

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1910, 1915 AND 1920]

Amendment of Rules 1910.16-4, 1910.16-6, 1915.4, 1920.51, 1920.52 and 1920.73 of the Pennsylvania Rules of Civil Procedure; No. 528; Civil Procedural Rules

Order

Per Curiam:

And Now, this 8th day of July, 2010, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 38 Pa.B. 6689 (December 13, 2008), and *West's Pennsylvania Reporter*, 959 A.2d No. 2, Ct.R-30-40 (December 19, 2008):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1910.16-4, 1910.16-6, 1915.4, 1920.51, 1920.52, and 1920.73 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 60 days on September 6, 2010.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation. Formula.

* * * * *

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* Where children are residing with the spouse obligated to pay spousal support or alimony pendente lite (custodial parent) and the other spouse (non-custodial parent) has a legal obligation to support the children, the guideline amount of spousal support or alimony pendente lite shall be determined by offsetting the non-custodial parent's obligation for support of the children and the custodial parent's obligation of spousal support or alimony pendente lite, and awarding the net difference either to the non-custodial parent as spousal support/alimony pendente lite or to the custodial parent as child support as the circumstances warrant

[The following example uses the formula to show the steps followed to determine the amount of the non-custodial parent's support obligation to the children and the effect of that obligation upon the custodial parent's spousal support obligation. The example assumes that the parties have two children and the non-custodial parent's net monthly income is \$1,000 and the custodial parent's net monthly income is \$2,600.] The calculation is a five-step process. First, determine the spousal support obligation of the custodial parent to the non-custodial parent based upon their net incomes from the formula for spousal

support without dependent children[, i.e., \$640]. Second, recompute the net income of the parties assuming the payment of the spousal support [so that \$640 is deducted from the custodial parent's net income, now \$1,960, and added to the non-custodial parent's net income, now \$1,640]. Third, determine the child support obligation of the non-custodial parent for two children[, i.e., \$536]. Fourth, determine the recomputed support obligation of the custodial parent to the non-custodial parent by subtracting the non-custodial parent's child support obligation from Step 3 [(\$536)] from the original support obligation determined in Step 1 [(\$640). The recomputed spousal support is \$104]. Fifth, because the first step creates additional tax liability for the recipient non-custodial parent and additional tax deductions for the payor custodial parent and the third step involves an offset of the child support owed by the non-custodial parent against the spousal support or alimony pendente lite owed by the custodial parent, only that reduced amount will be taxable. Therefore, upon application of either party, the trier of fact may consider as a deviation factor the ultimate tax effect of the calculation.

* * * * *

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

* * * * *

(b) *Health Insurance Premiums.*

(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party and/or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party who is paying the premium. **If there is no statutory duty of support owed to the party who is paying the premium, the portion attributable to that person must be deducted from the premium as set forth in subdivision (2) below.** If health insurance coverage for a child who is the subject of the support proceeding is being provided and paid for by a third party resident of [the] **either party's** household, the cost shall be allocated between the parties in proportion to their net incomes. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

(2) When the health insurance covers a party to whom no statutory duty of support is owed, **even if that person is paying the premium as set forth in subdivision (1) above**, or other persons who are not parties to the support action or children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event **that evidence as to this portion is not [known or cannot be verified] submitted by either party**, it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the

policy. Second, multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of the support action. The resulting amount is excluded from allocation.

(2.1) The actual incremental amount of the premium which provides coverage for the subjects of the support order, if submitted by either party, shall be used in determining the amount of the premium to be allocated between the parties. If not submitted by either party, then the amount of the premium shall be divided by the number of persons covered to calculate the portion of the premium that provides coverage to each person.

Example 1. If the parties are separated, but not divorced, and Husband pays \$200 per month toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing \$200 by five persons and then multiplying the resulting amount of \$40 per person by the two additional children, for a total of \$80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—\$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S.A. § 4321, Wife's percentage share of the \$120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

* * * * *

CHAPTER 1915. ACTIONS FOR CUSTODY, PARTIAL CUSTODY AND VISITATION OF MINOR CHILDREN

Rule 1915.4. Prompt Disposition of Custody Cases.

* * * * *

(b) *Listing Trials Before the Court.* Depending upon the procedure in the judicial district, within 180 days of the filing of the complaint either the court shall automatically enter an order scheduling a trial before a judge or a party shall file a praecipe, motion or request for trial, except as otherwise provided in this subdivision. If it is not the practice of the court to automatically schedule trials and neither party files a praecipe, motion or request for trial within 180 days of filing of the pleading, the court shall dismiss the matter unless the moving party has been granted an extension for good cause shown, which extension shall not exceed 60 days beyond the 180 day limit. **A further reasonable extension may be granted by the court upon agreement of the parties or when the court finds, on the record, compelling circumstances for a further reasonable extension.**

* * * * *

Official Note: For service of original process in custody, partial custody and visitation matters, see Rule 1930.4.

