

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 1910 ]

Order Amending Rule 1910.16-6; Civil Procedural Rules; No. 517

#### Order

*Per Curiam*

And Now, this 8th day of December, 2009, upon the recommendation of the Domestic Relations Procedural Rules Committee; the recommendation not having been published for comment pursuant to Pa.R.J.A. No. 103(a)(3) as the proposed amendments are perfunctory in nature.

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Civil Procedure 1910.16-6 is amended as follows.

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

PATRICIA NICOLA,  
*Chief Clerk*

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1910. ACTIONS FOR SUPPORT

#### Rule 1910.16-6. Support Guidelines. Adjustments to the Basic Support Obligation. Allocation of Additional Expenses.

Additional expenses permitted pursuant to this Rule 1910.16-6 may be allocated between the parties even if the parties' incomes do not justify an order of basic support.

\* \* \* \* \*

(c) *Unreimbursed Medical Expenses.* Unreimbursed medical expenses of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes. Notwithstanding the prior sentence, there shall be no apportionment of unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The court may direct that the obligor's share be added to his or her basic support obligation, or paid directly to the obligee or to the health care provider.

\* \* \* \* \*

(3) Annual expenses pursuant to this subdivision (c), shall be calculated on a calendar year basis. In the year in which the initial support order is entered, the \$250 threshold shall be pro-rated. Documentation of unreimbursed medical expenses that either party seeks to have allocated between the parties shall be provided to the other party not later than March 31 of the year following the calendar year in which the final bill was received by the party seeking allocation. **For purposes of subsequent enforcement, unreimbursed medical bills need not be submitted to the domestic relations section prior to March 31.** Allocation of

unreimbursed medical expenses for which documentation is not timely provided to the other party shall be within the discretion of the court.

\* \* \* \* \*

[Pa.B. Doc. No. 09-2309. Filed for public inspection December 18, 2009, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

### Proposed Amendments to Pa.Rs.Crim.P. 550 (Pleas of Guilty Before Magisterial District Judge in Court Cases) and 590 (Pleas and Plea Agreements)

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 550 and 590 to provide for more detailed standards regarding the areas of inquiry that are required to be part of all guilty plea colloquies in court cases before the courts of common pleas and magisterial district judges. This Supplemental Report resulted from the Committee's review of the correspondence received after publication of our original explanatory Report that explained the Committee's proposal for guilty plea colloquy procedures in the courts of common pleas only. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights the Committee's considerations in formulating this proposal. Note that the Committee's 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 explanatory Reports.

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

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

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

fax: (717) 795-2106  
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no later than Friday, January 22, 2010.

*By the Criminal Procedural  
Rules Committee*

D. PETER JOHNSON,  
*Chair*

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

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

\* \* \* \* \*

(B) The magisterial district judge may refuse to accept a plea of guilty, and the magisterial district judge shall not accept such plea unless there has been a determination, after inquiry of the defendant, that the plea is [ voluntarily and understandingly ] knowingly, intelligently, and voluntarily tendered.

(C) The plea shall be in writing:

(1) signed by the defendant, with a representation by the defendant that the plea is entered knowingly, [ voluntarily, and intelligently ] intelligently, and voluntarily; and

\* \* \* \* \*

(D) Before accepting a plea, the magisterial district judge shall be satisfied of:

(1) the defendant's capacity to comprehend and communicate in the proceedings;

(2) jurisdiction to accept the plea; and

(3) the defendant's eligibility under the law to plead guilty before a magisterial district judge.

(E) To ensure that the defendant is entering the plea knowingly, intelligently, and voluntarily the following information shall be elicited by the magisterial district judge as part of an oral examination:

(1) confirmation of the identity of the defendant;

(2) the defendant's understanding of the nature and elements of the charges to which he or she is pleading guilty, the permissible range of sentences, including fines, for those charges, the maximum aggregate sentence, and any applicable mandatory sentence;

(3) the factual basis for the plea;

(4) the defendant's understanding of his or her right to counsel;

(5) the defendant's satisfaction with the representation of his or her attorney, if any;

