

THE COURTS

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 61]

Amendment to Rule 7 of the Rules Governing the Conduct of Members of The Court of Judicial Discipline; Doc. No. 1 JD 94

Order

And Now, this 4th day of February, 2008, the Court, pursuant to Article 5, Section 18(b)(4) of the Constitution of Pennsylvania, having proposed amendments to Rule 7 of the Rules Governing the Conduct of Members of the Court of Judicial Discipline, as more specifically hereinafter set forth, *It Is Hereby Ordered*:

That Court Administrator Wanda W. Sweigart provide for the publication of the Amendment in the *Pennsylvania Bulletin*, and

That interested parties shall submit suggestions, comments, or objections no later than thirty days from the publication of this Order in that Bulletin.

M. KAY DUBREE,
Chair

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 61. RULES GOVERNING THE CONDUCT OF MEMBERS OF THE COURT OF JUDICIAL DISCIPLINE

Rule 7. Political Activity.

* * * * *

C. Non-judicial members of the Court shall not hold office in any political party or political organization during the member's term of service[, **and should refrain from political activity inappropriate to the member's judicial office**].

(1) Non-judicial members should not act [**as leaders**] **in any capacity** in any political organization of [**or make speeches for or endorse**] a candidate for judicial office or judicial appointment.

(2) Non-judicial members should not **publicly endorse** [**solicit or contribute funds for**] a candidate for judicial office **or judicial appointment** and [**nor serve as officers, members or volunteers in the campaign of a candidate for judicial office**] **should not solicit or contribute funds for a candidate for judicial office**.

[Pa.B. Doc. No. 08-253. Filed for public inspection February 15, 2008, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART 1. GENERAL

[234 PA. CODE CH. 1]

Proposed Amendments to Rules 515, 541, 543, 561 and 589

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 515, 541, 543, 561 and 589, to further emphasize that, after a case has been concluded in the magisterial district court and is forwarded to the court of common pleas, the case shall remain at the court of common pleas. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed changes to Rules 515, 541, 543, 561 and 589 precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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no later than Friday, March 21, 2008.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(3). Arrest Procedures in Court Cases

Rule 515. Execution of Arrest Warrant.

(A) A warrant of arrest may be executed at any place within the Commonwealth.

(B) A warrant of arrest shall be executed by a police officer.

(C) When the warrant has been issued by a magisterial district judge, and the defendant cannot be found, the case shall remain in the magisterial district, and shall not be forwarded to the court of common pleas for further proceedings.

Comment

* * * * *

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. See also Commonwealth v. Mason, 507 Pa. 396, 490 A.2d 421 ([Pa.] 1985).

* * * * *

Paragraph (C) abolishes the traditional practice known as "NEI" or "no est inventus" as being no longer necessary.

Official Note: Formerly Rule 124, adopted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 122 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 515 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002[.]; amended , 2008, effective , 2008.

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Committee Explanatory Reports:

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Report explaining the proposed changes adding new paragraph (C) and the Comment revision published at 38 Pa.B. 867 (February 16, 2008).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 541. Waiver of Preliminary Hearing.

* * * * *

(C) If the defendant waives the preliminary hearing and consents to be bound over to court, the defendant and defense attorney, if any, shall certify in writing that the issuing authority told the defendant of the right to have a preliminary hearing, and that the defendant voluntarily waives the hearing and consents to be bound over to court.

(D) Once a preliminary hearing is waived and the case bound over to the court of common pleas, the case shall not be remanded to the issuing authority for any reason. If the right to a preliminary hearing is subsequently reinstated, the preliminary hearing shall be held at the court of common pleas.

* * * * *

Official Note: Rule 140A adopted April 26, 1979, effective July 1, 1979; amended November 9, 1984, effective January 2, 1985; renumbered Rule 541 and amended March 1, 2000, effective April 1, 2001[.]; amended , 2008, effective , 2008.