Rescinded June 20, 1985, effective Jan. 1, 1986. Note amended Oct. 2, 1995, effective Jan. 1, 1996. Replaced by new rule.

Explanatory Comment—2000

A new rule requiring prompt custody trials was recommended by a special committee established by the Pennsylvania Superior Court. That committee concluded that the interests of children who are the subjects of custody litigation would best be served by a requirement that the litigation be concluded within specific time frames.

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.51. Hearing by the Court. Appointment of Master. Notice of Hearing.

(a)(1) The court may hear the testimony or, upon its own motion or the motion of either party, may appoint a master with respect to all or any of the matters specified in subdivision (a)(2)(i) to consider same and issue a report and recommendation. The order of appointment shall specify the matters which are referred to the master.

(2)(i) The court may appoint a master in an action of divorce under Section 3301(a), (b) and (d)(1)(ii) of the Divorce Code, an action for annulment, and the claims for alimony, alimony pendente lite, equitable distribution of marital property, child support, partial custody or visitation, or counsel fees, costs and expenses, or any aspect thereof.

(ii) **[No] If there are no claims other than divorce, no master may be appointed [as to the claim] to determine grounds for divorce [in an action under Section] if either party has asserted grounds for divorce pursuant to § 3301(c) or § 3301(d)(1)(i) of the Divorce Code. A master may be appointed to hear ancillary economic claims in a divorce action pursuant to § 3301(c) or § 3301(d) of the Divorce Code. The master may be appointed to hear ancillary economic claims prior to the entry of a divorce decree if grounds for divorce have been established.**

(iii) No master may be appointed in a claim for legal, physical or shared custody or paternity.

Official Note: Section 3321 of the Divorce Code, 23 [Pa.C.S.] Pa.C.S.A. § 3321, prohibits the appointment of a master as to the claims of custody and paternity.

(3) The motion for the appointment of a master and the order shall be substantially in the form prescribed by Rule 1920.74.

(4) A permanent or standing master employed by a judicial district shall not practice family law before a conference officer, hearing officer or permanent or standing master employed by the same judicial district.

Official Note: Hearing conference officers preside at office conferences under [Support] Rule 1910.11. Hearing officers preside at hearings under [Support] Rule 1910.12. The appointment of masters to hear actions in divorce or for annulment of marriage is authorized by [Divorce] Rule 1920.51.

(b) Written notice of the hearing shall be given to each attorney of record by the master. If a master has not been appointed, the prothonotary, clerk or other officer designated by the court shall give the notice.

(c) If no attorney has appeared of record for a party, notice of the hearing shall be given to the party by the

lmaster, or if a master has not been appointed, by the prothonotary, clerk or other officer designated by the court, as follows:

- (1) to the plaintiff, by ordinary mail to the address on the complaint;
- (2) to the defendant,
 - (i) if service of the complaint was made other than pursuant to special order of court, by ordinary mail to the defendant's last known address;
 - (ii) if service of the complaint was made pursuant to special order of court, (a) by sending a copy of the notice by ordinary mail to the persons, if any, named in the investigation affidavit, likely to know the present whereabouts of the defendant; and (b) by sending a copy by registered mail to the defendant's last known address.

Official Note: Under [Definition] Rule 76, registered mail includes certified mail.

(d) Advertising of notice of the hearing shall not be required.

(e) Proof of notice shall be filed of record.

Official Note: Consistent with [Section] § 3301(e) of the Divorce Code as amended, these rules contemplate that if a divorce decree may be entered under the no fault provisions of [Section] §§ 3301(c) or (d), a divorce decree will be entered on these grounds and no hearing shall be required on any other grounds.

Explanatory Comment—1994

While subdivision (a)(2)(ii) clearly prohibits appointment of a master to determine a divorce claim brought under §§ 3301(c) or 3301(d), the provision does permit a master to hear claims which are joined with the divorce action.

The rule is amended to conform with proposed new Rules 1915.4-1 and 1915.4-2, and to remove the implied prohibition against the use of hearing officers in partial custody or visitation cases.

Explanatory Comment—2010

The rule is amended to clarify the role of the master in a divorce case when either party has asserted grounds for divorce pursuant to § 3301(c) or § 3301(d) of the Divorce Code. The rule had been interpreted in some jurisdictions as requiring the entry of a bifurcated decree before a master could be appointed to hear economic claims.

