

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION [204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 323; Judicial Administration; Doc. No. 1

Order

Per Curiam:

And now, this 23rd day of September, 2008 it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the attached Financial Regulations. The fees outlined in the Financial Regulations are effective as of January 1, 2009.

To the extent that notice of proposed rule-making may be required by Pa.R.J.A. No. 103, the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration.

This Order is to be processed in accordance with Pa.R.J.A. No. 103(b) and is effective immediately.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION

CHAPTER 29. MISCELLANEOUS PROVISIONS

Subchapter K. COSTS, FINES AND FEES

TITLE 42. JUDICIARY AND JUDICIAL PROCEDURE

PART IV. FINANCIAL MATTERS

CHAPTER 17. GOVERNANCE OF THE SYSTEM

CHAPTER 35. BUDGET AND FINANCE

Subchapter A. General Provisions

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, and clerks of courts of all courts of common pleas, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including magisterial district judges, Philadelphia Municipal Court and Philadelphia Traffic Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), the following regulations are adopted to implement Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

42 Pa.C.S. § 1725.1. Costs.

(a) *Civil cases.*—In calendar year 2009, the costs to be charged by magisterial district judges in every civil case, except as otherwise provided in this section, shall be as follows:

- (1) Actions involving \$500 or less \$46.00
- (2) Actions involving more than \$500 but not more than \$2,000 \$61.00
- (3) Actions involving more than \$2,000 but not more than \$4,000 \$76.50
- (4) Actions involving more than \$4,000 but not more than \$8,000 \$114.50
- (5) Landlord-tenant actions involving less than \$2,000 \$69.00
- (6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000 \$84.00
- (7) Landlord-tenant actions involving more than \$4,000 but not more than \$8,000 \$114.50
- (8) Order of execution \$34.50
- (9) Objection to levy \$15.50
- (10) Reinstatement of complaint \$8.00
- (11) Entering Transcript on Appeal or Certiorari \$4.00

Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.

(a.1) *Custody cases.*—In calendar year 2009, the cost (in addition to the cost provided by general rule) to be charged by the court of common pleas shall be as follows:

- (1) Custody cases, except as provided in section 1725(c)(2)(v) \$7.00

(b) *Criminal cases.*—In calendar year 2009, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

- (1) Summary conviction, except motor vehicle cases \$43.50
- (2) Summary conviction, motor vehicle cases, other than paragraph (3) \$34.50
- (3) Summary conviction, motor vehicle cases, hearing demanded \$41.50
- (4) Misdemeanor \$49.50
- (5) Felony \$57.50

Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.

(c) *Unclassified costs or charges.*—In calendar year 2009, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

- (1) Entering transcript of judgment from another member of the minor judiciary \$8.00
- (2) Marrying each couple, making record thereof, and certificate to the parties \$38.50

(3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) \$15.50

(4) Issuing a search warrant (except as provided in subsection (d)) \$15.50

(5) Any other issuance not otherwise provided in this subsection. \$15.50

42 Pa.C.S. § 3571.

In calendar year 2009, Commonwealth portion of fines, etc.

* * * * *

(2) Amounts payable to the Commonwealth:
 (i) Summary conviction, except motor vehicle cases..... \$15.30

(ii) Summary conviction, motor vehicle cases other than subparagraph (iii)..... \$15.30

(iii) Summary conviction, motor vehicle cases, hearing demanded \$15.30

(iv) Misdemeanor \$19.80

(v) Felony..... \$30.70

(vi) Assumpsit or trespass involving:

(A) \$500 or less \$19.20

(B) More than \$500 but not more than \$2,000 \$30.50

(C) More than \$2,000 but not more than \$4,000 \$45.90

(D) More than \$4,000 but not more than \$8,000 \$76.35

(vii) Landlord-tenant proceeding involving:

(A) \$2,000 or less..... \$30.70

(B) More than \$2,000 but not more than \$4,000 \$38.15

(C) More than \$4,000 but not more than \$8,000 \$53.45

(viii) Objection to levy \$7.75

(ix) Order of execution..... \$23.00

(x) Issuing a search warrant (except as provided in section 1725.1(d) (relating to costs)) \$10.85

(xi) Order of possession \$15.50

(xii) Custody cases (except as provided in section 1725(c)(2)(v)) \$5.60

[Pa.B. Doc. No. 08-1790. Filed for public inspection October 3, 2008, 9:00 a.m.]

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE CH. 211]

Promulgation of Consumer Price Index Pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4); No. 322; Judicial Administration; Doc. No. 1

Order

Per Curiam:

And now, this 23rd day of September, 2008, it is Ordered pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for calendar year 2007 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 211. CONSUMER PRICE INDEX

§ 211.1. Consumer Price Index.

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for calendar year 2007 as required by Act 113 of 2001, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended). See, No. 322 Judicial Administration Docket No. 1.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U.S. City Average, for calendar year 2007 was 4.1% percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, February 20, 2008.)

