

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 7]

Amendment of Rule 701(A)(3) of the Rules of Judicial Administration; No. 310; Judicial Administration Doc. No. 1

Order

Per Curiam:

And Now, this 20th day of November, 2007, Rule 701(A)(3) of the Pennsylvania Rules of Judicial Administration is amended to read as follows.

To the extent that notice of proposed rulemaking would be required by Rule 103 of the Pennsylvania Rules of Judicial Administration or otherwise, the immediate amendment of Rule 701(A)(3) is hereby found to be required in the interest of justice and efficient administration.

This Order shall be effective immediately and shall be processed in accordance with Rule 103(b) of the Pennsylvania Rules of Judicial Administration.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 7. ASSIGNMENT OF JUDGES

ASSIGNMENT AND TRANSFER OF JUDGES

Rule 701. Assignment of judges to courts.

(A) [*Conditions Applicable for the Certification of Senior District Justices, Judges or Justices.*] Conditions applicable for the certification of senior magisterial district judges, judges or justices.

* * * * *

(3) Senior status shall end on the last day of the calendar year in which a **magisterial** district judge, judge or justice attains age [**seventy-five**] **seventy-eight**; however, those serving in senior status as of the effective date of this rule who were previously excepted from the age seventy-five limitation pursuant to the amendment of January 1, 1999 may continue to serve until the last day of the calendar year in which they attain age eighty.

* * * * *

[Pa.B. Doc. No. 07-2193. Filed for public inspection December 7, 2007, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL PROVISIONS

[231 PA. CODE CH. 1900]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation No. 92

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Penn-

sylvania 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, February 15, 2008 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

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1905. Forms for Use in PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

* * * * *

(b) The petition in an action filed pursuant to the Act shall be substantially in the following form, **but the first page (paragraphs 1 through 4) must be exactly as set forth in this rule:**

[(Caption)

PETITION FOR PROTECTION FROM ABUSE

1. Plaintiff's name is: _____

2. I am filing this petition on behalf of: Myself and/or Another Person.

If you checked "myself," please answer all questions referring to yourself as "Plaintiff." If you checked "another person," please answer all questions referring to that person as the "Plaintiff," and provide your address here, unless confidential:

If you checked "Another Person," indicate your relationship with Plaintiff:

- parent of minor Plaintiff(s)
- applicant for appointment as guardian ad litem of minor Plaintiff(s)
- adult household member with minor Plaintiff(s)
- court appointed guardian of incompetent Plaintiff(s)

3. Name(s) of ALL person(s), including Plaintiff and minor children, who seek protection from abuse:

- 4. Plaintiff's address is confidential or
- Plaintiff's address is:

5. Defendant is believed to live at the following address:

Defendant's Social Security Number (if known) is:

Defendant's date of birth is: _____

Defendant's place of employment is: _____

Check here if you have reason to believe that Defendant is a licensed firearms dealer is employed by a licensed firearms dealer or manufacturer, is employed as a writer, researcher or technician in the firearms or hunting industry or is required to carry a firearm as a condition of employment.

Check here if Defendant is 17 years old or younger.]

(Editor's Note: The following new form is proposed to be adopted at final rulemaking.)

PETITION FOR PROTECTION FROM ABUSE	IN THE COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA NO. _____
---	---

1. PLAINTIFF

--	--	--

First Middle Last Plaintiff DOB

Plaintiff's Address:

Plaintiff's address is confidential or Plaintiff's address is: _____

V.

2. DEFENDANT

--	--	--

First Middle Last Suffix

Defendant's Address:

DEFENDANT IDENTIFIERS			
DOB		HEIGHT	
SEX		WEIGHT	
RACE		EYES	
HAIR			
SSN			
DRIVERS LICENSE #			
EXP DATE		STATE	

CAUTION:

- Weapon Involved**
- Weapon Present on the Property**
- Weapon Requested Relinquished**

Defendant's Place of employment is: _____

Check here if you have reason to believe that Defendant is a licensed firearms dealer, is employed by a licensed firearms dealer or manufacturer; is employed as a writer, researcher or technician in the firearms or hunting industry or is required to carry a firearm as a condition of employment.

3. I am filing this Petition on behalf of: Myself and/or Another Person

If you checked "myself", please answer all questions referring to yourself as "Plaintiff". If you ONLY checked "another person", please answer all questions referring to that person as the "Plaintiff", and provide your name and address here, as filer, unless confidential.

Filer's Name:

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First Middle Last Suffix

Filer's Address is Confidential or Filer's address is: _____

If you checked "Another Person", indicate your relationship with Plaintiff:

- parent of minor Plaintiff(s)
- applicant for appointment as guardian ad litem of minor Plaintiff(s)
- adult household member with minor Plaintiff(s)
- court appointed guardian of incompetent Plaintiff(s)

4. Name(s) of All persons, including minor child/ren who seek protection from abuse:

[6] 5. Indicate the relationship between Plaintiff and Defendant.

CHECK ALL THAT APPLY:

- spouse or former
- spouse of Defendant
- parent of a child with Defendant
- current or former sexual or intimate partner with Defendant
- child of Plaintiff
- child of Defendant
- family member related by blood (consanguinity) to Defendant
- family member related by marriage or affinity to Defendant
- sibling (person who shares parenthood) of Defendant
- current or former cohabitant (person who lives with) Defendant
- Check here if Defendant is 17 years old or younger.**

[7] 6. Have Plaintiff and Defendant been involved in any of the following court actions?