Rule 1920.52. Hearing by the Court. Decision. No Post-trial Relief. Decree.

* * * * *

Official Note: The procedure relating to [Motions for Reconsideration] motions for reconsideration is set forth in Rule 1930.2.

(c) The court need not determine all claims at one time but may enter a decree adjudicating a specific claim or claims. **However, unless by agreement of the parties, no bifurcated decree of divorce shall be entered except as set forth in 23 Pa.C.S.A. § 3323(c.1). In any bifurcated decree entered by the court without the agreement of the parties, the court shall state with specificity the compelling circumstances that exist for the entry of the decree and the economic provisions sufficient to protect the non-moving party.**

(d) In all cases the court shall enter a decree separately adjudicating each claim raised.

Explanatory Comment—2010

The Divorce Code was amended in 2004 to make it more difficult for the court to enter a bifurcated divorce decree absent the agreement of the parties. Section 3323(c.1) became effective on January 28, 2005 and limits the circumstances in which the court may enter a bifurcated decree, requiring the establishment of grounds for divorce, compelling circumstances for the entry of the decree and sufficient economic protections for the non-moving party.

Rule 1920.73. Notice of Intention to Request Entry of Divorce Decree. Praecepto to Transmit Record Forms.

* * * * *

(b) The praecipe to transmit the record prescribed by Rule 1920.42 shall be in substantially the following form:

(Caption)

PRAECIPE TO TRANSMIT RECORD

To the Prothonotary:

Transmit the record, together with the following information, to the court for entry of a divorce decree:

1. Ground for divorce: irretrievable breakdown under § (3301(c)) **and** § (3301(d)(1)) of the Divorce Code. (Strike out inapplicable section.)

2. Date and manner of service of the complaint:
_____.

3. Complete either paragraph (a) or (b).
(a) Date of execution of the affidavit of consent required by § 3301(c) of the Divorce Code: by plaintiff _____; by defendant _____.

(b)(1) Date of execution of the affidavit required by § 3301(d) of the Divorce Code:
_____;

(2) Date of filing and service of the [plaintiff's] § 3301(d) affidavit upon the [respondent] opposing party:
_____.

4. Related claim spending:

_____.

5. Complete either (a) or (b).
(a) Date and manner of service of the notice of intention to file praecipe to transmit record, a copy of which is attached:
_____.

(b) Date plaintiff's Waiver of Notice was filed with the prothonotary:

Date defendant's Waiver of Notice was filed with the prothonotary:

Attorney for (PLAINTIFF)
(DEFENDANT)

[Pa.B. Doc. No. 10-1317. Filed for public inspection July 23, 2010, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 11]

Proposed Amendments to Pa.Rs.Crim.P. 140, 141, 142 and 1101

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 140, 141, 142 and 1101 to provide for limitations on punishment for contempt before the minor judiciary and to suspend 42 Pa.C.S. § 4137(c) as unconstitutional pursuant to *Commonwealth vs. McMullen*, 599 Pa. 435, 961 A.2d 842 (2008). This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Note that the Committee's 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 rule precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635

fax: (717) 231-9520
e-mail: criminalrules@pacourts.us

no later than Friday, September 17, 2010.

By the Criminal Procedural Rules Committee

RISA VETRI FERMAN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART D. Procedures Implementing 42 Pa.C.S. §§ 4137, 4138, 4139: Criminal Contempt Powers of District Justices, Judges of the Pittsburgh Magistrates Court, and Judges of the Traffic Court of Philadelphia

Rule 140. Contempt Proceedings Before [**District Justices**] **Magisterial District Judges**, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges.

(A) CONTEMPT IN THE PRESENCE OF THE COURT

1. An issuing authority may summarily hold an individual in contempt for misbehavior in the presence of the court [**which**] **that** obstructs the administration of justice, and, after affording the individual an opportunity to be heard, may impose a punishment of a fine of **not more than \$100** or imprisonment [**as provided by law**] **for not more than 30 days or both.**

* * * * *

3. The issuing authority shall issue a written order of contempt, in which the issuing authority shall:

a. set forth the facts of the case [**which**] **that** constitute the contempt;

* * * * *

(B) CONTEMPT NOT IN THE PRESENCE OF THE COURT

1. INSTITUTION OF PROCEEDINGS

a. An issuing authority may institute contempt proceedings by either

(1) giving written notice to the alleged contemnor of the time, date, and place of the contempt hearing, or