[Pa.B. Doc. No. 08-1791. Filed for public inspection October 3, 2008, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

[210 PA. CODE CH. 19]

Order Amending Pa.R.A.P. 1921; No. 194; Appellate Procedural Rules; Doc. No. 1

Amended Order

Per Curiam:

And Now, this 13th day of August, 2008, upon the recommendation of the Appellate Court Procedural Rules Committee, this recommendation having been submitted without publication in the interest of justice, pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rule of Appellate Procedure 1921 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall become effective immediately.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1921. Composition of Record on Appeal.

The original papers and exhibits filed in the lower court, **hard copies of legal papers filed with the prothonotary by means of electronic filing**, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court shall constitute the record on appeal in all cases.

Official Note: The rule is intended as a codification of present practice. An appellate court may consider only the facts which have been duly certified in the record on appeal. *Commonwealth v. Young*, 456 Pa. 102, 115, 317 A.2d 258, 264 (1974).

Explanatory Comment—2008

Pa.R.C.P. No. 205.4(a)(1) authorizes a court by local rule to permit or require electronic filing of legal papers with the prothonotary. Therefore, the amendment to Rule 1921 provides that where such electronic filing is utilized, hard copies of legal papers electronically filed shall become part of the record on appeal.

[Pa.B. Doc. No. 08-1792. Filed for public inspection October 3, 2008, 9:00 a.m.]

Title 225—RULES OF EVIDENCE

ARTICLE IV. RELEVANCY AND ITS LIMITS

[225 PA. CODE ART. IV]

Order Amending Pennsylvania Rule 408 and Revision of Comment; No. 451; Supreme Court Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 18th day of September 2008, upon the recommendation of the Committee on Rules of Evidence,

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.E. 408 and the Comment thereto are hereby revised as follows.

This *Order* shall be processed immediately in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 30, 2008.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 408. Compromise and Offers to Compromise.

[Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or

promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Comment

This rule is identical to F.R.E. 408.

The 2000 amendments abolish the common law rule that distinct admissions of fact made during settlement discussions are admissible, see *Rochester Marine Corp. v. Mulach Steel Corp.*, 449 A.2d 1366 (Pa. 1982) (plurality), bringing Pennsylvania in line with F.R.E. 408 and most of the states.

The 2000 amendments are consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

Like the federal rule, Pa.R.E. 408 permits evidence relating to compromises and offers to compromise to be admitted for purposes other than proving liability, such as showing bias or prejudice. See *Heyman v. Hanauer*, 152 A. 910 (Pa. 1930) (if proposal was offer to settle, it could have been used to impeach witness).

Pa.R.E. 408 is consistent with 42 Pa.C.S. § 6141 which provides, in pertinent part, as follows:

§ 6141. Effect of certain settlements

(a) *Personal injuries.*—Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(b) *Damages to property.*—Settlement with or any payment made to a person or on his behalf to others for damages to or destruction of property shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(c) *Admissibility in evidence.*—Except in an action in which final settlement and release has been pleaded as a complete defense, any settlement or payment referred to in subsections (a) and (b) shall not be admissible in evidence on the trial of any matter.

See *Hatfield v. Continental Imports, Inc.*, 610 A.2d 446 (Pa. 1992) (evidence of “Mary Carter” agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

Under Pa.R.E. 408, as under F.R.E. 408, evidence of offers to compromise or completed compromises

is admissible when used to prove an effort to obstruct a criminal investigation or prosecution. This is consistent with prior Pennsylvania case law. See *Commonwealth v. Pettinato*, 520 A.2d 437 (Pa. Super. 1987). Pa.R.E. 408 does not permit, however, the use of evidence relating to good faith compromises or offers to compromise when made for the purpose of reaching an agreement such as those sanctioned by Pa.R.Crim.P. 586 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 546 (relating to dismissal upon satisfaction or agreement). The court may need to conduct, out of the hearing of the jury, a preliminary inquiry into the circumstances surrounding compromises in criminal matters to determine whether to permit such evidence.]

(a) *Prohibited uses.*—Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

(1) furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made in compromise negotiations.

(b) *Permitted uses.*—This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

Comment

This rule differs from F.R.E. 408 as follows:

The federal rule in paragraph (a)(2) permits the use in criminal cases of statements made to government investigators, regulators, or enforcement authority in negotiations in civil cases.

The federal rule does not contain the last sentence of Pa.R.E. 408(b).

This rule does not follow the common law rule that distinct admissions of fact made during settlement discussions are admissible. See *Rochester Machine Corp. v. Mulach Steel Corp.*, 449 A.2d 1366 (Pa. 1982), a plurality decision. Instead, like the federal rule, Pa.R.E. 408 permits evidence relating to compromises and offers to compromise to be admitted for purposes other than proving liability, such as showing bias or prejudice of a witness, but specifically prohibits use of such evidence to impeach a witness through a prior inconsistent statement or contradiction.

