

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4 AND 5]

Proposed Amendments to Pa.R.Crim.P. 409 (Guilty Pleas), 414 (Guilty Pleas), 424 (Guilty Pleas), 460 (Notice of Appeal), 462 (Trial De Novo), and 550 (Pleas of Guilty Before Magisterial District Judge in Court Cases)

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 409, 414, 424, 460, 462 and 550 to provide, in summary and court cases in which a defendant withdraws a plea or appeals for a trial de novo, for the reinstatement of charges dismissed as a result of a plea agreement. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

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

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

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 Criminal Procedural Rules Committee
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no later than Friday, January 23, 2009.

By the Criminal Procedural Rules Committee

D. PETER JOHNSON,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART B(1). Procedures When Citation Is Issued to Defendant

Rule 409. Guilty Pleas.

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(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial de novo, the original charges will be reinstated and the case will proceed on the original charges;

[(2)] (3) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

[(3)] (4) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

[(4)] (5) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

[(5)] (6) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

* * * * *

Paragraph (C) [(4)] (5) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea. Paragraph (D) would permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

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Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule [430] 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective [August] February 1, [2007] 2008; amended , 2009, effective , 2009.

Committee Explanatory Reports:

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Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, [2007] 2008).

Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. 6882 (December 20, 2008).

PART B(2). Procedures When Citation Filed

Rule 414. Guilty Pleas.

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(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial de novo, the original charges will be reinstated and the case will proceed on the original charges;

[(2)] (3) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

[(3)] (4) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

[(4)] (5) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

[(5)] (6) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

* * * * *

Paragraph (C) [(4)] (5) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea. Paragraph (D) would

permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

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Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule [455] 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; **amended** , **2009, effective** , **2009.**

Committee Explanatory Reports:

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Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. 6882 (December 20, 2008).

PART C. Procedures in Summary Cases When Complaint Filed

Rule 424. Guilty Pleas.

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(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial de novo, the original charges will be reinstated and the case will proceed on the original charges;

[(2)] (3) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

[(3)] (4) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

[(4)] (5) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

[(5)] (6) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)[(4)] (5) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

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Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, [2007] 2008; amended , 2009, effective , 2009.

Committee Explanatory Reports:

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Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. [4289] 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3) and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. 6882 (December 20, 2008).

PART F. Procedures in Summary Cases for Appealing to Court of Common Pleas for a Trial De Novo

Rule 460. Notice of Appeal.

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(C) Within 5 days after filing the notice of appeal, a copy shall be served either personally or by mail by the clerk of courts upon the issuing authority, the affiant, and the appellee or appellee's attorney, if any.

(D) When a defendant appeals from a summary proceeding in any case in which a plea agreement has been reached between the Commonwealth and the defendant in which any of the original summary charges is withdrawn in exchange for a plea to one or more other summary charges, the magisterial district judge shall reinstate any charges withdrawn as part of a plea agreement, and the case shall proceed upon the original charges.

[(D)] (E) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

- (1) the transcript of the proceedings;
- (2) **if the charges are reinstated pursuant to paragraph (D), a statement to that effect;**
- (3) the original complaint or citation, if any;

[(3)] (4) the summons or warrant of arrest, if any; and

[(4)] (5) the bail bond, if any.

[(E)] (F) This rule shall provide the exclusive means of appealing from a summary guilty plea or conviction. Courts of common pleas shall not issue writs of certiorari in such cases.

[(F)] (G) This rule shall not apply to appeals from contempt adjudications.

Comment

This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

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Paragraph (D) was added in 2009 to provide for the reinstatement of charges withdrawn as part of a plea agreement when the defendant subsequently appeals for a trial de novo.

This rule is not applicable to cases that originated as court cases but all misdemeanor or felony charges are withdrawn in exchange for a plea to one or more summary charges. These cases will proceed under Rule 550.

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Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 6, 2003, effective July 1, 2003; Comment revised February 28, 2003, effective July 1, 2003; amended , 2009, effective , 2009.

Committee Explanatory Reports:

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

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Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (March 18, 2002).

NEW RULE 460:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 460 published at 30 Pa.B. 1478 (March 18, 2000).

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Report explaining the proposed amendments concerning plea agreements published at 38 Pa.B. 6882 (December 20, 2008).

Rule 462. Trial De Novo.

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(C) When a defendant appeals from a summary proceeding in any case in which a plea agreement has been reached between the Commonwealth and the defendant in which any of the original summary offenses is withdrawn in exchange for a plea to one or more other summary charges and the issuing authority has reinstated the withdrawn charges as provided in Rule 460(D), the case shall proceed upon the original charges.

[(C) (D)] In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

* * * * *

[(D) (E)] If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

[(E) (F)] If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

[(F) (G)] The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial.

[(G) (H)] At the time of sentencing, the trial judge shall:

* * * * *

[(H) (I)] After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

Comment

This rule is derived from former Rule 86(G) and former Rule 1117(c).

The procedures for conducting the trial de novo in the court of common pleas set forth in paragraphs (B), **[(F) (G)]**, and **[(G) (H)]** are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).

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The provisions of paragraph **[(C) (D)]** that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, 438 Pa. Super. 400, 652 A.2d 873 (1995).