(2) when deemed appropriate by the issuing authority, issuing an attachment by means of a warrant,

whenever a person is alleged to have (i) failed to obey a subpoena issued by the issuing authority; (ii) failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order; (iii) failed to comply with an order of a [**district justice**] **magisterial district judge** directing a defendant to compensate a victim; **or** (iv) [**violated an order issued pursuant to 23 Pa.C.S. § 6110; or (v)**] failed to comply with an order of an issuing authority in any case in which the issuing authority is by statute given the power to find the person in contempt.

b. If the proceedings are instituted by notice, the notice shall:

* * * * *

(4) advise the alleged contemnor that failure to appear at the hearing may result in the issuance of a **bench warrant [of arrest]**.

c. The notice shall be served in person or by both first class and certified mail, return receipt requested.

2. HEARING

* * * * *

c. The issuing authority shall not hold a contempt hearing in the absence of the alleged contemnor. If the alleged contemnor fails to appear for the contempt hearing, the issuing authority may continue the hearing and issue a **bench warrant [of arrest]**.

3. PUNISHMENT

Punishment for contempt may not exceed the limits set forth as follows:

a. Whenever a person is found to have failed to obey a subpoena issued by the issuing authority, punishment may be a fine of not more than \$100. Failure to pay within a reasonable time could result in imprisonment for not more than 10 days.

b. Whenever a person is found to have failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order, punishment may be imprisonment for not more than 90 days.

c. Whenever a person is found to have failed to comply with an order of an issuing authority directing a defendant to compensate a victim, punishment may be a fine of not more than \$100 or imprisonment for not more than 30 days, or both.

Comment

This rule sets forth the procedures to implement 42 Pa.C.S. §§ 4137, 4138, and 4139 concerning contempt powers of the minor judiciary, as well as any other statutes subsequently enacted [**which**] that would provide for findings of contempt by the minor judiciary. It is not intended to supplant the procedures set forth in 23 Pa.C.S. § [**6113**] **6110 et seq.** concerning violations of protection from abuse orders.

The scope of the contempt powers of [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges is governed by 42 Pa.C.S. §§ 4137, 4138, and 4139 respectively. Therefore, as used in this rule, “issuing authority” refers only to [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers. **However, 42 Pa.C.S. §§ 4137(c), 4138(c), and 4139(c) contain limitations upon the punishment that a minor court may impose for contempt. Such statutory limitations were held to be unconstitutional in Commonwealth v. McMullen, 599 Pa. 435, 961 A.2d 842 (2008) and, to the extent that 42 Pa.C.S. §§ 4137(c), 4138(c), and 4139(c) are inconsistent with this rule, they are suspended by Rule 1101 (Suspension of Acts of Assembly).**

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is

retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

* * * * *

Paragraph (A) sets forth the procedures for handling contempt proceedings when the misbehavior is committed in the presence of the court and is obstructing the administration of justice. See 42 Pa.C.S. §§ 4137(a)(1), 4138(a)(1), and 4139(a)(1). This type of contempt is commonly referred to as “direct” or “summary” contempt. The issuing authority may immediately impose punishment without a formal hearing because prompt action is necessary to maintain or restore order in the courtroom and to protect the authority and dignity of the court. Although immediate action is permitted in these cases, the alleged contemnor is ordinarily given an opportunity to be heard before the imposition of punishment. See *Commonwealth v. Stevenson*, 482 Pa. 76, 393 A.2d 386 ([Pa.] 1978).

* * * * *

For purposes of this rule, the phrase “failed to obey a subpoena issued by the issuing authority” in paragraph (B)(1)(a) is intended to include the failure to obey any other lawful process ordering the person to appear before an issuing authority.

Pursuant to 42 Pa.C.S. §§ 4137(a)(2), (3), (4), and (5), 4138(a)(2) and (3), and 4139(a)(2) and (3), only [**district justices**] **magisterial district judges** have the power to impose punishment for contempt of court for failure to comply with an order directing a defendant to compensate a victim or an order issued pursuant to 23 Pa.C.S. § 6110. See paragraph (B)1.a.

* * * * *

No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the contempt hearing. 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). Also see Rule 454 concerning counsel in summary cases. The Supreme Court in *Commonwealth v. Abrams*, 461 Pa. 327, 336 A.2d 308 ([Pa.] 1975) held that the right to counsel applies in cases of criminal contempt. See also *Commonwealth v. Crawford*, 466 Pa. 269, 352 A.2d 52 ([Pa.] 1976).

