rules are amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Pennsylvania Rule of Judicial Administration No. 103 or otherwise, the immediate amendment of Pa.B.A.R. 321 and 322 is hereby found to be required in the interest of justice and efficient administration. This Order shall be processed in accordance with Pennsylvania Rule of Judicial Administration No. 103(b) and the amendment adopted hereby shall be effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART IV. ADMISSION TO PRACTICE OF LAW

CHAPTER 71. PENNSYLVANIA BAR ADMISSION RULES

Subchapter C. RESTRICTED PRACTICE OF LAW CERTIFIED LEGAL INTERNS

Rule 321. Requirements for formal participation in legal matters by law students **and law school graduates**.

(a) *General rule.* The requirements for eligibility for formal participation in legal matters by a law student **or law school graduate** pursuant to Rule 322 (relating to authorized activities of certified legal interns) are:

(1) Enrollment in **or graduation from** an accredited law school **or a law school that has been approved by the Board which has filed and is actively pursuing an application for accreditation with the American Bar Association; [unless the] provided that students who attend or graduated from a law school that is located in a jurisdiction that has a program permitting law students to participate in legal matters, which does not afford students attending law school in Pennsylvania the same privilege or opportunity to formally participate in legal matters as a law student in the jurisdiction as is granted to students attending law school in the jurisdiction, shall not be eligible to participate in legal matters pursuant to Rule 322.**

(2) Completion of legal studies amounting to at least three semesters, or the equivalent if the law school is on a basis other than the semester basis.

(3) Existence and maintenance of certification as prescribed in Subdivision (b) of this rule.

(4) Introduction to the judge or **[district justice] magisterial district judge** before whom the law student **or law school graduate** is appearing by a member of the bar of this Commonwealth.

(5) Absence of a request for or receipt by the law student **or law school graduate** of compensation or remuneration of any kind for his or her services from the person on whose behalf the law student **or law school graduate** renders services. This paragraph shall not prevent:

(i) An attorney or a law school, legal services program, defender association, or government unit from paying compensation to the law student **or law school graduate**.

(ii) Any person other than the law student **or law school graduate** from making such charges for services as such person may otherwise properly require.

(b) *Certification.* Only those law students **or law school graduates** shall be eligible for the benefits of Rule 322 who have been certified by the dean of their law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern. The certification shall be made by filing one copy thereof with the Prothonotary. The certification:

(1) Shall be in writing on a form prescribed by the Board and shall remain in effect until the expiration of **[18] 24** months after it is filed, or until the announcement of the results of the first bar examination following the completion of the study of law by the student **or law school graduate**, whichever is earlier. In the case of a student **or law school graduate** who passes that examination, **[or who is not required to take an examination,]** the certification shall continue in effect until the student **or law school graduate** is admitted to the bar.

(2) May be withdrawn at any time by the dean by filing a notice to that effect with the Prothonotary. It is not necessary that the notice state the cause for withdrawal.

(3) May be terminated by the Court at any time without notice or hearing and without any showing of cause.

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Rule 322. Authorized activities of certified legal interns.

(a) *General rule.* Subject to the restrictions of this subdivision, a certified legal intern may with the approval of a supervising attorney:

(1) Appear before any government unit (other than the Supreme, Superior or Commonwealth Courts) in any civil or criminal matter on behalf of any indigent, if the person on whose behalf the legal intern is appearing consents to

such appearance. The supervising attorney must be personally present throughout the proceedings where the legal intern is appearing on behalf of the defendant in a criminal matter where the defendant has the right to counsel under any provision of law.

(2) Appear in any civil or criminal matter on behalf of the Commonwealth, if the Attorney General (or the prosecuting attorney in the case of a criminal matter) or his or her authorized representative consents to such appearance. The approval of the supervising attorney and the consent of the party represented required by this subdivision shall be in writing and filed of record in the matter and shall be brought to the attention of the judge or [**district justice**] **magisterial district judge** or the presiding officer of the other government unit.

