

# THE COURTS

## Title 210—APPELLATE PROCEDURE

[ 210 PA. CODE CH. 3 ]

Order Amending Rule 311 of the Rules of Appellate  
Procedure; No. 200; Appellate Procedural Rules

### Order

*Per Curiam:*

And Now, this 14th day of October, 2009, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published before adoption at 36 Pa.B. 4457 on August 21, 2006 and 38 Pa.B. 2480 on May 31, 2008:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 311 is amended as follows.

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

### Annex A

#### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE I. PRELIMINARY PROVISIONS

#### CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

#### INTERLOCUTORY APPEALS

#### Rule 311. Interlocutory Appeals as of Right.

(a) *General Rule.* An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

(1) *Affecting judgments.* An order refusing to open, vacate or strike off a judgment. If orders opening, vacating or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

(2) *Attachments, etc.* An order confirming, modifying or dissolving or refusing to confirm, modify or dissolve an attachment, custodianship, receivership or similar matter affecting the possession or control of property, except for orders pursuant to [ Sections ] Section 3323(f) [ and ] or 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f) [ and ], 3505(a).

(3) *Change of criminal venue or venire.* An order changing venue or venire in a criminal proceeding.

(4) *Injunctions.* An order [ granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except for injunctions pursuant to ] that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

(i) [ Sections ] Section 3323(f) [ and ] or 3505(a) of the Divorce Code, 23 Pa.C.S. §§ 3323(f) [ and ], 3505(a) [ . ]; or

(ii) after a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates con-

duct not previously mandated or permitted, and is effective before entry of the final order.

[ A decree nisi granting or denying an injunction is not appealable as of right under this rule, unless the decree nisi (i) grants an injunction effective upon the entry of a decree nisi or (ii) dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi. ]

\* \* \* \* \*

*Official Note:* Authority—This rule implements 42 Pa.C.S. § 5105(c) (interlocutory appeals), which provides:

\* \* \* \* \*

Paragraph (a)(4) (injunctions)—The 1987 amendment to paragraph (a)(4) is consistent with appellate court decisions disallowing interlocutory appeals in matrimonial matters. *Fried v. Fried*, 509 Pa. 89, 501 A.2d 211 (1985); *O'Brien v. O'Brien*, 359 Pa. Super. 594, 519 A.2d 511 (1987).

The 1996 amendment to paragraph (a)(4) reconciled two conflicting lines of cases by adopting the position that generally an appeal may not be taken from a decree nisi granting or denying a permanent injunction. [ *Humphreys v. Cain*, 84 Pa. Cmwlth. 222, 474 A.2d 353 (1984). To the extent that *Agra Enterprises, Inc. v. Brunozzi*, 302 Pa. Super. 166, 170, 448 A.2d 579, 581 (1982); *Martin Industrial Supply Corp. v. Riffert*, 366 Pa. Super. 89, 91, 530 A.2d 906, 907 (1987); *Bolus v. Ryder Truck Rental, Inc.*, 258 Pa. Super. 387, 388, 517 A.2d 995, 996 (1986); *Commonwealth ex. rel. Lewis v. Allowill Realty Corp.*, 330 Pa. Super. 32, 35, 478 A.2d 1334, 1336 (1984); and *Neshaminy Constructors, Inc. v. Philadelphia, Pennsylvania Building and Construction Trades Council, AFL-CIO*, 303 Pa. Super. 420, 422 n.1, 449 A.2d 1389, 1390 n.1 (1982) permit an immediate appeal from a decree nisi granting or denying prospective injunctive relief, they are overruled.

The 1996 amendment to paragraph (a)(4) simultaneously recognized two exceptions to the non-appealability of a decree nisi; these exceptions, identified as phrases (a)(4)(i) and (ii), permit an appeal from a decree nisi if the order has the immediate effect of changing the status quo. Thus, if the decree nisi grants or denies permanent injunctive relief to become effective when the decree nisi is made final, no appeal is possible. If, however, the decree nisi provides for permanent injunctive relief upon entry of the decree nisi, or strikes a previously granted preliminary injunction upon entry of the decree nisi, the decree nisi is appealable pursuant to phrase (a)(4)(i) or (ii). ]

The 2009 amendment to the rule conformed the rule to the 2003 amendments to the Pennsylvania Rules of Civil Procedure abolishing actions in equity and thus eliminating the *decree nisi*. Because *decrees nisi* were in general not appealable to the extent they were not effective immediately upon entry, this principle has been expressly incorporated into the body of the rule as applicable to any injunction.

\* \* \* \* \*

[Pa.B. Doc. No. 09-2022. Filed for public inspection October 30, 2009, 9:00 a.m.]

# Title 231—RULES OF CIVIL PROCEDURE

## PART I. GENERAL

### [ 231 PA. CODE CH. 1900 ]

#### Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation No. 98

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments, which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Submit written comments no later than Wednesday, February 10, 2010 directed to:

Patricia A. Miles, Esquire  
Counsel, Domestic Relations Procedural Rules Committee  
Pennsylvania Judicial Center  
601 Commonwealth Avenue, Suite 6200  
P. O. Box 62635  
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By the Domestic Relations  
Procedural Rules Committee

CAROL A. BEHERS, Esq.,  
Chair

### Annex A

#### TITLE 231. RULES OF CIVIL PROCEDURE

##### PART I. GENERAL

#### CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

(Editor's Note: Rule 1901.8 is new and printed in regular type to enhance readability.)