* * * * *

If a contemnor defaults in the payment of a fine imposed as punishment for contempt pursuant to [**42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c)**] **this rule**, the matter is to proceed as provided in Rule 142.

See Chapter 5 Part C concerning bail before a contempt hearing. See 42 Pa.C.S. § 4137(e) concerning a [**district justice’s**] **magisterial district judge’s** authority to set bail after an adjudication of contempt.

* * * * *

Paragraph (B)2.b(5) requires that the case be reviewed at the conclusion of a contempt hearing to determine whether the restitution order or the fines and costs installment order should be altered or amended, rather than scheduling another hearing. This review should be conducted whether or not the [**district justice**] **magisterial district judge** finds an individual in contempt for failure to comply with an order to pay restitution, or whether or not the issuing authority finds an individual in contempt for failure to comply with an installment

order to pay fines and costs. For the authority to alter or amend a restitution order, see 18 Pa.C.S. § [106] 1106(c)(2)(iii).

Official Note: Rule 30 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 140 and amended March 1, 2000, effective April 1, 2001; Comment revised March 26, 2004, effective July 1, 2004; **amended 2010, effective , 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. [1477] 1478 (March 18, 2000).

* * * * *

Report explaining the proposed amendments concerning limitations on punishment for contempt published at 40 Pa.B. 4146 (July 24, 2010).

Rule 141. Appeals from Contempt Adjudications by [**District Justices**] **Magisterial District Judges**, Pittsburgh Magistrates Court Judges, or Philadelphia Traffic Court Judges.

* * * * *

(E) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

* * * * *

(4) any **bench** warrant [**of arrest**].

* * * * *

Comment

This rule provides the procedures for taking an appeal from a finding of contempt by a [**district justice**] **magisterial district judge**, a Pittsburgh Magistrates Court judge, or a Philadelphia Traffic Court judge.

As used in this rule, "issuing authority" refers only to [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers. See 42 Pa.C.S. §§ 4137, 4138, and 4139.

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

As the Pennsylvania Supreme Court stated in *Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842 (2008), legislative limitations on a court's power to sentence for contempt are unconstitutional. To the extent that 42 Pa.C.S. §§ 4137(c), 4138(c), and

4139(c) provide such limitations, they are suspended by Rule 1101 (Suspension of Acts of Assembly).

* * * * *

See 42 Pa.C.S. § 4137(e) concerning the imposition of bail as a condition of release by a [**district justice**] **magisterial district judge**.

* * * * *

Official Note: Rule 31 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 141 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; **amended , 2010 effective , 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. [1477] 1478 (March 18, 2000).

* * * * *

Report explaining the proposed amendments regarding limitations on punishment for contempt published at 40 Pa.B. 4146 (July 24, 2010).

Rule 142. Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt.

(A) If a contemnor defaults on the payment of a fine imposed as punishment for contempt pursuant to [**42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c)**] **Rule 140(A)(1) and (B)(3)**, the issuing authority shall notify the contemnor in person or by first class mail that within 10 days of the date on the default notice the contemnor must either:

- (1) pay the amount due as ordered, or
 - (2) appear before the issuing authority to explain why the contemnor should not be imprisoned for nonpayment as provided by law,
- or a **bench** warrant for the contemnor's arrest shall be issued.

* * * * *

Comment

This rule provides the procedures governing defaults in the payment of fines imposed as punishment for contempt in proceedings before [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges. See [**42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c)**] **Rule 140(A)(1) and (B)(3)**.

As used in this rule, "issuing authority" refers only to [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers. See 42 Pa.C.S. §§ 4137, 4138, and 4139.

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the

Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

For contempt procedures generally, see Rule 140.

As the Pennsylvania Supreme Court stated in *Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842 (2008), legislative limitations on a court's power to sentence for contempt are unconstitutional. To the extent that 42 Pa.C.S. §§ 4137(c), 4138(c), and 4139(c) provide such limitations, they are suspended by Rule 1101 (Suspension of Acts of Assembly).

When a contemnor defaults on a payment of a fine, paragraph (A) requires the issuing authority to notify the contemnor of the default, and to provide the contemnor with an opportunity to either pay the amount due or appear within a 10-day period to explain why the contemnor should not be imprisoned for nonpayment. If the contemnor fails to pay or appear, the issuing authority must issue a bench warrant for the arrest of the contemnor.

* * * * *

Official Note: Rule 32 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 142 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; amended , 2010 effective , 2010.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed rule changes regarding limitations on punishment for contempt published at 40 Pa.B. 4146 (July 24, 2010).