Paragraph **[(D) (E)]** makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial de novo. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

Pursuant to paragraph **[(G) (H)]**, if the defendant is convicted, the trial judge must impose sentence, and advise the defendant of the payment schedule, if any, and the defendant's appeal rights. See Rule 704(A)(3) and Rule 720(D). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Once sentence is imposed, paragraph **[(H) (I)]** makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs, and the case may not be returned to the magisterial district judge. The execution of sentence includes the collection of any fines and restitution.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004 amended January 18, 2007, effective August 1, 2007; **amended** , **2009, effective** , **2009.**

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NEW RULE 462:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 462 published at 30 Pa.B. 1478 (March 18, 2000).

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Report explaining the proposed amendments concerning procedures following plea agreements published at 38 Pa.B. 6882 (December 20, 2008).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 550. Pleas of Guilty Before Magisterial District Judge in Court Cases.

(A) In a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction

tion, or in which a plea agreement has been reached between the Commonwealth and the defendant and all misdemeanor or felony charges are withdrawn in exchange for a plea to one or more summary charges, a defendant may plead guilty before a magisterial district judge at any time up to the completion of the preliminary hearing or the waiver thereof.

* * * * *

(D) A defendant who enters a plea of guilty under this rule may, within 10 days after sentence, change the plea to not guilty by so notifying the magisterial district judge in writing. In such event, the magisterial district judge shall vacate the plea and judgment of sentence, shall reinstate any charges withdrawn as part of a plea agreement, and the case shall proceed in accordance with Rule 547, as though the defendant had been held for court.

(E) Ten days after the acceptance of the guilty plea and the imposition of sentence, the magisterial district judge shall,

(1) in a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction, certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings[.] ; or

(2) in a court case in which a plea agreement has been reached between the Commonwealth and the defendant and all misdemeanor or felony charges are withdrawn in exchange for a plea to only summary charges, the magisterial district judge shall enter a final disposition.

Once the case has been forwarded to the court of common pleas, the case shall not be remanded to the issuing authority.

Comment

In certain cases, what would ordinarily be a court case within the jurisdiction of the court of common pleas has been placed within the jurisdiction of magisterial district judges. See Judicial Code, 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7). This rule provides the procedures to implement this expanded jurisdiction of magisterial district judges.

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This rule also applies in any court case in which the Commonwealth agrees to withdraw all misdemeanor or felony charges in exchange for the defendant's plea to one or more summary charges. Even though only summary charges remain, the case still is considered a court case. The procedures for appeal for a trial de novo in summary cases set forth in Rules 460-462 are not applicable.

Once the 10-day period for withdrawal of the guilty plea has expired, the case will not be forwarded to the court of common pleas, but will have a final disposition entered in the magisterial district court. However, if the guilty plea takes place after the case is held for court, the case shall remain in the court of common pleas and thereafter would proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation.

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Official Note: Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006; **amended** , **2009, effective** , **2009.**

Committee Explanatory Reports:

Final Report explaining the August 22, 1997 amendments that clarify the procedures following a district justice's acceptance of a guilty plea and imposition of sentence in a court case published with the Court's [**order**] **Order** at 27 Pa.B. 4549 (September 6, 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**] **1478** (March 18, 2000).

Final Report explaining the December 9, 2005 changes to the rule clarifying the magisterial district judges' exercise of jurisdiction published with the Court's Order at 35 Pa.B. 6896 (December 24, 2005).

Report explaining the proposed amendments concerning procedures following plea agreements published at 38 Pa.B. 6882 (December 20, 2008).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 409, 414, 424, 460, 462 and 550

SUMMARY PLEA AGREEMENTS

The Committee recently examined the procedures when a court case¹ is brought before an magisterial district judge, presumably for a preliminary hearing or other proceeding, and the defendant enters into a plea agreement with the Commonwealth. The defendant enters a guilty plea before the magisterial district judge to one or more summary offenses in exchange for the withdrawal of the misdemeanor or felony charges, and subsequently appeals the summary conviction to the court of common pleas. In this procedural posture, the issue is whether an appeal for a trial de novo should be permitted and what charges should go forward.

The Committee believes that it would be unfair for the defendant to enjoy the benefit of a bargain of reduced charges that was premised upon the entry of a guilty plea and then attempt to defeat the reduce charge on appeal. If the defendant desires to withdraw his or her plea, there should be a mechanism to reinstate the original charges.

The Committee concluded that, since these types of cases initially included misdemeanors or felonies, the cases should be treated as court cases throughout. This is consistent with the definition of "court case" in Rule 103 that states that a "court case is a case in which one or more offenses **charged** is a misdemeanor, felony, or murder of the first, second, or third degree (emphasis added)." Therefore, the defendant should not be permitted to appeal for a trial de novo. Rather, these cases should be treated as being akin to the acceptance of a third degree misdemeanor guilty plea as provided in Rule 550.

The Committee is proposing amendments to Rule 550 that would broaden the types of cases that would be covered by the Rule 550 procedures to include the acceptance by the magisterial district judges of guilty pleas to summary charges in cases that originally in-

¹The case originates by charging misdemeanor, felony or murder offenses.

cluded felony or misdemeanor charges. If the defendant subsequently withdraws his or her plea, as is currently provided in Rule 550(D), the magisterial district judge must reinstate the charges withdrawn as part of the plea agreement, and thereafter the case will proceed in accordance with Rule 547, as though the defendant had been held for court.

