

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CHS. 87, 91 and 93]

Amendments to Rules of Organization and Procedure of The Disciplinary Board of The Supreme Court of Pennsylvania

Order No. 68

The Rules of Organization and Procedure of the Board have been drafted to restate in full the substance of the Pennsylvania Rules of Disciplinary Enforcement. By Orders dated April 1, 2008, September 4, 2008, December 12, 2008 and April 3, 2009, the Supreme Court of Pennsylvania amended Pa.R.D.E. 219(a), 502(b), 221, 208(a), 215(c), 402(c) and 205. By this Order, the Board is making conforming changes to its Rules to reflect the adoption of those amendments.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, those proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

ELAINE M. BIXLER,
Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 87. INVESTIGATIONS AND INFORMAL PROCEEDINGS

§ 87.7. Notification to respondent-attorney of complaint.

(a) *General rule Condition precedent to recommendation for discipline.* Enforcement Rule 207(b)(2) provides that except in matters requiring dismissal because the complaint is frivolous or falls outside the jurisdiction of the Board, no disposition [Condition precedent to recommendation for discipline. Disciplinary Counsel shall [be] not [recommended] recommend or [undertaken by Disciplinary Counsel] undertake a disposition of discipline under Enforcement Rule 204 (relating to types of discipline) until the accused attorney has been notified of the allegations and the time for response under § 89.54 (relating to answer), if applicable, has expired.

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§ 87.8. District office action or recommendation.

(a) *General rule.* Enforcement Rule 208(a)(2) provides that upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous [or], as falling outside the jurisdiction of the Board, or on the basis of Board policy or prosecutorial discretion. Disciplinary Counsel may recommend:

* * * * *

(b) *District office procedure.* Following completion of any investigation of the complaint and after consideration of any statement of position filed by the respondent-attorney pursuant to § 87.7 (relating to notification to respondent-attorney of complaint) the Assistant Disciplinary Counsel assigned to the district office shall promptly [report the district office disposition of the matter to the Chief Disciplinary Counsel by means of] complete the appropriate form specified in subsection (c). The action taken or disposition recommended shall be one of the following:

- (1) Dismissal for lack of jurisdiction.
- (2) Dismissal because frivolous.
- (3) **Dismissal on the basis of prosecutorial discretion.**
- (4) **Dismissal on the basis of Board policy.**
- (5) Dismissal for any other reason.

[(4)](6) Conditional or unconditional informal admonition or private reprimand. An informal admonition or private reprimand shall be administered in those cases in which a violation of § 85.7 (relating to grounds for discipline) is found, but which is determined to be of insufficient gravity to warrant prosecution of formal charges.

[(5)](7) Prosecution of formal charges before a hearing committee or special master.

(c) *Selection of form.* Action under subsection (b)(1) [or], (2), (3), (4) or (5) of this section may be [taken] recommended by the assigned Assistant Disciplinary Counsel [-in-charge] and taken with the written concurrence of [any other] the Assistant Disciplinary Counsel-in-Charge, any other Assistant Disciplinary Counsel designated to serve in his or her absence or unavailability, the Chief Disciplinary Counsel, or an Assistant Disciplinary Counsel designated by the Chief Disciplinary Counsel to review such recommendations. In such cases the district office shall prepare and attach to the file Form DB-4 (Final Disposition of Complaint). In other cases where disposi-

tion under subsection (b)(1) [or], (2), (3), (4) or (5) may be appropriate, the assigned Assistant Disciplinary Counsel[-in-charge] shall prepare a Form DB-5 (Recommendation on Final Disposition of Complaint) and forward such form and the related file to Chief Disciplinary Counsel or his or her designee for review and action. In all other cases, Assistant Disciplinary Counsel shall prepare and attach to the file Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member).

§ 87.9. Office of Disciplinary Counsel action.

(a) [Frivolous or no jurisdiction] Dismissal of the complaint. If the district office or Chief Disciplinary Counsel or his or her designee, determines that the complaint should be dismissed under § 87.8(b)(1) [or], (2), (3), (4) or (5) (relating to district office action or recommendation), the Office of Disciplinary Counsel shall notify the complainant of such disposition by [means of Form DB-33 (Notice of Dismissal of Complaint)] letter and close the file on the matter. Wherever possible [in cases of lack of jurisdiction], the Office of Disciplinary Counsel shall advise the complainant that he or she may bring the matter to the attention of the authorities of the appropriate jurisdiction, to another agency or jurisdiction that has disciplinary authority over the respondent-attorney, to any fee disputes committee which may have been established for the county involved, to a criminal prosecution agency, or to any other duly constituted body which may be able to provide forum for the consideration of the grievance. Where the respondent-attorney has been previously notified of the pendency of the complaint by means of Form DB-7 (Request for Statement of Respondent's Position) or otherwise, the Office of Disciplinary Counsel shall [,] notify the respondent-attorney of the dismissal and may [in any other case,] transmit a copy of [Form DB-33] the dismissal letter to the respondent-attorney.

(b) Other cases. In all other cases the Office of Disciplinary Counsel shall forward to the Office of the Secretary [Form DB-32 (Request)] a request for the [Designation] assignment of a Reviewing Hearing Committee Member[]].

(c) Review of dismissed complaints. The Office of Disciplinary Counsel will review complaints dismissed under subsection (a) of this section upon request of the complainant. The request shall be in writing and submitted to the Assistant Disciplinary Counsel-in-Charge of the district office that dismissed the complaint. The request should specify the reason or reasons why Office of Disciplinary Counsel should reopen the investigation under § 87.6 and include any evidence that was not previously brought to the attention of Disciplinary Counsel. The Assistant Disciplinary Counsel-in-Charge or designated Assistant Disciplinary Counsel who concurred in the recommendation to dismiss the complaint pursuant to § 87.8(c) shall conduct the review and notify the complainant in writing of the decision to grant or deny the request. Where the request is denied by the Assistant Disciplinary Counsel-in-Charge, the complainant may direct a written request for further review to the Chief Disciplinary Counsel or his or her designee. The decision of the Chief Disciplinary Counsel or the designee shall be final for purposes of this subsection.

(d) No right to appeal. A complainant shall have no right to appeal the dismissal or any other disposition of a complaint under § 87.8 (relating to district office action or recommendation) or a final decision under paragraph (c) of this subsection to deny a request to reopen the investigation.

Subpart D. ABATEMENT OF INVESTIGATION

§ 87.73. Resignation by attorneys under disciplinary investigation.

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(d) Confidentiality of resignation statement. Enforcement Rule 215(c) provides that the order disbarring the attorney on consent shall be a matter of public record; and that, if the statement required by subsection (a) is submitted before the filing and service of a petition for discipline and the filing of an answer or the time to file an answer has expired, the statement shall not be publicly disclosed or made available for use in any proceeding other than a subsequent reinstatement proceeding except:

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(3) upon a request of another jurisdiction for purposes of a reciprocal disciplinary proceeding, [or]

(4) upon a request by the Pennsylvania Client Security Fund Board pursuant to Enforcement Rule 521(a) (relating to cooperation with Disciplinary Board)[.], or

(5) when the resignation is based on an order of temporary suspension from the practice of law entered by the Court either pursuant to Enforcement Rule 208(f)(1) (relating to emergency temporary suspension orders and related relief) or pursuant to Enforcement Rule 214 (relating to attorneys convicted of crimes).

CHAPTER 91. MISCELLANEOUS MATTERS

Subchapter H. FUNDS OF CLIENTS AND THIRD PERSONS; MANDATORY OVERDRAFT NOTIFICATION

Sec. 91.171. Definitions
91.172. Maintenance of fiduciary accounts.
91.173. Approval and termination of [financial institutions] Eligible Institutions.
91.174. Reports of overdrafts.
91.175. Fiduciary accounts.
91.176. Rules for determining reporting obligation.
91.177. Required records.

§ 91.171. Definitions.

The following terms when used in this subchapter shall have the meanings given to them in this section:

["Financial institution." Enforcement Rule 221(e) provides that the term "financial institution" includes savings and loan associations, credit unions, saving banks and any other business which accepts for deposit funds held in trust by attorneys.

"Trust Account." Enforcement Rule 221(a) provides that a Trust Account of an attorney is an account in which an attorney, in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, deposits funds received from a client or a third person in connection with a client-lawyer relationship, excluding funds which the attorney receives while acting as fiduciary for an estate, trust, guardianship or conservatorship.]

Eligible Institution. An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to section (h), *infra*.

Financial Institution. A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of which are insured by an agency of the Federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

Fiduciary Funds. Fiduciary Funds are Rule 1.15 Funds which an attorney holds as a Fiduciary, as defined in Rule 1.15(a)(2) of the Pennsylvania Rules of Professional Conduct. Fiduciary Funds may be either Qualified Funds or Non-Qualified Funds.

Rule 1.15 Funds. Rule 1.15 Funds are funds which an attorney receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the attorney's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the attorney receives in any of the foregoing capacities.

Trust Account. A Trust Account is an account in an Eligible Institution in which an attorney holds Rule 1.15 Funds. A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account, as defined in Rule 1.15(a)(5) and (7) of the Pennsylvania Rules of Professional Conduct.