(b) *Preparation of papers.* A certified legal intern may engage in other activities, under the general supervision of a member of the bar of this Commonwealth, but outside the personal presence of the attorney, including:

(1) Preparation of pleadings and other documents to be filed in any matter in which the legal intern is eligible to appear [**or**] **and in any appeals therefrom** in the Supreme, Superior or Commonwealth Courts.

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[Pa.B. Doc. No. 07-80. Filed for public inspection January 19, 2007, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Damages for Delay

Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

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Addendum to Explanatory Comment

The prime rate as set forth in the first edition of the *Wall Street Journal* for a particular year is the basis for calculating damages for delay under Pa.R.C.P. 238 as revised November 7, 1988. The prime rate published in the first edition of the *Wall Street Journal* for each of the years specified is as follows:

<i>Date of Publication</i>	<i>Prime Rate Percentage</i>
January 2, 2007	8 1/4
January 3, 2006	7 1/4
January 3, 2005	5 1/4
January 2, 2004	4
January 2, 2003	4 1/4
January 2, 2002	4 3/4
January 2, 2001	9 1/2
January 3, 2000	8 1/2
January 4, 1999	7 3/4
January 2, 1998	8 1/2
January 2, 1997	8 1/4

Official Note: The prime rate for the years 1980 through 1996 may be found in the Addendum to the Explanatory Comment published in the *Pennsylvania*

Bulletin, volume 33, page 634 (2/1/03) and on the web site of the Civil Procedural Rules Committee at <http://www.aopc.org>.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 07-81. Filed for public inspection January 19, 2007, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 10]

Order Amending Rule 1001; No. 352 Criminal Procedural Rules; Doc. No. 2

Order

Per Curiam:

Now, this 5th day of January, 2007, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 35 Pa.B. 1416 (February 26, 2005), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 865), 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 Rule of Criminal Procedure 1001 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective March 6, 2007.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA TRAFFIC COURT

Rule 1001. Disposition of Criminal Cases—Philadelphia Municipal Court.

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(D) **The attorney for the Commonwealth may file with the Municipal Court Clerk of Quarter Sessions a written certification to exercise the Commonwealth's right to a jury trial in a Municipal Court case. The attorney for the Commonwealth shall serve a copy of the certification on counsel for the defendant, or the defendant if unrepresented, and on the President Judge of Municipal Court. Upon receipt of the certification, the President Judge shall promptly schedule a preliminary hearing, and the case shall be conducted as provided in Rules 541, 542, and 543. When a case is held for court, the case shall remain in the Common Pleas Court through final disposition.**

Comment

This rule, which defines "Municipal Court Case," is intended to ensure that the Municipal Court will take dispositive action, including trial and verdict when appropriate, in any criminal case that does not involve a felony, excluding summary cases under the Vehicle Code. The latter are under the jurisdiction of the Philadelphia Traffic Court, see 42 Pa.C.S. §§ 1301—1303, 1321.

Paragraph (D) was added in 2007 in accord with the 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides that “the Commonwealth shall have the same right to trial by jury as does the accused.” See *Commonwealth v. Hargraves*, 883 A.2d 616 (Pa. Super. 2005), allocatur denied, 587 Pa. 711, 898 A.2d 1069 (Pa. 2006). The filing and service requirement in paragraph (D) must be accomplished as provided in Rule 576. Once a case is bound over to Common Pleas Court, the trial judge may not remand the case to the Municipal Court for any reason, even if the right to jury trial is waived.

Official Note: Present Rule 6001 adopted March 28, 1973, effective March 28, 1973, replacing prior Rule 6001; amended June 28, 1974, effective July 1, 1974; paragraph (C) added February 10, 1975, effective immediately; title amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended June 19, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1001 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended January 5, 2007, effective March 6, 2007.