As a procedural point, the Committee noted that Rule 550(E) requires that, if the defendant has not withdrawn his or her guilty plea within ten days of its entry, the magisterial district judge is required to certify the judgment and forward the case to the clerk of courts. The Committee recognized that the purpose of this procedure was to ensure the subsequent supervision by the probation department in a misdemeanor case and was therefore unnecessary in the situation of a plea to summary charges. Therefore, language has been added to Rule 550(E) that would provide, in cases involving the entry of a summary plea pursuant to a plea agreement, that once the period for withdrawal of the plea has passed, the case would remain with the magisterial district judge.

Recognizing that the approach set forth in the proposed procedure could be confusing, especially when the case is sent to the court of common pleas, the Committee also is proposing an addition to the Comment to Rule 460 explaining that the Rule 460 procedures are not applicable to a plea taken under Rule 550 in the context of a court case with a plea agreement to summary offenses only.

The Committee also examined the situation in which the case originates entirely as a summary case and one or more summary offenses are dismissed or reduced based upon an agreement to plead to one or more other summary charges.

The Committee believes that these cases should be treated in the same manner as the court cases discussed previously. If the defendant subsequently withdraws the plea or appeals for a trial de novo, the original charges should be reinstated. This would be consistent with the holding in *Commonwealth v. Rose*, 820 A.2d 164 (Pa. Super. 2003), a case in which the Superior Court found that the Commonwealth's voluntary withdrawal of three Motor Vehicle Code citations against the defendant in exchange for a guilty plea to two remaining citations did not constitute a dismissal, and therefore, the original citations could be reinstated when the defendant filed a summary appeal. The proposal includes language to be added to Rules 460 and 462 that would require the magisterial district judge to reinstate the original charges if the charges had been withdrawn as part of a plea agreement that the defendant subsequently abrogates by withdrawing his or her plea or filing an appeal for a trial de novo. The proposal also adds a requirement to the summary guilty plea rules, Rules 409, 414, and 424, that the defendant be given notice of the consequences of a withdrawal from such a plea agreement at the time of the entry of the plea.

[Pa.B. Doc. No. 08-2278. Filed for public inspection December 19, 2008, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Amendment of Philadelphia Civil Rule *205.4 and Adoption of Philadelphia Civil Rule *204.1.; Gen- eral Court Regulation No. 2008-03

Order

And Now, this 1st day of December, 2008, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on November 20, 2008, to amend Philadelphia Civil Rule *205.4 and to Adopt Philadelphia Civil Rule *204.1, *It Is Hereby Ordered* that Philadelphia Civil Rule *205.4 is amended, and that Philadelphia Civil Rule *204.1 is adopted as followed.

This General Court Regulation is issued in accordance with Pa.R.C.P. No. 239 and the previous-referenced rule changes shall become effective on January 5, 2009. The original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, shall be published in the *Pennsylvania Bulletin*, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, and the Civil Procedural Rules Committee. Copies of the General Court Regulation shall also be submitted to *American Lawyer Media*, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the web site of the First Judicial District of Pennsylvania: courts.phila.gov/regs, and, as required by Pa.R.C.P. No. 239.9(d) and 239.8(b)—(d), Philadelphia Civil Rule *205.4 shall be posted on the Pennsylvania Judiciary's Web Application Portal: ujsportal.pacourts.us/Rules/Rules Selection.aspx.

HONORABLE PAMELA PRYOR DEMBE,
President Judge
Court of Common Pleas

November 20, 2008 Board of Judges' Meeting

Rule *205.4. Electronic Filing of Legal Papers Filed in the Civil Trial Division.

~~(a) (1) -- Authorization for Electronic Filing.~~

~~(i) Commencing on a specific date as established by the Administrative Judge of the Trial Division by the issuance of an Administrative Order, parties may electronically file all legal papers and exhibits with the Prothonotary.~~

~~(ii) Commencing on a specific date as established by the Administrative Judge of the Trial Division by the issuance of an Administrative Order, parties shall electronically file all legal papers and exhibits with the Prothonotary.~~

~~**Note:** Electronic Filing will be implemented in 2008; however, the exact date is not known at this time. The Administrative Judge of the Trial Division will announce the implementation dates of discretionary and mandatory electronic filing by order issued as required by Pa.R.C.P. No. 239.~~

(a) Commencing at 9:00 AM on January 5, 2009, parties shall electronically file all "legal papers," as defined in Pa.R.C.P. No. 205.4(a)(2), with the Prothonotary through the Civil Trial Division's Electronic

Filing System as more specifically provided in Pennsylvania Rule of Civil Procedure No. 205.4 and Philadelphia Civil Rule *205.4.

Explanatory Note: The term “legal paper” as defined in Pa.R.C.P. No. 205.4(a)(2) encompasses **all** pleadings and other papers filed with the Prothonotary—even if the legal papers are not adversarial in nature and do not require the non-filing party or parties to respond (such as Notices of Tax Liens).

* * * * *

(d)(3) Electronic Filing Fees and Costs. As authorized by Act 81 of 2006, the Prothonotary shall collect an electronic filing fee for each legal paper or exhibit filed as established by the Prothonotary with the approval of the President Judge of the Court of Common Pleas. In addition to such electronic filing fee, commencing on date provided in subsection (a)(1)(ii) **January 5, 2009**, the Prothonotary is authorized to charge the sum of \$1.00 per page for each page of a legal paper or exhibit which is filed in a hard copy format and which must be converted by the Prothonotary to a *portable document format*. All fees collected pursuant to this rule shall be set aside by the Prothonotary and remitted monthly to the First Judicial District’s Procurement Unit. All such fees and costs collected will be used for the implementation and maintenance of the electronic filing system and additional development, enhancements and training.