§ 91.172. Maintenance of fiduciary accounts.

Enforcement Rule 221(b) provides that a Trust Account may be maintained only in [a financial institution] an Eligible Institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts.

§ 91.173. Approval and termination of [financial institutions] Eligible Institutions.

(a) *Approval.* Enforcement Rule 221 [(c)] (h) provides that [a financial institution] an Eligible Institution shall be approved as a depository for Trust Accounts if it shall file with the Board an agreement (in a form provided by the Board) in which the [financial institution] Eligible Institution agrees to make a prompt report to the Lawyers Fund for Client Security Board under the circumstances described in § 91.174 (relating to reports of overdrafts). Upon receiving a signed agreement from [a financial institution] an Eligible Institution as required by this subsection, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order approving the [financial institution] Eligible Institution as a depository for Trust Accounts.

(b) *Termination of approval.* Enforcement Rule 221 [(m)] (k) provides that a failure on the part of [a

financial institution] an Eligible Institution to make a report called for by this subchapter may be cause for termination of its approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action by any person who is proximately caused harm thereby. Upon learning that a financial institution has failed to make a report called for by this subchapter, the Board shall report that fact to the Supreme Court with a recommendation that the Court enter an order terminating the approval of the financial institution as a depository for Trust Accounts.

(c) *List of approved [financial institutions] Eligible Institutions.* The Board will periodically publish in the *Pennsylvania Bulletin* a list of [financial institutions] Eligible Institutions that are approved at the time as depositories for Trust Accounts under this subchapter. The current list shall also be published in the *Pennsylvania Code* as an appendix to this section.

§ 91.174. Reports of overdrafts.

(a) *General rule.* Enforcement Rule 221 [(c)] (h) provides that [a financial institution] an Eligible Institution shall report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of:

- (1) whether the instrument is honored; or
- (2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.

(b) *Timing of report.* Enforcement Rule 221 [(r)] (p) provides that the report required to be made under this subchapter shall be made by the [financial institution] Eligible Institution to the Lawyers Fund for Client Security Board within five business days of the presentation of the instrument.

(c) *Handling of report.* Enforcement Rule 221 [(q)] (o) provides that a designated representative of the Lawyers Fund for Client Security Board shall conduct a preliminary inquiry regarding the report and shall, where appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation.

(d) *Effect of report or referral.* Enforcement Rule 221 [(k)] (o) also provides that neither a report filed with the Lawyers Fund for Client Security Board pursuant to this subchapter nor a referral of such report to the Office of Disciplinary Counsel shall, in and of itself, be considered a disciplinary complaint.

(e) *Immunity.* Enforcement Rule 221 [(n)] (l) provides that [financial institutions] Eligible Institutions shall be immune from suit for the filing of any reports required by this subchapter or believed in good faith to be required by this subchapter. See § 91.173(b) (relating to termination of approval).

§ 91.175. Fiduciary accounts.

(a) *Identification.* Enforcement Rule 221 [(f)] (d) provides that the responsibility for identifying an account as a Trust Account shall be that of the attorney in whose name the account is held.

(b) *Service charge.* Enforcement Rule 221 [(o)] (m) provides that [a financial institution] an Eligible Institution shall be free to impose a reasonable service

charge upon the attorney in whose name the account is held for the filing of the report required by this subchapter.

§ 91.176. Rules for determining reporting obligation.

For purposes of this subchapter:

(1) Enforcement Rule 221 [(d)] (i)(1) provides that a Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

(2) Enforcement Rule 221 [(j)] (i)(2) provides that funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the [financial institution's] Eligible Institution's treatment of such funds, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. § 4108(b) (relating to items or deposits received after cutoff hour).

(3) Enforcement Rule 221 [(k)] (i)(3) provides that a check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.

(4) Enforcement Rule 221 [(l)] (j) provides that no report need be made when [a financial institution] the Eligible Institution determines that an instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.

§ 91.177. Required records

(a) *In general.* Enforcement Rule 221 [(g)] (e) provides that **an attorney shall maintain** the following books and records [shall be maintained] for each Trust Account **and for any other account in which Rule 1.15 Funds are held:**

(1) [**bank statements and check registers (which shall include the payee, date, amount and the client matter involved);**

(2)] **all transaction records [returned] provided to the attorney by the [financial institution] Eligible Institution, [including] such as periodic statements, canceled checks in whatever form, deposited items and records of electronic transactions; and**

[**(3) records of deposits and a ledger separately listing each deposited item and the client or third person for whom the deposit is being made.]**

(2) **check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction.**

(b) *Form.* Enforcement Rule 221 [(h)] (f) provides that the records required by this rule may be maintained in electronic or [**other form if they can be retrieved in printed] hard copy form[; and that electronic**

records must be regularly backed up by an appropriate storage device]. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device.

(c) *Availability.* Enforcement Rule 221 [(i)] (g) provides that the records required by this rule may be subject to subpoena **and must be produced** in connection with an investigation or hearing pursuant to these rules; and that failure to produce such records may result in the initiation of proceedings pursuant to § 91.151 (relating to emergency temporary suspension orders and related relief), which permits disciplinary counsel to commence a proceeding for the temporary suspension of a respondent-attorney who refuses to comply with a valid subpoena.

CHAPTER 93. ORGANIZATION AND ADMINISTRATION

Subchapter B. THE DISCIPLINARY BOARD

§ 93.21. The Disciplinary Board.

Enforcement Rule 205(a) and (b) provide that the Supreme Court shall appoint a board to be known as "The Disciplinary Board of the Supreme Court of Pennsylvania" which shall be composed of [14] 12 members of the bar of this Commonwealth and two non-lawyer electors; that the regular terms of members of the Board shall be for three years; that no member shall serve for more than two consecutive three-year terms [**and that the terms of one-third of the members of the Board, as nearly as may be, shall expire on April 1 of each year]**.

Subchapter F. CONFIDENTIALITY

§ 93.102. Access to disciplinary information and confidentiality.

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(c) *Exceptions to initial confidentiality.* Enforcement Rule 402(c) provides that, until the proceedings are open under subsection (a) or (b), all proceedings involving allegations of misconduct by or disability of an attorney shall be kept confidential unless:

* * * * *

(3) **the proceeding is based on an order of temporary suspension from the practice of law entered by the Court pursuant to Enforcement Rule 208(f)(1) (relating to emergency temporary suspension orders and related relief),**

[(3)] (4) in matters involving alleged disability, the Supreme Court enters its order transferring the respondent-attorney to inactive status pursuant to Chapter 91 Subchapter D (relating to disability), **or**

[(4)] (5) there is a need to notify another person or organization, including the Lawyers' Fund for Client Security, in order to protect the public, the administration of justice, or the legal profession.

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§ 93.104. Access by judicial system agencies to confidential information.

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(c) *Exception to required notice to respondent-attorney.* Enforcement Rule 402(h) provides that, if an agency or board requesting the release of information under subsection (a) **other than the Judicial Conduct Board and the Pennsylvania Lawyers Fund for Client Security Board** has not obtained an applicable waiver of confiden-

tiality from the respondent-attorney, and the agency or board requests that the information be released without giving notice to the respondent-attorney, the requesting agency or board shall certify that:

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Subchapter G. FINANCIAL MATTERS

ANNUAL ASSESSMENT [OR] ATTORNEY'S

§ 93.141. Annual assessment

(a) *General rule.* Enforcement Rule 219(a) provides that every attorney admitted to practice law in this Commonwealth, other than a military attorney holding a limited certificate of admission issued under Pennsylvania Bar Admission Rule 303 (relating to limited admission of military attorneys), shall pay an annual fee under such rule of [**\$130.00**] **\$140.00**; that the annual fee shall be collected under the supervision of the Administrative Office, which shall send and receive, or cause to be sent and received, the notices and statements provided for in this subchapter, and that the fee shall be used to defray the costs of disciplinary administration and enforcement under the Enforcement Rules, and for such other purposes as the Board shall, with the approval of the Supreme Court, from time to time determine.

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[Pa.B. Doc. No. 09-975. Filed for public inspection May 29, 2009, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 15 AND 17]

Amending Rules of Appellate Procedure 1561, 1701 and proposed New Rule of Appellate Procedure 1765

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 1561, 1701 and proposes new rule, Pa.R.A.P. 1765. These amendments and new rule are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court. This Committee has coordinated publication of this recommendation with the Criminal Procedural Rules Committee's publication of proposed new Rule of Criminal Procedure 911.

Proposed additions are bold while deleted material is bracketed and bold.

All communications in reference to the proposed amendment should be sent no later than July 3, 2009 to:

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D. Alicia Hickok, Deputy Counsel
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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court
Procedural Rules Committee*

HONORABLE MAUREEN E. LALLY-GREEN,
Chair

Explanatory Comment

The Appellate Court Procedural Rules Committee proposes that the Supreme Court amend Pa.R.A.P. 1561 and 1701(b) and enact a new Rule Pa.R.A.P. 1765 to permit the PCRA trial court, after an appeal has been taken, to "consider any petition for bail where post-conviction relief is granted or where an intermediate appellate court has reversed the denial of post-conviction relief," as well as to permit review of a PCRA trial court's bail determination while the disposition of the petition is on appeal.