#### Rule 1901.8. Return of Relinquished Firearms, Other Weapons and Ammunition.

(a) *Petition.* Within 1 year of the date of the dismissal or expiration of a temporary or final protection from abuse order that required the defendant to relinquish firearms, other weapons or ammunition, or the dismissal of a petition for a protection from abuse order, the defendant may seek the return of the relinquished items by filing a petition with the prothonotary, or other designated office, of the court in which the protection from abuse action was filed. The petition, rule to show cause and proposed order shall be substantially in the form set forth in Rules 1905(f), (g) and (h) and the petition shall be verified. Pursuant to 23 Pa.C.S. § 6108.1(a) (relating to return of relinquished firearms, other weapons and ammunition and additional relief), the

defendant shall not be required to pay any fees, costs or charges associated with the return of relinquished firearms, other weapons or ammunition.

**Official Note:** "Sheriff" is defined at 23 Pa.C.S. § 6101(a) as the sheriff of the county or, in a city of the first class, the chief or head of the police department.

(b) *Rule to Show Cause. Hearing.* A rule to show cause scheduling a hearing shall be issued as of course. The petition, rule to show cause and proposed order shall be served upon the plaintiff and the sheriff. The court shall serve the plaintiff by first class mail at the plaintiff's last known address. Upon receipt of the rule to show cause, the sheriff shall conduct a background check on the defendant, including clearance from the Pennsylvania State Police Instant Check System ("PICS"), to determine whether the defendant is lawfully eligible to possess firearms, other weapons or ammunition. If the plaintiff or the sheriff does not object to the return of the relinquished items, that person need not appear at the hearing and the court shall issue an order for the return of relinquished firearms, other weapons or ammunition. The plaintiff or the sheriff must attend the hearing to object to the return of the relinquished items.

#### Explanatory Comment 2009

The Protection From Abuse Act, 23 Pa.C.S. § 6108.1, provides that any order requiring the relinquishment of firearms, other weapons or ammunition must provide for the return of the relinquished items upon the expiration of the order or the dismissal of a petition for a protection from abuse order. The statute also requires that the defendant be lawfully eligible to possess the relinquished items. New Rule 1901.8, and the accompanying new forms at Rule 1905(f), (g) and (h), set forth a uniform procedure by which defendants may seek the return of relinquished firearms, other weapons and ammunition. The process for the return of items relinquished to a third party for safekeeping is set forth at 23 Pa.C.S. § 6108.3(d).

#### Rule 1905. Forms for Use in PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

\* \* \* \* \*

(c) The Temporary Order of Court, or any continued, amended or modified Temporary Order of Court, entered pursuant to the Act shall be substantially in the following form, but the first page must be exactly as set forth in this rule:

\* \* \* \* \*

#### 6. FIREARMS, OTHER WEAPONS AND AMMUNITION RESTRICTIONS.

Check all that apply:

\* \* \* \* \*

Defendant may relinquish any firearms, other weapons or ammunition to the sheriff. As an alternative, Defendant may relinquish firearms, other weapons and ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit. Defendant must relinquish any firearm, other weapon, ammunition or firearm license ordered to be relinquished no later than 24 hours after service of this order. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide to the sheriff an affidavit listing the firearms, other weapons or ammunition and their

current location no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S.A. § 6105.

The procedure for the return of relinquished firearms, other weapons or ammunition upon the dismissal or expiration of this order, or the dismissal of the petition for protection from abuse, shall be pursuant to Pa.R.C.P. 1901.8.

\* \* \* \* \*

(e) The Final Order of Court, or any amended, modified or extended Final Order of Court, entered pursuant to the Act shall be substantially in the following form, but the first page must be exactly as set forth in this rule:

\* \* \* \* \*

□ 7. Any firearm delivered to the sheriff or transferred to a licensed firearm dealer, or a qualified third party who satisfies the procedural and substantive requirements to obtain a safekeeping permit issued under 23 Pa.C.S.A. § 6108.3 pursuant to this order or the temporary order shall not be returned to Defendant until further order of court or as otherwise provided by law.

The procedure for the return of relinquished firearms, other weapons or ammunition upon the dismissal or expiration of this order, or the dismissal of the petition for protection from abuse, shall be pursuant to Pa.R.C.P. 1901.8.

\* \* \* \* \*

(f) The petition for return of relinquished firearms, other weapons or ammunition shall be substantially in the following form:

(CAPTION)

PETITION FOR RETURN OF RELINQUISHED FIREARMS, OTHER WEAPONS, AMMUNITION AND FIREARMS LICENSES

1. □ Petitioner is \_\_\_\_\_ (name) \_\_\_\_\_, defendant in the above-captioned protection from abuse action.

OR

□ Petitioner is \_\_\_\_\_ (name) \_\_\_\_\_, not the defendant, but is an adult whose firearms, other weapons or ammunition was confiscated as a result of the above-captioned protection from abuse action.

2. Petitioner's address is \_\_\_\_\_

3. Petitioner's Social Security number is \_\_\_\_\_. (Provision of the Social Security number is voluntary. However, failure to provide the number may result in delay or incompleteness of the background check.)

4. Petitioner's date of birth is \_\_\_\_\_.

5. Petitioner's driver's operating license number is \_\_\_\_\_.

6. A protection from abuse order was entered on \_\_\_\_\_ (date) \_\_\_\_\_. Pursuant to that order, Petitioner relinquished to \_\_\_\_\_ (provide name of individual person or entity, i.e. sheriff) \_\_\_\_\_

the following firearms, other weapons, ammunition and firearms licenses: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Check the appropriate box(es) and file with this petition a certified copy of any dismissal order or expired protection from abuse order:

□ The petition for protection from abuse was dismissed.