* * * * *

(f) Local Procedures. As authorized by Pa.R.C.P. No. 205.4(f), the following administrative procedures are adopted:

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(7) If a legal paper is electronically filed, the Civil Electronic Filing System will automatically serve all persons who have previously submitted electronic filings in the same case, pursuant to Philadelphia Civil Rule *205.4 and Pa.R.C.P. No. 205.4(g), but the filing party must serve all others as required by rules of court. All legal papers filed in a hard-copy format must be served by the filing party as required by rules of court.

New Rule

Rule *204.1. Pleadings and Other Legal Papers. Format.

(a) In order to accommodate the filing of documents in an electronic format as authorized by Philadelphia Civil Rule *205.4, all “legal papers,” as defined in Pa.R.C.P. No. 205.4(a)(2), must conform to the following requirements:

(1) All files must be no larger than 3MB each. If an electronic file exceeds this limit, then it must be split into multiple files;

(2) All PDF pages must be 8 and 1/2 inches in size exactly. Other file sizes may be incompatible with electronic filing;

(3) No security, passwords or other restrictions may be placed on electronic files. If an electronic file contains passwords or other security devices, it will be rejected; and

(4) After an electronic file is created, it must not be modified in any way. If an electronic filing is modified, it may be incompatible with the electronic filing system and will be rejected.

(b) In order to accommodate the scanning of legal papers presented in hard-copy format and saving in an electronic format as provided by Philadelphia Civil Rule *205.4(b)(1), in addition to the requirements of Pa.R.C.P. No. 204.1, all hard-copy “legal papers” must conform to the following requirements:

(1) all legal papers must be printed on only one side of the paper;

(2) all orders must contain a 3-inch space from the top of the page for all electronic court stampings, filing notices, etc.;

(3) legal papers must not be stapled or permanently bound, but must be secured by binder clips or other fasteners which do not puncture or otherwise interfere with scanning;

(4) bar codes on any page of the legal paper interfere with scanning and must therefore be crossed out or otherwise redacted; and

(5) to avoid scanning errors, Exhibit separator pages must be used instead of Exhibit tabs.

Explanatory Note: The source of this rule is Administrative Docket No. 01-2008, issued by Administrative Judge D. Webster Keogh on July 16, 2008.

Adopted by the Board of Judges on November 20, 2008; effective on January 5, 2009.

[Pa.B. Doc. No. 08-2279. Filed for public inspection December 19, 2008, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Civil Procedure; No. 10130 of 2001

Order

And Now, this 10th day of November, 2008, Local Rule of Civil Procedure 212.2 is amended to read as follows. This Order and Amended Local Rule 212.2, as well as adoption of Local Rule 212.4, shall be effective 30 days after publication in the *Pennsylvania Bulletin* and publication on the Pennsylvania Judiciary’s web application portal. All Local Rules inconsistent with the foregoing amended and new Local Rules are suspended upon the effective date of the foregoing amended and new Local Rules.

In accordance with Pa.R.C.P. No. 239, the Court Administrator of Beaver County shall file or distribute copies of this Order and the amended and new Local Rules as follows:

1. Seven (7) certified copies to the Administrative Office of Pennsylvania Courts;

2. Two (2) certified copies and a computer diskette containing the texts of the amended and new Rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. One (1) certified copy to the Civil Procedure Rules Committee of the Supreme Court of Pennsylvania;

4. One (1) copy to the Prothonotary of Beaver County to be kept continuously available for public inspection and copying;

5. One (1) copy to the Law Library of Beaver County.

In addition, the Court Administrator of Beaver County shall cause the foregoing Rules to be published on the web site of the Administrative Office of Pennsylvania Courts and on the Beaver County web site.

By the Court

JOHN D. MCBRIDE,
President Judge

Rule L 212.2. Pre-Trial Conference and Pre-Trial Statements.

A. Unless otherwise directed by the court, a Pre-Trial Conference shall be Scheduled by the Court Administrator for every case certified for jury trial. Pre-Trial Conferences shall be scheduled on those dates designated for that purpose on the court calendar and on such other dates as may from time to time be designated by the court.

(1) Prior to the Pre-Trial Conference, a party shall provide the opposing party with a copy of all documents or records secured through an authorization of the opposing party. Any such documents or records not so provided may not be used at trial for any purpose.

(2) Pre-Trial statements which comply with Pa.R.C.P. No. 212. Shall be submitted to the judge assigned to conduct the Pre-Trial Conference not later than five (5) business days prior thereto seven (7) days prior thereto. Failure to file a timely pre-trial statement may result in continuance of the Pre-Trial Conference and sanctions in the form of counsel fees payable to opposing counsel. In addition, to the requirements of Pa.R.C.P. No. 212.2, the Pre-Trial Statement shall contain:

(a) A statement of legal and evidentiary issues which are anticipated to arise together with a citation to authority;

(b) An itemized statement of all medical and hospital and other bills and expenses claimed;

(c) An itemized statement of lost earnings and impairment of earning power together with the basis therefore;

(d) A statement, if applicable, as to the plaintiff's selection of the limited or full tort option. If a limited tort option applies, a statement to support eligibility for recovery of non-economic damages shall be included;

Note: Although Pa.R.C.P.No. 212.2(5) requires the inclusion of an expert report or proper answer to interrogatory and the note thereto permits physician notes or records in lieu of a report, neither copies of hospital records nor illegible office notes are to be included.