(6) the defendant's understanding that he or she has certain rights with regard to the charges, including, but not limited to, the trial of the charges in the court of common pleas; the filing and litigation of pretrial motions; the right to counsel; the right to trial by jury, consisting of twelve jurors of his or her peers that the defendant would assist in selecting; the right to challenge potential jurors; the requirement of a unanimous verdict; that he or she is presumed innocent and can only be found guilty if the prosecution proves guilt beyond a reasonable doubt; and that he or she has the right to testify; to cross-examine the prosecution witnesses, and to call his or her own witnesses;

(7) that the defendant is aware that the magisterial district judge is not bound by the terms of any plea agreement tendered unless the magisterial district judge accepts such agreement;

(8) that the defendant understands that the plea precludes consideration for ARD or other diversionary programs; and

(9) the defendant's understanding that, as provided in paragraph (F), the defendant may within 10 days after sentence, change the plea to not guilty and that in order to change the plea, the defendant, within 10 days after imposition of sentence, must notify the magisterial district judge who accepted the plea of this decision in writing.

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

[ (E) ] (G) Ten days after the acceptance of the guilty plea and the imposition of sentence, the magisterial district judge shall certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings.

Comment

\* \* \* \* \*

[ Before accepting a plea:

(a) The magisterial district judge should be satisfied of jurisdiction to accept the plea, and should determine whether any other related offenses exist that might affect jurisdiction.

(b) The magisterial district judge should be satisfied that the defendant is eligible under the law to plead guilty before a magisterial district judge, and, when relevant, should check the defendant's prior record and inquire into the amount of damages.

(c) The magisterial district judge should advise the defendant of the right to counsel. For purposes of appointment of counsel, these cases should be treated as court cases, and the Rule 122 (Appointment of Counsel) procedures should be followed.

(d) The magisterial district judge should advise the defendant that, if the defendant wants to change the plea to not guilty, the defendant, within 10 days after imposition of sentence, must notify the magisterial district judge who accepted the plea of this decision in writing.

(e) The magisterial district judge should make a searching inquiry into the voluntariness of the defendant's plea. A colloquy similar to that suggested in Rule 590 should be conducted to determine the voluntariness of the plea. At a minimum, the magisterial district judge should ask questions to elicit the following information:

(1) that the defendant understands the nature of the charges pursuant to which the plea is entered;

(2) that there is a factual basis for the plea;

(3) that the defendant understands that he or she is waiving the right to trial by jury;

(4) that the defendant understands that he or she is presumed innocent until found guilty;

(5) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;

(6) that the defendant is aware that the magisterial district judge is not bound by the terms of any plea agreement tendered unless the magisterial district judge accepts such agreement; and

(7) that the defendant understands that the plea precludes consideration for ARD or other diversionary programs.

See Rule 590 and the Comment thereto for further elaboration of the required colloquy. ]

For purposes of appointment of counsel, cases proceeding under this rule shall be treated as court cases, and the Rule 122 (Appointment of Counsel) procedures will be followed.

New paragraphs (D) and (E) were added in 2010 to provide detail regarding the manner in which the magisterial district judge must conduct the inquiry into the entry of the plea. See also *Commonwealth v. Minor*, 467 Pa. 230, 356 A.2d 346 (1976), overruled on other grounds in *Commonwealth v. Minarik*, 493 Pa. 573, 427 A.2d 623, 627 (1981); *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 (1974); *Commonwealth v. Martin*, 445 Pa. 49, 282 A.2d 241 (1971).

As provided in paragraph (D)(2) before accepting a plea, the magisterial district judge must be satisfied of jurisdiction to accept the plea. This includes determining whether any other related offenses exist that might affect jurisdiction.

Similarly, the magisterial district judge must be satisfied of the defendant's eligibility under the law to plead guilty before a magisterial district judge. When relevant, the magisterial district judge must check the defendant's prior record and inquire into the amount of damages.

While the rule continues to require a written plea incorporating the contents specified in paragraph (C), the form of plea was deleted in 1985 because it is no longer necessary to control the specific form of written plea by rule.

Paragraph (C) does not preclude verbatim transcription of the colloquy and plea.

The requirements of the content of the colloquy as provided in paragraph (E) are based on the colloquy requirements in Rule 590 and the *Comment* thereto. Rule 590 requires the colloquy to be conducted "on the record." However, the requirement to conduct an oral colloquy in paragraph (E) does not require a verbatim transcription. Because a magisterial district judge is not a court of record, the requirement that an oral colloquy be conducted on the record may be satisfied by a certification in writing by the magisterial district judge that the oral colloquy has been performed in accordance with the requirements of this rule.