Admissibility of conduct and statements in mediations pursuant to the Mediation Act of 1996, 42 Pa.C.S. § 5949, are governed by that statute.

The rule is consistent with the Mediation Act of 1996. See 42 Pa.C.S. § 5949 (Confidential mediation communications and documents).

Pa.R.E. 408 is consistent with 42 Pa.C.S. § 6141 which provides, in pertinent part, as follows:

§ 6141. Effect of certain settlements

(a) *Personal Injuries.* Settlement with or any payment made to an injured person or to others on behalf of such injured person with the permission of such injured person or to anyone entitled to recover damages on account of injury or death of such person shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(b) *Damages to Property.* Settlement with or any payment made to a person or on his behalf to others for damages to or destruction of property shall not constitute an admission of liability by the person making the payment or on whose behalf the payment was made, unless the parties to such settlement or payment agree to the contrary.

(c) *Admissibility in Evidence.* Except in an action in which final settlement and release has been pleaded as a complete defense, any settlement or payment referred to in subsections (a) and (b) shall not be admissible in evidence on the trial of any matter.

See *Hatfield v. Continental Imports, Inc.*, 610 A.2d 446 (Pa. 1992) (evidence of "Mary Carter" agreement admissible to show bias or prejudice, and not excluded by § 6141(c)).

Under Pa.R.E. 408, as under F.R.E. 408, evidence of offers to compromise or completed compromises is admissible when used to prove an effort to obstruct a criminal investigation or prosecution. This is consistent with prior Pennsylvania case law. See *Commonwealth v. Pettinato*, 520 A.2d 437 (Pa. Super. 1987). Pa.R.E. 408 does not permit, however, the use of evidence relating to good faith compromises or offers to compromise when made for the purpose of reaching an agreement such as those sanctioned by Pa.R.Crim.P. 586 (relating to dismissal of criminal charges not committed by force or violence upon payment of restitution) or Pa.R.Crim.P. 546 (relating to dismissal upon satisfaction or agreement). The court may need to conduct, out of the hearing of the jury, a preliminary inquiry into the circumstances surrounding compromises in criminal matters to determine whether to permit such evidence.

FINAL REPORT

Amendments to Pa.R.E. 408 and Comment

The language of Federal Rule of Evidence 408 was changed substantially. The changes were aimed at clarifying the meaning of the rule, and answering several questions that had arisen in the application of the rule. Prior to the amendment, Pa.R.E. 408 was identical to the federal rule. We recommended that we adopt some, but not all of the changes. First, we recommended the adoption of the changes aimed at clarifying the meaning of the rule. Essentially, this is accomplished by breaking up one long paragraph into several, and placing in the first paragraph some language that was previously in the middle of the paragraph. These changes have no substantive impact.

The second change in the rule is the language at the end of the first paragraph, prohibiting the use of the

prohibited evidence to impeach through a prior inconsistent statement or contradiction. This had been a question in the federal courts. May a witness (usually a party) be impeached with a statement made during compromise negotiations that is arguably inconsistent with the witness's trial testimony? The federal courts had been split on this question. The federal drafters amended the rule, so that it now prohibits the use of statements made in negotiations as inconsistent statements. The drafters believed this was most consistent with the purpose of the rule, which is to encourage parties to engage in frank and open negotiations in order to compromise disputes. There is no authority on this question in Pennsylvania. We think that the federal drafter's approach is better, and, therefore, recommended adoption of this portion of the rule.

The federal rule in paragraph (a)(2) permits the use in criminal cases of statements made to government investigators, regulators, or enforcement authority in negotiations in civil cases. We did not recommend the adoption of this portion of the federal rule, because we believed it will deter parties in civil matters from frank and open negotiations with government regulators, if there is a risk that their statements will then be used in criminal prosecutions.

The last sentence of the proposed rule was deleted from the federal rule, because it was believed to be superfluous. We recommended its retention as a precaution against frivolous argument.

[Pa.B. Doc. No. 08-1793. Filed for public inspection October 3, 2008, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 4, 5, AND 9]

Order Approving the Revisions of the Comments to Rules 114, 430, 451, 509, 511, 536, 576, 907 and 908; Criminal Procedural Rules; No. 368; Doc. No. 2

Order

Per Curiam:

And Now, this 18th day of September, 2008, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before approval at 37 Pa.B. 6396 (December 8, 2007), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 934 No. 3 and 935 No. 1), and a *Final Report* to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revisions of the *Comments* to Rules of Criminal Procedure 114, 430, 451, 509, 511, 536, 576, 907 and 908 are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 1, 2009.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART A. Business of the Courts

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.