All trial exhibits are to be marked for identification but need not be attached to the Pre-Trial Statement.

(3) Unless excused by the court upon cause shown, the Pre-Trial Conference shall be attended by trial counsel as well as the plaintiff, a representative of the defendant's insurance carrier who has settlement authority, a representative of the CAT **MCARE** Fund and any defendant whose personal approval of a settlement offer is required and has not been given.

Note: Where a liability insurance carrier, the CAT **MCARE** Fund or a party has given counsel written authority to settle in an amount deemed by the court to be reasonable, the court will probably excuse attendance

at the Pre-Trial Conference. All requests to be excused should be by formal motion or petition setting forth the reasons for the request.

If trial counsel is excused by the court from attending, substitute counsel shall be equally familiar with the case and its issues or sanction may be imposed.

(b) After the Pre-Trial Conference has concluded, no Supplemental Pre-Trial Statement may be filed without leave of court for cause shown.

Rule L212.4. Case Management Conferences and Complex Cases.

A. At any time after the initial pleadings have closed (e.g. Complaint, Answer and New Matter and Reply to New Matter), any party may move the Court to schedule a case management conference, without the need for consent from the other party or parties.

B. After receiving the motion, the Court shall schedule a case management conference, at which the Court will set a discovery schedule, date for filing of dispositive motions, date for exchange of expert reports, and a date for a pretrial conference. Said dates will only be extended for good cause shown.

C. If the case is a complex case (one that involves significant legal and factual issues, has multiple experts, will take more than several days to try and requires significant attention of the Court in connection with pretrial and trial motions), the party filing the motion for a case management conference should advise the Court of that fact in the motion so that a special schedule and trial date can be set.

[Pa.B. Doc. No. 08-2280. Filed for public inspection December 19, 2008, 9:00 a.m.]

ERIE COUNTY

In the Matter of the Revision and Restatement of the Rules of Civil Procedure; Civil Division; No. 90052 Court Order 2008

Order

And Now, this 21st day of October, 2008, amended Rules 212.1, 212.4, 1301 and 1302 of the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania are as follows and they shall be effective upon publication on the Unified Judicial System portal.

By the Court

ELIZABETH K. KELLY,
President Judge

2008 Civil Rules Committee

Hon. Ernest J. DiSantis, Jr.; Gary Eiben; Kenneth J. Gamble; Marcia H. Haller; James P. Lay, III; Craig A. Markham; John W. McCandless; Daniel J. Pastore; Thomas S. Talarico; Joseph A. Yochim

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Rule 212.1. Pretrial Procedure.(a) *Scope.*

This Rule shall encompass all civil actions, except actions where jurisdiction lies in the Family/Orphans Court Division.

(b) *Case Management Orders (CMO).*1. *Case Management Orders—General.*

(A) At the time of judicial assignment, the Office of Court Administration shall issue a CMO designating dates for the close of discovery, the filing of pretrial statements, and a proposed trial term.

(B) At any time prior to judicial assignment, the parties may agree to the entry of a CMO by filing a stipulation with the Office of Court Administration and the Prothonotary.

(C) Following the entry of the CMO, any request for modification shall be done by motion filed with the Prothonotary and mailing or delivering a copy to the assigned judge.

2. *Case Management Orders—Time Limitations.*

(A) All CMOs, except those requested by stipulation, which are issued by the Office of Court Administration, shall provide the following time limitations:

(i) Close of discovery within two hundred forty (240) days of the issuance of the CMO.

(ii) Plaintiff's pretrial statement filed within thirty (30) days of the close of discovery.

(iii) Defendant's pretrial statement filed within sixty (60) days of the close of discovery.

(iv) The proposed trial term which will be the next available trial term for which the case can be certified.

(B) If a case has been accepted by the Court as "complex," all CMOs shall designate dates consistent with the following time limitations:

(i) Close of discovery is five hundred forty (540) days from the issuance of the CMO.

(ii) Plaintiff's pre-trial statement filed within forty five (45) days of the close of discovery.

(iii) Defendant's pretrial statement filed within ninety (90) days of the close of discovery.

(iv) The proposed trial term which will be the next available trial term for which the case can be certified.

(C) If a case has been accepted by the Court as "expedited," all CMOs shall designate dates consistent with the following time limitations:

(i) Close of discovery is ninety (90) days from the issuance of the CMO.

(ii) Plaintiff's pretrial statement filed within fifteen (15) days of the close of discovery.

(iii) Defendant's pretrial statement filed within thirty (30) days of the close of discovery.

(iv) The proposed trial term which will be the next available trial term for which the case can be certified.

(D) A party may request that a case be designated as complex or expedited by the filing of a stipulation or motion.

(E) All cases where the amount in controversy is within the limits for mandatory arbitration shall be designated as "expedited" cases and CMOs issued accordingly.

(c) *Settlement Conference.*

A party may request that the assigned judge conduct a settlement conference at any time after the filing of the last responsive pleading.

(d) *Mediation.*

Mediation is available upon agreement of all parties. The Prothonotary, upon request for appointment of a mediator, may appoint a mediator to conduct the process. Other alternatives for locating a trained mediator include the Erie County Bar Association's Mediation Service.

The following procedure shall guide the mediation process when requested by parties:

1. A mediator may be selected through the Prothonotary's Office from a list supplied by the Court, through the Erie County Bar Association's Mediation Program or by other means agreed upon by the parties.