While paragraph (E)(6) requires that the defendant be advised of all trial rights, especially those associated with a trial by jury, it should be noted that a defendant does not have the right to a jury trial in certain ungraded misdemeanor charges. In these cases, the oral colloquy would not include the information concerning the various rights associated with jury trials.

At the time of sentencing, or at any time within the 10-day period before transmitting the case to the clerk of courts pursuant to paragraph [ (E) ] (F), the magisterial district judge may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.

\* \* \* \* \*

**Official Note:** Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006; amended , 2010, effective , 2010.

*Committee Explanatory Reports:*

Final Report explaining the August 22, 1997 amendments, that clarify the procedures following a district justice's acceptance of a guilty plea and imposition of sentence in a court case published with the Court's order at 27 Pa.B. 4549, 4553 (September 6, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

Final Report explaining the December 9, 2005 changes to the rule clarifying the magisterial district judges' exercise of jurisdiction published with the Court's Order at 35 Pa.B. 6894, 6869 (December 24, 2005).

Supplemental Report explaining the proposed amendments to the rule regarding the requirements of the guilty plea colloquy published with the Court's Order at 39 Pa.B. 7097, 7102 (December 19, 2009).

**PART G. Plea Procedures**

**Rule 590. Pleas and Plea Agreements.**

(A) GENERALLY.

\* \* \* \* \*

(3) Guilty Pleas.

(a) The judge may refuse to accept a plea of guilty or nolo contendere, and shall not accept it unless the judge determines after [ inquiry ] examination of the defendant conducted in accordance with paragraphs (A)(3)(b) through (A)(3)(d) that the plea is [ voluntarily and understandingly ] knowingly, intelligently, and voluntarily tendered. [ Such inquiry shall appear on the record. ] The judge may permit the attorney for the Commonwealth or defendant's attorney to conduct the examination of the defendant pursuant to paragraph (A)(3)(c). The judge shall be present during this examination.

(b) To ensure that the defendant is entering the plea knowingly, intelligently, and voluntarily the following information shall be elicited as part of the oral examination on the record:

- (i) confirmation of the identity of the defendant;
- (ii) the defendant's capacity to comprehend and communicate in the proceedings;
- (iii) the defendant's understanding of the charges to which he or she is pleading guilty or nolo contendere, the maximum aggregate sentence, including fines, for those charges and any applicable mandatory sentence;



- (iv) the factual basis for the plea;
- (v) the defendant's satisfaction with the representation of his or her attorney; and

(vi) if the defendant is pleading guilty to murder generally, the defendant's understanding that the Commonwealth has the right to have a jury decide the degree of guilt when the defendant enters a plea of guilty to murder generally.

(c) In addition to the information required to be elicited under paragraph (A)(3)(d), the following information shall be elicited, either orally or in writing, on the record:

(i) the defendant's understanding that he or she has certain rights with regard to the charges, including but not limited to the filing and litigation of pretrial motions; the right to challenge potential jurors; the requirement of a unanimous verdict; that he or she is presumed innocent and can only be found guilty if the prosecution proves guilt beyond a reasonable doubt; and that he or she has the right to testify, to cross-examine the prosecution witnesses, and to call his or her own witnesses;

(ii) the defendant's counsel has explained to the defendant the nature and the elements of the charges to which he or she is pleading guilty or nolo contendere and that the defendant understands these charges; and

(iii) the defendant's understanding that, if the judge accepts the plea and finds the defendant guilty, the defendant's grounds to appeal are limited to the legality of the sentence, the voluntariness of the plea, and the jurisdiction of the court.

(d) Counsel for the defendant shall certify on the record, either orally or in writing, that he or she has had the opportunity to discuss the case with the defendant, and that the defendant has been advised of his or her rights.

(B) PLEA AGREEMENTS.

\* \* \* \* \*

(2) The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea or plea of nolo contendere is based, and that the defendant understands that the judge is not bound by the terms of the tendered plea agreement unless the judge accepts the plea agreement.