□ A temporary protection from abuse order was dismissed on \_\_\_\_\_ (date) \_\_\_\_\_.

□ The final protection from abuse order was dismissed or expired on \_\_\_\_\_ (date) \_\_\_\_\_.

□ There have been no extensions of the final protection from abuse order.

8. Petitioner is eligible under all applicable Federal and State laws to possess firearms, other weapons and ammunition: Check all that apply:

□ Petitioner is not subject to the prohibitions set forth in 18 Pa.C.S § 6105(a)—(c).

□ Petitioner is not prohibited by Federal law from possessing firearms, other weapons or ammunition.

□ Petitioner has not been charged with, or convicted of, a crime punishable by imprisonment for a term exceeding 1 year.

□ Petitioner never has been involuntarily committed for a mental health condition or been adjudicated incompetent/incapacitated.

□ Petitioner is not addicted to drugs or alcohol.

□ Petitioner is a United States citizen. OR

□ Petitioner's Immigration Identification Number is \_\_\_\_\_.

□ Petitioner never has received a dishonorable discharge from the United States Armed Forces.

□ Petitioner is not subject to a current protection from abuse order in this or any other case and no petition for a protection from abuse order filed by this or any other plaintiff is pending against Petitioner.

□ Petitioner is in compliance with all Federal, State and local firearm licensing laws regarding possessing, carrying or owning firearms, other weapons or ammunition.

□ Petitioner is not currently subject to probation, parole and is not the subject of any court order or bond in any jurisdiction that would prohibit Petitioner from possessing, carrying or owning firearms, other weapons or ammunition.

Wherefore, Petitioner requests the return of all relinquished firearms, other weapons, ammunition and firearms licenses.

VERIFICATION

I verify that I am the petitioner in the above captioned action and that the facts and statements in the above petition are true and correct to the best of my knowledge, information and belief. I understand that any false statements are made

subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

(g) The rule to show cause issued upon the filing of a petition for return of relinquished firearms, other weapons or ammunition shall be substantially in the following form:

(CAPTION)

RULE TO SHOW CAUSE

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, upon consideration of the foregoing petition, it is hereby ordered that

1. A rule is issued upon the plaintiff in the above captioned protection from abuse action and the sheriff to show cause why the petitioner is not entitled to the relief requested.

2. The sheriff is directed to conduct a background check, including approval from the Pennsylvania State Police Instant Check System ("PICS"), to determine if the petitioner is lawfully eligible to possess firearms, other weapons and ammunition.

3. A hearing is scheduled on a rule returnable on \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_ a.m./p.m. in Courtroom \_\_\_\_, of the \_\_\_\_\_ County Courthouse.

4. To object to the relief requested in the petition, the plaintiff or the sheriff must attend the hearing. If either the plaintiff or the sheriff do not oppose the return of relinquished items, that person need not attend the hearing.

5. If neither the plaintiff nor the sheriff appears at the hearing to oppose the return of the relinquished items, the court shall issue an order granting the petitioner the requested relief.

6. Copies of this rule to show cause shall be served on the plaintiff and the sheriff by the court.

BY THE COURT

J.

(h) The proposed order filed with a petition for return of relinquished firearms, other weapons, ammunition and firearms licenses shall be substantially in the following form:

(CAPTION)

ORDER

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, Upon the petition of \_\_\_\_\_,

after hearing at which petitioner  appeared  did not appear, plaintiff  appeared  did not appear, and the sheriff  appeared  did not appear,

it is hereby ORDERED, ADJUDGED and DECREED as follows:

The relief requested is granted and the rule is made absolute. The petitioner shall provide a certified copy of this order to the sheriff after which the sheriff shall return the relinquished items to the petitioner.

The relief requested is denied and the rule is dismissed.

BY THE COURT

J.

[Pa.B. Doc. No. 09-2023. Filed for public inspection October 30, 2009, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 4 AND 10 ]

Order Adopting Rule 1037 and Amending Rule 462; Rules of Criminal Procedure; Criminal Procedural Rules; No. 382

Order

Per Curiam:

And Now, this 16th day of October, 2009, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 39 Pa.B. 2435 (May 16, 2009), and in the Atlantic Reporter (Second Series Advance Sheets, Vol. 968), and a Final Report to be published with this Order:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Criminal Procedure 1037 is adopted and the Comment to Pennsylvania Rule of Criminal Procedure 462 is revised as follows.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 1, 2010.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 4. PROCEDURES IN SUMMARY CASES

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

Rule 462. Trial De Novo.

(A) When a defendant appeals after the entry of a guilty plea or a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard de novo by the judge of the court of common pleas sitting without a jury.

\* \* \* \* \*

Comment

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

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a guilty plea.

"Entry," as used in paragraph (A) of this rule, means the date on which the issuing authority enters or records

the guilty plea, the conviction, or other order in the [ **district justice** ] **magisterial district judge** computer system.

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

Pursuant to paragraph (B), the decision whether to appear and assume control of the prosecution of the trial de novo is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial de novo on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge also may permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

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

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

Paragraph (F) was amended in 2008 to permit a trial judge to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (relating to driving while operating privilege is suspended or revoked), but only if he or she meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial de novo at the time of sentencing.