2. The mediator shall designate the time for hearing with written notice to each party or their counsel. Hearings may be held at the mediator's office or elsewhere upon agreement of the parties.

3. All parties, including counsel, may attend the mediation.

4. The parties/counsel shall immediately notify the mediator if the matter has been resolved prior to the scheduled hearing.

5. Upon completion of the mediation, the mediator shall file a report with the Court, with copies to the parties or, if represented, to their counsel, stating only whether the case has settled. If the case has not settled, it shall proceed to arbitration or trial.

*(e) *Certification For Trial.*

1. These certification procedures apply to all civil jury and non-jury cases.

2. In order to have a case assigned to a particular trial term, all counsel or parties must certify the case as ready for trial by filing with the Prothonotary and serving upon the Court Administrator a certification in substantially the form contained herein and designated "Certification I."

3. If a party has failed to comply with the timetables established in the CMO or has failed to sign a Certification I after being requested to do so in writing, a party wishing to place the case on the trial list must file a certification in substantially the same form contained herein and designated "Certification II."

4. A Certification I or II indicating readiness for trial shall be filed with the Office of Court Administration and the Prothonotary no later than the last Friday of the calendar month that precedes the month immediately before the beginning of the proposed trial term, unless a

different deadline is established by notice published in the Erie County Legal Journal.

5. All "Certification II's" shall be forwarded to the assigned judge for disposition.

*Comment: To comply with this Rule, all counsel must certify that they have "met and discussed settlement of this matter." (See the Form for Certification I). One preferred method of alternative dispute resolution which would satisfy the requirements of this Rule is mediation. The Erie County Bar Association has established a Mediation Program; guidelines and forms can be obtained from the ECBA offices at (814) 459-3111, or on-line at www.eriebar.com.

Rule 212.4. Trial Lists and Continuances.

(a) After the deadline for certification has passed, the Office of Court Administration, in coordination with the assigned judge, shall list all certified cases for trial.

(b) When a case is listed for trial, it shall not be continued except for just cause. Except in the case of exigent circumstances, all motions for continuance must be made at least ten (10) days before the start of the trial in non-jury cases. All motions for continuance must include the reasons for the request and must be presented to the assigned judge.

(c) Motions for continuance which are being made with the agreement of all counsel must be signed by all counsel or parties.

Rule 1301. Scope.

(a) Compulsory arbitration of matters as authorized by the Judicial Code, 42 Pa.C.S. § 7361 as amended, shall apply to all cases at issue where the aggregate amount in controversy shall be Fifty Thousand Dollars (\$50,000.00), or less, regardless of the number of parties, except those cases involving title to real estate or which seek equitable or declaratory relief.

(b) In all cases where a party has obtained a judgment by default under Pa.R.C.P. No. 1037, the party obtaining said judgment by default may elect to have unliquidated damages assessed at a trial by arbitration with the issues limited to the amount of damages which shall not exceed \$50,000.00. The election to assess damages by arbitration shall constitute a waiver by the party making such election of any damages in excess of \$50,000.00.

(c) Discovery shall be allowed in all cases.

Explanatory Comment—2008

The monetary limits for arbitration are being increased from \$35,000.00 to \$50,000.00 and this change shall apply to those civil actions which are filed after the effective date of this rule change. This change is being made on a trial basis and shall be subject to a three year sunset provision. By the end of the three year period which begins on the effective date of this rule change, the court, with the assistance of the Erie County Bar Association, shall analyze the results and the effect of the increase in the arbitration limits to make a determination as to whether to maintain the limits at that level.

Rule 1302. List of Arbitrators. Appointment to Board.

(a)(1) The Board of Arbitrators in any case shall be selected in accordance with one of the procedures set forth below, from a list of attorneys admitted to practice in Erie County, who have filed their consent to act with the Prothonotary.

Those attorneys having practiced for three (3) years or more who wish to be Chairman of Boards of Arbitration shall so inform the Prothonotary of their eligibility.

(i) Selection by Praecipe: Upon the filing of a Praecipe for Arbitration, the Prothonotary shall nominate a Board of potential Arbitrators consisting of three (3) attorneys plus one (1) attorney for each attorney of record and unrepresented party. Not more than two (2) of the potential Arbitrators shall have been admitted to the practice of law for less than three (3) years. The list of attorneys so nominated shall be sent by the Prothonotary to each attorney of record and the unrepresented party. Each attorney of record and unrepresented party may strike off one (1) nominated attorney and return the list to the Prothonotary within five (5) days. A failure to respond within five (5) days constitutes a waiver of the right to strike one (1) name from the list. The three remaining names will make up the Board. If no name of the same name is stricken from the list, the first three (3) remaining names will make up the Board.

Upon the expiration of five (5) days, the Prothonotary shall notify all parties of the names of the Arbitration Panel and designate as Chair the first Arbitration Panel and designate as Chair the first Arbitrator, so selected, who has been admitted to the practice of law for at least three (3) years.

(ii) Selection by agreement: By agreement of counsel, the Prothonotary shall nominate a list of nine (9) attorneys selected at random from the entire list of potential arbitrators with an additional three (3) attorneys for each additional party with an adverse interest. Each party shall have the right to strike off attorneys so named, one at a time and alternately. If, after the striking of Arbitrators, the selection will result in a panel of members none of whom are eligible to be Chairman, the Prothonotary at the request of either counsel, shall select three (3) additional attorneys for consideration. The selection shall continue until a panel is agreed upon. If none of the three (3) chosen Arbitrators have been practicing for more than three (3) years, the counsel shall be deemed to waive this requirement. The Chairman shall be selected by counsel.

