

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 3 AND 6]

**Proposed Rescission of Current Pa.R.Crim.P. 600, New Pa.R.Crim.P. 600, Amendments to Pa.R.Crim.P. 106 and Revision of the Comment to Pa.R.Crim.P. 312**

The Criminal Procedural Rules Committee, responding to the Supreme Court's direction to the Committee in *Commonwealth v. Solano*, 588 Pa. 716, 906 A.2d 1180 (2006), to further study the provisions of Rule 600 and make a recommendation, is planning to recommend that the Supreme Court of Pennsylvania (1) rescind current Pa.R.Crim.P. 600 (Prompt Trial) and adopt a new Pa.R.Crim.P. 600 (Prompt Trial) in which the substantive provisions of the current rule have been reorganized and the various issues that have been addressed in the numerous Rule 600 cases since Rule 600, previously Rule 1100, was amended in 1987 have been incorporated, and (2) make correlative changes to Pa.Rs.Crim.P. 106 and 312.

This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed rule changes precedes the Report.

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

Anne T. Panfil, Chief Staff Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
5035 Ritter Road, Suite 100  
Mechanicsburg, PA 17055  
fax: (717) 795-2106  
e-mail: criminalrules@pacourts.us

no later than Friday, August 31, 2007.

*By the Criminal Procedural Rules Committee*

NICHOLAS J. NASTASI,  
*Chair*

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

##### PART A. Business of the Courts

#### Rule 106. Continuances in Summary and Court Cases.

(A) The court or issuing authority may, in the interests of justice, grant a continuance, on its own motion, or on the motion of either party.

(B) When the matter is before an issuing authority, the issuing authority shall record on the transcript the identity of the moving party and the reasons for granting or denying the continuance. **The issuing authority also shall record on the transcript to which party the period of delay caused by the continuance shall be attributed and whether the time will be included in or excluded from the computation of the time within which trial must commence in accordance with Rule 600.**

(C) When the matter is in the court of common pleas, the judge shall on the record identify the moving party and state of record the reasons for granting or denying the continuance. **The judge also shall indicate on the record to which party the period of delay caused by the continuance shall be attributed and whether the time will be included in or excluded from the computation of the time within which trial must commence in accordance with Rule 600.**

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

**Official Note:** Rule 301 adopted June 30, 1964, effective January 1, 1965; amended June 8, 1973, effective July 1, 1973; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; renumbered Rule 106 and amended March 1, 2000, effective April 1, 2001; **amended** , **2007, effective** , **2007.**

*Committee Explanatory Reports:*

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

**Report explaining the amendments to paragraphs (B) and (C) concerning Rule 600 published at 37 Pa.B. 4175 (August 4, 2007).**

#### CHAPTER 3. ACCELERATED REHABILITATIVE DISPOSITION (ARD)

##### PART B. Court Cases

#### Rule 312. Hearing, Explanation of Program.

\* \* \* \* \*

##### Comment

Although acceptance into an ARD program is not intended to constitute a conviction under these rules, it may be statutorily construed as a conviction for purposes of computing sentences on subsequent convictions. See, e.g., Vehicle Code § 3731(e)(2), added by 75 Pa.C.S. § 3731(e)(2).

**In addition to requesting that the defendant waive Rule 600 for the period of enrollment in the ARD program, the attorney for the Commonwealth may request that the defendant waive Rule 600 for the period of time spent in processing and considering the defendant's inclusion into the ARD program. See Rule 311.**

**Official Note:** Rule 178 approved May 24, 1972; effective immediately; amended February 15, 1974, effective immediately; amended April 10, 1989, effective July 1, 1989; renumbered Rule 312 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised** , 2007, effective , 2007.

*Committee Explanatory Reports:*

\* \* \* \* \*

Report explaining the Comment revision concerning waiver of Rule 600 published at 37 Pa.B. 4175 (August 4, 2007).

## CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

### PART A. General Provisions

Rule 600. Prompt Trial. (Rescinded).

[(A)(1) Trial in a court case in which a written complaint is filed against the defendant after June 30, 1973 but before July 1, 1974 shall commence no later than 270 days from the date on which the complaint is filed.

(2) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is incarcerated on that case, shall commence no later than 180 days from the date on which the complaint is filed.

(3) Trial in a court case in which a written complaint is filed against the defendant, when the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed.

(4) Trial in a court case that is transferred from the juvenile court to the trial or criminal division shall commence in accordance with the provision set out in paragraphs (A)(2) and (A)(3) except that the time is to run from the date of filing the transfer order.

(B) For the purpose of this rule, trial shall be deemed to commence on the date the trial judge calls the case to trial, or the defendant tenders a plea of guilty or nolo contendere.

(C) In determining the period for commencement of trial, there shall be excluded therefrom:

(1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;

(2) any period of time for which the defendant expressly waives Rule 600;

(3) such period of delay at any stage of the proceedings as results from:

(a) the unavailability of the defendant or the defendant's attorney;

(b) any continuance granted at the request of the defendant or the defendant's attorney.

(D)(1) When a trial court has granted a new trial and no appeal has been perfected, the new trial shall commence within 120 days after the date of the order granting a new trial, if the defendant is incarcerated on that case. If the defendant has been released on bail, trial shall commence within 365 days of the trial court's order.

(2) When an appellate court has remanded a case to the trial court, if the defendant is incarcerated on that case, trial shall commence within 120 days after the date of remand as it appears in the appellate court docket. If the defendant has been released on bail, trial shall commence within 365 days after the date of remand.

(3) When a trial court has ordered that a defendant's participation in the ARD program be terminated pursuant to Rule 184, trial shall commence within 120 days of the termination order if the defendant is incarcerated on that case. If the defendant has been released on bail, trial shall commence within 365 days of the termination order.

(E) No defendant shall be held in pre-trial incarceration on a given case for a period exceeding 180 days excluding time described in paragraph (C) above. Any defendant held in excess of 180 days is entitled upon petition to immediate release on nominal bail.

(F) Nothing in this rule shall be construed to modify any time limit contained in any statute of limitations.

(G) For defendants on bail after the expiration of 365 days, at any time before trial, the defendant or the defendant's attorney may apply to the court for an order dismissing the charges with prejudice on the ground that this rule has been violated. A copy of such motion shall be served upon the attorney for the Commonwealth, who shall also have the right to be heard thereon.