Committee Explanatory Reports:

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

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Final Report explaining the January 5, 2007 amendments adding paragraph (D) concerning the Commonwealth's right to a jury trial in a Municipal Court case published with the Court's Order at 37 Pa.B. 313 (January 20, 2007).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 1001

Commonwealth Right to Jury Trial in the Philadelphia Municipal Court

On January 5, 2007, effective March 6, 2007, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 1001. The changes provide a procedure for the transfer of cases from the Philadelphia Municipal Court to the Court of Common Pleas when the Commonwealth intends to assert its right to jury trial in a misdemeanor case.

Background

The Criminal Procedural Rules Committee, for some time, had under consideration a suggestion by one of its members that Rule 1001 (Disposition of Criminal Cases—Philadelphia Municipal Court) be amended to accommodate in misdemeanor cases in Philadelphia the Commonwealth's right to a jury trial as established by the 1998 amendment to Article I, § 6 of the Pennsylvania Constitution providing “the Commonwealth shall have the same right to a trial by jury as does the accused.”² The recent Superior Court decision in *Commonwealth v. Hargraves*, 883 A.2d 616 (2005), appeal denied, 587 Pa. 711, 898 A.2d 1069 (Pa. 2006), added impetus to the discussion of this issue.

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 1999 amendments to Rule of Criminal Procedure 620 (Waiver of Jury Trial) similarly acknowledged the Commonwealth's right to trial by jury.

The Philadelphia Municipal Court's jurisdiction over misdemeanors and the prohibition on jury trials in Municipal Court originally were established in 1968 in Schedule Article 5, § 16 of the Pennsylvania Constitution. The statutory jurisdictional authority for the Municipal Court initially was provided in 1976 in the Judicial Code, 42 Pa.C.S. § 1123, which states that the Municipal Court has jurisdiction over “Criminal offenses by any person (other than a juvenile) for which no prison term may be imposed . . . of not more than five years” The statute specifically states that a defendant has no right to a jury trial in Municipal Court but shall have the right of appeal for trial de novo, including the right to trial by jury, to the court of common pleas. Rule 1001, originally adopted in 1973, provides a procedure for transfer to the Court of Common Pleas and by-passing of Municipal Court proceedings in two situations. The first is upon the certification of the defense counsel in order to assert the right to jury trial. The second is upon certification by both defense and prosecution upon the grounds that the trial before the Municipal Court would be so time consuming as to unduly disrupt court business. In either case, approval for such a transfer must be granted by the President Judge of the Court of Common Pleas.

Because both 42 Pa.C.S.A. § 1123 and Rule 1001 were established well before the 1998 constitutional amendment that established the Commonwealth's right to a jury trial, the constitutional, statutory, and rule provisions are silent on how to effectuate the Commonwealth's jury trial right in misdemeanor cases in Philadelphia creating a procedural gap. This procedural gap became a divisive issue in Philadelphia resulting in *Commonwealth v. Hargraves*, supra. The Superior Court reversed the denial of the Commonwealth's petition to transfer the case from the Municipal Court to the court of common pleas for trial by jury, finding that this is the only manner in which the Commonwealth would be able to exercise its right to jury trial in Municipal Court cases, noting, inter alia, that the right to appeal for a trial de novo would not be available to the Commonwealth in a case in which the defendant has been found not guilty by the Municipal Court judge. The Superior Court also specifically rejected the claim that an absence of a procedure in Rule 1001 precluded allowance of the Commonwealth's request for transfer.

In view of this background, the Committee concluded that there was a need to rectify the procedural gap in the rules within the parameters enumerated in *Hargraves*.

