

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

[204 PA. CODE CH. 83]

Order Amending Pennsylvania Rules of Disciplinary Enforcement 504(d); No. 76; Disciplinary Rules; Doc. No. 1

Order

Per Curiam:

And Now, this 27th day of April, 2009, Rule 504(d) of the Pennsylvania Rules of Disciplinary Enforcement is amended as follows.

The amendments are adopted without prior publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b) and the amendments adopted hereby shall take effect immediately.

JOHN A. VASKOV,
Deputy Prothonotary
Supreme Court of Pennsylvania

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter E. PENNSYLVANIA LAWYERS FUND FOR CLIENT SECURITY GENERAL PROVISIONS

Rule 504. Confidentiality.

(a) All claims filed with the Fund shall be confidential and shall not be disclosed. This confidentiality requirement extends to all documents and things made and/or obtained, and all investigations and proceedings conducted and/or held by the Fund in connection with the filing of a claim.

(b) Notwithstanding subsection (a), the Fund, after an award is approved, may disclose the following information:

- (1) the name of the Claimant (if Claimant has granted permission to disclose);
- (2) the name of the Covered Attorney;
- (3) the amount claimed;
- (4) the amount awarded; and
- (5) a summary of the claim.

(c) Nothing in this Rule shall preclude the Fund from utilizing confidential information in the release of statistical data or in the pursuit of the Fund's subrogation rights.

(d) This Rule shall not be construed to preclude disclosure, at any time during [**the**] any investigation and/or proceeding, for confidential information requested by the following entities:

(1) authorized agencies investigating the qualifications of judicial candidates **and any proceedings related thereto**;

(2) the Judicial Conduct Board and/or its counterpart in other jurisdictions conducting an investigation **or proceeding**;

(3) authorized agencies investigating qualifications for government employment **and any proceedings related thereto**;

(4) federal courts and/or other jurisdictions investigating qualifications for admission to practice law **and any proceedings related thereto**;

(5) Office of Disciplinary Counsel and/or the Disciplinary Board [**investigating misconduct by the Covered Attorney**] **and/or its committees**;

(6) lawyer discipline agencies and client protection funds in other jurisdictions [**conducting an investigation**] **investigating a disciplinary complaint, client protection claim or qualifications for admission or readmission to practice law and any proceedings related thereto**; or

(7) law enforcement authorities investigating and/or prosecuting the Covered Attorney for a criminal offense.

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[Pa.B. Doc. No. 09-833. Filed for public inspection May 8, 2009, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Proposed Revisions of the Comments to Rules of Criminal Procedure 430, 455 and 456

Introduction

The Criminal Procedural Rules Committee (Committee) is planning to recommend that the Supreme Court of Pennsylvania approve the revisions of the Comments to Rules of Criminal Procedure 430, 455 and 456. These changes would clarify the treatment under the Criminal Procedural Rules of cases involving a child, as defined in the Public School Code of 1949, 24 P. S. § 1-102 et seq., who has failed to pay fines and costs following a summary conviction for truancy. 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. 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,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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fax: (717) 795-2106
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no later than Friday, June 19, 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 D(1). Arrests With a Warrant

Rule 430. Issuance of Warrant.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

A warrant for the arrest of the defendant shall be issued when:

- (1) the citation or summons is returned undelivered;
- (2) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons; or

(B) BENCH WARRANTS

(1) A bench warrant shall be issued when:

(a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or

(b) the defendant has failed to appear for the execution of sentence as required in Rule 454(F)(3).

(2) A bench warrant may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

(3) A bench warrant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of the fine and costs specified in the citation or summons; or

(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of the fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a

bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Comment

Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the **[juvenile] defendant** fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1). **See also the Public School Code of 1949, 24 P. S. § 13-1333(b)(2) that permits the issuing authority to allege the defendant dependent.**

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

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

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

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a bench warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The bench warrant issued under paragraph (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

Except in cases brought pursuant to the Public School Code of 1949, 24 P. S. 1-102 et seq., in which the defendant is at least 13 years of age but not yet 17, [If] if the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302,

definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, et seq.; has attained the age of 13 but is not yet 17; and has failed to pay the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

See Rule 431 for the procedures when a warrant of arrest is executed.

Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective February 1, 2008; Comment revised September 18, 2008, effective February 1, 2009; **Comment revised , 2009, effective , 2009.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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

Final Report explaining the February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

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

Final Report explaining the January 26, 2007 changes published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

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

Report explaining the proposed revision of the Comment concerning the Public School Code of 1949 published at 39 Pa.B. 2323 (May 9, 2009).

PART E. General Procedures in Summary Cases

Rule 455. Trial in Defendant's Absence.

(A) If the defendant fails to appear for trial in a summary case, the trial shall be conducted in the defendant's absence, unless the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the issuing authority may issue a warrant for the defendant's arrest.

(B) At trial, the issuing authority shall proceed to determine the facts and render a verdict.

(C) If the defendant is found not guilty, any collateral previously deposited shall be returned.

(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, and of the right to file an appeal within 30 days for a trial de novo. In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within 10 days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due may result in the issuance of an arrest warrant.