\* \* \* \* \*

**Comment**

The purpose of paragraph (A)(2) is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea or plea of nolo contendere is [voluntarily and understandingly] knowingly, intelligently, and voluntarily tendered. On the mandatory nature of this practice, see *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 (1974); *Commonwealth v. Campbell*, 451 Pa. 465, 304 A.2d 121 (1973); *Commonwealth v. Jackson*, 450 Pa. 417, 299 A.2d 209 (1973).

Paragraph (A)(3) was added in 2010 to provide further instructions to judges accepting pleas of guilty or nolo contendere. Under *Commonwealth v. Willis*, 471 Pa. 50, 369 A.2d 1189 (1977), and *Commonwealth v. Dilbeck*, 466 Pa. 543, 353 A.2d 824 (1976), judges are required to make inquiry on the record

into six areas, at a minimum, to ensure that a defendant is entering the plea knowingly, intelligently, and voluntarily. Paragraphs (A)(3)(c) and (d) elaborate on these areas of inquiry. Paragraph (A)(3)(a) provides that the judge may permit counsel to orally examine the defendant as part of the oral portion of the inquiry but the judge must be present during this examination.

Paragraph (A)(3)(b) recognizes that certain elements of the colloquy are so critical to assuring the judge that the defendant understands the plea and that the colloquy is in compliance with this rule that the inquiry must be performed orally on the record.

Paragraph (A)(3)(c) requires two additional areas of inquiry. Nothing in the rule would preclude the use of a written colloquy for inquiry into these areas that is read, completed, signed by the defendant, and made part of the record of the plea proceedings. Similarly, areas of inquiry not listed in the rule but that the court deems necessary for the acceptance of the plea may be addressed in a written colloquy. The written colloquy may have to be supplemented by some on-the-record oral examination. Its use would not, of course, change any other requirements of law, including these rules, regarding the prerequisites of a valid guilty plea or plea of nolo contendere.

While paragraph (A)(3)(c) requires that the defendant be advised of all trial rights, especially those associated with a trial by jury, it should be noted that a defendant does not have the right to a jury trial in certain ungraded misdemeanor charges. In these cases, the defendant would not be advised of the various rights associated with jury trials.

Some areas of inquiry that require oral inquiry need not necessarily be performed as a direct examination of the defendant. For example, the factual basis of the plea and the nature of the charges are case-specific and therefore an oral inquiry must be conducted into the specific facts of the case. This may be accomplished by the defendant confirming on the record a recitation of the facts by the attorney for the Commonwealth or defense counsel. In such a situation, however, the judge must be assured that the defendant fully understands and agrees with such a recitation.

Paragraph (A)(3)(d) requires that, in addition to the colloquy conducted of the defendant, counsel for the defendant also must certify on the record that the defendant has been fully advised of the nature of his or her plea.

The court may inquire of counsel for the defendant if he or she knows of any reason why the defendant cannot knowingly, intelligently, and voluntarily give up his or her rights and plead guilty or nolo contendere.

Similarly, paragraph (B)(1) requires that counsel for the defendant and for the Commonwealth state on the record the terms of any plea agreement. Under paragraph (B)(2), the defendant's understanding and acceptance of the terms of the agreement also must be elicited as a separate inquiry on the record. See *Commonwealth v. Porreca*, 528 Pa. 46, 595 A.2d 23 (1991). This inquiry should include discussion of whether the court is bound by the agreement, the ability to withdraw the plea if it is

not accepted, and that no coercion or other promises outside of the plea agreement have led to the defendant's willingness to enter a plea.

A judge either shall accept or reject the plea agreement in whole. The judge shall not accept a portion of the plea agreement while rejecting another portion of the plea agreement. See *Commonwealth v. Parsons*, 969 A.2d 1259 (Pa.Super. 2009).

For the procedures for accepting a guilty plea in a court case before a magisterial district judge, see Rule 550.

[ It is difficult to formulate a comprehensive list of questions a judge must ask of a defendant in determining whether the judge should accept the plea of guilty or a plea of nolo contendere. Court decisions may add areas to be encompassed in determining whether the defendant understands the full impact and consequences of the plea, but is nevertheless willing to enter that plea. At a minimum the judge should ask questions to elicit the following information:

- (1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or nolo contendere?
- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand that he or she has the right to trial by jury?
- (4) Does the defendant understand that he or she is presumed innocent until found guilty?
- (5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?
- (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?
- (7) Does the defendant understand that the Commonwealth has a right to have a jury decide the degree of guilt if the defendant pleads guilty to murder generally?