Under the post-sentence motion procedures, the clerk of courts must comply with this rule after entering an order denying a post-sentence motion by operation of law. See Rule 720(B)(3)(c).

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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 September 18, 2008, effective February 1, 2009.**

Committee Explanatory Reports:

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Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

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.

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph **(B)(1)(b)**, formerly paragraph (A)(1)(d), was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

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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 February 1, 2008; **Comment revised September 18, 2008, effective February 1, 2009.**

Committee Explanatory Reports:

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Final Report explaining the change to the Rule 454 reference in paragraph (B)(1)(b) with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

PART E. General Procedures in Summary CASES

Rule 451. Service.

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(B) [(b)] When service of a summons has been made by first class mail and the defendant fails to respond or appear within the time specified by these rules, the issuing authority shall cause service to be made upon the defendant personally or by certified mail, return receipt requested. Thereafter, the case shall proceed as provided in these rules.

Comment

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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 September 18, 2008, effective February 1, 2009.**

Committee Explanatory Reports:

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Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

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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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.

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

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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 September 18, 2008, effective February 1, 2009.**

Committee Explanatory Reports:

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Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5488 (October 4, 2008).

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.

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

Official Note: Original Rule 111, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 111 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 112 September 18, 1973, effective January 1, 1974; renumbered Rule 511 March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; Comment revised September 18, 2008, effective February 1, 2009.

Committee Explanatory Reports:

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Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

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.

(A) SANCTIONS

(1) [Revocation of Release] Revocation of Release

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(2) [Forfeiture] Forfeiture

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Comment

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Paragraph (A)(1)(b) was amended and former 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] 3, 2004, effective July 1, 2004; Comment revised August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; Comment revised May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; Comment revised September 18, 2008, effective February 1, 2009.

Committee Explanatory Reports:

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Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

PART F(1). Motion Procedures

Rule 576. Filing and Service by Parties.

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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").

* * * * *

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] 3, 2004, effective July 1, 2004. Rules 576 and 577 combined and amended March 3, 2004, effective July 1, 2004. Comment revised June 4, 2004, effective November 1, 2004; Comment revised September 18, 2008, effective February 1, 2009.

Committee Explanatory Reports:

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

Final Report explaining the March 3, 2004 changes amending and combining Rule 576 with former Rule 577 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 907. Disposition Without Hearing.

* * * * *
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).

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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 September 18, 2008, effective February 1, 2009.**

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

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

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Rule 908. Hearing.

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Comment

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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 September 18, 2008, effective February 1, 2009.**

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

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

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

FINAL REPORT¹

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

ELECTRONIC RETURN RECEIPTS

On September 18, 2008, effective February 1, 2009, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the *Comments to Rules of Criminal Procedure 114, 430, 451, 509, 511, 536, 576, 907, and 908*. The 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.

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

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

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"² and "signature"³ in 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 recommended to the Court that the rules should specifically recognize the Postal Service's return receipt electronic option. To accomplish this, the *Comments* to the rules requiring certified mail return receipt requested have been revised by the addition of a new provision 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,⁴ when using certified mail, return receipt requested.

[Pa.B. Doc. No. 08-1794. Filed for public inspection October 3, 2008, 9:00 a.m.]

[234 PA. CODE CHS. 5 AND 8]

Order Amending Rules 590, 803 and 804; Criminal Procedural Rules; No. 369; Doc. No. 2

Order

Per Curiam:

And Now, this 18th day of September, 2008, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration because the changes merely conform the rules to the law, and a *Final Report* to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to Rules of Criminal Procedure 590, 803, and 804 are adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective November 1, 2008.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART G. Plea Procedures

Rule 590. Pleas and Plea Agreements.

² "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."

³ "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, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules."

⁴ For example, United Parcel Service provides a comparable service for electronic return receipts.

* * * * *

(C) MURDER CASES.

In cases in which the imposition of a sentence of death is not authorized, when a defendant enters a plea of guilty or nolo contendere to a charge of murder generally, **the degree of guilt shall be determined by a jury unless the attorney for the Commonwealth elects to have the judge, before whom the plea was entered, [shall] alone determine the degree of guilt.**

Comment

The purpose of paragraph (A)(2) is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea or plea of nolo contendere is voluntarily and understandingly tendered. On the mandatory nature of this practice, see *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 ([Pa.] 1974); *Commonwealth v. Campbell*, 451 Pa. 198, 304 A.2d 121 ([Pa.] 1973); *Commonwealth v. Jackson*, 450 Pa. 417, 299 A.2d 209 ([Pa.] 1973).

* * * * *

(7) Does the defendant understand that the Commonwealth has a right to have a jury decide the degree of guilt if the defendant pleads guilty to murder generally?

The Court in *Commonwealth v. Willis*, 471 Pa. 50, 369 A.2d 1189 (1977), and *Commonwealth v. Dilbeck*, 466 Pa. 543, 353 A.2d 824 (1976), mandated that, during a guilty plea colloquy, judges must elicit the information set forth in paragraphs (1) through (6) above. In 2008, the Court added paragraph (7) to the list of areas of inquiry.