If the court, upon hearing, shall determine that the Commonwealth exercised due diligence and that the circumstances occasioning the postponement were beyond the control of the Commonwealth, the motion to dismiss shall be denied and the case shall be listed for trial on a date certain. If, on any successive listing of the case, the Commonwealth is not prepared to proceed to trial on the date fixed, the court shall determine whether the Commonwealth exercised due diligence in attempting to be prepared to proceed to trial. If, at any time, it is determined that the Commonwealth did not exercise due diligence, the court shall dismiss the charges and discharge the defendant.

In the event the case is dismissed pursuant to this paragraph, the court shall promptly prepare a report of continuances by the Commonwealth, and the reasons therefor, which prevented the case from coming to trial as required by this rule. Such report shall be certified by the president judge or administrative judge, shall be made part of the public record of the case, and shall be sent to the Court Administrator of Pennsylvania within 20 days of the order of discharge.

#### Comment

Rule 600 was adopted in 1973 pursuant to *Commonwealth v. Hamilton*, 297 A.2d 127 (Pa. 1972).

The time limits of this rule were amended on December 31, 1987, effective immediately. See *Commonwealth v. Palmer*, 558 A.2d 882 (Pa. Super. 1989).

In addition to amending the time limits of the rule, the Court deleted the provisions concerning Commonwealth petitions to extend the time for commencement of trial. See Rule 600(E) and

Paragraph (A)(2) requires that the Commonwealth bring a defendant to trial within 180 days from the filing of the complaint if the defendant is incarcerated on the charges. Under paragraph (E), subject to the exclusions provided in paragraph (C), a defendant who has been incarcerated on the charges pretrial for more than 180 days is entitled, upon petition, to immediate release on nominal bail.

If a defendant is at liberty on bail on the charges, paragraph (A)(3) requires that the Commonwealth bring the defendant to trial within 365 days from the filing of a complaint. Under paragraph (G), after 365 days and at any time before trial, a defendant released on bail or the defendant's counsel may apply to the court for an order dismissing the charges with prejudice on the ground that this rule has been violated. A copy of the motion must be served on the attorney for the Commonwealth, who has a right under this rule to be heard on the motion. If the court, upon hearing, determines that the Commonwealth exercised due diligence and that the circumstances causing the delay in the commencement of trial were beyond the Commonwealth's control, the court must deny the motion and list the case for trial on a date certain. If the court determines that the Commonwealth did not exercise due diligence, the court must dismiss the charges with prejudice and discharge the defendant.

When calculating the number of days set forth herein, see the Statutory Construction Act, 1 Pa.C.S. § 1908.

Pursuant to this rule, it is intended that "complaint" also includes special documents used in lieu of a complaint to initiate criminal proceedings in extraordinary circumstances such as criminal proceedings instituted by a medical examiner or coroner. See *Commonwealth v. Lopinson*, 234 A.2d 552 (Pa. 1967); *Commonwealth v. Smouse*, 594 A.2d 666 (Pa. Super. 1991).

A trial commences when the trial judge determines that the parties are present and directs them to proceed to voir dire or to opening argument, or to the hearing of any motions which had been reserved for the time of trial, or to the taking of testimony, or to some other such first step in the trial. It is not intended that preliminary calendar calls should constitute commencement of a trial. Concerning the hearing of motions reserved for the time of trial, see *Jones v. Commonwealth*, 434 A.2d 1197 (Pa. 1981).

For purposes of determining the time for commencement of trial, paragraph (C) contains the periods which must be excluded from that calculation. For periods of delay that result from the filing and litigation of omnibus pretrial motions for relief or other motions, see *Commonwealth v. Hill* and *Commonwealth v. Cornell*, 736 A.2d 578 (Pa. 1999).

Under paragraph (C)(3)(a), in addition to any other circumstances precluding the availability of the defendant or the defendant's attorney, the defendant should be deemed unavailable for the period of time during which the defendant contested extradition, or a responding jurisdiction delayed or refused to grant extradition; or during which the defendant was physically incapacitated or mentally

incompetent to proceed; or during which the defendant was absent under compulsory process requiring his or her appearance elsewhere in connection with other judicial proceedings.

The provisions enumerating the excludable periods contained in paragraph (C) apply to the periods for commencing a trial under paragraph (D).

Paragraphs (D)(1) and (2) provide the time limits for commencement of trial when a trial court has granted a new trial and no appeal has been perfected, or when an appellate court has remanded a case to the trial court, for whatever reason. Under paragraph (D)(1), a trial must commence within 120 days of the trial court order granting a new trial, unless the defendant has been released on bail, in which event the trial must commence within 365 days.

The withdrawal of, rejection of, or successful challenge to a guilty plea should be considered the granting of a new trial for purposes of this rule. Paragraph (D)(1) also applies to the period for commencing a new trial following the declaration of a mistrial.

Under paragraph (D)(2), when an appellate court has remanded a case to the trial court, for whatever reason, trial must commence within 120 days after the remand, unless the defendant has been released on bail, in which event trial must commence within 365 days after the remand. The date of remand is the date as it appears in the appellate court docket. When remand of the record is stayed, the period for commencement of trial does not begin to run until the record is remanded as provided in this rule.

Although a defendant's removal from the ARD program does not result in a "new trial" under paragraph (D)(3), termination of the defendant's ARD program pursuant to Rule 318 commences a new trial period for the purpose of this rule.

When a judge grants a continuance requested by the defendant, trial should be rescheduled for a date certain consistent with the continuance request and the court's business, and the entire period of such continuance may be excluded under paragraph (C).

When admitted to nominal bail pursuant to this rule, the defendant must execute a bail bond. See Rules 525 and 526.

In addition to requesting that the defendant waive Rule 600 for the period of enrollment in the ARD program (see Rule 312, paragraph (3)), the attorney for the Commonwealth may request that the defendant waive Rule 600 for the period of time spent in processing and considering the defendant's inclusion into the ARD program. ]

**Official Note:** Rule [ 600 ] 1100 adopted June 8, 1973, effective prospectively as set forth in paragraphs (A)(1) and (A)(2) of this rule; paragraph (E) amended December 9, 1974, effective immediately; paragraph (E) re-amended June 28, 1976, effective July 1, 1976; amended October 22, 1981, effective January 1, 1982. (The amendment to paragraph (C)(3)(b) excluding defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982.) Amended December 31, 1987, effective immediately; amended September 30, 1988, effective immedi-

ately; amended September 3, 1993, effective January 1, 1994; Comment revised 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 600 and amended March 1, 2000, effective April 1, 2001; Comment revised April 20, 2000, effective July 1, 2000; **rescinded**, **2007, effective**, **2007, and replaced by new Rule 600.**

*Committee Explanatory Reports:*

Report explaining the September 3, 1993 amendments published with the Court's Order at 23 Pa.B. 4492 (September 25, 1993).