The Court in *Commonwealth v. Willis*, 471 Pa. 50, 369 A.2d 1189 (1977), and *Commonwealth v. Dilbeck*, 466 Pa. 543, 353 A.2d 824 (1976), mandated that, during a guilty plea colloquy, judges must elicit the information set forth in paragraphs (1) through (6) above. In 2008, the Court added paragraph (7) to the list of areas of inquiry. ]

\* \* \* \* \*

It is advisable that the judge conduct the examination of the defendant. However, paragraph (A)(3)(a) [ **does not prevent** ] authorizes the judge to permit defense counsel or the attorney for the Commonwealth [ **from conducting** ] to conduct part or all of the examination of the defendant [ , as permitted by the judge. In addition, nothing in the rule would preclude the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the plea proceedings. This written colloquy would have to be supplemented by some on-the-record oral examination. Its use would not, of course, change any other requirements of law, including these rules, regarding the prerequisites of a valid guilty plea or plea of nolo contendere ].

\* \* \* \* \*

[ When a guilty plea, or plea of nolo contendere, includes a plea agreement, the 1995 amendment to paragraph (B)(2) requires that the judge conduct a separate inquiry on the record to determine that the defendant understands and accepts the terms of the plea agreement. See *Commonwealth v. Porreca*, 528 Pa. 46, 595 A.2d 23 (1991).

Former paragraph (B)(3) was deleted in 1995 for two reasons. The first sentence merely reiterated an earlier provision in the rule. See paragraph (A)(3). The second sentence concerning the withdrawal of a guilty plea was deleted to eliminate the confusion being generated when that provision was read in conjunction with Rule 591. As provided in Rule 591, it is a matter of judicial discretion and case law whether to permit or direct a guilty plea or plea of nolo contendere to be withdrawn. See also *Commonwealth v. Porreca*, 528 Pa. 46, 595 A.2d 23 (1991) (the terms of a plea agreement may determine a defendant's right to withdraw a guilty plea). ]

\* \* \* \* \*

**Official Note:** Rule 319(a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective 30 days hence; specific areas of inquiry in Comment deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraph (c) added and Comment revised May 22, 1978, effective July 1, 1978; Comment revised November 9, 1984, effective January 2, 1985; amended December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 590 and Comment revised March 1, 2000, effective April 1, 2001; **amended September 18, 2008, effective November 1, 2008; amended , 2010, effective , 2010.**

*Committee Explanatory Reports:*

Final Report explaining the December 22, 1995 amendments published with the Court's Order at 26 Pa.B. 8, 10 (January 6, 1996).

Final Report explaining the July 15, 1999 changes concerning references to nolo contendere pleas and cross-referencing Rule 320 published with the Court's Order at 29 Pa.B. 4055, 4057 (July 31, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

**Final Report explaining the September 18, 2008 amendments to paragraph (C) concerning juries determining degree of guilt published with the Court's Order at 38 Pa.B. 5425, 5428 (October 4, 2008).**

Report explaining the proposed changes to paragraph (A)(3) concerning plea colloquies published at 39 Pa.B. 991 (February 21, 2009); Supplemental Report explaining the proposed amendments concerning plea colloquies published at 39 Pa.B. 7097, 7102 (December 19, 2009).

## SUPPLEMENTAL REPORT

*Proposed Amendments to Pa.Rs.Crim.P. 550 and 590*

## GUILTY PLEA COLLOQUY

The Committee has examined guilty plea colloquy practice arising from appellate cases<sup>1</sup> and other reports that trial judges were not properly conducting guilty plea colloquies by not eliciting all of the information required to ensure that a provident plea had been entered. The Committee believes that this requirement, embodied in six mandatory areas of inquiry enumerated in *Commonwealth v. Willis*, 369 A.2d 1189 (Pa. 1977) and currently contained in the Rule 590 *Comment*, should be strengthened in the rules.

*Proposed Changes to Rule 590*

The Committee, recognizing the wide divergence in guilty plea colloquy practice throughout the Commonwealth, developed a proposal in which the six areas of inquiry currently contained in the Rule 590 *Comment* were expanded upon and augmented to provide a more detailed description of the type of inquiry need to ensure that the plea was entered knowingly, intelligently, and voluntarily. The proposal also addressed which elements of inquiry must be performed orally and which could be included in the common practice of written colloquy forms.