CHAPTER 11. ABOLITIONS AND SUSPENSIONS

Rule 1101. Suspension of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly:

* * * * *

(8) The Act of June 15, 1994, P. L. 273, No. 45, § 1, 42 Pa.C.S. §§ 4137, 4138, and 4139, that provides, *inter alia*, limitations on the punishment that may be imposed for contempt is suspended only insofar as the Act is inconsistent with the punishment limitations set forth in Rule 140. See *Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842 (2008) (legislative limitations on a court's power to sentence for contempt is unconstitutional).

Comment

This rule is derived from former Rules 39, 159, 340, 1415, and 2020, the rules previously providing for the suspension of legislation.

Official Note: Former Rule 39 adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 159 adopted September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; amended April 10, 1989, effective July 1, 1989; amended January 31, 1991, effective July 1, 1991; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule

1101. Former Rule 340 combined previous Rules 321 and 322, which were the prior suspension rules, and was adopted June 29, 1977, effective September 1, 1977; amended April 24, 1981, effective June 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 1415 adopted July 23, 1973, effective 90 days hence; paragraph (g) added March 21, 1975, effective March 31, 1975; amended August 14, 1995, effective January 1, 1996; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. Former Rule 2020 adopted September 3, 1993, effective January 1, 1994; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 1101. New Rule 1101 adopted March 1, 2000, effective April 1, 2001; amended , 2010 effective , 2010.

Committee Explanatory Reports:

FORMER RULE 39:

Final Report explaining the provisions of new Rule 39 published with the Court's Order at 27 Pa.B. [5401] 5405 (October 18, 1997).

FORMER RULE 159:

Report explaining the January 31, 1991 amendments to former Rule 159 published at 20 Pa.B. [4788] 4793 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

* * * * *

FORMER RULE 2020:

Report explaining the provisions of former Rule 2020 published at 21 Pa.B. [3681] 3684 (August 17, 1991).

NEW RULE 1101:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 1101 published at 30 Pa.B. [1477] 1478 (March 18, 2000).

Report explaining the proposed rule changes regarding the suspension of portions of 42 Pa.C.S. §§ 4137, 4138, and 4139, published at 40 Pa.B. 4146 (July 24, 2010).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 140, 141, 142, and 1101

Punishment for Contempt

On December 18, 2008, the Court issued the opinion in *Commonwealth v. McMullen*, 961 A.2d 842 (Pa. 2008), which held, *inter alia*, that the Legislature may not "create a form of indirect criminal contempt and restrict the court's ability to punish individuals who commit contempt of court," and therefore 42 Pa.C.S. § 4136(b), which provides that the punishment for the indirect criminal contempt addressed in the statute is limited to a fine not exceeding \$100 or imprisonment not exceeding 15 days and that the defendant is entitled to a jury trial, "unconstitutionally restricts the court's ability to punish for contempt." This case was brought to the Committee's attention because, although it addresses only the provisions of 42 Pa.C.S. § 4136(b) (indirect criminal contempt), 42 Pa.C.S. § 4137(c) also mandates the sentence that may be imposed for contempt before magisterial district judges.

Rules of Criminal Procedure 140 (Contempt Proceedings Before District Justices, Pittsburgh Magistrate Court Judges, and Philadelphia Traffic Court Judges.), 141 (Appeals from Contempt Adjudications by District Justices, Pittsburgh Magistrate Court Judges, and Philadel-

phia Traffic Court Judges.), 142 (Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt), that were adopted in 1997, implement 42 Pa.C.S. § 4137 providing the procedures for instituting the contempt proceedings, *etc.*, but do not address the punishment provisions in 42 Pa.C.S. § 4137(c).¹ The rules also reference 42 Pa.C.S. §§ 4138 and 4139, defining similar contempt powers for the Pittsburgh Magistrate's Court and Philadelphia Traffic Court, respectively.

The Committee studied the *McMullen* opinion and the statutes, as well as the history of Rules 140-142, and concluded that the holding in *McMullen* also applied to the statutory limitations imposed on the minor judiciary and therefore, the statutory limitations were unconstitutional. Although concluding the statutes are unconstitutional in so far as they set limitations on punishment, from the Committee's review of the statutory provisions, [also believed] the members concluded the statutory punishments are reasonable. The members also concluded that there should be some reasonable parameters for the exercise of the contempt power by the minor courts spelled out in the Criminal Rules, and agreed to incorporate the statutory punishments.