Final Report explaining the September 13, 1995 Comment revision 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. [ 1477 ] **1478** (March 18, 2000).

Final Report explaining the April 20, 2000 Comment revision concerning *Commonwealth v. Hill* and *Commonwealth v. Cornell*, published with the Court's Order at 30 Pa.B. 2219 (May 6, 2000).

**Report explaining the proposed rescission of current Rule 600 published at 37 Pa.B. 4175 (August 4, 2007).**

*(Editor's Note.* The following rule is new. It has been printed in regular type to enhance readability.)

**Rule 600. Prompt Trial.**

(A) COMMENCEMENT OF TRIAL; TIME FOR TRIAL

(1) For the purpose of this rule, trial shall be deemed to commence on the date the trial judge calls the case to trial, or the defendant tenders a plea of guilty or nolo contendere.

(2) Trial shall commence within the following time periods.

(a) Trial in a court case in which a written complaint is filed against the defendant shall commence within 365 days from the date on which the complaint is filed.

(b) Trial in a court case that is transferred from the juvenile court to the trial or criminal division shall commence within 365 days from the date on which the transfer order is filed.

(c) When a trial court has ordered that a defendant's participation in the ARD program be terminated pursuant to Rule 184, trial shall commence within 365 days from the date on which the termination order is filed.

(d) When a trial court has granted a new trial and no appeal has been perfected, the new trial shall commence within 365 days from the date on which the trial court's order is filed.

(e) When an appellate court has remanded a case to the trial court, the new trial shall commence within 365 days from the date of the written notice from the appellate court to the parties that the record was remanded.

(B) PRETRIAL INCARCERATION

Except in cases in which the defendant is not entitled to release on bail as provided by law, no defendant shall be held in pretrial incarceration in excess of

(1) 180 days from the date on which the complaint is filed; or

(2) 180 days from the date on which the order is filed transferring a court case from the juvenile court to the trial or criminal division; or

(3) 180 days from the date on which the order is filed terminating a defendant's participation in the ARD program pursuant to Rule 184; or

(4) 120 days from the date on which the order of the trial court is filed granting a new trial when no appeal has been perfected; or

(5) 120 days from the date of the written notice from the appellate court to the parties that the record was remanded.

(C) COMPUTATION OF TIME

(1) For purposes of paragraph (A), periods of delay caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

(2) For purposes of paragraph (B), only periods of delay caused by the defendant shall be excluded from the computation of the length of time of any pretrial incarceration. Any other periods of delay shall be included in the computation.

(3) When a judge grants a continuance, the judge shall indicate on the record

(a) to which party the period of delay caused by the continuance shall be attributed; and

(b) whether the time will be included in or excluded from the computation of the time within which trial must commence in accordance with this rule.

(D) REMEDIES

(1) Except in cases in which the defendant is not entitled to release on bail as provided by law, when a defendant is held in pretrial incarceration beyond the time set forth in paragraph (B), upon motion, the defendant is entitled to immediate release on nominal bail subject to any non-monetary conditions of bail imposed by the court as permitted by law.

(2) When a defendant has not been brought to trial within the time periods set forth in paragraph (A), at any time before trial, the defendant's attorney, or the defendant if unrepresented, may file a motion requesting that the charges be dismissed on the ground that this rule has been violated.

(a) When a case is dismissed pursuant to this paragraph, the judge promptly shall prepare a report of continuances and indicate to which party the period of delay caused by the continuance was attributed and whether the time was included in or excluded from the computation of the time within which trial commenced in accordance with this rule.

(b) The report shall be certified by the president judge or administrative judge, shall be made part of the public record of the case, and shall be sent to the Court Administrator of Pennsylvania within 20 days of the order of discharge.

(E) Nothing in this rule shall be construed to modify any time limit contained in any statute of limitations.

**Comment**

Rule 600 was adopted in 1973 as Rule 1100 pursuant to *Commonwealth v. Hamilton*, 449 Pa. 297, 297 A.2d 127 (1972), and provided, *inter alia*, that trials be held within

180 days of the filing of the complaint. The time limits of this rule were expanded on December 31, 1987, effective immediately, to provide that trials have to be held within 365 days. See *Commonwealth v. Palmer*, 384 Pa. Super. 379, 558 A.2d 882 (1989). The 1987 amendments also provided for a defendant who has been held in pretrial incarceration longer than 180 days to be released on nominal bail, and deleted the provisions concerning Commonwealth petitions to extend the time for commencement of trial.

In 2007, former Rule 600 was rescinded and new Rule 600 adopted to reorganize and clarify the provisions of the rule in view of the long line of cases construing the rule. Nothing in the new rule substantively changes the procedural requirements concerning prompt trial. The new rule retains the same provisions concerning (1) the requirement of bringing a defendant to trial within 365 days of specified events, new paragraph (A); (2) the 120- or 180-day time limits on pretrial incarceration, new paragraph (B); (3) the computation of time within which trial must commence, new paragraph (C); and (4) the dismissal and release provisions for violation of the rule, new paragraph (D).

When calculating the number of days set forth herein, see the Statutory Construction Act, 1 Pa.C.S. § 1908.

#### *Commencement of Trial; Time for Trial*

Paragraph (A) addresses both the commencement of trial and the 365-day time for trial. A trial commences when the trial judge determines that the parties are present and directs them to proceed to voir dire or to opening argument, or to the hearing of any motions that had been reserved for the time of trial, or to the taking of testimony, or to some other such first step in the trial. See, e.g., *Commonwealth v. Williams*, 250 Pa. Super. 221, 378 A.2d 906 (1977). It is not intended that preliminary calendar calls should constitute commencement of a trial. Concerning the hearing of motions reserved for the time of trial, see *Jones v. Commonwealth*, 495 Pa. 490, 434 A.2d 1197 (1981).