In February 2009, the Committee published for comment the proposal to add a list of mandatory elements to the text of Rule 590.<sup>2</sup> The proposal included a new paragraph (3)(b) that would be added to Rule 590 setting forth the five areas of inquiry that must be conducted orally on the record. The items that are required to be elicited orally relate to confirming the defendant's identity, his or her capacity to understand the nature of the proceedings; the nature, elements, and factual basis of the charges; and his or her satisfaction with his or her representation. New paragraph (3)(c) would set forth two broad areas of inquiry that, while mandatory, may be addressed either orally or through a written colloquy form, and on the record. These two areas concern the defendant's understanding of the full panoply of rights that he or she will be giving up if the plea is accepted. One of the elements of the original list of six areas of inquiry—the advice to the defendant that the judge is not bound by the terms of any plea agreement unless the judge accepts the agreement—was included in paragraph (B) that addresses plea agreements. Taken together, this new expanded list contains all of the original six areas of inquiry, augmented to provide more detailed instructions as to the composition of the colloquy. Additionally, the *Comment* language was revised to reflect these changes and emphasize that the main purpose of the colloquy is to assure that the plea is entered providently and provide some detail as to how the colloquy requirements might be applied.

While, the majority of the proposed changes described above were retained and are repeated in this current publication, several changes were made as a result of the publication comments the Committee received.

Several responses expressed concern about the provision in the original proposal that required that an oral examination be conducted into “the nature and elements” of the charges. The comments, which also were echoed by some of the Committee members, questioned whether an extensive oral review of each element of each charge

would be required. The Committee concluded that it is defense counsel's duty to advise the defendant on the details of the charges, and what really is needed in the colloquy is an affirmation that the defendant had been properly advised and understood the charges to which he or she was pleading guilty. The elements would not need to be stated in the oral colloquy or written out in a written colloquy but rather the defendant would confirm that he or she had been advised by his or her counsel and that he or she understood the elements. This process would be further supported by the recitation of the facts done orally on the record at the time of the entry of the plea. Therefore, this language, in paragraph (A)(3)(b)(iii), has been changed to state that the defendant “understands the charges” to which he or she is pleading guilty. Additionally, paragraph (A)(3)(c)(ii) has been modified so that the written colloquy includes a statement that the attorney explained the elements and the defendant understands them.

Another comment suggested that, since sentences may run consecutively, the defendant should be advised of the maximum aggregate sentence. The Committee agreed with this change, and modified paragraph (A)(3)(b)(iii) accordingly.

In addition, concerning the advice to be given the defendant regarding trial rights, the Committee agreed to modify paragraph (A)(3)(c)(i) to provide further clarity. In the phrase “the right to trial by jury, consisting of twelve jurors,” we added “of his or her peers.” We also added “the right to testify” to the list before the right “to call his or her own witnesses.”

In addition to the post publication modifications to the text of Rule 590, the Committee agreed to several revisions to the *Comment*. During the discussions about the defendant's trial rights, the Committee noted that there are cases in which a defendant does not have a right to a jury trial. The members agreed this point should be explained in the *Comment*. Accordingly, a provision has been added to the *Comment* clarifying that “the defendant has a right to jury trial except in certain ungraded misdemeanors when he or she would have bench trial.”

During the time the Committee was working on the guilty plea proposal, the Superior Court decided *Commonwealth v. Parsons*, 969 A.2d 1259 (Pa. Super. 2009). In *Parsons*, the Superior Court made it clear that when a judge accepts or rejects a plea agreement, the judge must accept or reject the entire agreement and may not accept or reject the agreement in part. After reviewing *Parsons*, the Committee agreed that the *Comment* should contain a cross-reference to *Parsons*.