In preparing this Recommendation, the Appellate Court Procedural Rules Committee appointed a subcommittee to work with a subcommittee of the Criminal Procedural Rules Committee. These proposed amendments and the new rule are the product of the joint subcommittee, as is proposed Criminal Rule 911, which is being published concurrently.

The Post-Conviction Relief Act, 42 Pa.C.S. § 9541, *et seq.*, limits its discussion of bail to what the trial court can do if the trial court *grants* the petition.

If the court rules in favor of the petitioner, it shall order appropriate relief and issue supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper.

42 Pa.C.S. § 9546(a). This is consistent with Pa.R.Crim.P. 908(D)(2), which permits a court to "issue any supplementary orders appropriate to the proper disposition of the case" at the conclusion of a PCRA hearing.

In other words, if the PCRA court grants relief, it can also set bail. There is no provision, however, for a situation in which a PCRA court *denies* relief and the Superior Court vacates and remands, but before the matter is returned to the PCRA trial court, the Commonwealth takes an appeal. This was the situation in *Commonwealth v. Bishop*, 829 A.2d 1170 (Pa. Super. July 22, 2003), in which the trial court stated that it had no jurisdiction under Rule 1701(a) unless and until the appellate court decided or dismissed the appeal and remanded the record.

Pa.R.A.P. 1762 provides that "in criminal matters" applications for bail should "ordinarily" first be presented to the trial court, whether or not an appeal is pending. A post-conviction relief proceeding is a civil proceeding that is quasi-criminal in nature but is collateral to the original proceeding and is governed by the Rules of Criminal Procedure. However, some Rules of Criminal Procedure limit their application to proceedings prior to the conclusion of direct appeal. *See, e.g.*, Pa.R.Crim.P. 534 (authorizing a bail bond only through direct appeal and expressly excluding post-conviction proceedings or other collateral attacks); see also Pa.R.Crim.P. 521 (describing the trial court's ability to grant bail). This has given rise to confusion in the Courts of Common Pleas and Superior Court as to the scope of each court's power to grant bail pursuant to a pending PCRA proceeding.

The trial court is generally the fact-finding tribunal. Accordingly, the Committee believes that Pa.R.A.P. 1701

should be amended to clarify that the trial court is the court to which a request for release on bail should be presented in the first instance following a vacation or reversal of the denial of post-conviction relief, even if the Commonwealth appeals the merits decision.

Another question that has arisen is whether a decision on bail by the PCRA trial court is reviewable by the appellate courts. In *Commonwealth v. Bonaparte*, 366 Pa. Super. 182, 530 A.2d 1351 (1987), a petitioner appealed a bail determination pending disposition of a PCHA petition. The trial court had considered the request under then—Pa.R.Crim.P. 4010. The Superior Court held that the question was instead governed by then—Pa.R.Crim.P. 1506(2) but nonetheless affirmed the trial court's determination. The Superior Court stated expressly that Pa.R.A.P. 1762 did not apply because it was limited to orders "denying bail prior to sentence or pending direct appeal."

That appears to be a correct reading of the Rules prior to this amendment. If the Superior Court reverses the denial of a PCRA petition and no appeal is taken, review of the bail determination would be governed by Pa.R.A.P. 1762(b) only because the failure to seek review would place the procedural posture of the case as "criminal" once again.

If an appeal is taken, however, the matter is still part of the post-conviction relief process and is not covered by Pa.R.A.P. 1762(a). We are thus recommending revisions of Pa.R.A.P. 1561 and the enactment of a new rule Pa.R.A.P. 1765 to fill this narrow gap. The right to review a bail determination under Pa.R.A.P. 1765 is limited to the time during which the substantive disposition is on appeal, in accordance with Pa.R.Crim.P. 910, which specifies that only "[a]n order granting, denying, dismissing, or otherwise finally disposing of a petition for post-conviction collateral relief shall constitute a final order for purposes of appeal." Pa.R.Crim.P. 910. That determination must be made by the PCRA trial court in the first instance. Because the record will be in the appellate court, the PCRA trial court must hold an evidentiary hearing, and it must apply a standard that recognizes: (1) that the petitioner has been tried and convicted, and the conviction upheld on direct appeal; and (2) that the petitioner has been granted relief by a panel or *en banc* sitting of an intermediate appellate court. To strike that balance, the three criteria that govern the right to pretrial bail have been balanced against the fact of the conviction and affirmance and the fact that the Commonwealth has appealed the intermediate appellate court's decision. Pre-trial, courts must balance:

- (a) the importance of the presumption of innocence;
- (b) the distaste for imposition of sanctions prior to trial and conviction;
- (c) the desire to give the accused maximum opportunity to prepare a defense.

See *Commonwealth v. Fowler*, 451 Pa. 505, 513, 304 A.2d 124, 128 (1973) (discussing *Commonwealth v. Truesdale*, 449 Pa. 325, 335-36, 296 A.2d 829, 834-35 (1972).) Between conviction and sentence, one convicted of murder could not be released on bail—with the sole caveat that if delay was unreasonable and caused by the Commonwealth, the court could decide to grant bail. The *Fowler* Court reasoned that the first and third *Truesdale* factors are no longer implicated and the second minimized, while the public interest in detaining the defendant "becomes compelling." *Id.* at 514-15, 304 A.2d at 129. See also *Commonwealth v. Cabeza*, 489 Pa. 142, 413 A.2d 1054 (1980) (applying the analysis to the then-new rules of criminal procedure).

To the extent that the passing observation in *Commonwealth v. Kyle*, 582 Pa. 624, 874 A.2d 12 (2005), that the Superior Court "granted bail" can be read as recognition that the Superior Court made the bail determination in the first instance rather than reversing a bail denial, it will be superseded, because the Superior Court would not have the right to grant bail without the petitioner's having first presented an application to the PCRA trial court.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1561. Disposition of Petition for Review.

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(d) *Review of detention.*—Except as prescribed by Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending, **Rule 1765, which governs applications relating to bail when an appeal is pending**, or [**by**] Rule 3331 (review of special prosecutions or investigations), review in the nature of criminal habeas corpus or post conviction relief may not be granted under this chapter.

Official Note: Subdivision (a) is based on 42 Pa.C.S. § 706 (disposition of appeals).

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Subdivision (d) is intended to make clear that the scope of this chapter is essentially civil in nature. [**The application of the petition for review to questions of release prior to sentence in criminal matters and in questions arising out of special prosecutions or investigations is merely a recognition of the technical need for a plenary filing to bring the question within the appellate jurisdiction of the appropriate court.**] Although a Post-Conviction Relief Act proceeding is technically civil, it is quasi-criminal, and, by definition, it occurs following the entry of judgment and affirmance of that judgment on direct appeal. A court's review in such instances is undertaken with a different presumption than applies in other civil or even criminal proceedings, because a court has found a defendant guilty and that determination has been affirmed on direct appeal. See [**Rules**] **Rule 1762(b)(2) and 1765** regarding bail applications.

CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

IN GENERAL

Rule 1701. Effect of Appeal Generally.

(a) *General rule.*—Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may no longer proceed further in the matter.

(b) *Authority of a trial court or agency after appeal.*—After an appeal is taken or review of a quasijudicial order is sought, the trial court or other government unit may:

- (1) Take such action as may be necessary to preserve the status quo, correct formal errors in papers relating to

the matter, cause the record to be transcribed, approved, filed and transmitted, grant leave to appeal in forma pauperis, grant supersedeas, **consider a [any] petition for bail except that, if the appeal is taken from a post-conviction relief determination, the trial court can consider a bail application only if (a) it has granted post-conviction relief or (b) an intermediate appellate court has reversed the denial of post-conviction relief,** and take other action permitted by these rules or otherwise ancillary to the appeal or petition for review proceeding.

* * * * *

STAY IN CRIMINAL MATTERS

(Editor's Note: The following text is new and has been printed in regular print to enhance readability.)

Rule 1765. Release in Post-Conviction Collateral Proceedings.

(a) Other than as provided by statute or Rule of Appellate Procedure 1701, a petitioner seeking post-conviction collateral relief may not make application for bail in any court while petitioner's appeal of a trial or appellate court's disposition of the petition is pending.

(b) If an appellate court has reversed the denial of post-conviction relief, an application for bail may be made in the Post-Conviction Relief Act trial court. If the Commonwealth has appealed that decision on the merits, the trial court may grant an application for bail only after an evidentiary hearing as required in Pennsylvania Rule of Criminal Procedure 911.

(c) If the Post-Conviction Relief Act trial court has made a bail determination, and if the grant or denial of the merits of a Post-Conviction Relief Act Petition is pending, either party may seek review of the bail determination by filing an application pursuant to Pa.R.A.P. 123 that is ancillary to the appeal on the merits. Such application should be filed in the court in which the appeal of the disposition of the Post-Conviction Relief Act petition is pending.

Official Note: This rule should be read in conjunction with Pennsylvania Rule of Criminal Procedure 911 and with 42 Pa.C.S. § 9546, which provides in part that a court that rules in favor of a Post-Conviction Relief Act petitioner "shall order appropriate relief and issue supplementary orders as to . . . bail." See also Pa.R.Crim.P. 908(D)(2); 42 Pa.C.S. § 5701; Pa.R.Crim.P. 521 (governing bail determinations generally). Because a Post-Conviction Relief Act matter is not criminal, the provisions of Pa.R.A.P. 1762 do not apply unless relief has been granted and no appeal taken.