(E) Any collateral previously deposited shall be forfeited and applied only to the payment of the fine and costs. When the amount of collateral deposited is more than the fine and costs, the balance shall be returned to the defendant.

(F) If the defendant does not respond within 10 days to the notice in paragraph (D), the issuing authority may issue a warrant for the defendant's arrest.

Comment

In those cases in which the issuing authority determines that there is a likelihood that the sentence will be

imprisonment or that there is other good cause not to conduct the trial in the defendant's absence, the issuing authority may issue a warrant for the arrest of the defendant in order to have the defendant brought before the issuing authority for the summary trial. See Rule 430(B). The trial would then be conducted with the defendant present as provided in these rules. See Rule 454.

When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

Paragraph (D) provides notice to the defendant of conviction and sentence after trial in absentia to alert the defendant that the time for filing an appeal has begun to run. See Rule 413(B)(3).

Except in cases under the Public School Code of 1949, 24 P. S. 1-102, et seq., in which the defendant is at least 13 years of age but not yet 17, [If] if the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P. S. § 1-102, et seq.; has attained the age of 13 but is not yet 17; and has failed to pay the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P. S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

If the defendant is 18 years of age or older and fails to pay or appear as required in paragraph (D), the issuing authority must proceed under these rules.

For the defendant's right to counsel, see Rule 122.

For arrest warrant procedures in summary cases, see Rules 430 and 431.

Official Note: Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended August 15, 2005, effective February 1, 2006; **Comment revised** , **2009, effective** , **2009.**

Committee Explanatory Reports:

Final Report explaining the April 18, 1997 amendments mandating a summary trial in absentia with certain exceptions published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraphs (D) and (E) published with the Court's Order at 27 Pa.B. 5414 (October 1, 1997).

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

Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the August 15, 2005 amendments to paragraph (D) concerning notice of right to appeal published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Report explaining the proposed revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 39 Pa.B. 2323 (May 9, 2009).

Rule 456. Default Procedures: Restitution, Fines, and Costs.

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

(C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing to determine whether the defendant is financially able to pay as ordered.

(1) Upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

(b) advise the defendant of the right to appeal within 30 days for a hearing de novo in the court of common pleas, and that if an appeal is filed:

(i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and

(ii) the defendant must appear for the hearing de novo in the court of common pleas or the appeal may be dismissed;

(c) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (C)(3)(a) through (C)(3)(c), and a copy of the order shall be given to the defendant.

(D) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

Comment

The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(D).

Except in cases under the Public School Code of 1949, 24 P.S. 1-102, et seq., in which the defendant is at least 13 years of age but not yet 17, [If] if the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Act of 1949, 24 P.S. § 1-102, et seq.; has attained the age of 13 but is not yet 17; and has failed to pay the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the

defendant does not appear within the 10-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

If the defendant is 18 years or older when the default in payment occurs, the issuing authority must proceed under these rules.

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set bail as provided in Chapter 5 Part C.

Under paragraph (C)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). See also Rules 121 and 122 (dealing with the right to counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. See 42 Pa.C.S. § 9730(b)(3).

This rule contemplates that when there has been an appeal pursuant to paragraph (D), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.

Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; **Comment revised 2009, effective , 2009.**

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (C) published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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

Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

[Final Report explaining the March 3, 2004 Comment revision published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).]

Final Report explaining the March 3, 2004 amendment to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Report explaining the proposed revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 39 Pa.B. 2323 (May 9, 2009).

REPORT

Proposed Revisions of the Comments to Pa.Rs.Crim.P. 430, 455 and 456

SUMMARY CASE RULES AND TRUANCY UNDER PUBLIC SCHOOL CODE OF 1949**I. Introduction**

The Committee is planning to propose to the Supreme Court revisions to the Comments to Rules of Criminal Procedure 430, 455 and 456 to clarify the treatment under the Criminal Rule procedures of cases involving a child, as defined in the Public School Code of 1949, 24 P. S. § 1-102 *et seq.*, who has failed to pay fines and costs following a summary conviction for truancy.

As part of the Magisterial District Judges System redesign, a question arose concerning how to proceed under the Criminal Rules with cases in which a defendant fails to pay fines and costs following a summary conviction for truancy. The confusion centers on the differences in the statutory provisions in the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, and the Public School Code of 1949, 24 P. S. § 1-102 *et seq.* for summary offenses committed by defendants between the ages of 13 and 17. Section 6302 of the Juvenile Act defines "delinquent act," and paragraph (iv) of the definition specifically excludes "summary offenses unless the child fails to comply with a lawful sentence imposed there under." "Child" is defined, *inter alia*, as "an individual who is under the age of 18 years" or "is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years." 42 Pa.C.S. § 6302. Section 13-1333 of the Public School Code of 1949, provides, *inter alia*, that a child, who has attained the age of 13 years but is not yet 17, who fails to comply with the provisions of the Public School Code commits a summary offense and, upon conviction, will be sentenced to pay a fine. The Code further provides that the failure to pay the fine and costs is not a delinquent

act, but the magisterial district judge may allege the child to be dependent under the Juvenile Act.