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

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

**For the procedures for appeals from the Philadelphia Traffic Court, see Rule 1037.**

**Official Note:** Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded

March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; **amended March 3, 2000, effective July 1, 2000**; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009; **Comment revised October 16, 2009, effective February 1, 2009.**

*Committee Explanatory Reports:*

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1685, 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5841, 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 933, 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 concerning stays published with the Court's Order at 27 Pa.B. 5408, 5413 (October 18, 1997).

Final Report explaining the May 14, 1999 amendments to former Rule 86, paragraph (G), concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2770, 2776 (May 29, 1999).

NEW RULE 462:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 462 published at 30 Pa.B. 1477, 1478 (March 18, 2000).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1508 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1324, 1326 (March 15, 2003).

Final Report explaining the March 26, 2004 Comment revision published with the Court's Order at 34 Pa.B. 1929, 1931 (April 10, 2004).

Final Report explaining the January 18, 2007 amendment to paragraph (G)(2) published with the Court's Order at 37 Pa.B. 523, 526 (February 3, 2007).

Final Report explaining the December 16, 2008 amendments to permit delay in sentencing for determination of intermediate punishment status published with the Court's Order at 39 Pa.B. 8 (January 3, [ 2008 ] 2009).

**Final Report explaining the October 16, 2009 Comment revision regarding new Rule 1037 and procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. 6327, 6329 (October 31, 2009).**

## CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA TRAFFIC COURT

### PART B. Philadelphia Traffic Court Procedures

(*Editor's Note:* Rule 1037 is new and printed in regular type to enhance readability).

#### Rule 1037. Appeal from Summary Conviction.

(A) When a defendant appeals after the entry of a guilty plea or a conviction in any summary proceeding in

the Philadelphia Traffic Court, upon the filing of the transcript and other papers by the Traffic Court, the Court of Common Pleas may schedule a status or settlement conference prior to the de novo summary trial.

(1) In the event the attorney for the Commonwealth or a designee and the defendant reach a negotiated plea, the plea may be entered before a Trial Commissioner and, upon approval by a judge of the Court of Common Pleas, the negotiated sentence will be recorded.

(2) In the event a negotiated plea is not approved by the court, the case shall be heard de novo by a judge of the Court of Common Pleas sitting without a jury.

(B) The attorney for the Commonwealth may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(C) In appeals from summary proceedings in the Philadelphia Traffic Court, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(1) the defendant waives the presence of the law enforcement officer in open court on the record;

(2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(D) If the defendant fails to appear for the trial de novo,

(1) when the appeal is from a mandatory sentence of imprisonment, the Court of Common Pleas judge shall dismiss the appeal, enter judgment in the Court of Common Pleas on the judgment of the Traffic Court judge, and issue a bench warrant and a commitment for the defendant. Execution of the sentence shall commence immediately upon defendant's arrest; and

(2) in all other cases, the Common Pleas Court judge shall dismiss the appeal and enter the judgment in the Court of Common Pleas on the judgment of the Traffic Court judge.

(E) If the defendant withdraws the appeal, the Court of Common Pleas judge shall enter the judgment in the Court of Common Pleas on the judgment of the Traffic Court judge.

(F) At the time of sentencing, the Court of Common Pleas judge shall:

(1) if the defendant's sentence includes a fine or costs and the defendant has the financial means to pay the amount in a single remittance, the judge shall instruct the defendant to make the payment at the Philadelphia Traffic Court. If the defendant is without the financial means to pay the amount in a single remittance, the judge shall instruct the defendant to contact the Philadelphia Traffic Court to establish an installment payment plan;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the judge may set bail;

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

(4) issue a written order imposing sentence, signed by the judge. The order shall include the information specified in paragraphs (F)(1)—(3), and a copy of the order shall be given to the defendant and to the Traffic Court.

(G) After sentence is imposed by the Court of Common Pleas judge, and either after the expiration of the time to file an appeal to the appellate courts, or, if a sentence of imprisonment has been imposed, after the execution of the sentence of imprisonment, the case shall be returned to the Philadelphia Traffic Court for the collection of any outstanding fines and costs and for all other appropriate action.

### Comment

This rule was adopted in 2009 to provide the procedures for appeals from the Philadelphia Traffic Court to the Court of Common Pleas of the First Judicial District. Except as provided in this rule, the procedures of Rules 460, 461 and 462, governing appeals for a trial de novo in summary cases, shall apply to summary case appeals in the Philadelphia Traffic Court.

For purposes of this rule, "judgment" means the determination of guilty and any sentence imposed on the defendant.

The date upon which payment is due upon a sentence of a fine or costs ordinarily will be 30 days following imposition of sentence.

**Official Note:** Rule 1037 adopted October 16, 2009, effective February 1, 2009.

### Committee Explanatory Reports:

Final Report explaining new Rule 1037 concerning procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. 6327, 6329 (October 31, 2009).

### FINAL REPORT<sup>1</sup>

*New Pa.R.Crim.P. 1037 and Revisions to the Comment to Pa.R.Crim.P. 462*

### PHILADELPHIA TRAFFIC COURT APPEALS

On October 16, 2009, effective February 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule 1037 (Appeal from Summary Conviction) and approved the revision of the *Comment* to Rule 462 (Trial *De Novo*). These changes provide the procedures governing appeals for trial *de novo* from the Philadelphia Traffic Court.