Committee Explanatory Reports:

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Report explaining the proposed amendments adding new paragraph (D) concerning reinstatement of a waived preliminary hearing published at 38 Pa.B. 867 (February 16, 2008).

Rule 543. Disposition of Case at Preliminary Hearing.

* * * * *

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

* * * * *

(G) Once a case is bound over to the court of common pleas, the case shall not be remanded to the issuing authority for any reason.

* * * * *

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007[.]; amended , 2008, effective , 2008.

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Committee Explanatory Reports:

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Report explaining the proposed amendments adding new paragraph (G) prohibiting remands to the issuing authority published at 38 Pa.B. 867 (February 16, 2008).

PART E. Procedures Following a Case Held for Court

Rule 561. Withdrawal of Charges by Attorney for the Commonwealth.

* * * * *

(C) In any case in which all the misdemeanor, felony, and murder charges are withdrawn pursuant to this rule, any remaining summary offenses shall be disposed of in the court of common pleas.

* * * * *

Official Note: Former Rule 224 adopted November 22, 1971, effective immediately; amended February 15, 1974, effective immediately; amended April 26, 1979, effective July 1, 1979; rescinded August 12, 1993, effective September 1, 1993. New Rule 224 adopted August 14, 1995, effective January 1, 1996; renumbered Rule 561 and amended March 1, 2000, effective April 1, 2001[.]; amended , 2008, effective , 2008.

Committee Explanatory Reports

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Report explaining the proposed amendments adding new paragraph (C) concerning disposition of summary offenses at the court of common pleas published at 38 Pa.B. 867 (February 16, 2008).

PART F(1). Motion Procedures

Rule 589. Pretrial Disposition of Summary Offenses Joined with Misdemeanor, Felony, or Murder Charges.

* * * * *

(B) In any case in which all the misdemeanor, felony, and murder charges are withdrawn pursuant to Rule 561, any remaining summary offenses shall be disposed of in the court of common pleas.

(C) In no event shall the trial judge remand the summary offense to the issuing authority for disposition.

* * * * *

Official Note: Adopted March 9, 2006, effective September 1, 2006[.]; amended , 2008, effective , 2008.

Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph (B) concerning the disposition of summary offenses at the court of common pleas published at 37 Pa.B. 867 (February 16, 2007).

REPORT

Amendments to Pa.Rs.Crim.P. 515, 541, 543, 561, and 589

Remands of Cases From the Court of Common Pleas

It has been the long-standing general requirement of the Supreme Court as reflected in the Rules of Criminal Procedure that once a summary case moves to the court of common pleas, the case must stay in the court of common pleas and may not be remanded to the issuing authority. This requirement applies both to summary cases on appeal for a trial de novo, Rule 462, and in cases in which the summary offense have been joined with misdemeanor or felony charges, even when only summary charges remain. See, for example, Rules 313, 585, 589 and 622.

As a result of reports of several counties violating these requirements, then-Chief Justice Cappy sent a letter to all President Judges emphasizing this point on September 28, 2006. After the Chief Justice's letter went out, the Committee received several inquiries from different judicial districts seeking clarification on whether certain remand practices violated the prohibition. Several counties raised scenarios in which cases are being remanded in circumstances that potentially were in contravention of Rules 622 and 589.

The Committee reviewed these scenarios and determined that rules changes are needed to make it clear in the rules that remands were improper in the three following situations:

1) The case is forwarded to the court of common pleas under the "NEI" practice. In these cases, the defendant has not been apprehended when the case is forwarded, nor has the defendant had a preliminary hearing. The defendant subsequently is apprehended before the filing of the criminal information occurs pursuant to Rule 565(A). In these situations, the case is remanded to the issuing authority for a preliminary hearing.

2) An originally unrepresented defendant initially waives the right to preliminary hearing and later, pre-

sumably after representation is obtained, requests such a hearing. It appears that these cases are being remanded to the issuing authority to hold the preliminary hearing as a matter of course.