The Criminal Rules currently only provide procedures for defendants who fall within the scope of the Juvenile Act. Pursuant to these procedures, if a defendant under the age of 18 does not pay the fines and costs, the magisterial district judge must send out a notice to the defendant that, if payment is not made or the defendant does not appear within 10 days, the case will be certified to the court of common pleas. If the juvenile is 18 or older at the time of the default in payment, and the defendant fails to respond to the 10-day notice, a bench warrant is issued.

The Committee reviewed the statutes and the rules. The members agreed that, because the Public School Code creates what can be perceived as an exception to the Juvenile Act by carving out a special procedure for summary case defendants between the ages of 13 and 17 who have been found to be in violation of the Public School Code, the differences should be recognized in the rules. The Committee agreed that the Comments to the rules dealing with summary case failures to pay should be revised to clarify the differences in the treatment of a defendant who has failed to pay fines and costs and would be subject to the Juvenile Act and a defendant who has failed to pay fines and costs and would be subject to the Public School Code of 1949. Specifically, the revisions should make it clear that the issuing authority would not certify the Public School Code cases to Juvenile Court because the failure to pay under the School Code is not a delinquent act, and that the issuing authority may allege the child dependent.

II. Discussion of Proposed Rule Changes

Rules 430 (Issuance of Warrant), 455 (Trial in Defendant's Absence) and 456 (Default Procedures: Restitution, Fines, and Costs) require a 10-day notice before a bench warrant may be issued when a defendant defaults in the payment of fines and costs. The Comments to all three rules include an explanation about the variation in procedure when the defendant is under the age of 18 years. The Committee is proposing that "Except in cases under the Public School Code of 1949, 24 P. S. 1-102, *et seq.*, in which the defendant is at least 13 years of age but not yet 17," be added at the beginning of each of these Comment provisions to make it clear that Public School Code summary cases are not treated in the same manner.

In addition, to further assist the bench and bar in understanding the procedures for Public School Code summary cases when the defendant is 13 but not yet 17 years of age, the Committee is proposing that the following paragraph be added to the Comments to Rules 430, 455 and 456.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P. S. § 1-102, *et seq.*; has attained the age of 13 but is not yet 17; and has failed to pay the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P. S. § 13-1333(b)(2), the defendant's failure to pay is not a

delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

Rule 403(B)(4) requires the issuing authority to issue a summons rather than an arrest warrant when the defendant under the age of 18 years fails to respond to a citation. The second paragraph of Rule 430 Comment elaborates on this summons procedure. The Committee believes this summons procedure also would apply to Public School Code summary cases, and therefore is not proposing any changes in this regard. However, recognizing the alternative course of action the Code gives to magisterial district judges of alleging the defendant dependent, the Committee agreed this Comment paragraph should be revised to include a citation to Section 13-333 of the Public School Code of 1949 explaining this option.

A final consideration of the Committee was that the application of the Public School Code penalties section, 24 P. S. § 13-333, is limited to defendants who have attained the age of 13 but are not yet 17, while the Juvenile Act application terminates when a defendant reaches the age of 18 in general. The Committee discussed how the case would proceed when a defendant convicted of a summary offense under the Public School Code turns 17 years of age, and, therefore, no longer is subject to the Public School Code. The Committee observed that, if the defendant had an outstanding installment payment plan, the obligation to pay would remain. If that defendant then fails to pay on an installment payment plan, he or she would be subject to the Juvenile Act. If, on the other hand, the failure to pay occurs after the defendant turns 18 years of age, the case would proceed under the rules. The Committee concluded this process is clear and no changes to the rules are necessary.

[Pa.B. Doc. No. 09-834. Filed for public inspection May 8, 2009, 9:00 a.m.]

[234 PA. CODE CH. 6]

Proposed Amendments to Pa.Rs.Crim.P. 646 (Materials Permitted in Possession of the Jury) and 647 (Request for Instructions, Charge to the Jury and Preliminary Instructions)

Introduction

The Criminal Procedural Rules Committee (Committee) is planning to recommend that the Supreme Court of Pennsylvania reconsider the current Rule 646 prohibition of providing the jury with written jury instructions, and amend Rules 646 and 647 to permit the trial judge to provide written copies of the portion of the charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been charged. 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. 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,

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
5035 Ritter Road, Suite 100
Mechanicsburg, PA 17055

fax: (717) 795-2106
e-mail: criminal.rules@pacourts.us

no later than Friday, June 19, 2009

*By the Criminal Procedural
Rules Committee*

D. PETER JOHNSON,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(2). Conduct of Jury Trial

Rule 646. Material Permitted in Possession of the Jury.

(A) Upon retiring, the jury may take with it such exhibits as the trial judge deems proper, except as provided in paragraph [(B)] (C).

(B) The trial judge may permit the members of the jury to have for use during deliberations written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed.

(1) If the judge permits the jury to have written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed, the judge shall provide that portion of the charge in its entirety.