As part of its oversight of the rules governing procedures in the Philadelphia Traffic Court, the Committee was asked by the Traffic Court to examine several aspects of the summary traffic appeal procedures. As discussed more fully below, due to the high volume of cases and unique circumstances of the Philadelphia Traffic Court, practices have developed there that are not explicitly provided for in the statewide or local rules. The Committee therefore worked with representatives of the Traffic

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

Court and the First Judicial District to develop rule changes that would address some of these differences.

Upon the Committee's recommendation arising from these discussions, the Court has adopted new Rule 1037 that provides the procedures for appeals from the Philadelphia Traffic Court to the Court of Common Pleas. This new rule replaces many of the Rule 462 appeal procedures for the Philadelphia Traffic Court. However, except where Rule 1037 differs, the procedures in Rules 460 and 461 still apply. A revision has been made to the Rule 462 Comment to reflect that Philadelphia Traffic Court summary appeal procedures are contained in new Rule 1037.

The new rule addresses three areas: (1) general appeal procedures; (2) procedures addressing failures to appear for trial *de novo*; and (3) procedures related to the collection of fine and costs.

### Appeal Procedures

As stated above, due to the high volume of cases in the Traffic Court and the significant numbers of appeals from Traffic Court, local practices have developed that vary from the strict letter of Rule 462 procedures. These variations do not adversely affect the rights of the parties and provide an efficient and effective method of adjudicating appeals arising from the Traffic Court. The explicit recognition of these procedures in the rules is intended to remove any confusion about them.

Currently, upon the filing of a Notice of Appeal in the Traffic Court, a summary trial date is assigned for an appearance at the Court of Common Pleas. The Traffic Court Docket and record are then forwarded to the Court of Common Pleas. On the summary trial date, a conference is conducted by a Trial Commissioner at which the defendant and a representative of the District Attorney's Office appear for purposes of negotiating a plea. If the parties agree on a plea, the plea is approved by a Common Pleas judge. If a plea cannot be agreed upon, a *de novo* summary trial is subsequently conducted by a Common Pleas judge. If the defendant pleads or is found guilty and sentenced, payment of any fine and costs is directed to the Traffic Court. The Traffic Court receives and distributes all payments of outstanding fines and costs and, as authorized by Rule 456, may establish and modify installment payment orders and may issue warrants for a defendant's arrest for non-payment.

These procedures are now formally recognized in paragraphs (A), (F) and (G) of new Rule 1037. Paragraphs (B) and (C) provide for the existing statewide practice of permitting the attorney of the Commonwealth, or in his or her absence, the affiant to conduct the trial *de novo* and requiring the law enforcement officer's appearance unless waived to be applicable in Traffic Court appeals.

### Failure to Appear

The new rule also clarifies the procedures for the execution of bench warrants issued when the defendant has failed to appear for the trial *de novo* in the Court of Common Pleas, especially in those cases that involve a mandatory sentence of incarceration. It was unclear under the prior practice whether the Common Pleas judge could dismiss the appeal and have a warrant issued for the defendant to be taken for service of the sentence. Therefore, paragraph (D) provides that, in a failure to appear case, the appeal will be dismissed and the judgment of the Traffic Court entered in the Court of Common Pleas. If the case involves a sentence of mandatory incarceration, a bench warrant will be issued by the Court of Common Pleas along with a commitment order.

The warrant will contain the notation that defendant is already sentenced and therefore is to be taken directly to serve his or her sentence.

It should be noted that the hearing requirement of Rule 150 (Bench Warrants) is currently being satisfied in the First Judicial District by a Trial Commissioner who is present at the Philadelphia County Prison to conduct these hearings whenever a defendant is arrested on a bench warrant or surrenders himself or herself at the Traffic Court.

### Fines and Costs

The new rule also authorizes an exemption from the general policy of the Pennsylvania Supreme Court that once a case has gone up from a minor court to a court of common pleas, no remand to the minor court should be allowed.<sup>2</sup> After the initial policy of no remands was developed, the Philadelphia Traffic Court was excluded from the policy for purposes of the payment and collection of fine and costs. This exemption was stated as part of an amendment to Traffic Court procedures adopted by the Court in 2005.<sup>3</sup> Specifically, the *Final Report* to that Recommendation states:

#### b. Trial *de novo*

Another issue concerns the 2003 changes to the Criminal Rules that clarify once a case is appealed for a trial *de novo*, the case is to remain in the common pleas court for disposition. This procedure is contrary to what is occurring in Philadelphia. Both Traffic Court and Philadelphia Common Pleas Court have serious concerns about the significant burden the statewide procedure would have on the Common Pleas Court, especially given the extraordinary number of cases involved and the amount of the fines and costs owed. Both courts note the current practice of returning the cases to Traffic Court for collection following the trial *de novo* works efficiently and has been successful.

However, because this exemption was not stated in the rules themselves, questions about these procedures continue to persist. Therefore, paragraph (G) provides that, either after the expiration of the time to file an appeal to the appellate courts, or, if a sentence of imprisonment has been imposed, after the execution of the sentence of imprisonment, the case is to be remanded to the Traffic Court for the collection of any outstanding fines and costs. The Traffic Court will also perform "all other appropriate action" such as requesting that the Pennsylvania Department of Transportation suspend the defendant's operating privilege if the defendant failed to comply with the payment plan, and will be able to use the remedies set forth in Rule 456 if the defendant failed to comply with the payment plan.

Finally, in order to ensure the defendant understands this process, upon sentencing after the appeal, the Common Pleas judge is required to advise the defendant that he or she has 30 days to pay the fines and costs in full or to contact the Traffic Court to renegotiate the payment plan.