- Divorce Custody Support Protection From Abuse

* * * * *

[8] 7. Has Defendant been involved in any criminal court action? _____

* * * * *

[9] 8. Plaintiff and Defendant are the parents of the following minor child/ren:

Name(s)	Age(s)	who reside at (list address unless confidential)
_____	_____	_____

[10] 9. If Plaintiff and Defendant are parents of any minor child/ren together, is there an existing court order regarding their custody? _____

* * * * *

[11] 10. The following other minor child/ren presently live with Plaintiff:

* * * * *

[12] 11. The facts of the most recent incident of abuse are as follows:

* * * * *

[13] 12. If Defendant has committed prior acts of abuse against Plaintiff or the minor child/ren, describe these prior incidents, including any threats, injuries, or incidents of stalking, and indicate approximately when such acts of abuse occurred (attach additional sheets of paper if necessary):

[14] 13. (a) Has Defendant used or threatened to use any firearms or other weapons against Plaintiff or the minor child/ren? If so, please describe the use or threatened use below and list on Attachment A to Petition, which is incorporated by reference into this petition, any firearms, other weapons or ammunition Defendant used or threatened to use against Plaintiff and/or the minor child/ren:

* * * * *

[15] 14. Identify the sheriff, police department or law enforcement agency in the area in which Plaintiff lives that should be provided with a copy of the protection order:

[16] 15. There is an immediate and present danger of further abuse from Defendant.

* * * * *

(c) The Temporary Order of Court entered pursuant to the Act shall be substantially in the following form, but the first page must be exactly as set forth in this rule:

[(Caption)

TEMPORARY PROTECTION FROM ABUSE ORDER

Defendant's Name: _____

Defendant's Date of Birth: _____

Defendant's Social Security Number: _____

Names of All Protected Persons, including Plaintiff and minor child/ren:

_____]

(Editor's Note: The following new form is proposed to be adopted at final rulemaking.)

TEMPORARY PROTECTION FROM ABUSE ORDER <input type="checkbox"/> Amended Order <input type="checkbox"/> Continued Order	IN THE COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA NO. _____
---	---

PLAINTIFF

First	Middle	Plaintiff DOB

Name(s) of All protected persons, including minor child/ren and DOB:

V.

DEFENDANT

First	Middle	Suffix

Defendant's Address:

DEFENDANT IDENTIFIERS			
DOB		HEIGHT	
SEX		WEIGHT	
RACE		EYES	
HAIR			
SSN			
DRIVERS LICENSE #			
EXP DATE		STATE	

CAUTION:

- Weapon Involved
- Weapon Present on the Property
- Weapon Ordered Relinquished

The Court Hereby Finds: That it has jurisdiction over the parties and subject matter, and the Defendant will be provided with reasonable notice and opportunity to be heard.

The Court Hereby Orders:

- Defendant shall not abuse, harass, stalk or threaten any of the above persons in any place where they might be found.
- Except for such contact with the minor child/ren as may be permitted under paragraph 5 of this order, Defendant shall not contact Plaintiff, or any other person protected under this order, by telephone or by any other means, including through third persons.
- Additional findings of this order are set forth below.

Order Effective Date _____ **Order Expiration Date** _____

NOTICE TO THE DEFENDANT

Defendant is hereby notified that violation of this order may result in arrest for indirect criminal contempt, which is punishable by a fine of up to \$1,000 and/or up to six months in jail. 23 Pa.C.S.A. § 6114. Consent of Plaintiff to Defendant's return to the residence shall **not** invalidate this order, which can only be changed or modified through the filing of appropriate court papers for that purpose. 23 Pa.C.S.A. § 6108 (g). If Defendant is required to relinquish any firearms, other weapons or ammunition or any firearm license, those items must be relinquished to the sheriff within 24 hours of the service of this order. As an alternative, Defendant may relinquish any firearm, other weapon or ammunition listed herein to a third party provided Defendant and the third party first comply with all requirements to obtain a safekeeping permit. If, due to their current location, firearms, other weapons or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide an affidavit to the sheriff listing the firearms, other weapons or ammunition and their current location no later than 24 hours after the service of this order. Defendant is further notified that violation of this order may subject him/her to state charges and penalties under the Pennsylvania Crimes Code and to federal charges and penalties under the Violence Against Women Act, 18 U.S.C. § § 2261-2262.

AND NOW, this ___ day of _____, 20___, upon consideration of the attached Petition for Protection From Abuse, the court hereby enters the following Temporary Order:

Plaintiff's request for a Temporary Protection Order is *denied*.

Plaintiff's request for a Temporary Protection Order is *granted*.

1. Defendant shall not abuse, harass, stalk or threaten any of the above persons in any place where they might be found.

2. Defendant is evicted and excluded from the residence at [NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED] or any other permanent or temporary residence where Plaintiff or any other person protected under this order may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this order.

3. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this order, Defendant is prohibited from having ANY CONTACT with Plaintiff, or any other person protected under this order, either directly or indirectly, at any location, includ-

ing but not limited to any contact at Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this order:

* * * * *

(e) The Final Order of Court entered pursuant to the Act shall be substantially in the following form, **but the first page must be exactly as set forth in this rule:**

[(Caption)

FINAL ORDER OF COURT

Defendant's Name: _____

Defendant's Date of Birth: _____

Defendant's Social Security Number: _____

Names and Dates of Birth of All Protected Persons, including Plaintiff and minor children:

Names	Dates of Birth
_____	_____
_____	_____
_____	_____

(Editor's Note: The following new form is proposed to be adopted at final rulemaking.)

FINAL PROTECTION FROM ABUSE ORDER <input type="checkbox"/> Extended Order <input type="checkbox"/> Amended Order	IN THE COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA NO. _____
--	---

PLAINTIFF

--	--

First Middle Last Plaintiff DOB

Name(s) of All protected persons, including minor child/ren and DOB:

V.

DEFENDANT

--	--	--	--

First Middle Last Suffix

Defendant's Address:

DEFENDANT IDENTIFIERS

DOB		HEIGHT	
SEX		WEIGHT	
RACE		EYES	
HAIR			
SSN			
DRIVERS LICENSE #			
EXP DATE		STATE	

CAUTION:

- Weapon Involved
- Weapon Present on the Property
- Weapon Ordered Relinquished

The Court Hereby Finds: That it has jurisdiction over the parties and subject matter, and the Defendant has been provided with reasonable notice and opportunity to be heard.

The Court Hereby Orders:

- Defendant shall not abuse, harass, stalk or threaten any of the above persons in any place where they might be found.
- Except as provided in paragraph 5 of this order, Defendant shall not contact Plaintiff, or any other person protected under this order, by telephone or by any other means, including through third persons.
- Additional findings of this order are set forth below.

Order Effective Date _____ **Order Expiration Date** _____

NOTICE TO THE DEFENDANT

Violation of this order may result in your arrest on the charge of indirect criminal contempt which is punishable by a fine of up to \$1,000 and/or a jail sentence of up to six months. 23 PA C.S.A. §6114. Violation may also subject you to prosecution and criminal penalties under the Pennsylvania Crimes Code. A violation of this order may result in the revocation of the safekeeping permit, which will require the immediate relinquishment of your firearms, other weapons and ammunition to the sheriff. Plaintiff's consent to contact by Defendant shall not invalidate this order which can only be modified by further order of court. 23 PA C.S.A. § 6108(g).

This order is enforceable in all fifty (50) States, the District of Columbia, Tribal Lands, U.S. Territories and the Commonwealth of Puerto Rico under the Violence Against Women Act, 18 U.S.C. §2265. If you travel outside of the State and intentionally violate this order, you may be subject to federal criminal proceedings under that Act. 18 U.S.C §§2261-2262. If you possess a firearm or any ammunition while this order is in effect, you may be charged with a federal offense even if this Pennsylvania order does not expressly prohibit you from possessing firearms or ammunition. 18 U.S.C §922(g)(8).

CHECK ALL THAT APPLY:

Plaintiff or Protected Person(s) is/are:

- spouse or former spouse of Defendant
- parent of a child with Defendant
- current or former sexual or intimate partner with Defendant
- child of Plaintiff
- child of Defendant
- family member related by blood (consanguinity) to Defendant
- family member related by marriage or affinity to Defendant
- sibling (person who shares parenthood) of Defendant
- current or former cohabitant (person who lives with) Defendant

Defendant was served in accordance with Pa.R.C.P. 1930.4 and provided notice of the time, date and location of the hearing scheduled in this matter.

AND NOW, this ____ day of _____, 20__, the court having jurisdiction over the parties and the subject-matter, it is ORDERED, ADJUDGED AND DECREED as follows:

* * * * *

Explanatory Comment—2008

The Protection From Abuse petition form, temporary order form and final order form are being modified to conform to the model template used in Project Passport. Project Passport was designed to improve recognition and enforcement of protection orders within and between states and tribes by encouraging states and tribes to adopt a recognizable first page for protection orders. Use of the model template is supported by the National Center for State Courts and the National American Indian Court Judges Association.

The critical aspects of the model template for the first page are common data elements jointly identified by multi-disciplinary teams. Using a recognizable first page for protection orders with this essential data readily available and easily recognizable on a protection order, particularly on "foreign protection orders," helps strengthen the safety net for domestic violence survivors and their children by offering greater consistency in the issuance and enforcement of protection orders.

Implementation of the model first page for Project Passport requires several changes to the Pennsylvania Protection From Abuse petition, temporary order and final order forms. The petition form caption, as well as the plaintiff's or filer's name, relationship to the plaintiff, names and dates of birth of the protected persons, plaintiff's address, defendant's address, social security number, place of employment, and age, were moved to the Project Passport first page. The petition paragraphs are also renumbered. On the temporary order and final order forms, the captions and the defendant's name, date of birth and social security number, as well as the names of the plaintiff and protected persons and dates of birth, were moved to the Project Passport first page. The Project Passport first page for the petition and temporary and final orders all include physical identifiers for the defendant and an indication if weapons were involved,

present on the property or relinquished. The first page of the final order also includes the effective and expiration dates of the protection order and the notice to the defendant.