[Pa.B. Doc. No. 09-976. Filed for public inspection May 29, 2009, 9:00 a.m.]

[210 PA. CODE CH. 9]

Proposed New Rule of Appellate Procedure 912

The Appellate Court Procedural Rules Committee is proposing a new rule, Rule of Appellate Procedure 912. The proposed rule is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court.

All communications in reference to the proposed amendment should be sent no later than July 3, 2009 to:

Dean R. Phillips, Chief Counsel
 D. Alicia Hickok, Deputy Counsel
 Scot Withers, Deputy Counsel
 Appellate Court Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Avenue, Suite 6200
 P. O. Box 62635
 Harrisburg, PA 17106-2635

fax: (717) 231-9551
 e-mail: appellaterules@pacourts.us

An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court
 Procedural Rules Committee*

HONORABLE MAUREEN LALLY-GREEN,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 912. Abandonment of Appellant During an Appeal of the Disposition of a First Post-Conviction Relief Act Petition.

(a) If counsel for an appellant who is appealing the merits of a denial of a first Post-Conviction Relief Act Petition fails to file a document that is required by Rule or Order of the Court for the appeal to proceed, the appellate court shall not quash or dismiss the appeal for failure to file until the following steps have been taken:

(1) The appellate court shall order the Post-Conviction Relief Act court to investigate whether the appellant has abandoned the appeal voluntarily, and if not, whether appellant's counsel has been *per se* ineffective by failing to file that document.

(2) A copy of the appellate court's order shall be served on the appellant, appellant's counsel, and the attorney for the Commonwealth.

(3) Notwithstanding the provisions of Pa.R.A.P. 1701, at the conclusion of its investigation, if the Post-Conviction Relief Act court concludes that appellant's counsel abandoned the appeal through *per se* ineffectiveness by failing to file that document, the Post-Conviction Relief Act court shall replace counsel. The Post-Conviction Relief Act court also may sanction counsel.

(4) The Post-Conviction Relief Act court shall report its findings in writing to the appellate court within sixty days of the date of the appellate court order. A copy of the report shall be served on the appellant, appellant's counsel, and the attorney for the Commonwealth.

(b) When the Post-Conviction Relief Act court finds, pursuant to paragraph (1), that the appellant's counsel was *per se* ineffective for failing to file the document that was required by Rule or Order of the Court for the appeal to proceed, the appellate court shall permit the filing *nunc pro tunc* of that document.

(c) The appellate court will retain jurisdiction during the proceedings in the Post-Conviction Relief Act court.

Note

This rule was adopted in 2009 to formalize the informal procedure adopted by the Superior Court in response to *Commonwealth v. Robinson*, 575 Pa. 500, 837 A.2d 1157 (2002). Pursuant to this informal procedure, when counsel abandons his or her client in cases on appeal following the denial of a first PCRA petition, as for example when the attorney fails to file an appellate brief, the Superior Court will retain jurisdiction and instead of dismissing the appeal will remand the case to the Post-Conviction Relief Act court for a determination whether the attorney abandoned the client and with instructions for the judge to take appropriate action. See *Commonwealth v. Bennett*, 539 Pa. 382, 930 A.2d 1264 (2007) at fn. 12.

“Post-Conviction Relief Act court,” as used in this rule, refers to the judge of the Court of Common Pleas handling the Post-Conviction Relief Act proceedings at the time of the appeal.

Appeals of orders that are ancillary to the appeal on the merits—including, but not limited to bail denials—may not be remanded under Rule 912.

Explanatory Comment

The Appellate Court Procedural Rules Committee, in conjunction with the Criminal Procedural Rules Committee, proposes that the Supreme Court enact Pa.R.A.P. 912 to codify the procedure to be followed when a failure to file a document required for an appeal to proceed jeopardizes an appeal on a first Petition filed under the Post-Conviction Relief Act.¹ Both Committees designated members to work as a joint subcommittee to prepare this Recommendation.

As the Supreme Court recognized in *Commonwealth v. Bennett*, 539 Pa. 382, 930 A.2d 1264 (2007), the Superior Court currently follows a practice such as that set forth in the proposed rule. In large part, the new rule would formalize the current practice, which was developed by the Superior Court in response to the Supreme Court’s opinion in *Commonwealth v. Robinson*, 575 Pa. 500, 837 A.2d 1157 (2002). Pursuant to this informal procedure, when counsel abandons his or her client in cases on appeal following the denial of a first PCRA petition, as for example when an attorney fails to file an appellate brief, the Superior Court will retain jurisdiction while remanding the case to the PCRA court for a determination as to whether the attorney’s failure constituted an abandonment of the client on appeal. If so, either current or replacement counsel may be permitted to file the necessary document *nunc pro tunc*. Under the proposed new rule, if the PCRA court finds that appellate counsel was *per se* ineffective—but only upon that finding—the court *must* replace counsel, and the Superior Court *must* allow the document in question to be filed *nunc pro tunc*. In this way, the proposed rule reduces the discretion of informal practice, but it provides greater consistency.

[Pa.B. Doc. No. 09-977. Filed for public inspection May 29, 2009, 9:00 a.m.]

¹ A petitioner has a Commonwealth-created right to counsel on a first Post-Conviction Relief Act Petition, but not on subsequent ones.

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 9]

Proposed New Rule of Criminal Procedure 911

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule of Criminal Procedure 911 (Bail Motions After Disposition of Post-Conviction Collateral Relief Petition) that would clarify when the PCRA court may grant a defendant’s request for release on bail. This proposal is correlative to a proposal by the Appellate Court Procedural Rules Committee for new Pa.R.A.P. 1765, and amendments to Pa.Rs.A.P. 1561 and 1701. 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 proposed new Rule 911 precedes the Report.

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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By the Criminal Procedural
Rules Committee

D. PETER JOHNSON,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

(*Editor’s Note:* The following text is new and has been printed in regular print to enhance readability.)

Rule 911. Bail Motions After Disposition of Post-Conviction Collateral Relief Petition.

(A) After disposition of a post-conviction collateral relief petition, the petitioner by motion filed within 30 days of entry of the disposition on the docket may request release on bail with the judge only when:

- (1) the judge has granted post-conviction relief; or
- (2) an appellate court has reversed the PCRA court’s denial of post-conviction relief.

(B) Upon receipt of a motion requesting release on bail, the judge shall hold a hearing. At the hearing, the judge shall consider any relevant evidence, including information about:

(1) the release criteria set forth in Rule 523 and the types of release on bail set forth in Rule 524;

(2) any interest that will be served by detaining the defendant;

(3) any interest that will be served by releasing the defendant;

(4) the likelihood that the defendant will prevail if a new trial or sentencing is held;

(5) the seriousness of the criminal offense committed;

(6) the danger the defendant may pose to any other person, the community, or himself or herself if he or she is released;

(7) the likelihood that the defendant may flee if released; and

(8) any other factors relevant to the case.

(C) Release shall not be granted unless necessary in the interest of justice, in exceptional circumstances, and for compelling reasons.

(D) At the conclusion of the hearing, the judge shall state on the record the reasons for the decision granting or denying the motion for release on bail.

Comment

This rule provides the procedures for the filing and disposition of motions for release on bail in post-conviction collateral relief cases either after the judge has granted the petition or once an appellate court has reversed the judge's denial of the petition. See Rules of Appellate Procedure 1701(b)(1), 1762(b)(2), and 1765. Also see Rule 908(C)(2) and 42 Pa.C.S. § 9546(a).

Unlike pretrial and pre-sentence release on bail, a PCRA petitioner is not entitled to release on bail as a matter of right. Rather, bail may be allowed in the discretion of the judge. Paragraph (C) cautions the judge about the limitations on the exercise of discretion in these cases. Article I, § 14 of the Pennsylvania Constitution, that provides "all prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great" also limits the judge's discretion. See also Rule 521.

"Judge," as used in this rule, refers to the judge of the court of common pleas handling the PCRA proceedings at the time the motion for release on bail is filed.

The parties may introduce copies of the record from any proceedings, including pretrial, trial, direct appeal, or PCRA, during the bail hearing.

Official Note: Adopted _____, effective _____.
Committee Explanatory Reports:

Report explaining the provisions of the proposed new rule published at 39 Pa.B. 2695 (May 30, 2009).

REPORT

Proposed New Rule of Criminal Procedure 911

BAIL MOTIONS AFTER DISPOSITION OF POST-CONVICTION COLLATERAL RELIEF PETITION

I. Introduction

The Committee, in conjunction with the Appellate Court Procedural Rules Committee,¹ is planning to pro-

¹ The Appellate Court Procedural Rules Committee proposal is for new Pa.R.A.P. 1765 and amendments to Pa.Rs.A.P. 1561 and 1701.

pose to the Supreme Court new Rule of Criminal Procedure 911 that would clarify when a PCRA judge² at the conclusion of a post-conviction collateral proceeding may grant a defendant's request for release on bail. The need for this new rule was suggested to the Committee by the Appellate Court Procedural Rules Committee.