[Pa.B. Doc. No. 09-2024. Filed for public inspection October 30, 2009, 9:00 a.m.]

<sup>2</sup> The most recent statement of this policy was contained in a September 28, 2006 letter from then-Chief Justice Cappy to all President Judges, emphasizing this point.

<sup>3</sup> See 35 Pa.B. 5239 (September 24, 2005).

## [ 234 PA. CODE CH. 6 ]

**Order Amending Rules 646 and 647; Rules of Criminal Procedure; Criminal Procedural Rules; No. 381****Order**

*Per Curiam:*

*And Now*, this 16th day of October, 2009, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 39 Pa.B. 2324 (May 9, 2009), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 968), and a *Final Report* to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 646 and 647 of the Pennsylvania Rules of Criminal Procedure are amended as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 1, 2010.

**Annex A****TITLE 234. RULES OF CRIMINAL PROCEDURE****PART 1. GENERAL****CHAPTER 6. TRIAL PROCEDURES IN COURT CASES****PART C(2). Conduct of Jury Trial****Rule 646. Material Permitted in Possession of the Jury.**

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

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

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

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

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

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

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

- (1) a transcript of any trial testimony;
- (2) a copy of any written or otherwise recorded confession by the defendant;
- (3) a copy of the information; **and**
- (4) **except as provided in paragraph (B), written jury instructions.**

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

**Comment**

This rule prohibits the jury from receiving a copy of the indictment or information during its deliberations. The rule also prohibits the jury from taking into the jury room any written or otherwise recorded confession of the defendant. In *Commonwealth v. Pitts*, 450 Pa. 359, 301 A.2d 646, 650 n. 1 (1973), the Court noted that "it would be a better procedure not to allow exhibits into the jury room which would require expert interpretation."

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

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

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

The judge must instruct the jurors concerning the use of written instructions during deliberations. Paragraph (B)(2) sets forth the minimum information the judge must explain to the jurors.

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

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



If any matter is repeated or stated in different ways in my instructions, no emphasis is intended. Do not draw any inference because of a repetition. Do not single out any individual rule or instruction and ignore the others. Do not place greater emphasis on the elements of the offenses, lesser included offenses and defenses simply because I have provided them to you in writing and other instructions are not provided in writing. Consider all the instructions as a whole and each in the light of the others.

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

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

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

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

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

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

**Official Note:** Rule 1114 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; amended November 18, 1999, effective January 1, 2000; renumbered Rule 646 March 1, 2000, effective April 1, 2001; amended June 30, 2005, effective August 1, 2005; amended August 7, 2008, effective immediately; **amended October 16, 2009, effective February 1, 2010.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the October 16, 2009 amendments concerning providing jurors with the elements of the charged offenses in writing published with the Court’s Order at 39 Pa.B. 6331, 6333 (October 31, 2009).**

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

(A) Any party may submit to the trial judge written requests for instructions to the jury. Such requests shall

be submitted within a reasonable time before the closing arguments, and at the same time copies thereof shall be furnished to the other parties. Before closing arguments, the trial judge shall inform the parties on the record of the judge’s rulings on all written requests **and which instructions shall be submitted to the jury in writing.** The trial judge shall charge the jury after the arguments are completed.

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

\* \* \* \* \*

**Comment**

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

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

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

**Official Note:** Rule 1119 adopted January 24, 1968, effective August 1, 1968; amended April 23, 1985, effective July 1, 1985; renumbered Rule 647 and amended March 1, 2000, effective April 1, 2001; Comment revised June 30, 2005, effective August 1, 2005; **amended October 16, 2009, effective February 1, 2010.**

*Committee Explanatory Reports:*

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

Final Report explaining the **June 30, 2005** Comment revision concerning the note taking instruction published with the Court’s Order at 35 Pa.B. 3919 (July 16, 2005).

**Final Report explaining the October 16, 2009 changes adding to the Comment a cross-reference to Rule 646 published with the Court’s Order at 39 Pa.B. 6331, 6333 (October 31, 2009).**

FINAL REPORT<sup>1</sup>*Amendment of Pa.Rs.Crim.P. 646 and 647*

## WRITTEN JURY INSTRUCTIONS

On October 16, 2009, effective February 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the amendment of Rules 646 (Material Permitted in Possession of the Jury) and 647 (Request for Instructions, Charge to the Jury, and Preliminary Instructions) to permit the trial judge to provide written copies of the portion of the charge on the elements of the offenses, lesser included offenses, and any defense upon which the jury has been charged.

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

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

In recent years, however, most states and the Federal courts have relaxed the prohibition of providing written instructions during deliberations.<sup>2</sup> The Committee conducted an extensive review of the experiences of these courts and concluded that the fears that most associate with this practice, such as misinterpretation of the law or undue weight being placed on the written instructions, have not been demonstrated in these jurisdictions.<sup>3</sup>

At the same time, interest in permitting the practice in Pennsylvania has increased. For example, at several meetings in 2005-2007, the Committee invited a number of judges of the courts of common pleas to address the Committee on procedural issues in which they were interested. A number of these judges requested that the Committee consider permitting the elements of the offense to be provided in writing to the jury during deliberations. They reported that the majority of questions received from jurors during deliberations would be eliminated by providing this limited information. Popular interest in this practice has remained high as well; several pieces of legislation have been introduced that urged the Court to reconsider the prohibition.<sup>4</sup>

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

The Committee considered a proposal that the entire instructions should be provided in writing. The Commit-

tee believed that the logistical difficulties in preparing what would need to be verbatim transcripts of the charge would be prohibitive, at least under current technology. Further, the Committee did not want to squelch the individual initiative that many judges employ to provide “off-the-cuff” elaboration and example. If anything less than the entire charge would be permitted, however, it should be clearly defined and should not favor one party over another.