[Pa.B. Doc. No. 07-2194. Filed for public inspection December 7, 2007, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 500]

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 (1) the temporary delay in the dissemination and (2) temporary sealing of arrest warrant information to the public prior to execution. This Supplemental Report resulted from the Committee's review of the correspondence received after publication of our original explanatory Report that explained the Committee's proposal for procedures for delay in dissemination of arrest warrant information only. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Supplemental 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 and are underlined; 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

no later than Monday, January 14, 2008.

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; **dissemination of arrest warrant information; sealing of arrest warrant.**

(A) Issuance of Arrest Warrant

(1) In the discretion of the issuing authority, advanced communication technology may be used to submit a complaint and affidavit(s) for an arrest warrant and to issue an arrest warrant.

[(B)] (2) No arrest warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

[(C)] (3) Immediately prior to submitting a complaint and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority by any device which, at a minimum, allows for simultaneous audio-visual communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant.

[(D)] (4) At any hearing on a motion challenging an arrest warrant, no evidence shall be admissible to establish probable cause for the arrest warrant other than the affidavits provided for in paragraph **[(B)] (A)(2)**.

(B) Dissemination of Arrest Warrant Information

(1) At the request of the affiant or the attorney for the Commonwealth when an arrest warrant is issued following the filing of a complaint, the criminal complaint, the arrest warrant, and any affidavit(s) of probable cause shall not be made available by the court for inspection or dissemination until the warrant has been executed or 10 days after the warrant is issued, whichever occurs first.

(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 dissemination of the criminal complaint, the arrest warrant, and any affidavit(s) of probable cause.

(3) The period of the delay in dissemination may not be extended for any reason. However, nothing in this rule prevents the sealing of an arrest warrant following the procedures in paragraph (C).

(C) Sealing of Arrest Warrant

(1) For purposes of this paragraph, "arrest warrant information" is defined as the criminal complaint in cases in which an arrest warrant is issued, the arrest warrant, and any affidavit(s) of probable cause.

(2) Prior to Execution of an Arrest Warrant:

(a) At the request of the attorney for the Commonwealth, the arrest warrant information may be sealed upon good cause shown.

(b) When the attorney for the Commonwealth intends to request that the arrest warrant information be sealed,

(i) the complaint and the arrest warrant affidavit(s) shall be presented by the attorney for the Commonwealth to a judge of the court of common pleas or an appellate court justice or judge, and

(ii) the affidavit(s) for the arrest warrant shall include the facts and circumstances that are alleged to establish good cause for the sealing of the arrest warrant information.

(c) When the justice or judge seals the arrest warrant information, he or she shall also certify on the face of the warrant that for good cause shown

the arrest warrant information is sealed and shall remain sealed and shall state the length of time the warrant information will be sealed.

(d) The sealed arrest warrant information shall be filed with the clerk of courts in the judicial district in which the arrest warrant is issued unless otherwise ordered by the justice or judge.

(e) The arrest warrant information shall be sealed for a period of not more than 60 days, unless the time period is extended as provided in paragraph (f) or paragraph (g).

(f) Upon motion of the attorney for the Commonwealth for good cause shown, the justice or judge who sealed the arrest warrant information may extend the period of time that the warrant information will remain sealed. If the justice or judge is unavailable, another justice or judge shall be assigned to decide the motion.

(g) Upon motion for good cause shown, the justice or judge may grant an unlimited number of extensions of the time that the arrest warrant information shall remain sealed. Each extension shall be for a period of not more than 30 days.

(h) Upon motion of the attorney for the Commonwealth, the justice or judge shall order the arrest warrant information to be unsealed.

(i) After the arrest warrant is executed:

(i) a copy of the complaint, arrest warrant, and supporting affidavits shall be given to the defendant at the preliminary arraignment as provided in Rule 540, unless otherwise ordered as provided in paragraph (i)(ii).

(ii) Upon motion of the attorney for the Commonwealth, the justice or judge who issued the warrant, for good cause shown, may delay giving the defendant a copy of the sealed arrest warrant affidavit(s) for periods of not more than 30 days. In no case shall the delay extend beyond the date of the court arraignment.

(iii) If the justice or judge is unavailable, another justice or judge shall be assigned to decide the motion.

(j) If the motion requesting any extension pursuant to paragraphs (f) or (g) is granted, the motion and any record of the hearing on the motion shall be sealed and transmitted with the extension order to the clerk of courts.

(k) When the order sealing the affidavit(s) and any extensions thereof expires, the clerk of courts shall make the warrant information available for public inspection.

(3) After Execution of an Arrest Warrant,

(a) at the request of the attorney for the Commonwealth or the attorney for the defendant, the arrest warrant affidavit(s) of probable cause may be sealed upon good cause shown.

(b) When the attorney for the Commonwealth or the attorney for the defendant intends to request that the arrest warrant affidavit(s) of probable cause be sealed,

(i) arrest warrant affidavit(s) shall be presented by the attorney for the Commonwealth or the attorney for the defendant to a judge of the court of common pleas or an appellate court justice or judge, and

(ii) the affidavit(s) for the arrest warrant shall include the facts and circumstances that are alleged to establish good cause for the sealing of the arrest warrant affidavits.