The general rule is that trial must commence within 365 days from the date on which the complaint is filed. Pursuant to this rule, it is intended that "complaint" also includes special documents used in lieu of a complaint to initiate criminal proceedings in extraordinary circumstances such as criminal proceedings instituted by a medical examiner or coroner. See *Commonwealth v. Lopinson*, 427 Pa. 284, 234 A.2d 552 (1967); *Commonwealth v. Smouse*, 406 Pa. Super. 369, 594 A.2d 666 (1991).

The withdrawal of, rejection of, or successful challenge to a guilty plea should be considered the granting of a new trial for purposes of paragraph (A)(2)(d) of this rule. Paragraph (A)(2)(d) also applies to the period for commencing a new trial following the declaration of a mistrial.

The date of filing court orders for purposes of paragraph (A)(2) is the date of receipt of the order in the clerk of court's office. See the third paragraph of the Comment to Rule 114 (Orders and Court Notices; Filing; Service; and Docket Entries).

When an appellate court has remanded a case to the trial court for a new trial, for purposes of computing the time for trial under paragraph (A)(2)(e) or the length of time of pretrial incarceration for purposes of paragraph (B)(5), the date of the remand is the date of the prothonotary's notice to the parties that the record was remanded. See Pa.R.A.P. 2572(e) concerning the requirement that

the prothonotary of the appellate court give the parties written notice of the date on which the record was remanded.

#### *Computation of Time*

Paragraph (A) sets forth the time within which a trial must be commenced. The courts have referred to the date on which trial would commence as the "mechanical run" date. When the trial commences beyond the "mechanical run" date, the judge must determine the basis for the delay and whether the delay is attributable to the Commonwealth, the defense, or the court, and whether the Commonwealth has exercised due diligence. See, e.g., *Commonwealth v. Cook*, 544 Pa. 361, 676 A.2d 639 (1996).

For purposes of determining the time within which trial must be commenced pursuant to paragraph (A), paragraph (C)(1) makes it clear that any delay in the commencement of trial that is not attributable to the Commonwealth when the Commonwealth has exercised due diligence must be excluded from the computation of time. It is intended that the time to be excluded includes the periods of time described in former versions of Rule 600 (former Rule 1100) and case law as "excludable time," "excusable time," and "extensions of time." Thus, the inquiry for a judge in determining whether there is a violation of the time periods in paragraph (A) is whether the delay is caused solely by the Commonwealth when the Commonwealth has failed to exercise due diligence. See, e.g., *Commonwealth v. Matis*, 551 Pa. 220, 710 A.2d 12 (1998); *Commonwealth v. Brown*, 875 A.2d 1128 (Pa. Super. 2005). If the delay is caused by the defendant or by the court, or occurred as a result of circumstances beyond the Commonwealth's control and despite its due diligence, the time is excluded. See, e.g., *Commonwealth v. Crowley*, 502 Pa. 393, 466 A.2d 1009 (1983) (judicial delay); *Commonwealth v. Frye*, 909 A.2d 853 (Pa. Super. 2006) (due diligence); *Commonwealth v. Malgieri*, 889 A.2d 604 (Pa. Super. 2005) (due diligence, judicial delay); and *Commonwealth v. Hunt*, 858 A. 2d 1234 (Pa. Super. 2004) (excludable time, judicial delay).

For purposes of determining the length of time a defendant has been held in pretrial incarceration pursuant to paragraph (B), only the periods of delay attributable to the defense are to be excluded from the computation. See *Commonwealth v. Dixon*, 589 Pa. 28, 907 A.2d 468 (2006).

The concept of "excludable" time in former versions of the rule is delay attributable to the defendant or defense. See, e.g., *Commonwealth v. Matis*, supra. For purposes of paragraph (C)(1) and paragraph (C)(2), the following periods of time, that were previously enumerated in the text of former Rule 600(C), are periods of time when the defendant is unavailable, that is, periods of delay caused by the defendant. This time must be excluded from the computations in paragraphs (C)(1) and (C)(2):

(1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;

(2) any period of time for which the defendant expressly waives Rule 600;

(3) such period of delay at any stage of the proceedings as results from either the unavailability of the defendant or the defendant's attorney or any continuance granted at the request of the defendant or the defendant's attorney.

In addition to any other circumstances precluding the availability of the defendant or the defendant's attorney,

the defendant should be deemed unavailable for the period of time during which the defendant contested extradition, or a responding jurisdiction delayed or refused to grant extradition; or during which the defendant was physically incapacitated or mentally incompetent to proceed; or during which the defendant was absent under compulsory process requiring his or her appearance elsewhere in connection with other judicial proceedings.

For periods of delay that result from the filing and litigation of omnibus pretrial motions for relief or other motions, see *Commonwealth v. Hill* and *Commonwealth v. Cornell*, 558 Pa. 238, 736 A.2d 578 (1999) (the mere filing of a pretrial motion does not automatically render defendant unavailable; only unavailable if delay in commencement of trial is caused by filing pretrial motion).

Paragraph (C)(3) requires the judge to indicate on the record whether the time is excludable whenever he or she grants a continuance. See also Rule 106 (Continuances in Summary and Court Cases). As used in paragraph (C)(3), "judge" includes "magisterial district judges."

When a judge grants a continuance, trial should be rescheduled for a date certain consistent with the continuance request and the court's business.

#### Remedies

Paragraph (D)(1) sets forth the remedy should a defendant be held in pretrial incarceration beyond the time periods in paragraph (B). Except in cases in which bail is not available pursuant to Article I, Section 14 of the Pennsylvania Constitution, the defendant must be released on nominal bail. Imposition of nominal bail includes in the appropriate case the imposition of non-monetary conditions of release. See *Commonwealth v. Sloan*, 589 Pa. 15, 907 A.2d 460 (2006). See also Rules 524, 526, and 527 concerning types and conditions of release on bail.

Article I, Section 14 of the Pennsylvania Constitution provides, *inter alia*, that "all prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great." Defendants who are not granted release on bail pursuant to this section are not eligible for release under paragraph (D)(1) of this rule. See *Commonwealth v. Jones*, 899 A.2d 353 (Pa. Super. 2006), and *Commonwealth v. Oliver*, 229 Pa. Super. 456, 674 A.2d 287 (1996).