3) In cases in which summary offenses are joined with misdemeanor and felony charges, and, pursuant to Rule 561, the district attorney withdraws all the misdemeanor and/or felony charges prior to the filing of the information, leaving only summary offenses, the district attorney remands the case, without any court involvement, to the issuing authority for disposition of the summary offenses.

While the specifics of each of the proposed rules changes for these scenarios are addressed separately below, the general concept of the changes is that, once a case has been transferred from the issuing authority to the court of common pleas, the cases must remain at the court of common pleas for further proceedings.

There are several reasons for the strong policy against remanding cases. First, there is the question of jurisdiction; once a case has moved from the issuing authority, the power of the issuing authority to hear the case comes into question. Second, any time a case moves from one level of court to another, there will be delays and complications that result from the physical requirements of the transfer.

1. NEI

The first remand situation occurs in cases declared "NEI," where the defendant never had a preliminary hearing, and is then apprehended before the filing of the information occurs pursuant to Rule 565(A).

"NEI," an abbreviation for the phrase "non est inventus," is the procedure used in some counties when a warrant has been issued for the defendant's arrest, the defendant cannot be found, and the case is transferred to the common pleas court for further proceedings. While the terminology is traditional, there is no written authority in the rules or statutes for the practice.

Presently, the practice is used in a limited number of counties to ensure that warrants initially issued by magisterial district judges are placed on law enforcement computer systems such as NCIC and CLEAN. Another reason for its use is to transfer the warrant to a central fugitive unit at the county level.

The Committee is recommending the abolition of the practice of NEI, believing that there is no justification for the transfer of jurisdiction at this stage in the proceedings for essentially administrative law enforcement purposes. Currently, there is nothing to prevent the entry of issuing authority warrants on law enforcement systems such as CLEAN and NCIC except limited manpower. Additionally, with advances in systems technology, issuing authority warrant information will soon be routinely added to these systems via the Magisterial District Justice System feeds to law enforcement networks. Furthermore, there is nothing to prevent a county from adopting a policy of providing all issuing authority warrants to a centralized fugitive unit upon their issuance.

Therefore, the Committee is recommending a new paragraph (C) to Rule 515 that would abolish the practice of transferring "NEI" cases to the court of common pleas

solely on the basis of the defendant being a fugitive. Since these types of cases would no longer be transferred to the court of common pleas, upon apprehension, the case would still be within the jurisdiction of the issuing authority and would not need to be remanded.

2. Remand as Remedy for Waived Preliminary Hearing

The second remand scenario arises when an originally unrepresented defendant initially waives the right to have a preliminary hearing and later, presumably after representation is obtained, requests such a hearing. The Committee received reports that these requests are being granted as a matter of course despite appropriate waiver colloquies having been conducted.

The Committee concluded that there is no need to remand for a preliminary hearing in these situations; rather, if it is determined that the defendant should be granted a preliminary hearing, the preliminary hearing should be held in the court of common pleas. The Committee is therefore proposing an amendment to Rule 541 to state that when the right to a previously waived preliminary hearing is reinstated, the case must remain at the court of common pleas. The Committee also is proposing that a new paragraph be added to Rule 543 to further emphasize the “no remands” policy.

3. Withdrawal of felony/misdemeanor prior to information.

The third circumstance in which cases are being remanded from common pleas to the issuing authority is cases in which the summary offense has been joined with misdemeanor or felony charges, and [when], pursuant to Rule 561, the Commonwealth withdraws all the misdemeanor and/or felony charges, leaving only summary offenses. In some instances, the district attorney “remands” the case, without any court involvement, to the issuing authority for disposition of the summary offenses.

The Committee believes there is no reason why this type of case should be remanded. The Committee reasons that, since the case has gone up as a court case, the case remains a court case, and should be disposed of in common pleas court. The Committee therefore is proposing amendments to Rules 561 and 589 that provide that summary charges must be handled in common pleas court when the attorney for the Commonwealth decides to withdraw all non-summary charges and not to file an information.