(c) When the justice or judge seals the arrest warrant affidavits, he or she also shall issue an order stating that for good cause shown the arrest warrant affidavit(s) is sealed and shall remain sealed and shall state the length of time the affidavit(s) will be sealed.

(d) The court's order and the sealed arrest warrant affidavit(s) shall be filed with the clerk of courts in the judicial district in which the arrest warrant was issued unless otherwise ordered by the justice or judge.

(e) The arrest warrant affidavit(s) shall be sealed for a period of not more than 60 days or until the date of the court arraignment, whichever is shorter.

(h) Upon motion of the attorney for the Commonwealth or the attorney for the defendant, the justice or judge shall order the arrest warrant affidavit(s) to be unsealed.

(j) When the order sealing the affidavit(s) expires, the clerk of courts shall make the affidavit(s) available for public inspection.

Comment

This rule was amended in 2008 to add provisions concerning the delay in dissemination of warrant information and sealing the arrest warrant information. Paragraph (A) retains the existing requirements for the issuance of arrest warrants. Paragraph (B) establishes the procedures for a temporary delay in the dissemination of arrest warrant information prior to the execution of the warrant. Paragraph (C) establishes the procedures for temporarily sealing, for good cause shown, the criminal complaint, the arrest warrant, and the affidavit(s) supporting an arrest warrant, the "arrest warrant information."

Issuance of Arrest Warrants

Paragraph (A)(1) recognizes that an issuing authority either may issue an arrest warrant using advanced communication technology or order that the law enforcement officer appear in person to apply for an arrest warrant.

This rule does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for an arrest warrant must be sworn to before the issuing authority prior to the issuance of the warrant. The language "sworn to before the issuing authority" contemplates, when advanced communication technology is used, that the affiant would not be in the physical presence of the issuing authority. See paragraph [(C)] (A)(3).

* * * * *

The "visual" requirement in paragraph [(C)] (A)(3) must allow, at a minimum, the issuing authority to see the affiant at the time the oath is administered and the information received.

Under Rule 540, the defendant receives a copy of the warrant and supporting affidavit at the time of the preliminary arraignment.

Delay in Dissemination of Arrest Warrant Information

Paragraph (B) was added in 2008 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 for 10 days or until execution. 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 reduce the impact of the delay in the disclosure of the arrest warrant information upon the right of public access to warrant information.

Although paragraph (B) permits the filing of a request for delay in dissemination in any case in which an arrest warrant is issued following the filing of a complaint, it is expected that the procedure will be used most frequently in those cases in which arrest warrants are issued at the initiation of the case, either immediately or shortly after the filing of the complaint. In other words, cases in which a summons is issued as the original process but later an arrest warrant is issued may utilize the procedure in paragraph (B). However, the requester should recognize that information might have already been released to the public prior to the request.

Once the arrest warrant is executed, or when 10 days have elapsed from the issuance of the order and the warrant has not been executed, the information must be disseminated unless sealed pursuant to paragraph (C).

Sealing of Arrest Warrants

Paragraph (C) was added in 2008 to codify and further define the practice of temporarily sealing arrest warrants previously recognized in case law such as *Commonwealth v. Fenstermacher*, 515 Pa. 501, 530 A.2d 414 (1987). Unlike existing case law, which only addresses the sealing of arrest warrants after execution, the procedures in paragraph (C) apply to all arrest warrants.

Magisterial district judges, bail commissioners, and municipal court judges do not have authority to seal arrest warrant information. In cases in which it is believed that there is good cause to seal the arrest warrant information, the request for the warrant must be presented to a judge of the court of common pleas or a justice or judge of an appellate court.

Paragraph (C) establishes two procedures, recognizing that there will be a different purpose for the request to seal based upon the time when the request is made either prior to or after the execution of the warrant. The first procedure, contained in paragraph (C)(2), permits the attorney for the Commonwealth to request that the criminal complaint, the arrest warrant, and any affidavit of

probable cause be sealed. Ordinarily the sealing of arrest warrants under these procedures would be limited to cases in which there is concern that premature disclosure of the existence of the arrest warrant will endanger those serving the warrant or will impel the subject of the warrant to flee. Therefore, when determining whether good cause exists to seal the arrest warrant information, the justice or judge should consider whether revealing the information would encourage flight or resistance.

The procedure in paragraph (C)(2) may be used to seal an arrest warrant from the time the arrest warrant is issued or after the expiration of an order delaying dissemination of arrest warrant information under paragraph (B). In the former situation, the usual practice would be to request the arrest warrant information to be sealed in conjunction with the request for the warrant itself. In the latter situation, the request to seal would obviously be made separately.

Paragraph (C)(3) contains the second procedure that permits either the attorney for the Commonwealth or the attorney for the defendant to request the sealing of any affidavit(s) of probable cause. Ordinarily the sealing of arrest warrant affidavits under this procedure would be limited to cases in which there is concern that disclosure of the contents of affidavits to the public would prejudice the possibility of a fair trial or when there is information that might jeopardize an ongoing investigation or an informant.