The amendments to Rules 646 and 647 therefore limit what may be provided to the jury in writing to written copies of the elements of the offense, lesser included offenses, and defenses upon which the jury had been orally charged. This limited practice has the benefit of clear definition and even-handed application as well as being more practically manageable. It also is consistent with the input received from the common pleas judges and the Legislature. Therefore, a new paragraph (B) has been added to Rule 646 that would permit the judge to provide this portion of the charge to the jury in writing.

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

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

Additionally, the intention of the amendments is not to create greater burdens on the trial courts that utilize this procedure and therefore the *Comment* to Rule 646 includes some practical suggestions on how the written instructions may be produced. For example, in order that there be no mistaken belief that a transcript of the instructions is required, the *Comment* suggests that the instructions do not have to be contemporaneously transcribed but can be a version of previously prepared instructions that the judge reads and is then provided to the jury.

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

The Court recognizes that these amendments represent a significant change in the current jury trial practice. On the other hand, the scope of what is permitted to be provided to the jury in writing is of a limited nature. Therefore, these changes should be viewed only as part of an ongoing examination of jury charge procedures. The Court has directed the Committee to monitor the effect these amendments have on jury trial practice, and to report back to the Court after 2 years from the effective date of these changes.

[Pa.B. Doc. No. 09-2025. Filed for public inspection October 30, 2009, 9:00 a.m.]

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

<sup>2</sup> Among the majority of states that permit written jury instructions are Alabama, Arizona, California, Colorado, Illinois, Massachusetts, Texas and Virginia.

<sup>3</sup> See, e.g., *The State-Of-The-States Survey of Jury Improvement Efforts: A Compendium Report* by Hon. Gregory E. Mize (ret.), Paula Hannaford-Agor, J.D. & Nicole L. Waters, Ph.D. published by the National Center for State Courts; *Recent Evaluative Research on Jury Trial Innovations* by Judge B. Michael Dann and Professor Valerie P. Hans in *Court Review*, Spring 2004, volume 41, pages 12–19.

<sup>4</sup> See HR 559 of 2008 and House Resolution 128 of 2009, both requesting the Pennsylvania Supreme Court to modify the rules in this area. See also HB 190 of 2007, HB 612 of 2007, and HB 1085 of 2009, all of which propose amendments to Title 42 to allow the submission of written jury instructions to the jury.

# Title 255—LOCAL COURT RULES

## JEFFERSON COUNTY

### Adoption of Local Rules of Criminal Procedure; No. 10-2009 O.C.

#### Order

*And Now*, this 13th day of October 2009, pursuant to Pa.R.Crim.P. 105, governing the establishment of local rules of criminal procedure, it is hereby *Ordered* and *Decreed* that the following rule, designated Jefferson County Rule of Criminal Procedure (Jeff. Co. R.Crim.P.) 00.10-2009, is adopted as a rule of this Court. The same shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

#### Local Rules of the Court of Common Pleas of Jefferson County, Supplementing the Pennsylvania Rules of Criminal Procedure; Jeff. Co. R.Crim.P. 00.10-2009, Costs for Issuance of Partial Payment Plan by MDJ.

Pursuant to 42 Pa.C.S.A. § 1725.1, the Magisterial District Judges of Jefferson County may impose a miscellaneous issuance (C17) cost for the issuance of an installment payment plan when a defendant requests and is permitted to make installment payments as provided in the Pennsylvania Rules of Criminal Procedure. Said cost shall be in compliance with the fee schedule published by the Administrative Office of Pennsylvania Courts.

*By the Court*

HONORABLE JOHN HENRY FORADORA,  
*President Judge*

[Pa.B. Doc. No. 09-2026. Filed for public inspection October 30, 2009, 9:00 a.m.]

## LANCASTER COUNTY

### In Re: Adoption of New Local Rule of Criminal Procedure 117, and Rescinding Existing Local Rule of Criminal Procedure 117 and Local Rule 5 of Lancaster County Rules for Magisterial District Judges; CPJ. No. 7, Page 1357; No. 17 AD 2009

#### Administrative Order

*And Now*, this 13th day of October, 2009, it is hereby Ordered that existing Lancaster County Rule of Criminal Procedure 117 and Lancaster County Rule 5 for Magisterial District Judges are rescinded and new Lancaster County Rule of Criminal Procedure 117 is adopted as follows:

The Court Administrator is directed to:

1. File one (1) certified copy of this Order and Rule with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified paper copies and one (1) diskette or CD-ROM containing this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish a copy of this Order and Rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

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

This order shall become effective January 5, 2010.

*By the Court*

LOUIS J. FARINA,  
*President Judge*

### Rule 117. Magisterial District Court Coverage: Hours and Availability; System; and Duties.

#### I. Coverage Hours and Availability

##### A. Judicial Coverage During Regular Business Hours

(1) Magisterial District Court Offices within the Second Judicial District shall be open for regular business Monday through Friday, excluding County Holidays, during such hours as are established by the President Judge, and as may be modified with the approval of the President Judge to meet the needs of the public and the Court. The coverage required under Rule 117 and as set forth in this Order shall be provided by the Magisterial District Judge with jurisdiction over the matter during regular business hours, if available.