[Inquiry into the above six areas is mandatory during a guilty plea colloquy under *Commonwealth v. Willis*, 369 A.2d 1189 (Pa. 1977), and *Commonwealth v. Dilbeck*, 353 A.2d 824 (Pa. 1976).]

Many, though not all, of the areas to be covered by such questions are set forth in a footnote to the Court's opinion in *Commonwealth v. Martin*, 445 Pa. 49, 54-55, 282 A.2d 241, 244-245 ([Pa.] 1971), in which the colloquy conducted by the trial judge is cited with approval. See also *Commonwealth v. Minor*, 467 Pa. 230, 356 A.2d 346 ([Pa.] 1976), and *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 ([Pa.] 1974). As to the requirement that the judge ascertain that there is a factual basis for the plea, see *Commonwealth v. Maddox*, 450 Pa. 406, 300 A.2d 503 ([Pa.] 1973) and *Commonwealth v. Jackson*, 450 Pa. 417, 299 A.2d 209 ([Pa.] 1973).

* * * * *

The "terms" of the plea agreement, referred to in paragraph (B)(1), frequently involve the attorney for the Commonwealth—in exchange for the defendant's plea of guilty or nolo contendere, and perhaps for the defendant's promise to cooperate with law enforcement officials—promising concessions such as a reduction of a charge to a less serious offense, the dropping of one or more additional charges, a recommendation of a lenient sentence, or a combination of these. In any event, paragraph (B) is intended to insure that all terms of the agreement are openly acknowledged for the judge's assessment. See, e.g., *Commonwealth v. Wilkins*, 442 Pa. 542, 277 A.2d 341 ([Pa.] 1971).

* * * * *

When a guilty plea, or plea of nolo contendere, includes a plea agreement, the 1995 amendment to paragraph (B)(2) requires that the judge conduct a separate inquiry on the record to determine that the defendant understands and accepts the terms of the plea agreement. See *Commonwealth v. Porreca*, 528 Pa. 46, 595 A.2d 23 ([Pa.] 1991).

Former paragraph (B)(3) was deleted in 1995 for two reasons. The first sentence merely reiterated an earlier provision in the rule. See paragraph (A)(3). The second sentence concerning the withdrawal of a guilty plea was deleted to eliminate the confusion being generated when that provision was read in conjunction with Rule 591. As provided in Rule 591, it is a matter of judicial discretion and case law whether to permit or direct a guilty plea or plea of nolo contendere to be withdrawn. See also *Commonwealth v. Porreca*, 528 Pa. 46, 595 A.2d 23 ([Pa.] 1991) (the terms of a plea agreement may determine a defendant's right to withdraw a guilty plea).

For the procedures governing the withdrawal of a plea of guilty or nolo contendere, see Rule 591.

Paragraph (C) reflects a change in Pennsylvania practice, [which] that formerly required the judge to convene a panel of three judges to determine the degree of guilt in murder cases in which the imposition of a sentence of death was not statutorily authorized. **The 2008 amendment to paragraph (C) and the Comment recognizes the Commonwealth's right to have a jury determine the degree of guilt following a plea of guilty to murder generally. See Article I, § 6 of the Pennsylvania Constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused." See also *Commonwealth v. White*, 589 Pa. 642, 910 A.2d 648 (2006).**

Official Note: Rule 319(a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective 30 days hence; specific areas of inquiry in Comment deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; 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; paragraph (c) added and Comment revised May 22, 1978, effective July 1, 1978; Comment revised November 9, 1984, effective January 2, 1985; amended December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 590 and Comment revised March 1, 2000, effective April 1, 2001; **amended September 18, 2008, effective November 1, 2008.**

Committee Explanatory Reports:

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

Final Report explaining the September 18, 2008 amendments to paragraph (C) concerning juries determining degree of guilt published with the Court's Order at 38 Pa.B. 5431 (October 4, 2008).

CHAPTER 8. SPECIAL RULES FOR CASES IN WHICH DEATH SENTENCE IS AUTHORIZED

Rule 803. Guilty Plea Procedure.

(A) When a defendant charged with murder enters a plea of guilty to a charge of murder generally, **the degree**

of guilt shall be determined by a jury unless the attorney for the Commonwealth elects to have the judge, before whom the plea is entered, [shall] alone determine the degree of guilt.

(B) If the crime is determined to be murder of the first degree the sentencing proceeding shall be conducted as provided by law.

Comment

For the procedure for the entry of guilty pleas, see Rule 590. For the sentencing procedure if the crime is determined to be murder of the first degree, see Sentencing Code, 42 Pa.C.S. § 9711(b).