(iii) Selection of sole arbitrator: In any case within the limits of compulsory arbitration, a sole Arbitrator may be selected to adjudicate the case by agreement of counsel. The award shall have the same effect as that of a three (3) person panel. The Prothonotary shall nominate a list of five (5) attorneys selected at random from the entire list with an additional two (2) attorneys for each additional party with an adverse interest. Each party shall then have the right to strike off two so named, one at a time and alternately. The remaining attorney shall comprise the Board of Arbitration and shall be considered the Chairman.

(2) In the event an arbitrator selected pursuant to the above procedures is unavailable to attend the hearing for any reason, that arbitrator shall give the parties written notice of his or her unavailability five (5) days before the hearing date, so as to allow the parties time to agree on selection of a replacement arbitrator and have said replacement available to attend the hearing so as not to cause the need for rescheduling of the same. If the arbitrator fails to comply with the five (5) day notice requirement, at the time of the regularly scheduled arbitration hearing the parties shall notify the Prothonotary of the arbitrator's failure. Thereafter, the arbitrator shall automatically be stricken from the list of arbitrators maintained by the Prothonotary with leave to reapply for inclusion on the list upon petition to the Court and cause

shown.

: IN THE COURT OF COMMON PLEAS
: OF ERIE COUNTY, PENNSYLVANIA
: NO.

ORDER OF COURT

You _____, are ORDERED to appear in person in the CUSTODY CONCILIATION OFFICE, Room 307, Third Floor, Erie County Courthouse, 140 West Sixth Street, Erie, Pennsylvania on _____ at _____ o'clock a.m./p.m. for an Intake Conference.

Both parents are further ORDERED to attend a custody seminar entitled "CHILDREN COPE WITH DIVORCE" prior to the Intake Conference.

_____ must attend the seminar on _____.

_____ must attend the seminar on _____.

THE DATES OF ATTENDANCE WILL NOT BE CHANGED EXCEPT FOR AN EMERGENCY.

FAILURE TO APPEAR AT THE INTAKE CONFERENCE OR FAILURE TO ATTEND THE SEMINAR WILL

BE BROUGHT TO THE ATTENTION OF THE COURT AND MAY RESULT IN A FINDING OF CONTEMPT AND THE IMPOSITION OF A FINE, IMPRISONMENT OR BOTH.

If you fail to appear as provided by this Order, an Order for custody may be entered against you or the Court may issue a warrant for your arrest.

BY THE COURT:

John A. Bozza, Judge

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral & Information Service
P. O. Box 1792
Erie, Pennsylvania 16507
(814) 459-4411
Hours: 8:30 a.m. - 3:00 p.m.

If you are eligible for accommodation under the Americans With Disabilities Act, please contact us immediately so arrangement may be made.

FORM 2

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Revised through July 16, 2007. Any corrections and/or additions should be brought to the attention of the Erie County Bar Association.

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[Pa.B. Doc. No. 08-2281. Filed for public inspection December 19, 2008, 9:00 a.m.]

MONTGOMERY COUNTY

Amendment of Montgomery County Local Rule of Civil Procedure 1915.3*—Seminar for Separated and Divorced Parents No. 08-00001

Order

And Now, this 3rd day of December, 2008, the Court amends Montgomery County Local Rule of Civil Procedure 1915.3*—Seminar for Separated and Divorced Parents. This amended Rule shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In further conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, and (1) copy with the Court Administrator of

Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

RICHARD J. HODGSON,
President Judge

Rule 1915.3*. Seminar for Separated and Divorced Parents.

(a) In an action for custody, partial custody or visitation, **[if a case is not resolved by the custody conciliator and must therefore proceed to a hearing before a Judge,]** both parents shall attend an approved education seminar on the general responsibilities of separated and divorced parents.

(b) * * *

(c) Seminar attendance **[may also be required upon motion of either party, by agreement of the parties, upon recommendation by the Custody Conciliator or upon the Court's own motion,]** is not required in connection with any petition to modify custody**[, any petition for contempt or a custody order or any other matter relating to child custody or visitation]** where the parties have already attended the seminar within the past two (2) years.

(d) * * *

(e) * * *

(f) * * *

[Pa.B. Doc. No. 08-2282. Filed for public inspection December 19, 2008, 9:00 a.m.]

SOMERSET COUNTY

Consolidated Rules of Court; No. 63 Miscellaneous 2008

Adopting Order

Now, this 24th day of November, 2008, it is hereby Ordered:

The following designated Somerset County Rule of Criminal Procedure (Som.R.Crim.P.), as follows, is adopted as an amendment to Som.R.Crim.P. 522, adopted October 30, 2008, and effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

The Somerset County Court Administrator shall:

A. File ten (10) certified copies of this order and the attached Rules with the Administrative Office of Pennsylvania Courts:

B. Distribute two (2) certified copies of this Order and the attached Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

C. File one (1) certified copy of this Order and the attached Rule with the Pennsylvania Criminal Procedural Rules Committee; and

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court

JOHN M. CASCIO,
President Judge

Rules of Court

Som.R.Crim.P. 552. Administrative Processing and Identification

(A) In all cases in which a defendant has been charged with an offense graded as a misdemeanor or greater, the defendant shall be required to appear either at the Pennsylvania State Police Barracks, if arrested by the a member of the Pennsylvania State Police, or, if arrested by an arresting authority other than the Pennsylvania State Police, at the Somerset County Regional Booking Center (RBC), located in the Somerset Borough Police Department or at such other location designated, in writing, by the President Judge of the Somerset County Court of Common Pleas, for fingerprinting and processing.