The Appellate Court Procedural Rules Committee noted that, because there are no procedural rules specific to bail after the conclusion of the PCRA proceedings, there is a great deal of confusion about whether bail may be considered and, if so, how and when. Because the issues implicate both the Appellate Court Procedural Rules and the Criminal Procedural Rules, a Joint Subcommittee of members from both Committees was formed to assist the two Committees in addressing these concerns. The Joint Subcommittee's recommendation for new Pa.R.A.P. 1765 and amendments to Pa.Rs.A.P. 1561 and 1701, and, correlatively, for new Rule of Criminal Procedure 911 has been approved for publication by both Committees.

The Joint Subcommittee initially proposed changes to the Rules of Appellate Court Procedure prohibiting applications for bail in the trial or appellate court during the pendency of appeal of the denial of the petition for post-conviction relief, and appeals from a denial of bail.³

After reviewing the publication responses, the Appellate Court Rules Committee asked the Joint Subcommittee to re-evaluate the original proposal. In particular, the Joint Subcommittee was to consider whether, because bail is a collateral proceeding to an underlying action, the option to request bail exists when the PCRA judge has granted the defendant's PCRA petition or when the Appellate Court has reversed the PCRA judge's denial of the petition. After a thorough re-examination of the issues, the original proposal has been amended to permit a bail request by the defendant in the limited situations in which the PCRA judge has granted the PCRA petition and when the Appellate Court has reversed the PCRA judge's denial of the petition. To accomplish this, the Joint Subcommittee recommended to the respective Committees that there be changes made to both the Appellate Court Procedural Rules and the Criminal Procedural Rules.⁴

II. Proposed New Rule of Criminal Procedure 911 (Bail Motions After Disposition of Post-Conviction Collateral Relief Petition)

Proposed new Rule 911 sets forth the procedures for release on bail in the limited circumstances after disposition of a post-conviction collateral relief petition either when the PCRA judge has granted post-conviction relief or when an appellate court has reversed the PCRA judge's denial of post-conviction relief. Because bail at this stage is extremely restricted, the changes also include cautionary language making the limitations clear. In addition, because the procedures occur only after the conclusion of the PCRA proceedings, the new rule is being numbered Rule 911, the last rule of the PCRA rules in Chapter 9.

Paragraph (A) sets forth the motion procedure and the limitations on when bail may be requested. The burden is on the defendant to file a motion with the PCRA judge and the motion must be filed within 30 days of entry of the disposition of a post-conviction collateral relief petition on the docket. The time to make a request for bail is

² "PCRA judge" refers to the judge of the court of common pleas handling the proceedings under the Post Conviction Relief Act ("PCRA") at the time the motion for release on bail is filed.

³ This proposal was published for comment on May 24, 2008. See 38 Pa.B. 2359.

⁴ The Appellate Court Procedural Rules Committee's recommendation explaining the proposed changes to the Rules of Appellate Court Procedure has been published with this proposal.

limited to when the PCRA judge has granted post-conviction relief or when an appellate court has reversed the PCRA judge's denial of post-conviction relief.

After the PCRA judge receives a request for release on bail, the judge is required to hold a hearing. At the hearing, the PCRA judge is required to consider the criteria enumerated in paragraph (B) and the restrictions set forth in paragraph (C) before making a decision. When the case is proceeding pursuant to the PCRA, the defendant does not have a right to release on bail because a court has found a defendant guilty and that determination has been affirmed on direct appeal.⁵ The fact that the nature of the PCRA court's inquiry is different is reflected in the new Rule 911(B) criteria and the further restrictions enumerated in paragraph (C). These points are elaborated in the Comment.

Paragraph (D) requires the PCRA judge to state on the record the reasons for granting or denying bail. This requirement is necessary to make a record for purposes of appeal.

The Comment includes a reference to the relevant Rules of Appellate Procedure. The Comment also includes references to Rule of Criminal Procedure 908 and 42 Pa.C.S. § 9546(a) that provide the PCRA judge's authority to issue supplementary orders appropriate to the proper disposition of the case.

Finally, recognizing that, at this stage in the proceedings, some of the information that would be relevant to making a determination about releasing a defendant on bail may be in the records of earlier proceedings that might not be available to the PCRA court, the Comment explains that the parties may introduce copies of these records at the hearing.

[Pa.B. Doc. No. 09-978. Filed for public inspection May 29, 2009, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DELAWARE COUNTY

Delaware County Orphans' Court Division Local Rules Nos. 3.5A, 3.5B, 3.6A, 6.10B(2), 6.10D(3), 6.9A, 6.10D(3), 6.10D(4), 6.1A(3), 6.1C and 14.2B; No. 08-2750

Order

And Now, this 11th day of May 2009, upon unanimous approval of the Board of Judges of Delaware County, Pennsylvania, the Thirty Second Judicial District, it is hereby *Ordered* and *Decreed* that the Orphans' Court Rules are hereby amended to reflect the changes and recommendations of the Orphans' Court Rules Committee prescribed in the following document. Said rules changes shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH P. CRONIN, Jr.,
President Judge

⁵ Prior to conviction, defendants have a constitutional right to release on bail except in limited cases set forth in Article I, § 14 of the Pennsylvania Constitution. See Pa.Rs.Crim.P. 520 and 521.

PROPOSALS FOR CHANGES TO DELAWARE COUNTY LOCAL ORPHANS' COURT RULES

NOVEMBER 7, 2008
AS AMENDED FEBRUARY 4, 2009

First: ***Re: Local Rule 3.5A.***

The Committee recommends implementation of the new Citation (attached hereto) drafted by William G. Halligan, Esquire, as it is consistent with Local Rule 3.5A. The Committee also recommends drafting of a new Preliminary Decree, for the same purpose. No change to Local Rule 3.5A is recommended.

Second: ***Re: Local Rule 3.5B.***

The Committee recommends passage of new Local Rule 3.5B, as follows:

Local Rule 3.5B Uncontested Petitions.

(1) If a petitioner believes there will be no objections, by creditors and/or parties in interest, to a petition being filed, petitioner may state this in his petition and send notice pursuant to Rule 5.1 to all such creditors and/or parties at least twenty (20) days prior to filing said petition advising said creditors and/or parties in interest of the projected date of filing said petition unopposed petition. In the notice, petitioner should advise said creditors and/or parties in interest that petitioner intends to state to the Court in the petition that said petition is unopposed and any creditor or party in interest who disagrees with petitioner's position that the petition is unopposed must notify petitioner or his counsel on or before the projected date of filing of the petition. If no creditor or party in interest notifies petitioner or his counsel by the projected filing date that the petition is opposed, the Court may rule on the petition without scheduling a hearing thereon, or may schedule a hearing if the Court believes a hearing is necessary for any reason.

(2) The date of the notice shall be the date of mailing, or service of the notice. A certification by counsel listing the persons notified and stating the date and manner of service, together with a copy of the notice given, shall be attached to the petition.

(3) If all potential creditors and/or parties in interest are in agreement and have signed consents to the proposed petition, the petitioner may attach said consents to the petition and advise the Court that all parties in interest have consented to the petition. Under these circumstances, the petitioner does not need to give twenty (20) days notice of the filing of the proposed petition. Upon receipt of the petition, wherein petitioner has advised the Court that all creditors and/or parties in interest have signed consents, and said consents are attached to the petition, the Court may rule on said petition without scheduling a hearing thereon, or may schedule a hearing if the Court believes a hearing is necessary for any reason.

(4) The above manner of proceeding (without a hearing) is not available in matters wherein the relevant statutes require a hearing.

Third: **Re: Local Rule 3.6A.**

The Committee recommends rescission of Local Rule 3.6 and passage of new Local Rule 3.6A, as follows:

Local Rule 3.6A Practice as to Depositions, Discovery, Production of Documents and Perpetuation of Testimony.

(1) Leave to take depositions, or to perpetuate testimony, or obtain discovery or the production of documents, may be granted only on petition upon cause shown except upon agreement of parties and counsel.

(2) Petitions filed pursuant to the Rule shall include a description of all efforts made to resolve discovery issues informally. Petitions shall also state the identity of the persons that are to be deposed; the testimony that is to be perpetuated; the documents that are to be produced; and a description of any other discovery requested. The Petition shall also state the reasons why the aforementioned discovery is necessary and relevant to the litigation.

Fourth: **Re: Local Rule 6.10B(2).**

The Committee recommends that reference to non-existent Local Rule 5.1C be deleted from Local Rule 6.10B(2), which should be amended accordingly to read as follows:

Local Rule 6.10B(2).

(2) *Service of Copy.* A copy of the objections shall be served contemporaneously after filing, on accountant's attorney or on the accountant if not represented, in the manner provided in Pa. O.C. Rule 5.1 and Del. Co. O.C.D. Rules 5.1A and 5.1B.

Fifth: **Re: Local Rule 6.10D(3) and Local Rule 6.9A.**

The Committee recommends rescission of Local Rule 6.10D(3)(a), (b) and (c), and placement of those subsections with Local Rule 6.9A, which deals with Petitions for Adjudication. (See Proposal Seventh, below, for proposed changes to Local Rule 6.9A.)