In 2006, the Supreme Court recognized in *Commonwealth v. White*, 589 Pa. 642, 910 A.2d 648(2006), that the Commonwealth has a right to have a jury determine the degree of guilt following a plea of guilty to murder generally. In 2008, the Court approved the revision of the Rule 590 *Comment* that added this point to the list of things about which a judge must inquire during the guilty plea colloquy. As part of the post-publication modification of the text of Rule 590, the Committee moved this provision from the *Comment* and added it as a sixth area of inquiry to the list of mandatory oral inquiry in paragraph (A)(3)(c). This area of inquiry goes to the defendant's understanding that the Commonwealth has the right to have a jury decide the degree of guilt when the defendant enters a plea of guilty to murder generally.

Finally, two paragraphs would be deleted from the Rule 590 *Comment*. The first, referring to conducting a sepa-

<sup>1</sup> See, e.g., Judge Klein's concurring opinion in *Commonwealth v. Fowler*, 893 A.2d 758 (2006).

<sup>2</sup> The original *Report* was published at 39 Pa.B. 991 (February 21, 2009).



rate inquiry on the record regarding the defendant's understanding and acceptance of a plea agreement, was repetitious of language contained in the proposed new *Comment* language. The second, describing changes made to the rule in 1995 to comport with Rule 591, was no longer necessary since the *Comment* cross-references Rule 591.

#### *Proposed Changes to Rule 550*

One comment received during publication raised the question of how the requirements of the Rule 590 oral colloquy can be accomplished by a magisterial district judge (MDJ) when accepting pleas under Rule 550. Specifically, the Rule 550 *Comment* cross-references Rule 590 as the model of how a colloquy should be conducted. However, as proposed, Rule 590 would require a specific oral colloquy to be conducted on the record. How can this be accomplished before an MDJ, when the magisterial district courts are not courts of record?

Initially, the Committee favored removing the Rule 590 requirement that the oral colloquy be conducted "on the record." Instead, the MDJ would still look to Rule 590 as to how the colloquy would be conducted. The oral colloquy would be conducted but, since no record would be produced, the MDJ would be required to certify that he or she had performed the required oral colloquy.

Subsequently, the Committee determined that this would be insufficient because of the differences between a Rule 550 plea and a Rule 590 plea in addition to the fact that MDJ courts are not courts of record, as discussed above. It was noted, for example, that proposed Rule 590(A)(3)(c)(iii) would require a discussion of appellate rights' waiver while Rule 550(D) provides for a ten-day period for the automatic withdrawal that did not seem to be encompassed by the Rule 590 language. In addition, the guilty plea procedures under Rule 550 did not seem as amenable to a division between oral and written colloquy elements as in Rule 590. The Committee ultimately concluded that the best way of making these rules compatible would be to spell out the guilty plea colloquy procedures in Rule 550.

The proposed changes would consist of a list of the elements of inquiry for the colloquy to be added to the text of Rule 550. This list is a combination of the draft Rule 590 language and the suggested list of areas of inquiry in the current version of the Rule 550 *Comment*. In preparing this list, the Committee concluded that some of the items in the list of areas of inquiry in the *Comment* were not really "areas of inquiry" but rather were conclusions to reach after the inquiry. Therefore, a new paragraph (D) would be added to Rule 550 that includes the provision that, before accepting a plea, the MDJ must make certain findings, including whether the defendant has the capacity to comprehend and participate in the proceedings. Additionally, the *Comment* to Rule 550 currently lists several elements, such as jurisdiction, that the magisterial district judge "should be satisfied of. . ." These elements would also be included in new paragraph (D), although some of the more explanatory portions of these paragraphs, such as the factors to consider when determining if jurisdiction exists, would be retained in the *Comment* rather than added to the text of the rule.

The proposal retains the concept that, after the oral colloquy was conducted, since no record would be produced, the MDJ would be required to certify that he or she has performed the required oral colloquy.

Finally, the Committee noted that various phrases were used inconsistently in Rules 550 and 590 to describe the

defendant's state of mind in order for the plea to be accepted. The Committee favored the phrase "knowingly, intelligently, and voluntarily" as clearer and more comprehensive. This phrase has been used throughout both rules.

[Pa.B. Doc. No. 09-2310. Filed for public inspection December 18, 2009, 9:00 a.m.]