The 2008 amendment to paragraph (A) recognizes the Commonwealth's right to have a jury determine the degree of guilt following a plea of guilty to murder generally. See Article I, § 6 of the Pennsylvania Constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused." See also *Commonwealth v. White*, 589 Pa. 642, 910 A.2d 648 (2006).

Official Note: Original Rule 352 adopted September 22, 1976, effective November 1, 1976; amended May 26, 1977, effective July 1, 1977; rescinded April 2, 1978, effective immediately. Former Rule 352 adopted July 1, 1985, effective August 1, 1985; renumbered Rule 353 February 1, 1989, effective July 1, 1989; renumbered Rule 802 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 803 June 4, 2004, effective November 1, 2004; **amended September 18, 2008, effective November 1, 2008.**

Committee Explanatory Reports:

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

Final Report explaining the September 18, 2008 amendments to paragraph (A) concerning juries determining degree of guilt published with the Court's Order at 38 Pa.B. 5431 (October 4, 2008).

Rule 804. Procedure When Jury Trial is Waived.

(A) **[When a defendant charged with murder waives a jury trial,] In all cases in which the defendant is charged with murder, the defendant and the attorney for the Commonwealth may waive a jury trial with approval by a judge of the court in which the case is pending. In these cases, the trial judge shall alone hear the evidence, determine all questions of law and fact, and render a verdict [which] that shall have the same force and effect as a verdict of a jury.**

* * * * *

Official Note: Original Rule 353 adopted September 22, 1976, effective March 1, 1977, effective date extended to April 1, 1977; amended May 26, 1977, effective July 1, 1977; rescinded April 2, 1978, effective immediately. Former Rule 353 adopted July 1, 1985, effective August 1, 1985, renumbered Rule 354 February 1, 1989, effective July 1, 1989; renumbered Rule 803 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 804 June 4, 2004, effective November 1, 2004; **amended September 18, 2008, effective November 1, 2008.**

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 (March 18, 2000).

Final Report explaining the September 18, 2008 amendments to paragraph (A) concerning waiver of a jury trial published with the Court's Order at 38 Pa.B. 5431 (October 4, 2008).

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 590, 803 and 804

COMMONWEALTH'S RIGHT TO HAVE JURY DETERMINE DEGREE OF GUILT

On September 18, 2008, effective November 1, 2008, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 590 and 803 to conform to the rules with the Court's holding in *Commonwealth v. Miriam White*, 589 Pa. 642, 910 A.2d 648 (2006). The amendments make it clear in these rules that the Commonwealth has a right to have a jury determine the degree of guilt when the defendant pleads guilty to murder generally. The Court also amended Rule 804 to conform it to the jury waiver provisions in Rule 620.

1. Pa.Rs.Crim.P. 590 and 803

The Committee undertook a review of the guilty plea rules following the Court's decision in *Commonwealth v. Miriam White, supra.*, in which the Court held, *inter alia*, that the Commonwealth has a right to request that a jury determine the degree of guilt in cases in which the defendant pleads guilty to murder generally. In reaching this decision, Justice Eakin, writing for the majority, noted:

Waiving one's right, however, does not constitute waiver of another's corresponding right; White cannot vitiate the Commonwealth's right by waiving her own. Accordingly, we conclude the Commonwealth retains its right to a jury under Article I, § 6 of the Pennsylvania Constitution, Pa. Const. art. I, § 6 ("in criminal cases the Commonwealth shall have the same right to trial by jury as does the accused."); . . . and it may request one at the degree of guilt hearing. *Id.* at 662.

Paragraph (C) of Rule 590 (Pleas and Plea Agreements) and paragraph (A) of Rule 803 (Guilty Plea Procedure) provide in cases in which the defendant pleads guilty to murder generally, "the judge before whom the plea is entered shall alone determine the degree of guilt." In view of *White*, this provision in the rules, without some further elaboration, is no longer procedurally accurate. Accordingly, Rule 590(C) and Rule 803(A) are amended to recognize the 1998 amendment to Article I, § 6 of the Pennsylvania Constitution and alert the bench and bar to the holding in *White*.

The Committee, in considering how to address the matter in the rules, observed that the right to a jury trial, granted by the Pennsylvania Constitution to both the defendant and the Commonwealth, is the default position. That is, both the defendant and the Commonwealth start with the right to a jury trial. Absent an affirmative waiver of the right to a jury trial by both parties, the case will proceed before a jury. The Committee also noted, as stated in *White, supra.* at 662, when a defendant enters a guilty plea to murder generally, the defendant is waiving his or her right to have a jury determine the degree of guilt. In view of this analysis, the amendments to Rule 590(C) and Rule 803(A) make it clear when a defendant pleads guilty to murder generally, the jury will determine

the degree of guilt unless the Commonwealth elects to have the judge before whom the plea was entered make the determination.