However, the subject matter contained in Local Rule 6.10D(3)(d) does concern Audits and Claims and, therefore, should remain with Local Rule 6.10D. The removal of subparagraphs (a), (b) and (c) would result in the slight restructuring of 6.10D(3), so that Local Rule 6.10D(3) would read in its entirety as follows:

Local Rule 6.10D(3).

(3) *Objections to Petitions for Adjudication.* Objections to the petition for adjudication may be made orally at the time of audit.

Sixth: **Re: Local Rule 6.10D(4).**

The Committee recommends rescission of Local Rule 6.10D(4) and the placement of that provision within Local Rule 6.9A, as set forth in Proposal Seventh, below.

Seventh: **Re: Local Rule 6.9A.**

The Committee recommends that the material presently contained at Local Rule 6.10D(3)(a), (b) and (c) and D(4) be added to present Local Rule 6.9A, and that the title of the Rule be amended, so that the Rule would read in its entirety as follows:

Local Rule 6.9A Filing Petition for Adjudication and Statement of Proposed Distribution.

(1) *Recital of Facts.* Accountant shall file with his account a petition for adjudication, setting forth all facts necessary to enter a proper decree.

(2) *Forms of Petitions.* The petition for adjudication shall be on forms provided by the clerk, or typewritten in conformity therewith, signed by the fiduciaries stating the account and verified by at least one of them. The statement of proposed distribution is the concluding paragraph of the printed forms of petition for adjudication to be filed with the account.

(3) *Additional Receipts and Disbursements.* Receipts and disbursements since the date to which the account was stated and to be included in the adjudication, shall be set forth in the petition for adjudication, or in a separate statement attached thereto, or in the appearance slip of the attorney for accountant.

(4) *Exhibits.* Accountants shall submit with the petition the several documents enumerated in the forms provided by the clerk. The accountant shall submit, at or prior to the audit, a copy of the audit notice under Del. Co. O.C.D. Rule 6.3A and an affidavit listing those to whom such audit notice was sent.

Eighth: **Re: Local Rule 6.1A(3).**

The Committee recommends rescission of Local Rule 6.1A(3).

Ninth: **Re: Local Rule 6.1C.**

The Committee recommends that Local Rule 6.1C be rewritten to state as follows:

Local Rule 6.1C Forms of Account.

All forms for fiduciaries' accounts should conform to the model account forms promulgated by the Pennsylvania Supreme Court. In the absence of a state-mandated form, the account should conform as nearly as possible to the forms provided for other fiduciaries.

Tenth: **Re: Local Rule 14.2B**

The Committee recommends that the typographical error in the heading to Local Rule 14.2B be corrected so that the *heading* will read as follows:

Local Rule 14.2B Allowances from Incapacitated Persons' Estates.

CYNTHIA A. McNICHOLAS, ESQUIRE,
Chair, Orphans' Court Rules Committee

**COMMONWEALTH OF PENNSYLVANIA
DELAWARE COUNTY**

IN THE ORPHANS' COURT DIVISION
OF THE COURT OF COMMON PLEAS
OF DELAWARE COUNTY, PENNSYLVANIA

NO.

IN THE MATTER OF ESTATE OF JOHN DOE, DECEASED

RE: PETITION FOR CITATION TO SHOW CAUSE, IF ANY, WHY THIS
PETITION SHOULD NOT BE GRANTED

CITATION

TO: JOE DOE

WHEREAS, at a Court held and kept in the Borough of Media in and for the County of Delaware, Pennsylvania on the _____ day of _____, 2009, before the Honorable JOSEPH P. CRONIN, JR., President Judge of said Court, a petition was presented and a Citation awarded in the above entitled matter.

NOW THEREFORE, a return date is fixed for the _____ day of _____, 2009, by which date any party opposing the granting of the prayer of the petition shall file an answer admitting or denying the averments of facts of the petition, and specifically stating his objections thereto and averring the facts relied upon by him.

FURTHERMORE, WE COMMAND YOU, that you be and appear for a hearing before the Judge of the Court of Common Pleas, Orphans' Court Division, on the _____ day of _____, 2009, at _____, to show cause, if any you have, why the relief sought in the said petition should not be granted. Witness HUGH A. DONAGHUE, ESQUIRE, Clerk of Orphans' Court Division, this _____ day of _____, 2009.

Chief Deputy Clerk
Orphans' Court Division

[Pa.B. Doc. No. 09-979. Filed for public inspection May 29, 2009, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Amendment of Local Rule of Civil Procedure 39-1910.11; Miscellaneous Doc.; Volume 2009; Page 1990

Order of Court

And Now this 7th day of May, 2009, It Is Hereby Ordered that Local Rule of Civil Procedure 39-1910.11 is amended as follows.

These changes shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

DOUGLAS W. HERMAN,
President Judge

Rule 39-1910.11. Office Conference. Subsequent Proceedings. Order.

39-1910.11(a). *Office Conference conducted by Conference Officer.* The office conference shall be conducted by a conference officer designated from time to time by the conference officer supervisor and/or the director of Domestic Relations.

39-1910.11(b). Rescinded.

39-1910.11(e). Rescinded.

39-1910.11(f)(1). *Instructions Mailed with Conference Order.* The Domestic Relations Section shall mail a copy of "How to Appeal Your Recently Obtained Support Order," to each party with the order entered following the conference at Domestic Relations.

39-1910.11(i)(1). *Demand for Appeal Hearing; filing fee.* Any party may seek review by the court of the order entered following the conference at Domestic Relations. Review by the court will act as an appeal of the decision made by the conference officer at the Domestic Relations Section. The hearing before the court will be a *de novo* hearing. An appealing party shall file a written demand for hearing using the form "Demand for Appeal Hearing," attached as Exhibit "A." Except as set forth in subsection (C) below, the party shall pay a \$25.00 filing fee to Franklin/Fulton County Domestic Relations Section at the time of filing the written demand for hearing.

(A) The demand for hearing shall not be accepted and/or scheduled by Domestic Relations if not accompanied by the filing fee.

(B) The filing fee for the written demand for hearing is non-refundable.

(C) If a party is poor and unable to pay the filing fee, the party must seek leave of court to have the fee waived.

39-1910.11(i)(2). *Content of "Demand for Appeal Hearing."* The party filing a written demand for hearing shall indicate on the form the reasons for or issues the party wishes the court to address at the hearing. The party must select the type of hearing being requested: routine hearing or specially assigned hearing.

(A) Routine Hearing is a hearing that does not need more than 30 minutes to complete and does not address complex questions of law or fact.

(B) Specially Assigned Hearing requires greater than 30 minutes to complete and does address complex questions of law or fact. Pa.R.C.P. 1910.11(j)(2) applies.

(C) Failure of the party to select either a routine hearing or a specially assigned hearing on the "Demand

for Appeal Hearing" will result in the Domestic Relations Section scheduling the matter for a routine hearing lasting no more than 30 minutes.

39-1910.11(i)(3). *Scheduling and Notice.* When any party files a written demand for hearing and pays the filing fee, the Domestic Relations Section shall schedule a hearing before the court and give notice to the parties.

39-1910.11(i)(4). *Mailing to both parties.* When the *de novo* hearing has been scheduled, the Domestic Relations Section shall mail to the parties a copy of the order scheduling the hearing before the court, a copy of the written demand for hearing, and the form "Pre-Trial Memorandum for Appeal Hearing," attached as Exhibit "B."

39-1910.11(i)(5). *Pre-Trial Memorandum for Appeal Hearing.* The "Pre-Trial Memorandum for Appeal Hearing" shall be filed at Domestic Relations at least seven (7) days before the hearing. The following shall apply:

(A) Failure of the appealing party to file a pre-trial hearing memorandum may be considered an abandonment of claims and a withdrawal of the appeal. The court may impose other sanctions as appropriate.

(B) Failure of the opposing/responding party to file a pre-trial hearing memorandum may be treated as not contesting the appellant's claims and will be deemed a waiver of all other issues on appeal. The court may impose other sanctions as appropriate.

(C) For a routine hearing, the pre-trial hearing memorandum shall contain the following: an explanation of each issue you expect to raise at the hearing; a description of the facts you plan to prove related to the support action; identification of witnesses and the facts to which each witness will testify; a description of exhibits other than those required by the Pennsylvania Rules of Civil Procedure; and the relief being sought.

(D) For a specially assigned hearing, the pre-trial hearing memorandum shall contain in addition to all the items listed in Rule 39-1910.11(i)(5)(C), the following information: identification of legal authority (statutes, court cases, or rules) relating to the party's position on each issue raised; and an indication of the length of hearing needed to present all the evidence and witnesses' testimony for both sides of the support action.

39-1910.11(i)(6). *Distribution of Copies.* Upon receiving the parties' "Pre-Trial Memorandum for Appeal Hearing," the Domestic Relations Section shall mail copies of the same to each party prior to the hearing before the court.

39-1910.11(j). Rescinded.

39-1910.11(j)(2). *Discovery.* When a hearing has been assigned a special time, discovery is available in accordance with Pa.R.C.P. 4001 through 4025. See Pa.R.C.P. 1910.11(j)(2). If discovery has been conducted, parties shall attach a statement of what discovery has been sought and responded to, shall identify issues related to failure to make discovery requested or failure to adequately respond, and shall suggest to the court whether the court should or should not review discovery prior to the *de novo* hearing.