When admitted to nominal bail pursuant to this rule, the defendant must execute a bail bond. See Rules 525 and 526.

Paragraph (D)(2) requires that any defendant not brought to trial within the time periods in paragraph (A) at any time before trial may move to have the charges dismissed on the ground that this rule has been violated, making the rule clear that it applies to all defendants, not just defendants released on bail. See *Commonwealth v. Solano*, 588 Pa. 716, 906 A.2d 1180 (2006).

When a case is dismissed for violation of this rule, the dismissal is "with prejudice," and the Commonwealth's only recourse is to file either a motion for reconsideration or an appeal.

For the procedures concerning filing and service of motions, see Rule 576. For the procedures following the filing of a motion, see Rule 577.

**Official Note:** Rule 1100 adopted June 8, 1973, effective prospectively as set forth in paragraphs (A)(1) and (A)(2) of this rule; paragraph (E) amended December 9, 1974, effective immediately; paragraph (E) re-amended June 28, 1976, effective July 1, 1976; amended October 22, 1981, effective January 1, 1982. (The amendment to paragraph (C)(3)(b) excluding defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982.) Amended December 31, 1987, effective immediately; amended September 30, 1988, effective immediately; amended September 3, 1993, effective January 1, 1994; Comment revised 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 600 and amended March 1, 2000, effective April 1, 2001; Comment revised April 20, 2000, effective July 1, 2000; rescinded, 2007, effective, 2007. New Rule 600 adopted, 2007, effective, 2007.

#### Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published with the Court's Order at 23 Pa.B. 4492 (September 25, 1993).

Final Report explaining the September 13, 1995 Comment revision 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 April 20, 2000 Comment revision concerning *Commonwealth v. Hill* and *Commonwealth v. Cornell*, published with the Court's Order at 30 Pa.B. 2219 (May 6, 2000).

Report explaining the rescission of current Rule 600 and the provisions of new Rule 600 published at 37 Pa.B. 4175 (August 4, 2007).

## REPORT

***Proposed Rescission of Current Pa.R.Crim.P. 600, New Pa.R.Crim.P. 600, Amendments to Pa.R.Crim.P. 106, and Revision of the Comment to Pa.R.Crim.P. 312***

### Prompt Trial

#### I. INTRODUCTION

The Criminal Procedural Rules Committee is proposing the rescission of current Rule 600 (Prompt Trial) and the adoption of a new Rule 600 (Prompt Trial) to conform the provisions of Rule 600 to the appellate courts' decisions interpreting and applying the rule. The Committee also is proposing amendments to Pa.R.Crim.P. 106 (Continuances in Summary and Court Cases) and a revision of the Comment to Pa.R.Crim.P. 312 (Hearing, Explanation of Program) that are correlative to the changes being proposed for Rule 600.<sup>1</sup>

The Committee, acting on the Supreme Court's referral in footnote 7 in *Commonwealth v. Solano*, 588 Pa. 716, 906 A.2d 1180 (2006), that stated

Given the uncertainty that has arisen over the years since the drafting of the original speedy trial rule pursuant to our directive in *Hamilton*,<sup>2</sup> particularly with respect to our speedy trial rule's application to capital cases, we deem it proper to again refer the

<sup>1</sup>This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

<sup>2</sup>*Commonwealth v. Hamilton*, 449 Pa. 297, 297 A.2d 127 (1972).

matter to our Criminal Procedural Rules Committee for further study and recommendation,

reviewed the case law that has been decided since the Court's 1987 amendment of then-Rule 1100 (now Rule 600) providing for the 365-day limit for the time for trial and the 180-day limit on pretrial incarceration without trial. The majority of the cases address three issues. As suggested by the Court in *Solano*, supra., one area that has generated a good deal of case law has to do with the application of the rule to capital cases. Another area concerns the calculation of the time for trial, in particular, what constitutes excludable time and excusable time. The last area concerns the time limitations on pretrial incarceration and the intent of the nominal bail provisions.

Following an extensive review of the case law and the current provisions of Rule 600, the Committee agreed that, for the most part, the current substantive provisions of the rule, particularly with respect to the 365-day time for trial, the 180-day limit on pretrial incarceration without trial, and the release and dismissal remedies, should be retained. The Committee is proposing some changes. First, we are proposing that the provisions of current Rule 600 should be reorganized so the rule flows in a more orderly manner. In addition, the proposed amendments incorporate the appellate courts' clarifications concerning the issues raised with regard to current Rule 600. Finally, the Committee is proposing that current Rule 600 be rescinded and a new Rule 600 be adopted. The rule is "new" only in the sense that it has been reorganized, with most of the substantive provisions of the current rule being retained.

## II. DISCUSSION

Proposed new Rule 600 would be divided into sections identified with captions. The order these sections are set forth in new Rule 600 is as follows:

- (1) the provisions addressing the commencement of trial and the time for trial, new Rule 600(A);<sup>3</sup>
- (2) the provisions addressing the pretrial incarceration time limits, new Rule 600(B);<sup>4</sup>
- (3) the provisions addressing the computation of time excluded from the times for trial and the time limitations on pretrial incarceration, new Rule 600(C);<sup>5</sup>
- (4) the provisions providing the remedies, new Rule 600(D);<sup>6</sup> and
- (5) the statute of limitations provision, new Rule 600(E).<sup>7</sup>

The Comment would be reorganized into comparable sections with the same captions.

### A. Commencement of Trial; Time for Trial

As part of the reorganization of current Rule 600, paragraph (B), which provides that:

- (1) For the purpose of this rule, trial shall be deemed to commence on the date the trial judge calls the case to trial, or the defendant tenders a plea of guilty or nolo contendere,

has been moved without change to the first subparagraph in new paragraph (A).

The five paragraphs enumerating the 365-day time for trial found in current paragraphs (A)(3), (A)(4), (D)(1), (D)(2), and (D)(3) are set out as new paragraph (A)(2).<sup>8</sup> The Committee reasoned that it makes more sense to combine the time for trial provisions in current paragraphs (A)(3) and (A)(4) with the time for a new trial provisions in current paragraphs (D)(1), (D)(2), and (D)(3) because the time for the trial in all five scenarios is 365 days from a triggering event.