Rule 140 is the general rule for contempt procedures in the magisterial district courts, the Pittsburgh Magistrate's Court, and the Philadelphia Traffic Court. Rule 140 breaks the procedures down into two contempt categories, contempt committed in the presence of the court and contempt occurring outside of the presence of the court. Each contempt category and associated procedures are described separately. The Committee agreed the statutory punishment limitations would go in Rule 140. Thus, the statutory punishment limitations for contempt before the court would be enumerated in current paragraph (A)(1). The statutory punishment limitations for contempt occurring outside of the presence of the court would be enumerated in a new paragraph (B)(3).

One of the punishment limitations in 42 Pa.C.S. § 4137 applies to a violation of an order issued pursuant to 23 Pa.C.S. § 6110, the portion of the Protection from Abuse Act authorizing emergency protection from abuse orders to be issued by the minor judiciary. The Committee concluded that protection from abuse proceedings are unique and that any limitations on the rare circumstance under which the minor judiciary would adjudicate contempt under this statute are not appropriately addressed in a general Rule of Criminal Procedure. Therefore, the proposed amendments to Rule 140 would delete from paragraph (B)(2) the reference to 23 Pa.C.S. § 6110 and expand the existing Comment language that states "It is not intended to supplant the procedures set forth in 23 Pa.C.S. § 6113 concerning violations of protection from abuse orders" to include the entire Protection from Abuse Act, 23 Pa.C.S. § 6110 *et seq.*

Rule 140 presently contains one category of contempt for which the statutes do not provide any limitation on punishment. That category is described as a failure to "comply with an order of an issuing authority in any case in which the issuing authority is by statute given the power to find the person in contempt." The Committee noted that the only example of such a statute not covered by the existing punishment provisions was found in 42 Pa.C.S. § 1523 which, in summary cases before a magisterial district judge in which the defendant is a juvenile, permits the magisterial district judge to issue an order directing the parent or guardian of the juvenile to appear

¹ At the time, the Committee believed that the scope of the punishment was substantive and therefore not subject for the Court's rule-making authority, and did not question the constitutionality of the punishment provisions of the statutes.

at the summary hearing. Observing that a failure to obey the order to appear is the same as failing to obey a subpoena, the Committee agreed that this specific instance would be addressed by adding to the Rule 140 Comment that the rule's use of the phrase "failed to obey a subpoena issued by the issuing authority" included any other lawful process ordering the person to appear before an issuing authority.

Another revision to the Rule 140 Comment would be an explanation regarding the status of the Pittsburgh Magistrate's Court. Currently, the Pittsburgh Magistrate's Court is no longer staffed and its function has been taken over by the Pittsburgh Municipal Court that is staffed by magisterial district judges. However, since the Magistrate's Court has never been disestablished and theoretically could be re-staffed, the terminology is retained in the rules with an explanation in the Comments to Rules 140, 141, and 142.

Rule 141 provides procedures for appeal from contempt findings in the minor courts, and does not address any matters related to punishment limitations. There is a cross-reference to the statutes contained in the Rule 141 Comment but that refers primarily to stay provisions that already have been suspended. Therefore, only a general cross-reference to the suspension of the punishment limitations in Rule 1101 would be added to the Comment.

Rule 142 provides procedures for the handling of defaults in payment of fines imposed for contempt. The Rule 142 Comment currently cross-references the punishment provisions of the statutes. Conforming to the other changes, that cross-reference would be changed to refer to punishment provisions that would be added to Rule 140.

Finally, an amendment describing the suspensions of the statutory provisions, which would be limited solely to the punishment provisions of 42 Pa.C.S. § 4137(c), would be added to Rule 1101.

[Pa.B. Doc. No. 10-1318. Filed for public inspection July 23, 2010, 9:00 a.m.]

[234 PA. CODE CH. 9]

Proposed Amendments to Pa.Rs.Crim.P. 907, 908 and 909, and the Revision of the Comment to Pa.R.Crim.P. 910

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 907—909 (relating to disposition without hearing; hearing; and procedures for petitions in death penalty cases: stays of execution of sentence; hearing; disposition), and approve the revision of the Comment to Rule of Criminal Procedure 910 (relating to appeal). The proposed changes clarify that a new notice of appeal has to be filed within 30 days of the order reinstating the direct appeal rights *nunc pro tunc*. The proposed changes also clarify the requirements for issuing and filing orders following a PCRA disposition. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

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

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

Anne T. Panfil, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635

fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

no later than Friday, September 17, 2010.

By the Criminal Procedural Rules Committee

RISA VETRI FERMAN,
Chair

Annex A

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

Rule 907. Disposition Without Hearing.