(Revised 4/2009)

Exhibit "A."
In the Court of Common Pleas of the 39th Judicial District of Pennsylvania
Franklin / Fulton County Branch - Domestic Relations Section

Note: Use "tab" between fields

Plaintiff v. Defendant
Docket No. DRS
PACSES No.

Demand for Appeal Hearing
Notice: Appellants must pay the \$25 filing fee unless the Court waives it.

(name) demands an appeal hearing for the following reasons:
(continue on back if necessary)

Check one: [] Routine hearing needing not more than 30 minutes OR
[] Specially assigned Hearing requiring minutes (Pa.R.C.P. 1910.11(j)(2) applies)

Failure to select will cause the DRS to schedule the matter for a routine hearing lasting no more than 30 minutes.

Note: Multiple routine hearings are scheduled for not more than 30 minutes and do not have complex questions of law or fact. Hearings dealing with complex questions of law or fact are specially scheduled for times other than times set for routine hearings and are presumed to require more than 30 minutes trial time. For both types of hearing, all unrepresented parties and counsel for represented parties must file a pre-hearing memorandum detailing the following information: a list of issues for the court to decide, what facts you expect to establish, a list of witnesses and the expected testimony of each witness, a list of any exhibits you expect to use, and the requested outcome. In addition, for specially assigned hearings, all unrepresented parties and counsel for represented parties must also include in their pre-hearing memoranda a reference to governing legal authority and the anticipated length of the hearing.

Pre-trial memoranda for hearings shall be filed with the Domestic Relations Office at least seven (7) days prior to the hearing.

Failure of an appealing party to file a pre-trial hearing memorandum may be considered an abandonment of claims and a withdrawal of the appeal. Failure of the opposing party to file a pre-trial hearing memorandum may be treated as not contesting the appellant's claims and will be deemed a waiver of all other issues on appeal. The Court may impose other sanctions as appropriate.

Signature of party demanding hearing:
Check one: [] Plaintiff [] Defendant

Date:

Signature of attorney, if any, for party:
Counsel for (check one): [] Plaintiff [] Defendant

Notice to Counsel: Counsel whose signature appears above will be deemed to have entered an appearance in the matter and will be obligated to provide representation at the hearing absent leave of court to withdraw.

(Revised 04/2009)

Exhibit "B."
In the Court of Common Pleas of the 39th Judicial District of Pennsylvania
Franklin / Fulton County Branch—Domestic Relations Section

Plaintiff v. Defendant
DRS No.
PACSES No.

Pre-trial Memorandum for Appeal Hearing

IMPORTANT NOTICE: This Pre-trial memorandum must be filed with the DRS at least seven (7) days before the appeal hearing.

This pre-trial memorandum is being filed by (check one): Plaintiff Defendant

I (check one) did did not file a request for an appeal hearing.

I (check one) do do not have an attorney. My attorney's name is _____

A. Issues: The issues I raise on appeal are as follows (attach extra sheet if necessary):

- 1. _____

- 2. _____

- 3. _____

B. Facts: I expect to prove the following facts to make my case (attach extra sheet if necessary):

For Child Support matters, it is suggested that you include information including each child's name, birth date and age. State the incomes of both plaintiff and defendant and where each is employed. State whether either the plaintiff or the defendant is receiving any benefits such as welfare, social security, worker's compensation, unemployment compensation, etc. and if any child is receiving any benefits such as welfare or social security, and state the amount of each benefit. State whether either the plaintiff or the defendant has other child or spousal support obligations, if known and the amount. If one or both of the parties pay child care expenses, state how much each pays. State which parent is seeking reimbursement for child care expenses. If one of the parties is paying health insurance premiums for any child, state how much and state who is seeking reimbursement. If you have a current custody arrangement, write down what it is. The Court uses it for support purposes, but will not make a decision on custody or visitation or change the current custody or visitation schedule.

For Spousal Support/alimony *pendente lite* matters, it is suggested that you state the date of marriage and the date of separation, as well as the status of any divorce action pending. State the ages and dates of birth of both wife and husband. State whether there is a marital home, who lives there and who pays the mortgage and how much. Set forth the income for the wife and husband and if either is retired, unemployed, disabled, etc. Identify any benefits that either party is receiving such as welfare, social security, worker's compensation, unemployment compensation, etc. State whether parties are working part time or full time. Provide information about any other support obligations that either wife or husband has for child support, if known. State how much is paid for health insurance for spouse and/or children, which spouse is paying that expense and who is seeking reimbursement. List any other expenses, with amounts, as it relates to the marriage, such as private school tuition for children's education, etc., and state who is seeking reimbursement for such expense. Include any information regarding entitlement for spousal support.

C. Witnesses: I will have the following witnesses present to testify. For each witness I have included the witness's name, address and what facts the witness will testify to (attach extra sheet if necessary).

- 1. _____

- 2. _____

3. _____

D. Exhibits: *In addition to the documents which I am required to bring to the hearing, as listed below**, I expect to use the following exhibits or documents at the hearing:

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

* Each party **is required** to bring the following documentary evidence to the hearing and, if available, should provide the following evidence to the DRS office when this memorandum is filed:

1. a true copy of your most recent Federal Income Tax Return, including W-2's, as filed;
2. your pay stubs for the preceding six (6) months;
3. verification of child care expenses;
4. proof of medical coverage which you may have, or may have available to you, and the cost of it;
5. income and expense statements (for guideline cases showing only income and extraordinary expenses and for Melzer v. Witsberger cases—480 A.2d 991—completing entire income and expense statement).

E. Requested outcome: When the hearing is over and I have given all of my evidence to the judge, this is what I want the Judge to put in the order that will decide my case (use extra sheet if necessary): _____

Any party may complete the following sections **but for parties who have been given a specially assigned time for your hearing, the following information is required:**

F. Reference to governing legal authority:

G. For scheduling purposes, please give your best estimate of the amount of time the Court will need to hear your case: (check one): thirty (30) minutes or less
 45 minutes one hour 1 1/2 hours two hours 3 hours or more

Date: _____

Respectfully submitted,

Signature of Unrepresented Party or Party's Attorney

If appropriate: **▶ ▶ ▶ ▶**

Firm Name: _____

Address: _____

Phone No: _____

Supreme Ct. ID No: _____

Counsel for:

Plaintiff

Defendant

Note: Hearings have been assigned a special time when there are complex questions of law, fact or both; when the hearing will be protracted, or when the orderly administration of justice requires that the hearing be separately listed. When a hearing has been assigned a special time, discovery is available in accordance with Pa.R.C.P. 4001 through 4025. If discovery has been conducted, parties should attach a statement of what discovery has been sought and responded to, should identify issues related to failure to make discovery requested or failure adequately to respond, and should suggest to the Court whether it should or should not review discovery prior to the evidentiary hearing.

(Revised 04/2009)

[Pa.B. Doc. No. 09-980. Filed for public inspection May 29, 2009, 9:00 a.m.]

LANCASTER COUNTY
Lancaster County Rules of Criminal Procedure;
No. 507.1; AD 9-2009

Administrative Order

And Now, May 6th, 2009, effective 30 days after publication of this Order in the *Pennsylvania Bulletin*, Lancaster County Rule of Criminal Procedure No. 507.1 is adopted as follows:

***Rule No. 507.1. Approval of police complaint brought by the Warden, any Deputy Warden or Major of the Lancaster County Prison.**

The District Attorney of Lancaster County having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging the following crimes brought by the Warden, any Deputy Warden or Major of the Lancaster County Prison:

1. Any offense brought under Title 18 of the *Pennsylvania Consolidated Statutes Annotated*.
2. Any offense brought as a violation of the Controlled Substance, Drug Device and Cosmetic Act, 35 P.S. Section 780-113. shall not hereafter be accepted by any

judicial officer unless the Complaint and Affidavit have the approval of an attorney for the Commonwealth prior to filing.

By the Court

LOUIS J. FARINA,
President Judge

[Pa.B. Doc. No. 09-981. Filed for public inspection May 29, 2009, 9:00 a.m.]

LUZERNE COUNTY
Order Amending Rules of Civil Procedure 1038, 1301, 1308 and Rescinding Rules of Civil Procedure 1302(g) and 1311

Order

Now this 7th day of May, 2009, it is hereby *Ordered and Decreed*, that the Order of March 11, 2009, order amending Luzerne County rules of civil procedure 1038, 1301, 1308 and rescinding Luzerne County rules of civil procedure 1302(g) and 1311, is amended as follows:

1. The rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.
2. Luzerne County rules of civil procedure 1038, 1301, 1308 and rescinding Luzerne County rules of civil procedure

dures 1302(g) and 1311 has been published in the *Pennsylvania Bulletin* Volume 39, Number 13, March 28, 2009, at page 1523.