Following the initiation of proceedings, the computation of time is the date on which the complaint is filed. In all other cases under the rule, the date that is used for the computation of the time for trial in the current rule is described as "the date of the order," "the date of filing of the order;" or "the date of service of the order." The Committee reviewed Rule 114 (Orders and Court Notices: Filing; Service; and Docket Entries) noting that the rule requires a docket entry of three dates: date on the order; date of receipt of the order in clerk's office, which is the date the order is filed; and date of service of the order. The Committee thinks Rule 600 would be clearer if the terminology conforms with the provisions of Rule 114. Except for remands from the appellate court, all references to the time that the calculation begins to run have been changed to be from the date the order is filed, with a cross-reference to Rule 114 included in the Comment.

For remands from an appellate court, new paragraph (A)(2)(e), the Committee is proposing that the language of Rule 600 conform with the language in Rule of Appellate Procedure 2572(e). The time would run from the date of the written notice to the parties of the remand of the record. A cross reference to Rule of Appellate Procedure 2572(e) has been added to the Comment. There are no other changes in these paragraphs.

### B. Pretrial Incarceration

Current Rule 600(A)(2), (A)(4), and (D) establish time limits on a defendant's incarceration without a trial. As part of the reorganization of current Rule 600, the Committee agreed that the pretrial incarceration time limits in current paragraphs (A)(2), (A)(4), (D)(1), (D)(2), and (D)(3) should be set forth in one section. Accordingly, these paragraphs are set out as new paragraph (B).

The Committee discussed the pretrial incarceration time limits in the current rule. The members concluded that the time limits should be retained as to the 180-day time limits following the filing of a complaint and following the filing of a transfer order in a juvenile case and the 120-day time limits when a new trial is granted by a trial judge or an appellate court. However, the members concluded there is no reason the time limit on pretrial incarceration in ARD cases should be different from the 180-day time limit following the filing of the complaint. Accordingly, the current 120-day time limit in ARD cases when the defendant's participation in an ARD program has been terminated is changed to 180 days in new paragraph (B)(3).

The Committee also is proposing that new paragraph (B) include, as the introductory clause, a provision that recognizes the line of cases that have held the pretrial incarceration time limits do not apply when a defendant is not entitled to release on bail. See, e.g., *Commonwealth v. Jones*, 899 A.2d 353 (Pa. Super. 2006). The constitutional law and case law relative to this exception are explained in the Comment.

<sup>8</sup>The Committee is recommending that current paragraph (A)(1) concerning the special time for trial for those cases tried between June 30, 1973 and July 1, 1974, the 270-day time for trial provision, be deleted as no longer necessary.

<sup>3</sup>The provisions of this section are derived from current Rule 600(A) and (D).

<sup>4</sup>The provisions of this section are derived from current Rule 600(A), (D) and (E).

<sup>5</sup>The provisions of this section are derived from current Rule 600(C) and (G).

<sup>6</sup>The provisions of this section are derived from current Rule 600(E) and (G).

<sup>7</sup>The provisions of this section are the same as current Rule 600(F).

### C. Computation of Time

The provisions of current Rule 600 that have generated the majority of the appellate cases construing Rule 600 are (1) paragraph (C), which addresses time that is to be excluded from the determination of the period for commencement of trial, and (2) paragraph (G), which addresses what the case law has called “excusable” time. How to clarify the method of calculation in a manner consistent with the case law that would aid the bench and bar was a challenge for the Committee. The Committee began its analysis of the process by conceptualizing the days that count when making the computations for the commencement of trial in terms of a calendar. When the time clock starts to run, as the case proceeds days on the calendar are removed. When there is a delay in the case, if the delay is caused by the Commonwealth and the Commonwealth has failed to exercise due diligence, then the pages continue to come off the calendar. See, e.g., *Commonwealth v. Matis*, 551 Pa. 220, 710 A.2d 12 (1998). The pages on the calendar are not taken off during the time for all other delays in the case. In other words, as set forth in new paragraph (C)(1):

(1) For purposes of paragraph (A), periods of delay caused by the Commonwealth when the Commonwealth has failed to exercise due diligence shall be included in the computation of the time within which trial must commence. Any other periods of delay shall be excluded from the computation.

The Committee recognized there are many causes for delay that impact the computation of the time within which trial must commence, and classification of delay continues to be addressed in the case law. Based on this, the Committee reasoned that much of the confusion about the computation of time would be eliminated with a clear statement concerning how the time should be computed in the text of the rule and examples of causes for delay and how these are computed set forth in the Comment. Accordingly, the provisions concerning “excludable time” set forth in current Rule 600(C) have been moved into the Comment, along with an elaboration about the other types of delay that have been addressed in case law—“excusable time” and “extensions of time”—and citations to relevant case law.

The computation of time when calculating the time that a defendant has been incarcerated without a trial for Rule 600 purposes was recently addressed by the Supreme Court in *Commonwealth v. Dixon*, 589 Pa. 28, 907 A.2d 468 (2006). The Court held that, in computing the time of pretrial incarceration, only delay attributable to the defendant (“excludable” time) counts. The Committee incorporated this “rule” concerning the computation of the length of time of pretrial incarceration in new paragraph (C)(2) as follows:

(2) For purposes of paragraph (B), only periods of delay caused by the defendant shall be excluded from the computation of the length of time of any pretrial incarceration. Any other periods of delay shall be included in the computation.

The process for determining how the computing is done and what to consider is elaborated in the computation of time section of the Comment, with citations to several of the relevant cases concerning computation of time. The Committee was selective in the cases included in the Comment because to try to mention every case would be a daunting task and make for an unwieldy Comment. In addition, the cases all say the computation of the time has to be determined on a case-by-case basis, and the list

of scenarios from the cases to date is extensive. Finally, by way of introduction to the computation of time section in the Comment, the Committee included a paragraph elaborating on the case law’s use of “run date” and “mechanical run date.” Citing *Commonwealth v. Cook*, 544 Pa. 361, 676 A.2d 639 (1996), by way of example, the Committee explains in the Comment that the courts refer to the date on which trial would commence as the “mechanical run” date.