During the Committee's discussions about the proposed rule changes, several members opined that in order to make an informed decision whether to plead guilty to murder generally, the defendant must understand that the Commonwealth has a right to have a jury determine the degree of guilt in these circumstances. The Committee reasoned this information should be elicited as part of the guilty plea colloquy. To accomplish this, the areas of inquiry listed in the Rule 590 *Comment* have been revised to include a provision that the judge inquire into whether the defendant understands that the Commonwealth has a right to have a jury decide the degree of guilt when the defendant pleads guilty to murder generally.

In addition, the *Comments* to Rules 590 and 803 have been revised by the addition of references to Article 1 § 6 of the Pennsylvania Constitution and to *Commonwealth v. White, supra.*

2. Pa.R.Crim.P. 804

Although not the subject of *White*, Rule 804 (Procedure When Jury Trial is Waived) also has been amended. Rule 804 provides, *inter alia*, that "When a defendant charged with murder waives a jury trial, the trial judge shall alone hear the evidence." The Committee, during its discussions of Rules 590 and 803 and the Commonwealth's right to a jury trial, noted that Rule 804 had not been amended at the same time that Rule 620 (Waiver of Jury Trial) was amended to reflect the 1998 amendment to Article I, § 6 of the Pennsylvania Constitution. In view of this, it makes sense at this time to amend Rule 804 to bring the rule into conformity with the waiver of jury trial provisions in Rule 620. Accordingly, paragraph (A) of Rule 804 is amended to provide that both the defendant and the attorney for the Commonwealth may waive a jury trial with the approval of the judge when the defendant is charged with murder.

[Pa.B. Doc. No. 08-1795. Filed for public inspection October 3, 2008, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BUCKS COUNTY

Bucks County Orphans' Court Mediation Program; Administrative Order No. 53

Order of Court

The Court recognizes that the use of mediation may offer litigants a faster and less expensive alternative to litigation. Accordingly, in the interests of judicial economy and of those litigants who may benefit from the availability of mediation as a means of dispute resolution, the following program, which shall be known as the "Bucks County Orphans' Court Mediation Program" is hereby adopted:

1. Upon adoption of this program, any litigant who files an action in either the Orphans' Court or the Register of Wills of Bucks County that does not, under law, require an adjudication, will receive from the Clerk of the Orphans' Court or the Register of Wills, a media-

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

tion notice outlining the availability of mediation as an alternative to litigation. The Mediation Notice shall be in the form of a brochure which explains the Orphans' Court Mediation process and procedure.

2. If the filing party has an interest in mediation, then he or she shall provide a copy of the brochure upon all other parties to determine if the parties wish to mediate some or all of the disputed issues.

3. The parties electing mediation shall pay an initial mediation fee directly to the mediator to cover administrative costs and the fee for a two-hour mediation.

4. If mediation resolves the dispute, the parties shall terminate the legal proceedings and they may also file an Agreed Order with the Orphan's Court. If the matter has been assigned to an Orphan's Court Judge, the Judge may, in his discretion, require the parties and/or the mediator to provide the Court with such information as to the status of the mediation as the Judge may deem appropriate.

5. If the mediation does not resolve the dispute, any party may continue with litigation.

By the Court

DAVID W. HECKLER,
President Judge

[Pa.B. Doc. No. 08-1796. Filed for public inspection October 3, 2008, 9:00 a.m.]

BUCKS COUNTY

Transcript Fees in Criminal Matters; Criminal Division; MD 1894-2008; No. 54

Order of Court

And Now, this 1st day of July, 2008, Bucks County Administrative Order No. 54 is hereby promulgated as follows:

All transcripts ordered in criminal matters, including appeals, by attorneys privately retained shall be provided at the customary private transcription rate for such transcripts.

This order shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

DAVID W. HECKLER,
President Judge

[Pa.B. Doc. No. 08-1797. Filed for public inspection October 3, 2008, 9:00 a.m.]

COLUMBIA AND MONTGOMERY COUNTIES

Amendments and Adoption of Local Rule of Criminal Procedure 117; No. 2008-AD-9

Order of Court

And Now, this 24th day of September, 2008, Local Rule 117 is hereby amended and adopted as follows:

The Court Administrator is directed to:

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

2. File two (2) certified copies and one (1) diskette of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

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

4. Keep continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

By the Court

SCOTT W. NAUS,
President Judge

1. Normal Business Hours:

(a) Magisterial District Judge Offices shall be open for regular business Monday through Friday, excluding County Holidays, during such hours as established by the President Judge, and as may be modified with the approval of the President Judge to meet the needs of the public and the Court.

(b) When during regular business hours the Magisterial District Judge who has jurisdiction over a particular matter is unavailable, authority to act is transferred to other Magisterial District Judges in the 26th Judicial District pursuant to a Special Assignment schedule approved by the President Judge and amended from time to time. This schedule shall govern the appropriate jurisdiction for specific actions, unless the individual Magisterial District Judges specifically transfer that jurisdiction among themselves due to their own unavailability based on work schedule or other related convenience, in which case the Court approves that transferred Magisterial District Judge for authority over a particular action.