(2) The judge shall instruct the jury about the use of the written charge. At a minimum, the judge shall instruct the jurors that

(a) the entire charge, written and oral, shall be given equal weight; and

(b) the jury may submit questions regarding any portion of the charge.

[(B)] (C) During deliberations, the jury shall not be permitted to have:

(1) a transcript of any trial testimony;

(2) a copy of any written or otherwise recorded confession by the defendant;

(3) a copy of the information; and

(4) except as provided in paragraph (B), written jury instructions.

[(C)] (D) The jurors shall be permitted to have their notes for use during deliberations.

Comment

This rule prohibits the jury from receiving a copy of the indictment or information during its deliberations. The rule also prohibits the jury from taking into the jury room

any written or otherwise recorded confession of the defendant. In *Commonwealth v. Pitts*, 450 Pa. 359, 301 A.2d 646, 650 n. 1 (1973), the Court noted that “it would be a better procedure not to allow exhibits into the jury room which would require expert interpretation.”

[The 1999 amendment to paragraph (B) makes it clear that the trial court is prohibited from sending written jury instructions with a jury for use during deliberations.] The 2009 amendment to paragraph (B) changes the procedures in Pennsylvania concerning the jury’s access during deliberations to written copies of the judge’s charge by permitting the judge to provide each member of the jury with written copies of the portion of the judge’s charge on the elements of offenses, the lesser included offenses, and the elements of any potential defenses upon which the jury was charged for the jurors to use during their deliberations. This amendment supersedes the line of cases from *Commonwealth v. Baker*, 466 Pa. 382, 353 A.2d 406 (1976) (plurality opinion) and *Commonwealth v. Oleynik*, 524 Pa. 41, 568 A.2d 1238 (1990), through *Commonwealth v. Karaffa*, 551 Pa. 173, 709 A.2d 887 (1998), in which the Court held it was reversible error to submit written jury instructions to the jury to the extent these cases would preclude that portion of the charge containing the elements of the offense charged, lesser included offenses, and defenses raised at trial from going to the jury.

It is within the discretion of the trial judge to permit the use of the written copies of the portions of the charge on the elements by the jury during deliberations. However, once the judge permits the use of the written elements, the elements of all of the offenses, lesser included offenses, and defenses upon which the jury was charged must be provided to the jury in writing.

The method of preparing the written instructions to be provided to the jury is within the discretion of the trial judge. For example, the instructions do not have to be contemporaneously transcribed but can be a copies of previously prepared instructions that the judge has read as part of the charge that are then provided to the jury for use during deliberations.

The judge must instruct the jurors concerning the use of written instructions during deliberations. Paragraph (B)(3) sets forth the minimum information the judge must explain to the jurors.

It is strongly recommended the judge instruct the jurors along the lines of the following:

Members of the jury, I will now instruct you on the law that applies to this case including the elements of each offense as well as the elements of the lesser included offenses and defenses upon which evidence has been provided during this trial. To assist you in your deliberations I will give you a written list of the elements of these offenses, lesser included offenses, and defenses to use in the jury room.

If any matter is repeated or stated in different ways in my instructions, no emphasis is intended. Do not draw any inference because of a repetition. Do not single out any individual rule or instruction and ignore the others. Do not place greater emphasis on the elements of the offenses, lesser included offense and defenses simply because I have provide

them to you in writing and other instructions are not provided in writing. Consider all the instructions as a whole and each in the light of the others.

If, during your deliberations, you have a question or feel that you need further assistance or instructions from me, write your question on a sheet of paper and give it to the court officer who will be standing at the jury room door, and who, in turn, will give it to me. You may ask questions about any of the instructions that I have given to you whether they were given to you orally or in writing.

See Rule 647(A) (Request For Instructions, Charge To The Jury, And Preliminary Instructions) concerning the content of the charge and written requests for instructions to the jury.

The 1996 amendment adding “or otherwise recorded” in paragraph (B)(2) is not intended to enlarge or modify what constitutes a confession under this rule. Rather, the amendment is only intended to recognize that a confession can be recorded in a variety of ways. See *Commonwealth v. Foster*, 425 Pa. Super. 61, 624 A.2d 144 (1993).

Nothing in this rule is intended to preclude jurors from taking notes during testimony related to a defendant’s confession and such notes may be in the jurors’ possession during deliberations.

Paragraph (C) was added in 2005 to make it clear that the notes the jurors take pursuant to Rule 644 may be used during deliberations.

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in this rule because there may be some cases still pending that were instituted prior to the abolition of the indicting grand jury.

Official Note: Rule 1114 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; amended November 18, 1999, effective January 1, 2000; renumbered Rule 646 March 1, 2000, effective April 1, 2001; amended June 30, 2005, effective August 1, 2005; amended August 7, 2008, effective immediately; **amended** , **2009, effective** **2009.**

Committee Explanatory Reports:

Report explaining the August 12, 1993 Comment revision published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the January 16, 1996 amendments published with the Court’s Order at 26 Pa.B. 439 (February 3, 1996).

Final Report explaining the changes to paragraph (B) and the Comment prohibiting written jury instructions going to the jury published with the Court’s Order at 29 Pa.B. 6102 (December 4, 1999).