Paragraphs (C)(2)(c) requires that the justice or judge issuing the warrant certify on the face of the warrant that for good cause shown the arrest warrant information was sealed, thereby giving notice of the sealing to the defendant. Since paragraph (C)(3)(c) contemplates that the sealing order will be issued only after the warrant has been executed, the judge must certify in the order that for good cause shown the arrest warrant affidavit(s) were sealed.

Unless the justice or judge orders otherwise, paragraphs (C)(2)(d) and (C)(3)(d) requires that the sealed arrest warrant information must be filed with the clerk of courts in the judicial district in which the arrest warrant is issued.

Under paragraph (C)(2), an order sealing the arrest warrant information is limited in duration to not more than 60 days. Extension of this period may be granted only upon the showing of good cause for the extension.

Under paragraph (C)(3), an order sealing the arrest warrant affidavit(s), is limited to a duration of not more than 60 days or until the date of the court arraignment, whichever is shorter. No extensions may be requested.

Paragraph (C)(2)(h) provides that the attorney for the Commonwealth may move to unseal the arrest warrant information and the judge or justice must order the information unsealed. Ordinarily, this will occur in circumstances in which law enforcement wishes to publicize the existence of a previously sealed warrant in order to obtain public assistance in the apprehension of the defendant. The judge or justice may not deny the motion.

When a sealed copy of the arrest warrant information has been given to the defendant, nothing in this rule is intended to preclude the attorney for the Commonwealth from requesting that the justice or judge issue a protective order to prevent or restrict the defendant from disclosing the arrest warrant or the contents of the affidavit. *See* Rule 573(F).

When the order sealing the arrest warrant information terminates, the clerk of courts must make the arrest warrant information available for inspection.

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** , **2008, effective** , **2008.**

Committee Explanatory Reports:

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Report explaining the proposed amendments concerning procedures for delay in dissemination of arrest warrant information and for sealing arrest warrants published at 37 Pa.B. 4178 (August 4, 2007); Supplemental Report explaining the proposed amendments that would provide procedures for delay in dissemination and sealing of arrest warrant information published at 37 Pa.B. 6395 (December 8, 2007).

SUPPLEMENTAL REPORT

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

Delay in Dissemination Arrest Warrant Information; Sealing of Arrest Warrant information

The Committee has examined the question of an issuing authority's obligation to disseminate arrest warrant information to the public prior to the execution of these warrants. This concern has been heightened by the increased level of automation of court records and increased accessibility of this information. The Committee recognizes that 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. The Committee concluded that such disclosure was inappropriate and that reasonable limitations on pre-execution disclosure should be put into place, regardless of whether that information was disseminated electronically or was physically available for inspection at the issuing authority's office. As a result, in August 2007, the Committee published for comment a proposal that would have added a procedure for delaying the dissemination of pre-execution arrest warrant information.¹

Based on comments received, the Committee realized that the limited procedure contemplated in the original proposal did not sufficiently address the safety needs that prompted the question nor ensure that the defendant's or the public's right to access were not unduly impinged. Among the questions raised by the Committee's proposal were: (1) whether there should be a specific time limit on the delay in dissemination after which the warrant information would be available to the public regardless of whether the warrant had been executed; (2) whether the issuing authority should have any discretion in granting

¹ The original Report was published at 37 Pa.B. 4178 (August 4, 2007).

a request for a hold on dissemination; (3) whether there should be a "good cause" requirement; and (4) whether the request should be limited to being made by the attorney for the Commonwealth.

The Committee concluded that the best method of addressing these questions was by the creation of a "two-tiered" system for access to arrest warrant information. The first tier would be an expedited procedure in which a brief delay in the dissemination of the warrant information could be granted by an issuing authority as an essentially ministerial function.

The second tier would be a procedure providing for the sealing of arrest warrants. This would be a more deliberative procedure with greater procedural safeguards. It would not necessarily be dependant upon the execution of the warrant. Furthermore, the procedure for sealing arrest warrants could be used to extend the time under which public access to arrest warrant information is limited or could be used as a sealing order from the start in those situations in which a higher degree of confidentiality was deemed necessary.

Detailing procedures for sealing arrest warrants would have the added benefit of providing definition to a practice currently established only in caselaw, *see Commonwealth v. Fenstermacher*, 515 Pa. 501, 530 A.2d 414 (1987).² The Committee determined that, while the authority of a court to seal arrest warrants was generally recognized, gaps exist in the practice. This point is highlighted in *Fenstermacher* that explicitly left open the question of public access to pre-execution arrest warrant information. The Committee believes that judges, practitioners, and the public would benefit from the clarity and uniformity that a detailed rule would provide as to how access to arrest warrant information may be restricted and the standards for determining if such restrictions should be granted. This clarity and uniformity would provide law enforcement and prosecutors with the tools to ensure public safety while ensuring that defense and public interests are protected.

Therefore, the Committee is proposing amendments to Rule 513 incorporating these principles. Rule 513 would be reorganized with the current text of the rule appearing as paragraph (A), titled "Issuance of Arrest Warrant." The first tier procedures would follow as paragraph (B), titled "Dissemination of Arrest Warrant Information" and the second tier would be placed in paragraph (C), titled "Sealing of the Arrest Warrant."