3. Luzerne County District Court Administrator is Ordered to file seven (7) certified copies of this Order, along with a diskette with the Administrative Office of Pennsylvania Courts, two (2) certified copies of this Order with a diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

4. It is further Ordered that this Order shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

By the Court

CHESTER B. MUROSKI,
President Judge

**AMENDMENTS TO LUZERNE COUNTY RULES OF
CIVIL PROCEDURE
MARCH 11, 2009**

I. Rule 1038 is amended in its entirety to provide as follows:

Rule 1038. Trial without jury. Appeals from tax assessment of real estate.

The following provisions shall govern the trial of appeals from the tax assessment of real estate:

1. Definitions.

(a) Residential property is defined as a single-family residence or a multi-family residential structure with an owner occupied unit and containing no more than four units.

(b) Non-Residential is defined as all other property.

2. Mediation.

All assessment appeals shall be referred by the Prothonotary to the court administrator for mediation. A report of mediation shall be filed in all cases.

3. Trial List. Case at issue. Certificate of Readiness.

(a) After the expiration of sixty (60) days from the date of service of the original appeal petition, and after the pleadings in the case are closed and whether or not mediation has yet occurred, any of the parties may place the case at issue by filing a certificate of readiness with the Prothonotary. The certificate shall classify the case as an assessment appeal and identify the nature of property as residential or non-residential as defined herein.

(b) The court administrator shall compile a trial/conciliation list for each term designated for the trial of assessment appeals. Separate trial/conciliation lists shall be compiled for residential and non-residential property.

(c) The court administrator shall notify the parties at least ninety (90) days prior to the beginning of the trial term that the appeal is scheduled to be conciliated/tried during that term.

4. Conciliation.

(a) All appeals shall be conciliated before trial by a conciliation judge or special master assigned thereto.

(b) At the time of conciliation, all parties or their counsel shall be present with full authority to effectuate a settlement of the appeal. Note: Parties and counsel are

advised to pay particular attention to the notice of conciliation. In appropriate cases, the conciliation and trial may be scheduled on the same day. In such instances, the parties must appear at the conciliation ready to move directly into trial if the conciliation does not result in settlement.

(c) If any party fails to comply with the provisions of this local rule, the court may impose sanctions or the special master may include in the report a recommendation for the imposition of appropriate sanctions, including but not limited to, attorneys' fees and costs against the party or parties failing to comply.

5. Pre-Trial Statement.

(a) Sixty days prior to the date scheduled for conciliation of tax assessment appeal, the appellant shall distribute to all counsel of record, or if counsel have not entered an appearance, on the party(ies), and to the court administrator a pre-trial statement. The pre-trial statement shall incorporate the following:

(i) a description of the use of the real estate and the nature of the real estate.

(ii) a list of all persons who will give testimony in the trial of this appeal.

(iii) a list of all exhibits which the party intends to use at trial.

(iv) any report, including without limitation an expert report or appraisal, of any person or entity who has been retained, employed, or consulted by the parties, who will give testimony in the trial of this appeal.

(b) Twenty days prior to the date scheduled for conciliation of a tax assessment appeal, the appellee(s) shall distribute to all counsel of record, or if counsel have not entered an appearance, on the party(ies), and to the court administrator a pre-trial statement. The pre-trial statement shall incorporate the following information or documents:

(i) a description of the use of the real estate and the nature of the real estate.

(ii) a list of all persons who will give testimony in the trial of this appeal.

(iii) a list of all exhibits which the party intends to use at trial.

(iv) any report, including without limitation an expert report or appraisal, of any person or entity who has been retained, employed, or consulted by the parties, who will give testimony in the trial of this appeal.

(c) All interested parties whose interests are aligned with the appellant shall distribute their Pre-Trial Statement in accordance with subsection (a) herein. All interested parties whose interests are aligned with the appellee(s) shall distribute their Pre-Trial Statement in accordance with subsection (b) herein.

(d) The failure to comply with subsections (a), (b) and (c) of this local rule shall result in appropriate relief, which may include the exclusion or limitation at trial of testimony or evidence which was not provided in the pre-trial statement or a recommendation for the imposition of attorneys' fees and costs against the party or parties failing to comply.

6. Trial By Special Master.

(a) If a special master is assigned for trial, the special master shall schedule a trial and shall provide notice of the trial to all party(ies) and/or counsel of record.

The trial shall be open to the public and recorded by a court reporter.

The special master, in the discretion of the special master, may continue the trial.

(b) Report of Special Master.

Following the trial, the special master shall file a written report and recommendation which may be in narrative form stating the reasons for the recommendations and shall include a proposed final order. The special master shall serve a copy of the report and recommendation on all counsel of record or the party(ies), if not represented, by first class United States mail and the court administrator.

(c) Objections To Report and Recommendation of Special Master.

The parties shall file objections, if any, to the report and recommendation in writing within twenty days of the date of mailing of the report and recommendation by the special master. Objections must be accompanied by a certification of counsel that the trial transcript, or necessary portions thereof, has been ordered from the court reporter. Copies of the objections and certification shall be served on all counsel of record or if counsel have not entered their appearance on the party(ies), the special master and the court administrator.

(d) Briefs on Objections.

Within twenty days of the date on which the transcript is filed of record, the moving party shall file a brief in support of objections and shall serve a copy on all counsel of record or if counsel have not entered their appearance on the party(ies) and the court administrator. The brief in support of objections shall refer to transcript page numbers where possible. The moving party's failure to file a brief in support of objections shall constitute a waiver of all issues which could have been raised therein.

(e) Opposing Briefs.

Within twenty days after the moving party has filed a brief in support of objections, responding parties shall file their briefs in opposition to objections and serve a copy on all counsel of record or if counsel have not entered their appearance, on the party(ies), and the court administrator.

(f) Argument.

After the date set for briefs in opposition to objections has passed, the moving party shall notify the court administrator that the matter is ripe for argument by filing a notice that matter is ready for argument with the court administrator on the civil argument request form which shall be made available at the court administrator's office. The moving party shall serve a copy of this notice on all counsel of record or if counsel have not entered their appearance on the party(ies). Upon the filing of this notice, the court shall schedule oral argument if requested by a party; otherwise, the matter shall be decided upon briefs.

(g) Final Order.

Following oral argument the court may enter an appropriate final order. In the event that none of the parties file objections as described above to the report and recommendation, the court shall enter a final order consistent with the report, recommendation and proposed final order submitted by the special master.

II. Rule 1301 is amended in its entirety to provide as follows:

Rule 1301. Arbitration. Scope.

The following civil actions shall first be submitted to compulsory arbitration and heard by a board of arbitrators:

All civil actions and actions in replevin in which the amount in controversy, exclusive of interest and costs, is Fifty Thousand (\$50,000.00) Dollars or less shall be submitted to and heard and decided by a Board of Arbitrators pursuant to and in accordance with the provisions of 42 Pa.C.S. § 7361 and Pa.R.C.P. 1301 et seq.

III. Rule 1302(g) Assessment Appeals is rescinded.

IV. Rule 1308 is amended in its entirety to provide as follows:

Rule 1308. Appeal—Praeceptum for Trial List.

Appeals from an award of the board of arbitrators shall be ordered on the trial list on praecipe of either party.

V. Rule 1311 Procedure on Appeal is rescinded.

[Pa.B. Doc. No. 09-982. Filed for public inspection May 29, 2009, 9:00 a.m.]

LUZERNE COUNTY

Rule of Civil Procedure 206.4(c); No. 4448 of 2009

Order

Now this 7th day of May, 2009, it is hereby *Ordered and Decreed*, that the Order of March 11, 2009 adopting Luzerne County Rule of Civil Procedure 206.4(c) is amended as follows:

1. The rule shall be effective upon publication on the Pennsylvania Judiciary Web application portal.

2. Luzerne County Rule of Civil Procedure 206.4(c) has been published in the *Pennsylvania Bulletin* Volume 39, Number 13, March 28, 2009, at page 1522.

3. Luzerne County District Court Administrator is Ordered to file seven (7) certified copies of this Order, along with a diskette with the Administrative Office of Pennsylvania Courts, two (2) certified copies of this Order with a diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, One (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

4. It is further Ordered that this Order shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

By the Court

CHESTER B. MUROSKI,
President Judge

AMENDMENTS TO LUZERNE COUNTY RULE OF CIVIL PROCEDURE 206.4(c)

Rule 206.4(c). Procedure for Issuance of Rule to Show Cause. Issuance as of Course. Discretionary Issuance.

(A) Procedure for Issuance of Rule to Show Cause. Issuance as of Course.

(1) With the exception of those matters governed by sub-section (B) of this Local Rule, a party seeking a Rule to Show Cause shall present the same along with the underlying Motion/Petition, a comprehensive Brief in Support and Proposed Order, to the Office of Court Administration.

(a) All proceedings concerning the appointment of an arbitrator for claims arising under the under-

insured or uninsured motorist provisions of an automobile insurance policy are subject to this Rule.

(2) . . . (no change to text) . . .

(3) The Court Administrator will assign a return date for the Rule to Show Cause, no less than 20 days, in accordance with internal operating procedures of the Court of Common Pleas and issue the Rule to Show Cause. **However, a rule to show cause issued upon a petition for appointment of an arbitrator shall be returnable in no less than 30 days.**

. . . (No further changes to the text of the Rule) . . .

[Pa.B. Doc. No. 09-983. Filed for public inspection May 29, 2009, 9:00 a.m.]