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

Final Report explaining the June 30, 2005 amendment concerning jurors’ notes published with the Court’s Order at 35 Pa.B. 3917 (July 16, 2005).

Final Report explaining the August 7, 2008 revision to the Comment concerning jurors’ notes related to a defen-

dant's confession published with the Court's Order at 38 Pa.B. 4606 (August 23, 2008).

Report explaining the proposed amendments concerning providing jurors with the elements of the charged offenses in writing published at 39 Pa.B. 2326 (May 9, 2009).

Rule 647. Request for Instructions, Charge to the Jury, and Preliminary Instructions.

(A) Any party may submit to the trial judge written requests for instructions to the jury. Such requests shall be submitted within a reasonable time before the closing arguments, and at the same time copies thereof shall be furnished to the other parties. Before closing arguments, the trial judge shall inform the parties on the record of the judge's rulings on all written requests. The trial judge shall charge the jury after the arguments are completed.

(B) No portions of the charge nor omissions [**therefrom**] from the charge may be assigned as error, unless specific objections are made thereto before the jury retires to deliberate. All such objections shall be made beyond the hearing of the jury.

(C) After the jury has retired to consider its verdict, additional or correctional instructions may be given by the trial judge in the presence of all parties, except that the defendant's absence without cause shall not preclude proceeding, as provided in Rule 602.

(D) The trial judge may give instructions to the jury before the taking of evidence or at anytime during the trial as the judge deems necessary and appropriate for the jury's guidance in hearing the case.

Comment

Paragraph (A), amended in 1985, parallels the procedures in many other jurisdictions which require that the trial judge rule on the parties' written requests for instructions before closing arguments, that the rulings are on the record, and that the judge charge the jury after the closing arguments. See, e.g., Fed.R.Crim.P. 30; ABA Standards on Trial by Jury, Standard 15-3.6(a); Uniform Rule of Criminal Procedure 523(b).

Pursuant to Rule 646 (Materials Permitted in Possession of the Jury), the judge must determine whether to provide the members of the jury with written copies of the portion of the judge's charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been instructed for use during deliberations.

Paragraph (D), added in 1985, recognizes the value of jury instructions to juror comprehension of the trial process. It is intended that the trial judge determine on a case by case basis whether instructions before the taking of evidence or at anytime during trial are appropriate or necessary to assist the jury in hearing the case. The judge should determine what instructions to give based on the particular case, but at a minimum the preliminary instructions should orient the jurors to the trial procedures and to their duties and function as jurors. In addition, it is suggested that the instructions may include such points as note taking, the elements of the crime charged, presumption of innocence, burden of proof, and credibility. Furthermore, if a specific defense is raised by evidence presented during trial, the judge may want to instruct on the elements of the defense immediately after it is presented to enable the jury to properly evaluate the specific defense. See also Pennsylvania Suggested Standard Criminal Jury Instructions, Chapter II (1979).

Official Note: Rule 1119 adopted January 24, 1968, effective August 1, 1968; amended April 23, 1985, effective July 1, 1985; renumbered Rule 647 and amended March 1, 2000, effective April 1, 2001; Comment revised June 30, 2005, effective August 1, 2005; **amended** , **2009, effective** , **2009.**

Committee Explanatory Reports:

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

[Final Report explaining the Comment revision concerning the note taking instruction published with the Court's Order at 35 Pa.B. 3919 (July 16, 2005).]

Final Report explaining the June 30, 2005 Comment revision concerning the note taking instruction published with the Court's Order at 35 Pa.B. 3917 (July 16, 2005).

Report explaining the proposed changes adding to the Comment a cross-reference to Rule 646 published at 39 Pa.B. 2326 (May 9, 2009).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 646 and 647

WRITTEN JURY INSTRUCTIONS

As part of its ongoing research and examination of the manner in which jury trials are conducted, the Committee has been studying the question of whether juries should be permitted written copies of the jury instructions for use during deliberations. The Committee began its most recent review of this issue at the direction of the Court. The Committee was instructed to "consider the issue of sending written instructions out with the jury during deliberations."

Currently, Pennsylvania law prohibits jurors from having any form of written instructions during deliberations. See *Commonwealth v. Baker*, 353 A.2d 406 (Pa. 1976) (plurality opinion); *Commonwealth v. Oleynik*, 568 A.2d 1238 (Pa. 1990); and *Commonwealth v. Karaffa*, 709 A.2d 887 (Pa. 1998). This was consistent with what had been the traditional practice.

In recent years, however, most states and the federal courts have relaxed the prohibition of providing written instructions during deliberations.¹ The Committee conducted an extensive review of the experiences of these courts and concluded that the fears that most associate with this practice, such as misinterpretation of the law or undue weight being placed on the written instructions, have not been demonstrated in these jurisdictions.²

At the same time, interest in permitting the practice in Pennsylvania has increased. For example, at several meetings in 2005-2007, the Committee invited a number of judges of the courts of common pleas to address the Committee on procedural issues in which they were interested. A number of these judges requested that the Committee consider permitting the elements of the offense to be provided in writing to the jury during deliberations. They reported that the majority of questions received from jurors during deliberations would be eliminated by providing this limited information. Popular

¹ Among the majority of states that permit written jury instructions are Alabama, Arizona, California, Colorado, Illinois, Massachusetts, Texas and Virginia.