The paragraph (B) procedures for delay in dissemination are similar to the Committee's original proposal. An affiant or attorney for the Commonwealth may request that an issuing authority delay dissemination of arrest warrant information, in any form, to the public for 10 days only or until the warrant is executed, whichever occurs sooner. The delay may not be extended under this procedure. The issuing authority would not have discretion in granting the delay. It is contemplated that the criminal complaint, the arrest warrant itself, the affidavit of probable cause and the existence of the warrant are included in this limitation.

² In *Fenstermacher*, a newspaper filed a motion for access to the probable cause affidavits for an executed arrest warrant, 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. 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.

The delay in dissemination is intended to bind all court personnel. On the other hand, if law enforcement or the prosecution later determines that dissemination of the arrest warrant information would be beneficial, they may do so without seeking rescission of the delay order.

The paragraph (C) procedures for sealing arrest warrants are based upon those for sealing search warrants in Rule 211. They are intended to be used in those cases in which confidentiality of the arrest warrant information needs to be of longer duration or cases in which, from the outset, a higher level of protection is needed. The request must be made by an attorney for the Commonwealth, and may be made only in a court of record, usually the court of common pleas. The sealing order may be granted only upon a showing of good cause. A sealing order will last for 60 days with the possibility of obtaining an extension but only upon a further showing of good cause.

A distinction is made between requests made pre-execution and post-execution sealing. The reason for this distinction is that there will be a different purpose for the request to seal based upon the time when the request is made. Prior to execution, the primary concern will be preventing premature disclosure due to concerns over safety and risk of flight. In this situation, the request will be made on behalf of law enforcement and so the request is limited to the attorney for the Commonwealth. Post-execution requests will most likely be directed to preventing adverse pre-trial publicity or to protect an informant. Therefore, the rule would permit either the attorney for the Commonwealth or the defendant's attorney to make the request to seal.

When the arrest warrant information is sealed prior to execution, upon execution, a copy of the complaint, the arrest warrant, and any affidavits of probable cause shall be given to the defendant unless, for good cause shown, the court grants a delay.

When the arrest warrant affidavit(s) are sealed post-execution, the sealing order must be filed with the clerk of courts.

Unlike the delay in dissemination provisions which bind only the court, arrest warrant information that is sealed may not be divulged by any party until the expiration of the sealing order or until the court grants a request to unseal the arrest warrant information.

[Pa.B. Doc. No. 07-2195. Filed for public inspection December 7, 2007, 9:00 a.m.]

[234 PA. CODE CHS. 100, 400, 500 AND 900]
**Proposed Revisions of the Comments to
 Pa.Rs.Crim.P. 114, 430, 451, 509, 511, 536, 576,
 907 and 908**

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania approve the revision of the Comments to Pa.Rs. Crim.P. 114, 430, 451, 509, 511, 536, 576, 907, and 908. The proposed Comment revisions make it clear that judicial districts may utilize the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested. 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 changes to the rules precedes the Report. Additions are shown in bold and are underlined; 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

no later than Friday, January 11, 2007.

By the Criminal Procedural Rules Committee:

NICHOLAS J. NASTASI,
Chair

Annex A

**TITLE 23A. RULES OF CRIMINAL PROCEDURE
 CHAPTER 1. SCOPE OF RULES, CONSTRUCTION
 AND DEFINITIONS, LOCAL RULES**

**Rule 114. Orders and Court Notices: Filing Service;
 and Docket Entries.**

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Comment

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Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping or making docket entries.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

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Official Note: Formerly Rule 9024, adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 and Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 114 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended July 20, 2006, effective September 1, 2006; **Comment revised , 2008, effective , 2008.**

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 2007).

CHAPTER 4 PROCEDURES IN SUMMARY CASES

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Warrant.

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Comment

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A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

* * * * *

Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective August 1, 2007; **Comment revised , 2008, effective , 2008.**

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 2007).

PART E. General Procedures in Summary Cases

Rule 451. Service.

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Comment

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Paragraph (B) makes it clear that the issuing authority must only provide additional notice to a defendant by personal service or certified mail when a defendant fails to respond to a summons. It is intended that, when a defendant fails to appear for trial pursuant to a trial notice served by first class mail, the issuing authority need provide no further notice, but should proceed to conduct the trial in the defendant's absence pursuant to Rule 455.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Official Note: Rule 80 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; Comment revised June 2, 1994, effective September 1, 1994;

renumbered Rule 451 and amended March 1, 2000, effective April 1, 2001; Comment revised March 3, 2004, effective July 1, 2004; **Comment revised , 2008, effective , 2008.**

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 2007).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(1). Complaint Procedures

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

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Comment

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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.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

* * * * *

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; **Comment revised , 2008, effective , 2008.**

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 2007).

PART B(2). Summons Procedures

Rule 511. Service of summons; proof of service.

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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.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

* * * * *

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; **Comment revised , 2008, effective , 2008.**

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 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.

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Comment

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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).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

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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 2, 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; **Comment revised** , 2008, **effective** , 2008.

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 2007).

PART F(1). Motion Procedures

Rule 576. Filing and Service by Parties.

* * * * *

Comment

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See *Commonwealth v. Jones*, 549 Pa. 58, 700 A.2d 423 ([Pa.] 1997); and *Commonwealth v. Little*, 716 A.2d 1287 (Pa. Super. 1998) concerning the timeliness of filings by prisoners proceeding pro se (the "prisoner mailbox rule").