One of the problems inherent in the current system the Committee thought needed to be addressed in the new rule concerns the difficulty the trial judge has reconstructing what took place during the life of the case when a Rule 600 violation has been alleged. The members reasoned if the judge is required at the time a continuance is granted to state on the record whether the time is includable or excludable under Rule 600, there will be fewer problems down the line with calculating the times and properly attributing any periods of delay. To accomplish this, the Committee is proposing that new paragraph (C)(3) require, at the time a continuance is granted, that the judge indicate on the record (1) to which party the period of delay caused by the continuance is attributed and (2) whether the time is included in or excluded from the computation of the time within which trial must commence.

In the computation of time section of the Comment, the Committee has provided a gloss on the requirement that the judge indicate whether the time for a continuance is excludable, with a cross-reference to Rule 106 that would be amended to conform with the new provisions of Rule 600. The Comment provision also clarifies that the requirement applies to both magisterial district judges and common pleas court judges.

### D. Remedies

Current Rule 600(E) provides that “any defendant held in excess of 180 days is entitled upon petition to immediate release on nominal bail.” Current Rule 600(G) provides for the dismissal of the charges and discharge of the defendant after the expiration of 365 days if the court determines that the Commonwealth did not exercise due diligence. As part of the reorganization of Rule 600, the Committee is proposing that these two sections be moved into new paragraph (D) which is the remedies section.

The release provisions in current paragraph (E) also have generated a good deal of confusion and interpretive case law. Specific issues include (1) whether the nominal bail provision was intended to apply to cases in which the defendant is not entitled to release on bail and (2) whether the nominal bail provision was subject to nonmonetary conditions of release as provided in Rule 527 (Nonmonetary Conditions of Release on Bail).

Article I, Section 14 of the Pennsylvania Constitution provides, *inter alia*, that “all prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great.” The appellate courts, as exemplified by *Commonwealth v. Jones*, 899 A.2d 353 (Pa. Super. 2006), have made it clear that when a defendant is not granted release on bail under the provisions of Article I, Section 14, the defendant also is not eligible for release under Rule 600.



The Supreme Court recently held in *Commonwealth v. Sloan*, 589 Pa. 15, 907 A.2d 460 (2006), that a defendant's release on nominal bail pursuant to Rule 600 may be subject to nonmonetary conditions of release such as electronic monitoring or reporting requirements.

New paragraph (D)(1) incorporates these constructions of the current nominal bail provision by clarifying in the text of the new rule that the release provisions do not apply when a defendant is not entitled to release and that nominal bail is subject to non-monetary conditions of release on bail. Some of the relevant case law and the relevant bail rules are referenced in the remedy section of the Comment.

The other area of confusion in Rule 600 concerns the application of the dismissal provisions in current paragraph (G) to cases in which the defendant is not "on bail after the expiration of 365 days." The Supreme Court in *Commonwealth v. Solano*, 588 Pa. 716, 906 A.2d 1180 (2006), addressed this issue and has made it clear that the Rule 600 dismissal provisions apply to all cases, not just cases in which the defendant is released on bail. The provisions in new paragraph (D)(2), which for the most part incorporate the provisions in current paragraph (G), reflect this holding, and a cross-reference to *Solano* has been added to the Comment.

In addition to the clarifying provisions discussed above, the provisions concerning motions in current paragraph (G) have been modified in new paragraph (D)(2) to be consistent with other Criminal Rules concerning motions. The paragraph provides for a motion to be filed by the defendant's attorney, or the defendant if unrepresented. A cross-reference to the relevant motion rules, Rules 576 and 577, has been added to the Comment.

The first sentence of current paragraph (G) provides that the defendant "may apply to the court for an order dismissing the charges with prejudice." The Committee questioned what is meant by "with prejudice" and why the term is necessary in Rule 600. The Court in *Commonwealth v. Hamilton*, 449 Pa. 297, 297 A.2d 127 (1972), was clear that it thought the dismissal had to end the case, otherwise the purpose of the rule would be emasculated. Based on this decision, the Committee does not think it is necessary to retain "with prejudice" in the text of the rule. In the alternative, we are proposing a Comment provision that explains when a case is dismissed for violation of this rule, the dismissal is "with prejudice." The Comment also notes that the options available to the Commonwealth to challenge a dismissal are a motion for reconsideration to the trial court and an appeal to the Superior Court.

#### E. Statute of Limitations

The provision in current Rule 600(F) that "nothing in this rule shall be construed to modify any time limit contained in any statute of limitations" has been retained as is in the new rule as new paragraph (E).

#### F. New Rule 600 Comment

Committee has retained much of what is in the current Rule 600 Comment. However, we are proposing the reorganization of the current Comment to conform to the proposed changes to the text of the rule, and the addition of captions correlative to the captions in proposed new Rule 600.

The Committee also has moved into the first paragraph of the new Comment the historical provisions in the first three paragraphs of the current Rule 600 Comment, and has expanded the explanation to provide more clearly the

background of Rule 600. The second paragraph of the new Comment provides a brief summary of the changes being proposed for new Rule 600 and emphasizes that, for the most part, new Rule 600 is the same as current Rule 600.

In addition to the new provisions of the Comment discussed above, several other changes appear in the new Comment. First, the Committee has expanded the reference to *Commonwealth v. Hill* and *Commonwealth v. Cornell*, 558 Pa. 238, 736 A.2d 578 (1999), in current Rule 600 to explain that the mere filing of a pretrial motion does not automatically render a defendant unavailable, and that a defendant would be unavailable only if the delay in commencement of trial is caused by filing pretrial motion.

The current Rule 600 Comment includes the following two paragraphs concerning ARD:

Although a defendant's removal from the ARD program does not result in a "new trial" under paragraph (D)(3), termination of the defendant's ARD program pursuant to Rule 318 commences a new trial period for the purpose of this rule.

In addition to requesting that the defendant waive Rule 600 for the period of enrollment in the ARD program (see Rule 312, paragraph (3)), the attorney for the Commonwealth may request that the defendant waive Rule 600 for the period of time spent in processing and considering the defendant's inclusion into the ARD program

The Committee does not think the first paragraph is necessary given the specific ARD provisions in new paragraphs (A)(2)(c) and (B)(3) of new Rule 600. Accordingly, this paragraph has been deleted from the Comment.

The Committee believes the second paragraph more appropriately belongs in the ARD rules. Accordingly, the Committee is proposing the provision be moved to the Rule 312 Comment.

[Pa.B. Doc. No. 07-1389. Filed for public inspection August 3, 2007, 9:00 a.m.]