Discussion of Amendment to Rule 1001

Noting that Rule 1001(C) provides a vehicle to by-pass Municipal Court proceedings for the defendant's assertion of the right to jury trial, the Committee agreed a new paragraph would be added to Rule 1001 that would similarly effectuate the Commonwealth's right to trial by jury in such cases. Relying on recommendations from the Ad Hoc Subcommittee that was formed to develop the procedures for the exercise of the Commonwealth's right to a jury trial,³ the Committee recommended a procedure that would have the Commonwealth file a certification with the Municipal Court Clerk of Quarter Sessions with copies to the defense and the President Judge of the Municipal Court, without time limits. The Committee reasoned that requiring the Commonwealth to file their

³ The Committee appointed an Ad Hoc Subcommittee made up of representatives of the Philadelphia Municipal and Common Pleas Courts to assist the Committee in developing the procedures that affect Philadelphia only. The members of the Ad Hoc Subcommittee were Philadelphia Administrative Judge Fitzgerald, Municipal Court President Judge Presentza, Court Administrator for the First Judicial District David Lawrence, Municipal Court Deputy Court Administrator Kathleen Rapone, and representatives of the Philadelphia District Attorney's Office, the Philadelphia Public Defender's Office, and the Committee.

jury trial certification within a specified time limit would unnecessarily place a limitation on the Commonwealth that is not placed on the defense.

Accordingly, new paragraph (D) requires, upon the filing of a written certification by the attorney for the Commonwealth stating that the Commonwealth is seeking a trial by jury, that a case presently in the Municipal Court be promptly scheduled for a preliminary hearing and thereafter conducted as a regular court case pursuant to Rules 541, 542, and 543.

Recognizing that double jeopardy issues are implicated when the Commonwealth seeks an appeal from a Municipal Court decision, the Committee recommended that the transfer of such cases be mandatory in order to preserve the Commonwealth's right to a jury trial. Thus, unlike the other transfer provisions in Rule 1001(C), new paragraph (D) does not provide for the approval of the President Judge of the Court of Common Pleas.

The Comment to Rule 1001 is revised to include a cross-reference to *Hargraves*, and an instruction that the filing and service requirements in new paragraph (D) must be accomplished as provided in Rule 576. Once a case proceeds under the provisions of paragraph (D) and is bound over to the Court of Common Pleas, it may not be returned to the Municipal Court for any reason, including a later waiver of jury trial.

Finally, a cross-reference to the constitutional provision establishing the Commonwealth's right to a jury trial is added to the Rule 1001 Comment.

[Pa.B. Doc. No. 07-82. Filed for public inspection January 19, 2007, 9:00 a.m.]

SUPREME COURT

Schedule of Holidays for Year 2008 for Staffs of the Appellate Courts and the Administrative Office of Pennsylvania Courts; No. 296 Judicial Administration; Doc. No. 1

Order

Per Curiam:

And Now, this 4th day of January, 2007 it is hereby ordered that the following paid holidays for calendar year 2008 will be observed on the dates specified below by all employees of the appellate courts and the Administrative Office of Pennsylvania Courts:

January 1, 2008	New Year's Day
January 21, 2008	Martin Luther King, Jr. Day
February 18, 2008	Presidents' Day
March 21, 2008	Good Friday
May 26, 2008	Memorial Day (Observed)
July 4, 2008	Independence Day
September 1, 2008	Labor Day
October 13, 2008	Columbus Day (Observed)
November 4, 2008	Election Day
November 11, 2008	Veterans Day
November 27, 2008	Thanksgiving Day
November 28, 2008	Day After Thanksgiving
December 25, 2008	Christmas Day

[Pa.B. Doc. No. 07-83. Filed for public inspection January 19, 2007, 9:00 a.m.]

Sessions of the Supreme Court of Pennsylvania for the Year 2008; No. 176 Appellate Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 4th day of January, 2007 it is ordered that the argument/administrative sessions of the Supreme Court of Pennsylvania shall be held in the year 2008 as follows:

Pittsburgh (Administrative Session)	January 10
Philadelphia (Administrative Session)	February 7
Pittsburgh	March 3 through March 7
Philadelphia	April 14 through April 18
Harrisburg	May 12 through May 16
Pittsburgh (Administrative Session)	June 5
Pittsburgh	September 8 through September 12
Philadelphia	October 20 through October 24
Harrisburg	December 1 through December 5

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

[Pa.B. Doc. No. 07-84. Filed for public inspection January 19, 2007, 9:00 a.m.]