² See, e.g., *The State-Of-The-States Survey of Jury Improvement Efforts: A Compendium Report* by Hon. Gregory E. Mize (ret.), Paula Hannaford-Agor, J.D. & Nicole L. Waters, Ph.D. published by the National Center for State Courts; *Recent Evaluative Research on Jury Trial Innovations* by Judge B. Michael Dann and Professor Valerie P. Hans in *Court Review*, Spring 2004, volume 41, pages 12-19.

interest in this practice has remained high as well; several pieces of legislation have been introduced that urged the Court to reconsider the prohibition.³

Based upon the foregoing, the Committee concluded that permitting the use of written jury instructions in some form would be a beneficial practice. The question then becomes how extensive the scope of allowance should be.

The Committee considered a proposal that the entire instructions should be provided in writing. The Committee believes that the logistical difficulties in preparing what would need to be verbatim transcripts of the charge would be prohibitive, at least under current technology. Further, the Committee does not want to squelch the individual initiative that many judges employ to provide "off-the-cuff" elaboration and example. If anything less than the entire charge is permitted, however, it should be clearly defined and should not favor one party over another.

The proposed amendments therefore limit what may be provided to the jury in writing to written copies of the elements of the offense, lesser included offenses, and defenses upon which the jury had been orally charged. This limited practice has the benefit of clear definition and even-handed application as well as being more practically manageable. It also is consistent with the input the Committee received from the common pleas judges and the Legislature. Therefore, a new paragraph (B) would be added to Rule 646 that would permit the judge to provide this portion of the charge to the jury in writing.

Recognizing that a jury's need for written instructions will vary from case to case, the Committee believes that the decision whether to provide written instructions should be discretionary. However, in order to ensure fairness in the process of providing these instructions, once a judge decides to provide written instructions, he or she must send out the elements of the offenses and defenses in their entirety. This requirement is contained in paragraph (B)(1).

During the discussion of this proposal, some members of the Committee expressed the concern that the jury would emphasize the importance of the written portion of the instructions if only partial written instructions were provided. To address this concern, paragraph (B)(2) requires mandatory instructions that must include language that the entire instructions, written and oral, should be given equal weight and that the jury should feel free to ask questions regarding any portion of the instructions. These points are elaborated upon in the Comment and a sample instruction is provided.

Additionally, the Committee does not intend for this practice to create greater burdens on the courts that utilize this procedure and the Comment to Rule 646 also would include some practical recommendations suggestions on how the written instructions may be produced. For example, in order that there be no mistaken belief that a transcript of the instructions is required, the Comment suggests that the instructions do not have to be

contemporaneously transcribed but can be a version of previously prepared instructions that the judge reads and is then provided to the jury.

Finally, a cross reference to the new procedures in Rule 646 would be added to the Comment to Rule 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions).

[Pa.B. Doc. No. 09-835. Filed for public inspection May 8, 2009, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

In re: Compulsory Arbitration Motion Practice; President Judge Administrative Order No. 2009-02

Order

And Now, this 3rd day of April, 2009, in order to streamline the filing and processing of motions and applications filed in connection with Compulsory Arbitration cases, *It Is Hereby Ordered, Adjudged and Decreed* that effective April 13, 2009:

1) All Arbitration Applications shall be filed electronically with the Prothonotary's office through the Civil Trial Division Electronic Filing System as authorized by Pa.R.C.P. No. 205.4 and Philadelphia Civil Rule *205.4;

2) At the time of filing, the Prothonotary shall assess and collect the applicable motion fees;

3) The Arbitration forms are amended as attached to this Order, and self-addressed stamped envelopes are no longer required to be submitted;

3) Notice of the entry of dispositive orders shall be sent as provided in Pa.R.C.P. No. 205.4(g)(2)(ii) or Pa.R.C.P. No. 236; and

4) The provisions of Philadelphia Civil Rule *1303 which are in conflict with this order are hereby rescinded.

This Administrative Order shall be published in the *Pennsylvania Bulletin*. The original Administrative Order shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the President Judge of the Court of Common Pleas, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Supreme Court's Civil Procedural Rules Committee. Copies of the Administrative Order shall be submitted to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Library and the Law Library for the First Judicial District, and shall be posted on the web site of the First Judicial District of Pennsylvania: <http://courts.phila.gov>.

HONORABLE PAMELA PRYOR DEMBE,
President Judge
Court of Common Pleas

³ See HR 559 of 2008 and House Resolution 128 of 2009, both requesting the Pennsylvania Supreme Court to modify the rules in this area. See also HB 190 of 2007, HB 612 of 2007 and HB 1085 of 2009, all of which propose amendments to Title 42 to allow the submission of written jury instructions to the jury.