2. On Call Magisterial District Judge:

(a) An on-call Magisterial District Judge shall be available twenty-four hours a day, every day of the calendar year to provide continuous coverage for the issuance of warrants, the holding of preliminary arraignments, the setting and accepting of bail, and the issuance of emergency orders under the Protection from Abuse Act.

(b) An on-call Magisterial District Judge shall be on-call during non-business hours on a rotating basis, pursuant to an annual schedule prepared by the District Court Administrator.

3. Accepting Bail:

(a) Between the hours of 4:30 p.m. and 8:00 a.m., Monday through Friday, and on weekends and County Legal Holidays, the Warden of the County Prison, or his designee, shall be authorized to accept bail pursuant to and subject to the limitations of the Pennsylvania Rules of Criminal Procedure. The Warden's authority is limited to accepting the bail deposit, delivering the bail and bond to the proper Issuing Authority (Magisterial District Judge) or the County Clerk of Courts, whichever has jurisdiction, and, under the Pennsylvania Rules of Criminal Procedure 525, releasing the defendant upon execution of the bail bond.

4. Search Warrants and Arrest Warrants, and Protections from Abuse Petitions:

(a) An on-call Magisterial District Judge shall be available without unreasonable delay for the issuance of search warrants pursuant to Rule 203, arrest warrants pursuant to rule 513, and Emergency Protection from Abuse Orders

5. Preliminary Arraignments:

(a) For Arrests occurring between the hours of 8:00 a.m. and 4:30 p.m., the Defendant shall be taken to the Magisterial District Judge having jurisdiction.

(b) For arrests occurring after 4:30 p.m. but before 11:00 p.m., the on-call Magisterial District Judge shall be available without unreasonable delay at his/her office, or at the discretion of the Magisterial District Judge, by video conferencing from the Columbia County Prison or Montour County Prison.

(c) For arrests occurring after 11:00 p.m. but before 8:00 a.m., the arresting agency, including the state police, municipal police, sheriff or constable, is authorized to detain the prisoner at the Columbia County Prison or Montour County Correctional Facility until arraignment. For Defendants so detained, the on-call Magisterial District Judge shall appear in person or by video conferencing at the Columbia County Prison or Montour County Prison at 9:00 a.m. to preside at the Preliminary Arraignment.

(d) The arresting agency detaining the Defendant shall provide to the Magisterial District Judge the original and copies of the Criminal Complaint with Probable Cause Affidavit attached, a copy of the Defendant's criminal record, and any recommendation regarding bail for the Defendant, by depositing the documents at the Columbia County Prison or Montour County Prison for use by the Magisterial District Judge.

(e) The Columbia County Prison and Montour Prison are directed to identify a detention area for prisoners so detained.

(f) The Columbia County Prison or Montour County Prison is directed to make available to the Magisterial District Judge appropriate space for video conferencing availability between the hours of 9:00 a.m. and 10:00 a.m. to perform the Preliminary Arraignment.

(g) Upon completion of the Preliminary Arraignment, the detention authorized by this rule shall terminate and the person detained shall be processed in accordance with the Order of the Magisterial District Judge at the Preliminary Arraignment.

6. Bench Warrants in Court Cases:

(a) Upon receiving notice from the Magisterial District Court that a bench warrant has been executed or that the Defendant has surrendered, the Court administrator shall schedule a hearing as soon as possible but not later than seventy-two (72) hours after the Defendant has been lodged in the Columbia County Prison or Montour County Prison.

7. Summary Offense Arrest Warrants and Bench Warrants:

(a) Any individual executing an arrest warrant or a bench warrant in a summary offense shall proceed in accordance with Rules 430 and 431 except as set forth hereafter.

(b) In the event the warrant is executed between the hours of 8:00 a.m. and 4:30 p.m., the Defendant shall be taken to the Magisterial District Judge having jurisdiction.

(c) For summary warrants executed after 4:30 p.m., the individual executing the arrest warrant shall: (1) accept a signed guilty plea and the full amount of the fines and costs; (2) accept a signed not guilty plea and the full amount of collateral; or (3) allow the defendant to voluntarily appear before the Magisterial District Judge by 9:00 a.m. the next business day, or a bench warrant shall be issued.

(d) For summary bench warrants executed after 4:30 p.m., but before 8:00 a.m., the individual executing the arrest warrant is authorized to detain the prisoner at the Columbia County Prison or Montour County Prison until 9:00 a.m., the following morning. For Defendants so detained, the on-call Magisterial District Judge shall appear in person or by video conferencing at the Columbia County Prison or Montour County Prison at 9:00 a.m. to preside at the bench warrant hearing.

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