## Title 252—ALLEGHENY COUNTY RULES

### ALLEGHENY COUNTY

#### Criminal Rules of the Court of Common Pleas; Doc. No. 2 of 2009

#### Order of Court

*And Now*, to-wit, this 23rd day of November, 2009, *It Is Hereby Adjudged, Ordered and Decreed* that the following Rules of the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division, adopted by the Board of Judges on November 17, 2009, shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Criminal Procedure Rule 114.1	Orders and Court Notices: Method of Service
Criminal Procedure Rule 528.1	Motion for Allowance to Post Real Property as Security
Criminal Procedure Rule 547.1	Issuing Authorities
Criminal Procedure Rule 575.1	Allegheny County Criminal Court

*By the Court*

HONORABLE DONNA JO McDANIEL,  
*President Judge*

#### **Rule 114.1. Orders and Court Notices: Method of Service.**

(a) The clerk of courts, the court and the court administrator are all authorized to serve court orders and notices.

(b) The method of service shall be any method consistent with the Pennsylvania Rules of Criminal Procedures.

#### **Rule 528.1. Motion for Allowance to Post Real Property As Security.**

(a) Real Property may only be posted upon motion to the Court of Common Pleas of Allegheny County.

(b) All motions for allowance to post real property pursuant to Pennsylvania Rule of Criminal Procedure 528(D) shall be substantially in the following form:

#### **Rule 547.1. Issuing Authorities Transmitting Documents.**

(a) Issuing authorities transmitting documents pursuant to Pennsylvania Rule of Criminal Procedure 547 shall do so by certified mail or hand delivery.

(b) The issuing authority shall include a listing of all contents including the OTN (Offense Tracking Number) of each matter transmitted.

#### **Rule 575.1. Requirements Governing the Physical Characteristics of Court Papers and All Attachments, Supporting Documents and Exhibits.**

(a) *Filing Requirements*

(1) Every document shall be attached only at the top left corner of the pages with one staple or, if the document is too thick for a staple, then at the top of the pages with a metal fastener (not a binder clip).

(2) Cloth tape or other permanent binding shall not be used.

(3) "Bluebacks" shall not be used.

(b) *Basic Requirements*

(1) Ordinarily, all attachments, supporting documents and exhibits shall be on eight and one-half inches paper at the time of filing with the clerk of courts.

(2) A smaller document shall be reproduced, if possible, on eight and one-half inches by eleven inches paper.

(3) A larger document shall be reduced and reproduced to eight and one-half inches by eleven inches six, provided it will still be legible.

(4) If it is not possible to obtain a legible photocopy of the documents or exhibit because of unique characteristics or inherent limitations, e.g., maps, surveys, computer printouts, data processing cards, colored paper, tape recordings, cassettes, movies, DVDs, CD, etc., the filing party shall present the document or material to the clerk of courts to be dated and time stamped, docketed, and filed. Each such special filing shall be accompanied by one (1) cover sheet.

*Note:* It is recommended that the case number be entered at the top or bottom right corner of every page of every filing because of the possibility that pages of a filing may come apart.

[Pa.B. Doc. No. 09-2311. Filed for public inspection December 18, 2009, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### LUZERNE COUNTY

**In Re: Judge Michael T. Toole; Judicial Administration; Doc. No. 336**

#### Order

*Per Curiam*

*And Now*, this 3rd day of December 2009, this Court has received notice of an information filed by the United States Attorney for the Middle District of Pennsylvania against Judge Michael T. Toole, a judge of the Court of Common Pleas of Luzerne County, and an agreement by Judge Michael T. Toole to enter a plea of guilty to the offenses described in that information. In view of the compelling and immediate need to protect and preserve the integrity of the Unified Judicial System and the administration of justice for the citizens of Luzerne County, Judge Michael T. Toole is hereby relieved of any and all judicial and administrative responsibilities as a judge of the Court of Common Pleas of Luzerne County and ordered not to take any further administrative or judicial action whatsoever in any case or proceeding now or hereinafter pending until further order of this Court. This action will not result in any diminution in salary or benefits until further order of this Court. This Order is without prejudice to the rights of Judge Michael T. Toole to seek such relief in this Court for the purpose of vacating or modifying this interim Order. Pa. Const. Article V § 10(a); In re: Avellino, 690 A.2d 1138 (Pa. 1997); and see, In re: McFalls, 795 A.2d 367 (Pa. 2002).

PATRICIA NICOLA,  
*Chief Clerk*

[Pa.B. Doc. No. 09-2312. Filed for public inspection December 18, 2009, 9:00 a.m.]