(B) Pursuant to 18 Pa.C.S.A. § 9112, an arresting authority shall be responsible for taking the fingerprints of persons arrested for misdemeanors, felonies or summary offenses which become misdemeanors on a second arrest after conviction of that summary offense. The Regional Booking Center shall serve as the designated fingerprinting and processing site for all arresting authorities in Somerset County other than the Pennsylvania State Police. The State Police Barracks shall serve as the designated fingerprinting site for the Pennsylvania State Police.

(C)(1) In cases in which a defendant has been arraigned before a Magisterial District Judge and fails to post bond, the defendant shall be fingerprinted and photographed at either the RBC or the State Police Barracks, prior to his or her commitment at the Somerset County Jail.

(2) In cases in which a defendant has been arrested during night, weekend or holiday hours, unless the charges proceed by summons, the defendant shall be taken to an appropriate facility for video arraignment and then taken directly to the RBC or the State Police Barracks for the booking procedure, or be taken directly to the RBC or the State Police Barracks for a video arraignment and booking procedure, before being committed to the Somerset County Jail if bond is not posted. If the defendant posts bond, the Magisterial District Judge shall either include a bond condition that directs the Defendant to appear at the State Police Barracks or the **[SBC] RBC**, as appropriate, within 48 hours for processing or may direct the arresting officer to take the defendant directly to the appropriate facility for processing prior to his or her release.

(3) In cases of private prosecutions, the defendant may only be fingerprinted and photographed after conviction of a misdemeanor, felony or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense. An order shall be issued from the Court of Common Pleas after such conviction directing the Defendant to report to the RBC to be fingerprinted and photographed.

(4) In cases which proceed by issuance of a summons, the Magisterial District Judge presiding at the scheduled Preliminary Hearing shall order the defendant to submit to the RBC within five (5) days following the date of issuance of such order.

(D) A booking fee of one hundred dollars (\$100.00) shall be assessed and collected by the Somerset County Clerk of Courts after sentencing upon conviction of or plea to a misdemeanor or felony offense or acceptance into the Accelerated Rehabilitative Disposition Program.

(E) This fee will not apply to those Defendants whose cases are dismissed by the Magisterial District Judge, withdrawn or nolle prossed by the Commonwealth or who enter a guilty plea to a summary offense at the time of the preliminary hearing.

(F) The [SBC] RBC shall also serve as a processing center for all parties required to be registered and processed under the provisions of 42 Pa.C.S.A. § 9791, et. seq., commonly known as “Megans Law,” pursuant to 42 Pa.C.S.A. § 9795.2 (d), if determined by the Pennsylvania State Police to be an “approved registration site” pursuant to 42 Pa.C.S.A. § 9799.1.

[Pa.B. Doc. No. 08-2283. Filed for public inspection December 19, 2008, 9:00 a.m.]

WAYNE COUNTY

Local Rule 117.1; No. 169-2006-Misc. Criminal

Order

And Now, to wit, this 1st day of December, 2006, Wayne County Local Rule 117.1 is *Hereby Adopted*. In accordance with Pa.R.J.A. 103(c), this Order and the following Rule shall be effective 30 days after publication in the *Pennsylvania Bulletin*. The Court Administrator of Wayne County is *Ordered* and *Directed* to submit seven (7) certified copies of this Order and the following Rule to the Administrative Office of Pennsylvania Courts, two (2) certified copies and one (1) diskette, to be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Criminal Procedure Rules Committee, one (1) certified copy to the Wayne County Law Library and keep continuously available for public inspection and copying, one (1) copy in the Office of the Clerk of Courts of Wayne County.

By the Court

ROBERT J. CONWAY,
President Judge

Local Rule 117.1

(A) Magisterial District Judges—Coverage

All Magisterial District Judge Offices shall be open for regular business hours from 8:30 a.m. to 4:30 p.m. Monday through Friday, except for county holidays. A Magisterial District Judge shall be available twenty-four hours per day, every day to provide continuous coverage pursuant to a schedule of specified times for after-hours coverage, approved by the Court, when the “on duty” issuing authority will be available to conduct business. Any addition or amendments to the schedule shall be requested in writing, on forms prescribed by the Court.

(B) Officials Designated to Accept Bail

In addition to those persons who are authorized by statute or the Pennsylvania Rules of Criminal Procedure to admit an arrestee to bail, the Warden or the Wayne County Prison or the designee of the Warden shall have the authority to do the same in accordance with and subject to the limitations of the Pennsylvania Rules of Criminal Procedure.

During regular business hours, payment of Bail shall be posted at the appropriate Magisterial District Judge's Office or at the Clerk of Court's Office. Monetary bail and surety bonds may be posted outside of regularly scheduled work hours at the Wayne County Prison. The Warden or his designee is authorized to accept such bail and to witness a defendant's signature on the bail bond at any time. The defendant and surety shall be given a copy of the bail bond. The Warden shall then forward the appropriate bail information and any money posted to the Clerk of Courts office on the next business day.

[Pa.B. Doc. No. 08-2284. Filed for public inspection December 19, 2008, 9:00 a.m.]