(2) When a Magisterial District Judge who has jurisdiction over a particular matter is unavailable during regular business hours, coverage shall be provided by other Magisterial District Judges in the 2nd Judicial District in accordance with a Business Hours Assignment schedule approved by the President Judge and amended from time to time as necessary.

##### B. Judicial Coverage During Non-Business Hours (Duty Court Hours)

During those hours when the Magisterial District Courts are not normally open for business (Duty Court Hours), the coverage required under Rule 117 and as set forth in this rule shall be provided by Magisterial District Judges in accordance with a Duty Court Assignment schedule approved by the President Judge and amended from time to time as necessary.

##### C. Availability of Duty Court Judge

During Duty Court Hours, the Duty Court Judge shall be available at or about 7 A.M and 8 P.M. each day, either in person at the Lancaster City Public Safety Building or by video conference from his or her court office, to perform any pending judicial duties. In addition to these two designated times, the Duty Court Judge shall be available at any time during Duty Court Hours to perform those duties requiring continuous coverage as set forth below in Section III. A. of this local rule.

#### II. Coverage System During Duty Court Hours

##### Regional Booking/Centralized Arraignment System

(1) **Live Scan/CPIN Booking:** A Countywide Regional Booking and Centralized Arraignment system is hereby implemented in Lancaster County to be in effect during Duty Court Hours. All criminal Defendants apprehended during Duty Court Hours are required to be processed and booked through Live Scan and CPIN equipment at a Lancaster County Police Department possessing this technology, and which Police Department has been approved and designated as a Regional Booking Center in accordance with the Lancaster County Countywide Booking Center Plan.

(2) **Regional Booking Center Fee:** The Lancaster Countywide Regional Booking Center Plan having been

approved by PCCD, a Regional Booking Center fund fee of three hundred dollars (\$300) is imposed on any Defendant processed and booked through a Lancaster County Regional Booking Center at any time if the person:

(a) Is placed on probation without verdict pursuant to Section 17 of the Act of April 14, 1972 (P. L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(b) Received Accelerated Rehabilitative Disposition for, pleads guilty or nolo contendere to, or is convicted of, a crime under the following:

(i) 18 Pa.C.S. § 106(a) (relating to classes of offenses).

(ii) 75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).

(iii) 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance).

(iv) A violation of The Controlled Substance, Drug, Device and Cosmetic Act.

**(3) Centralized Arraignment:** After being processed and booked at a Lancaster County Regional Booking Center during Duty Court Hours, Defendants are required to be either:

(a) Transported by the arresting police department to the Lancaster City Public Safety Building to be held there for detention until preliminary arraignment is conducted by the assigned Duty Court Magisterial District Judge, either in person or by video conference, or,

(b) Held by the arresting police department at a location designated by the Court as an approved Advanced Communication Technology Site for the purpose of video conferencing until preliminary arraignment is conducted by the assigned Duty Court Magisterial District Judge by video conference.

### III. Required Coverage Duties

#### A. Search Warrants and Arrest Warrants; Protection From Abuse Petitions, and Acceptance of Bail

Magisterial District Judges with jurisdiction during regular business hours and the Duty Court Judge during Duty Court hours shall be available to provide continuous coverage for the issuance of search warrants pursuant to Pa.R.Crim.P. 203, arrest warrants pursuant to Pa.R.Crim.P. 513, requests to accept bail pursuant to Pa.R.Crim.P. 520(B), and requests for emergency relief under the Protection From Abuse Act.

#### B. Preliminary Arraignments, Accepting Criminal Complaints and Setting Bail

Magisterial District Judges with jurisdiction during regular business hours and the Duty Court Judge during Duty Court Hours shall be available without unnecessary

delay to conduct preliminary arraignments pursuant to Rule 516, to set bail pursuant to Rule 517(A), and to accept criminal complaints and conduct preliminary arraignments pursuant to Rule 519(A)(1).

#### C. Summary Offense Arrest Warrants and Arrests Without a Warrant

Magisterial District Judges with jurisdiction during regular business hours and the Duty Court Judge during Duty Court Hours shall be available without unnecessary delay for the purpose of providing the services set forth in Pa.R.Crim.P. 117(A)(2)(a) requiring conducting summary trials or setting collateral in summary cases under Rule 431(B)(3) and Rule 441(C).

#### D. Summary Offense Bench Warrants

If a summary Bench Warrant is executed during regular business hours, the Magisterial District Judge with jurisdiction shall be available without unnecessary delay to conduct a bench warrant hearing. If a Bench Warrant is executed during Duty Court Hours, the Duty Court Judge may conduct a bench warrant hearing.

#### IV. Acceptance of Bail

Magisterial District Judges, the Clerk of Court or his designees, and the Warden of the Lancaster County Prison or his designees, shall be authorized to accept bail in accordance with the provisions of the Pennsylvania Rules of Criminal Procedure.

[Pa.B. Doc. No. 09-2027. Filed for public inspection October 30, 2009, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Suspension

Notice is hereby given that on October 15, 2009, under Rule 208(f)(5), Pa.R.D.E., the Supreme Court of Pennsylvania ordered that Richard H. Cline be placed on temporary suspension until further definitive action by the Supreme Court, to be effective November 14, 2009. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,

*Secretary,*

*The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 09-2028. Filed for public inspection October 30, 2009, 9:00 a.m.]