COMPULSORY ARBITRATION MOTION PRACTICE
MISCELLANEOUS APPLICATION

MOTION MUST BE ELECTRONICALLY FILED AFTER EXPIRATION OF RESPONSE PERIOD (SEE INSTRUCTIONS).		FIRST JUDICIAL DISTRICT OF PENNSYLVANIA COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY ARBITRATION CENTER 1601 MARKET STREET, 2ND FLOOR PHILADELPHIA, PA 19103	
LIST ALL COURT TERMS AND NUMBERS OF CONSOLIDATED CASES IN SPACE DIRECTLY BELOW.			
COURT TERM AND NUMBER	APPLICANT <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	DATE AND TIME OF LISTED HEARING	
CAPTION			
PLAINTIFF'S COUNSEL AND PHONE NO.			
DEFENDANT'S COUNSEL AND PHONE NO.			
ADDITIONAL DEFENDANT'S COUNSEL AND PHONE NO.			
1. Set forth requested relief			
2. Set forth the specific basis for the request			
3. On or after _____, the within Application will be filed with the Arbitration Center.			
4. You must submit a Response to me by _____, for attachment to the Application (within ten (10) days of mailing of copy of Application).			
5. A copy of this Application was mailed/delivered/faxed to opposing counsel, _____, Esquire on _____. <input type="checkbox"/> A Response was received and is attached hereto <input type="checkbox"/> No Response was received.			
6. Other			

I hereby certify the above is true and correct.

Signature of Counsel for Applicant

Filing Date

ORDER

AND NOW, this _____ day of _____, 20____, upon consideration of the within Application, it is hereby ORDERED and DECREED that:

- the Application is denied.
- the within case is transferred to the Non-Jury List;
- the within case may be transferred to the Jury List provided the jury fee is paid within 10 days;
- the Applicant is granted leave to file a Motion _____ no later than _____;
- the Applicant's request to mold the award of the Arbitrators is denied;
- the Applicant's request to mold the award of the Arbitrators is granted. See detailed order attached hereto;
- Other

COMPULSORY ARBITRATION MOTION PRACTICE

Instructions

Philadelphia Civil Rule * 1303 authorizes the filing of three types of Arbitration Applications:

- 1) A “One-Time Only” rescheduling Agreement;
- 2) A “Continuance and Deferral Application” and
- 3) A “Miscellaneous Application.”

Before any Application is filed with the Court, however, the moving party (“Applicant”) must first send the Application to all other parties as required by Philadelphia Civil Rule * 1303 so that the non-moving parties may be made aware of the requested relief and provide their position by sending a Response to the Applicant or by signing the rescheduling Agreement. After the Response period, the Applicant must file the Application electronically through the Civil Trial Division’s Electronic Filing System (go to <http://courts.phila.gov>, click the “*On-Line Services*” tab, and click the “*FJD Electronic Filing*” link). A User Name and Password is needed to access the Electronic Filing System, and the requisite filing fee (\$52.68) must be paid as required.

As part of the electronic filing process, the Applicant must attach to the electronic submission a *pdf* version of the Arbitration Application and Response(s), if any. The Applicant must maintain the signed hard copy of the Application and Response(s) as required by Pa.R.C.P. No. 205.4 (b)(4).

After review of the Application and Response(s), if any, as required by Philadelphia Civil Rule * 1303 a dispositive order will be issued and served either through the electronic filing system as authorized by Pa.R.C.P. No. 205.4(g)(2)(ii), by mail or a combination of both.

As provided in Philadelphia Civil Rule * 205.4 (d)(3), any Application which is filed in a hard copy format and which must be converted by the Prothonotary to a *portable document format* will be subject to an additional charge of \$1.00 per page.

Important Notice

- 1) Any Application or Response(s) filed directly with the Arbitration Center will be discarded.
- 2) If an Application contains incorrect information, including information concerning service of the Application and Response(s), the Order entered upon reliance of the representations in the Application may be vacated and appropriate sanctions will be imposed.
- 3) Self-addressed, stamped envelopes need not be submitted by the Applicant.

COMPULSORY ARBITRATION MOTION PRACTICE
RESPONSE TO ARBITRATION APPLICATION

SEND TO APPLICANT FOR ATTACHMENT TO APPLICATION. LIST ALL COURT TERMS AND NUMBERS OF CONSOLIDATED CASES IN SPACE DIRECTLY BELOW.		FIRST JUDICIAL DISTRICT OF PENNSYLVANIA COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY ARBITRATION CENTER 1880 JOHN F. KENNEDY BLVD., 5TH FLOOR PHILADELPHIA, PA 19103	
COURT TERM AND NUMBER	APPLICANT <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	DATE AND TIME OF LISTED HEARING	
CAPTION			
PLAINTIFF'S COUNSEL AND PHONE NO.			
DEFENDANT'S COUNSEL AND PHONE NO.			
ADDITIONAL DEFENDANT'S COUNSEL AND PHONE NO.			
DATE APPLICATION RECEIVED		DATE RESPONSE SENT TO APPLICANT	
SET FORTH YOUR POSITION CONCERNING THE MOVING PARTY'S REQUESTED RELIEF (ATTACH PROPOSED ORDER)			

I hereby certify the above is true and correct.