## [234 PA. CODE CH. 5]

### Proposed Amendments to Pa.R.Crim.P. 513

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 513 to provide for the temporary delay in the dissemination of arrest warrant information to the public prior to execution of the warrant. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed amendments to Rule 513 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel  
 Supreme Court of Pennsylvania  
 Criminal Procedural Rules Committee  
 5035 Ritter Road, Suite 100  
 Mechanicsburg, PA 17055  
 fax: (717) 795-2106  
 e-mail: criminal.rules@pacourts.us

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed amendments concerning dissemination of arrest warrant information published at 37 Pa.B. 4179 (August 4, 2007).**

**REPORT**

***Proposed Amendments to Pa.R.Crim.P. 513***

**Dissemination of Arrest Warrant Information**

Recently, the Committee has been presented with questions regarding the obligation of an issuing authority to disseminate arrest warrant information to the public prior to the execution of these warrants, a question, left unanswered in the case law, that has arisen a number of times over the years.

The primary concerns that have been raised with the Committee are that the premature disclosure of arrest warrant information has the potential for injury or loss of life to the executing officers in addition to the possibility of flight on the part of the defendant. These concerns have been heightened recently by the increased level of automation of court records that has resulted in the increased accessibility of this information at a much earlier stage in the criminal proceedings.

In *Commonwealth v. Fenstermacher*, 515 Pa. 501, 530 A.2d 414 (1987), in which a newspaper filed a motion for access to arrest warrant affidavits, the Supreme Court of Pennsylvania noted that there were important policy considerations which underlay a general right to public access to court records, such as discouraging perjury, enhancing police and prosecutorial performance, and promoting a public perception of fairness in the arrest warrant process. However, the Court found that the public's right to inspect judicial documents is not absolute and the decision regarding public access to arrest warrant affidavits is best left to the discretion of the court. Nonetheless, the remedy the Court supported was to require that affidavits be sealed under a court order, not simply upon the request of one of the parties. It is important to note that the Court in *Fenstermacher* specifically stated that they were not addressing the question of access to pre-executed warrant affidavits.

In view of the concerns raised with the Committee, the Committee concluded that unlimited disclosure of arrest warrant information prior to the execution of the warrant poses a serious threat to the safety and welfare of the public and law enforcement. Based on the Supreme Court's ruling in *Fenstermacher*, the Committee agreed that reasonable limitations on pre-execution disclosure with appropriate safeguards would protect the public and law enforcement without unnecessarily infringing of the right of the public to access the information. We further concluded that these limitations should apply to both information that is disseminated electronically and information that is physically available for inspection at the issuing authority's office.

The Committee therefore is proposing an amendment to Rule 513 that would provide that an affiant or attorney for the Commonwealth may request that the issuing authority delay dissemination of arrest warrant information, in any form, to the public until the warrant is executed. The criminal complaint, the arrest warrant itself, the affidavit of probable cause and the existence of the warrant are included in this limitation. The safeguards included in new paragraph (E) of Rule 513 are that the delay is of limited duration, ministerial in nature and limited to individual cases specified by the affiant or

no later than Monday, September 3, 2007.

*By the Criminal Procedural Rules Committee*

NICHOLAS J. NASTASI,  
*Chair*

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

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

**PART B(3). Arrest Procedures in Court Cases**

**(a) Arrest Warrants**

**Rule 513. Requirements for Issuance.**

\* \* \* \* \*

**(E) Dissemination of Arrest Warrant Information.**

**(1) When an arrest warrant is issued following the filing of a complaint, at the request of the affiant or the attorney for the Commonwealth, the criminal complaint, the arrest warrant, and any affidavit(s) of probable cause shall not be made available by the issuing authority for public inspection or dissemination until the warrant has been executed.**

**(2) In those counties in which the attorney for the Commonwealth requires that complaints and arrest warrant affidavits be approved prior to filing as provided in Rule 507, only the attorney for the Commonwealth may request a delay in the public dissemination of the criminal complaint, the arrest warrant, and any affidavit(s) of probable cause.**

**Comment**

\* \* \* \* \*

**Paragraph (E) was added in 2007 to address the potential dangers to law enforcement and the general public and the risk of flight when arrest warrant information is disseminated prematurely; that is prior to the execution of the arrest warrant. The paragraph provides that the affiant or the attorney for the Commonwealth may request the delay in dissemination of the criminal complaint, the arrest warrant, and any affidavit(s) of probable cause until execution and that, upon such request, the issuing authority must delay the dissemination. The provisions in the rule that any delay must be specifically requested by law enforcement and any delay is limited to pre-execution arrest warrants only reduce the impact of the delay in the disclosure of the arrest warrant information upon the right of public access to warrant information.**

**Official Note:** Rule 119 adopted April 26, 1979, effective as to arrest warrants issued on or after July 1, 1979; Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 513 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **amended** , **2007, effective** , **2007.**

attorney for the Commonwealth. In other words, whether to delay dissemination is determined on a case-by-case basis and must be specifically requested by the affiant or attorney for the Commonwealth. Furthermore, the delay may be requested only in those cases in which an arrest warrant is issued following the complaint; it may not be requested in cases in which a bench warrant has been issued or an arrest warrant has been issued subsequent to a summons. Additionally, the delay in dissemination will only last until the arrest warrant is executed. Finally, in those counties in which the attorney for the Commonwealth requires that complaints and arrest warrant affidavits be approved prior to filing as provided in Rule 507, only the attorney for the Commonwealth, and not the affiant, may request the delay.

[Pa.B. Doc. No. 07-1390. Filed for public inspection August 3, 2007, 9:00 a.m.]

---

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that Harry Elwood Franks, Jr., having been suspended from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated January 23, 2007; the Supreme Court of Pennsylvania issued an Order dated July 18, 2007, suspending Harry Elwood Franks, Jr. from the practice of law in this Commonwealth for a period of 3 months. In

accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 07-1391. Filed for public inspection August 3, 2007, 9:00 a.m.]

---

### Notice of Suspension

Notice is hereby given that on July 18, 2007, under Rule 214(d)(2), Pa.R.D.E., the Supreme Court of Pennsylvania ordered that S. C. Bluespruce-Refert be placed on temporary suspension from the practice of law, effective August 17, 2007. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 07-1392. Filed for public inspection August 3, 2007, 9:00 a.m.]

---