[Pa.B. Doc. No. 08-254. Filed for public inspection February 15, 2008, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Civil Procedural Rules; Amendment of Rule 102—Definitions; Repeal and Replacement of Rule 131—Representation; General Court Regulation No. 2008-01

Order

And Now, this 4th day of February, 2008, the Board of Judges of Municipal Court having voted at the Board of Judges’ meeting held on November 30, 2007 to amend and adopt Municipal Court Rule of Civil Procedure 102 and to repeal, replace and adopt Rule of Civil Procedure 131 *It Is Hereby Ordered* that Municipal Court Rules of Civil Procedure 102 and 131 are adopted as follows.

This General Court Regulation is issued in accordance with Pa.R.C.P. 239 and, shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. As required by Rule 239, 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 Municipal Court of Philadelphia, and copies shall be submitted to the Administrative Office of Pennsylvania Courts for publication on its website, and the Civil Procedural Rules Committee. Copies of the Order 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 posted on the website of the First Judicial District: <http://courts.phila.gov>.

By the Court

HON. LOUIS J. PRESENZA,
President Judge

Rule 102. Definitions.

Authorized Representative—An authorized representative is an individual who is an agent of a party, has personal knowledge of the subject matter of litigation, and files a written authorization with the Court prior to the commencement of trial. A written authorization shall be signed by a party and the party’s authorized representative. It shall specify the nature and extent of the authority that the party has given to the authorized representative. A valid written authorization must be filed with the Court before an authorized representative may take any actions on behalf of a party. An approved written authorization form is attached to these rules.

Editor’s note: Amendment adopted by the Board of Judges November 30, 2007, effective 30 days after publication in the *Pennsylvania Bulletin*.

IN THE PHILADELPHIA MUNICIPAL COURT

	NO.	
PLAINTIFF(S)	DEFENDANT(S)	

APPOINTMENT OF AUTHORIZED REPRESENTATIVE FORM (RULES 102 AND 131)

The following section is to be completed by the individual on behalf of the party that is appointing an Authorized Representative:

I, _____, on behalf of _____
Name of Appointing Individual **Name of Party**

a party in the above-captioned matter, do hereby certify that the party is one of the following: **(check one)**

an individual or sole proprietor; a corporation; a general partnership; a limited partnership; a limited liability company; a professional association; or a business trust.

I further certify that I have authority to execute this form on behalf of the party and that I am: **(check one)**

the individual or sole proprietor that is the party; an officer of the corporation that is the party; a partner of the general partnership that is the party; a general partner of the limited partnership that is the party; a manager of the limited liability company that is the party; an officer of the board of governors of the professional association that is the party; or a trustee of the business trust that is the party.

I hereby authorize _____ to act as an Authorized Representative of the party named above and certify that the Authorized Representative has personal knowledge of the facts and circumstances of the above-captioned matter and is acting as an agent of the party. The nature and extent of the authorized representative's authority is limited to the following: **(check as many as are applicable)**

filing a statement of claim; filing a landlord tenant complaint; negotiating an amicable resolution of the matter; participating at trial by testifying, submitting documents into evidence, asking questions of witnesses and making argument, and filing or responding to a petition to open a default judgment.

I hereby verify that the facts set forth above are true and correct to the best of my knowledge, information and belief. I further acknowledge that this verification is made subject to the penalties for making an unsworn falsification to authorities in violation of 18 Pa. C.S. § 4904.

Printed Name: _____

Signature of Appointing Individual

Date: _____

The following section is to be completed by the Authorized Representative:

I, _____, do hereby verify, to the best of my knowledge, information and belief, that I have personal knowledge of the facts and circumstances of the above-captioned matter. I further acknowledge that this verification is made subject to the penalties for making an unsworn falsification to authorities in violation of 18 Pa. C.S. § 4904.