Respectfully submitted,

Date

, Esquire

Filing Date

**COMPULSORY ARBITRATION MOTION PRACTICE
CONTINUANCE & DEFERRAL APPLICATION**

<p>MOTION MUST BE ELECTRONICALLY FILED AFTER EXPIRATION OF RESPONSE PERIOD (SEE INSTRUCTIONS).</p> <p>LIST ALL COURT TERMS AND NUMBERS OF CONSOLIDATED CASES IN SPACE DIRECTLY BELOW.</p> <p><input type="checkbox"/> Emergency Application <input type="checkbox"/> Non-Emergency Application</p>	<p>FIRST JUDICIAL DISTRICT OF PENNSYLVANIA COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY ARBITRATION CENTER 1880 JOHN F. KENNEDY BLVD., 5TH FLOOR PHILADELPHIA, PA 19103</p>	
COURT TERM AND NUMBER	APPLICANT <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant	DATE AND TIME OF LISTED HEARING
CAPTION		
PLAINTIFF'S COUNSEL AND PHONE NO.		
DEFENDANT'S COUNSEL AND PHONE NO.		
ADDITIONAL DEFENDANT'S COUNSEL AND PHONE NO.		
LIST PRIOR HEARING DATE(S), PARTY REQUESTING PREVIOUS CONTINUANCE(S), REASON FOR CONTINUANCE(S)		
1. THE CONTINUANCE OR DEFERRAL IS NEEDED FOR THE FOLLOWING REASON(S):		
2. SET FORTH THE SPECIFIC BASIS FOR THE REQUEST AS PROVIDED IN PA. R.C.P. 216 AND PHILA. CIV. R. NO. *1303(c) AND STATE HOW COMPLIANCE WITH SAID RULES HAS BEEN ACCOMPLISHED.		
3. A COPY OF THIS APPLICATION WAS MAILED/DELIVERED/FAXED TO OPPOSING COUNSEL ON _____.		
4. Position of Opposing Counsel. (Will not be considered unless position stated.)		
5. Agreed upon continuance date, if any:		

I hereby certify the above is true and correct.

Signature of Counsel for Applicant

Date

COMPULSORY ARBITRATION MOTION PRACTICE
 ONE-TIME ONLY RESCHEDULING AGREEMENT
By Agreement of All Parties

MUST BE ELECTRONICALLY FILED NO LATER THAN TWO DAYS BEFORE THE SCHEDULED HEARING DATE. LIST ALL COURT TERMS AND NUMBERS OF CONSOLIDATED CASES IN SPACE DIRECTLY BELOW.		FIRST JUDICIAL DISTRICT OF PENNSYLVANIA COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY ARBITRATION CENTER 1880 JOHN F. KENNEDY BLVD., 5TH FLOOR PHILADELPHIA, PA 19103	
COURT TERM AND NUMBER	APPLICANT	LIST DATE OF ORIGINAL SCHEDULED HEARING	
		JOINT REQUEST	
CAPTION			

All parties and/or Counsel agree to reschedule the hearing to the following new date and time (*new date must be within 2 weeks before or after original scheduled hearing date*):

Name of Plaintiff _____		
PRINT NAME OF COUNSEL FOR PLAINTIFF AND PHONE NO.	SIGNATURE OF PARTY OR COUNSEL (<i>Fax Signature Acceptable</i>)	DATE

Name of Defendant _____		
PRINT NAME OF COUNSEL FOR DEFENDANT AND PHONE NO.	SIGNATURE OF PARTY OR COUNSEL (<i>Fax Signature Acceptable</i>)	DATE

Name of Defendant _____		
PRINT NAME OF COUNSEL FOR DEFENDANT AND PHONE NO.	SIGNATURE OF PARTY OR COUNSEL (<i>Fax Signature Acceptable</i>)	DATE

Name of Defendant _____		
PRINT NAME OF COUNSEL FOR DEFENDANT AND PHONE NO.	SIGNATURE OF PARTY OR COUNSEL (<i>Fax Signature Acceptable</i>)	DATE

Name of Additional Defendant _____		
PRINT NAME OF COUNSEL FOR ADDITIONAL DEFENDANT AND PHONE NO.	SIGNATURE OF PARTY OR COUNSEL (<i>Fax Signature Acceptable</i>)	DATE

NOTE:
THIS AGREEMENT MUST BE SIGNED BY ALL COUNSEL OF RECORD OR BY UNREPRESENTED PARTIES.
THE SIGNED AGREEMENT IS TO BE RETAINED BY THE PARTIES.
A SCANNED COPY OF THE AGREEMENT MUST BE ELECTRONICALLY FILED.

01-410 (Rev. 3/09)

[Pa.B. Doc. No. 09-836. Filed for public inspection May 8, 2009, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated April 21, 2009, David Allen Gniewek is Suspended on Consent from the Bar of this Commonwealth for a period of 3 years, to be effective May 21, 2009. 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. 09-837. Filed for public inspection May 8, 2009, 9:00 a.m.]