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A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(2)(f). The authorization for service by facsimile transmission or other electronic means under this rule is document specific and only valid for an individual document. Counsel will have to renew the authorization for each document.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

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Official Note: Former Rule 9022 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective January 1, 1994; amended July 9, 1996, effective September 1, 1996; renumbered Rule 576 and amended March 1, 2000, effective April 1, 2001. Former Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 2, 2004, effective July 1, 2004. Rules 576 and 577 combined and amended March 3, 2004, effective July 1, 2004; **Comment revised** , 2008, **effective** , 2008.

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 2007).

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 907. Disposition Without Hearing.

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Comment

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Second or subsequent petitions will not be entertained unless a strong prima facie showing is offered to demonstrate that a miscarriage of justice may have occurred. See *Commonwealth v. Szuchon*, 534 Pa. 483, 486, 633 A.2d 1098, 1099 ([Pa.] 1993) (citing *Commonwealth v. Lawson*, 519 Pa. 504, 549 A.2d 107 ([Pa.] 1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent of the crimes charged. See *Commonwealth v. Szuchon*, 534 Pa. 483, 487, 633 A.2d 1098, 1100 ([Pa.] 1993).

* * * * *

A PCRA petition may not be dismissed due to delay in filing except after a hearing on a motion to dismiss. See 42 Pa.C.S. § 9543(b) and Rule 908.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Official Note: Previous Rule 1507 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; amended January 28, 1983, effective July 1, 1983; rescinded February 1, 1989, effective July 1, 1989, and not replaced. Present Rule 1507 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 907 and amended March 1, 2000, effective April 1, 2001; **Comment revised** , 2008, **effective** , 2008.

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 2007).

Rule 908. Hearing.

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Comment

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Except as provided in Rule 902(E)(2) for first counseled petitions in death penalty cases, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. See 42 Pa.C.S. § 9545(d)(2).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Official Note: Rule 1508 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 908 and amended March 1, 2000, effective April 1, 2001; **Comment revised** , 2008, **effective** , 2008.

Committee Explanatory Reports:

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Report explaining the proposed revision of the Comment concerning the United States Postal Service's return receipt electronic option published at 37 Pa.B. 6400 (December 8, 2007).

REPORT

Revisions of the Comments to Pa.Rs.Crim.P. 114, 430, 451, 509, 511, 536, 576, 907, and 908

Electronic Return Receipts

The Committee has received a number of inquiries from clerks of courts and district court administrators asking whether, when the Criminal Rules require that service of a document be by certified mail return receipt requested, the United States Postal Service's electronic return receipt service satisfies these rules' requirements. The correspondents explained that, when a user elects to use the United States Postal Service's electronic return receipt service, the post office will notify the sender by email that the document has been delivered. The notice provides the date and time of delivery, the city, state, and zip code where the delivery was made, and the name of the individual who signed the return card. If the sender subsequently would require a copy of the actual return card, the "green card," the post office will provide the card for an additional cost. The correspondents emphasized that the benefit of this electronic option is that it significantly reduces the costs of sending certified mail and provides an earlier return receipt.

During its discussions about the electronic return receipt service, the Committee acknowledged that the purpose of the certified mail requirements in the rules is to ensure service, see, e.g., Rules 114(B)(3)(a)(v), 536(A)(2)(b), 576(B)(2)(e), 907(4), and 908(E), and to provide proof of service, see, e.g., Rules 430(B)(1)(a), 451(B), 509 Comment, and 511(A) and (B). The Committee agreed that the Postal Service's electronic return receipt service, as explained above, satisfies these rules' service and notice requirements. In addition, the Committee noted the definitions of "copy"¹ and "signature"² in

¹"COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means, and includes, but is not limited to: carbon copies; copies reproduced by using a photocopy machine, by transmission using facsimile equipment, or by scanning into and printing out of a computer."

²"SIGNATURE, when used in reference to documents generated by the minor judiciary or court of common pleas, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created,

Rule 103 accommodate the electronic return of the certified mail return receipt.

Although the rules do not prohibit the use of this new technology, because the rules are silent, the Committee continues to receive inquiries about this issue. Accordingly, the members agreed that the rules should specifically recognize the Postal Service's return receipt electronic option. To accomplish this, the Committee is proposing a revision of the Comments to the rules requiring certified mail return receipt requested making it clear that nothing in the rules is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt,³ when using certified mail, return receipt requested.

[Pa.B. Doc. No. 07-2196. Filed for public inspection December 7, 2007, 9:00 a.m.]

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

Video Conferencing Equipment Purchases

The Administrative Office of Pennsylvania Courts announces a project to supply video conferencing hardware, software, implementation services, maintenance and support to Magisterial District Judges throughout Pennsylvania to enable Preliminary Arraignments to be held by means of live video conferences. For more information and specifications visit www.courts.state.pa.us/index/Aopc/ITDept/VideoConferencingRFP.asp.

ZYG MONT A. PINES,
Court Administrator of Pennsylvania

[Pa.B. Doc. No. 07-2197. Filed for public inspection December 7, 2007, 9:00 a.m.]

transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules."

³For example, United Parcel Service provides a comparable service for electronic return receipts.