Printed Name: _____

Signature of Authorized Representative

Date: _____

Rule 131. Representation.

a. An individual or sole proprietor may be represented by himself or herself, by an attorney at law, or by an authorized representative.

b. A corporation as defined in Part II of Title 15 of *Pennsylvania Consolidated Statutes* may be represented by an officer, an attorney at law, or by an authorized representative.

c. A general partnership as defined in Part III of Title 15 of *Pennsylvania Consolidated Statutes* may be represented by a partner, an attorney at law, or by an authorized representative. A limited partnership as defined in Part III of Title 15 of *Pennsylvania Consolidated Statutes* may be represented by a general partner, an attorney at law, or by an authorized representative. A limited liability company as defined in Part III of Title 15 of *Pennsylvania Consolidated Statutes* may be represented by a manager, an attorney at law, or by an authorized representative.

d. A professional association as defined in Part IV of Title 15 of *Pennsylvania Consolidated Statutes* may be represented by an officer of its board of governors, an attorney at law, or by an authorized representative.

e. A business trust as defined in Part V of Title 15 of *Pennsylvania Consolidated Statutes* may be represented by a trustee, an attorney at law, or by an authorized representative.

f. If appointed by a party, an authorized representative may take any action up to and until the conclusion of a trial in the Philadelphia Municipal Court that a party may take, including, but not limited to, filing a statement of claim, filing a landlord tenant complaint, testifying, and submitting documents into evidence. A party shall always have the right to file a document limiting or rescinding a person's right to act as an authorized representative.

g. Notwithstanding the above, a party may not use an authorized representative in any action in which the City of Philadelphia is seeking fines, penalties, unpaid taxes, or unpaid water/sewer charges.

Official Note: An authorized representative is defined in Rule 102. The addition of an authorized representative as a person who may be a representative of a party is intended to permit a party to select and appoint an individual who has knowledge of the facts and circumstances of the litigation to appear for that party up through the completion of trial in the Philadelphia Municipal Court. As noted in the definition of an authorized representative, an individual must file an appropriate authorization form prior to the commencement of trial in order to act as an authorized representative. Additionally, the phrase "personal knowledge" is to be interpreted in conformity with the use of that term in Pa.R.E. 602.

This rule is not intended to allow a non-lawyer to establish a business for the purpose of representing others in Court proceedings. The designation of an authorized representative must be made in each case. The Philadelphia Municipal Court will not accept for filing a blanket authorization by which a party seeks to empower an authorized representative to act for the party in all cases that the party may have pending in the Philadelphia Municipal Court.

Editor's note: Original Rule 131 repealed and new rule adopted by the Board of Judges November 30, 2007, effective 30 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 08-255. Filed for public inspection February 15, 2008, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Marshall Ethan Rosenberg having been excluded from the practice of law before the United States Patent and Trademark Office by Order of United States Administrative Law Judge William B. Moran dated March 7, 2007, the Supreme Court of Pennsylvania Disbarred Marshall Ethan Rosenberg from the practice of law in this Commonwealth, effective March 5, 2008. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 08-256. Filed for public inspection February 15, 2008, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that John Charles Vassar having been disbarred from the practice of law in the State of New York by Opinion and Order of the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, dated September 24, 2007, the Supreme Court of Pennsylvania Disbarred John Charles Vassar from the practice of law in this Commonwealth, effective March 5, 2008. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 08-257. Filed for public inspection February 15, 2008, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Victor Mba-Jonas having been indefinitely suspended from the practice of law in the State of Maryland by Opinion and Order of the Court of Appeals of Maryland filed March 20, 2007, the Supreme Court of Pennsylvania issued an Order dated February 4, 2008 suspending Victor Mba-Jonas from the practice of law in this Commonwealth consistent with the Opinion and Order of the Court of Appeals of Maryland.

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

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

[Pa.B. Doc. No. 08-258. Filed for public inspection February 15, 2008, 9:00 a.m.]