Except as provided in Rule 909 for death penalty cases,

* * * * *

(4) When the petition is dismissed without a hearing, the judge **promptly** shall issue an order to that effect and shall advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the petition and of the time **limits** within which the appeal must be [**taken**] **filed**. **The order shall be filed and served as provided in Rule 114.**

(5) **When the petition is granted without a hearing, the judge promptly shall issue an order granting a specific form of relief, and issue any supplementary orders appropriate to the proper disposition of the case. The order shall be filed and served as provided in Rule 114.**

Comment

* * * * *

Second or subsequent petitions will not be entertained unless a strong *prima facie* showing is offered to demonstrate that a miscarriage of justice may have occurred. See *Commonwealth v. Szuchon*, 534 Pa. 483, 486, 633 A.2d 1098, 1099 ([Pa.] 1993) (citing *Commonwealth v. Lawson*, 519 Pa. 504, 549 A.2d 107 ([Pa.] 1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent of the crimes charged. See *Commonwealth v. Szuchon*, 534 Pa. 483, 487, 633 A.2d 1098, 1100 ([Pa.] 1993).

When the disposition granting a petition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge must advise the defendant by certified mail, return receipt requested that a new notice of appeal must be filed within 30 days of the order.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

* * * * *

Official Note: Previous Rule 1507 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; amended January 28, 1983, effective July 1, 1983; rescinded February 1, 1989, effective July 1, 1989, and not replaced. Present Rule 1507 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 907 and amended March 1, 2000, effective April 1, 2001; Comment revised September 18, 2008, effective February 1, 2009; **amended** , **2010, effective** , **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. [1477] 1478 (March 18, 2000).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. [5428] 5431 (October 4, 2008).

Report explaining the proposed amendments to paragraph (4) and the addition of paragraph (5) concerning orders and the proposed revision of the Comment concerning appeals nunc pro tunc published at 40 Pa.B. 4149 (July 24, 2010).

Rule 908. Hearing.

* * * * *

(D) Upon the conclusion of the hearing the judge shall [:

(1)] determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any[;].

[(2)] (1) **If the judge dismisses the petition, the judge promptly shall issue an order denying relief [or]. The order shall be filed and served as provided in Rule 114.**

(2) **If the judge grants the petition, the judge promptly shall issue an order granting a specific form of relief, and issue any supplementary orders appropriate to the proper disposition of the case. The order shall be filed and served as provided in Rule 114.**

(E) If the judge disposes of the case in open court **in the presence of the defendant** at the conclusion of the hearing, the judge shall advise the defendant on the record of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken. If the case is taken under advisement, **or when the defendant is not present in open court**, the judge, by certified mail, return receipt requested, shall advise the defendant of the right to appeal **from the final order disposing of the petition and of the time limits within which the appeal must be filed.**

Comment

* * * * *

The 1997 amendment to paragraph (A)(1) requires a hearing on every Commonwealth motion to dismiss due to delay in the filing of a PCRA petition. See 42 Pa.C.S. § 9543(b), as amended in 1995.

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge, pursuant to paragraph (E), also must advise the defendant that a new notice of appeal must be filed within 30 days of the order reinstating the direct appeal rights.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

* * * * *

Official Note: Rule 1508 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 908 and amended March 1, 2000, effective April 1, 2001; Comment revised September 18, 2008, effective February 1, 2009; amended , 2010, effective 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. [1477] 1478 (March 18, 2000).

Final Report explaining the [Setpember] September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. [5428] 5431 (October 4, 2008).

Report explaining the proposed amendments to paragraphs (D) and (E) concerning orders and notice to the defendant, and the proposed revision of the Comment concerning appeals *nunc pro tunc* published at 40 Pa.B. 4149 (July 24, 2010).

Rule 909. Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition.

* * * * *

(B) Hearing; Disposition

* * * * *

(2) If the judge is satisfied from this review that there are no genuine issues concerning any material fact, the defendant is not entitled to post-conviction collateral relief, and no legitimate purpose would be served by any further proceedings,

* * * * *

(c) No later than 90 days from the date of the notice, or from the date of the defendant's response, the judge shall issue an order:

(i) [dismiss] dismissing the petition [and issue an order to that effect];

(ii) [grant] granting the defendant leave to file an amended petition; or

(iii) [order] ordering that an evidentiary hearing be held on a date certain.

The order shall be filed and served as provided in Rule 114.

* * * * *

Comment

* * * * *

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, the judge must

advise the defendant either in person or by certified mail, return receipt requested that a new notice of appeal must be filed within 30 days of the order.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

Official Note: Previous Rule 1509 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 August 11, 1997, effective immediately. Present Rule 1509 adopted August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; renumbered Rule 909 and amended March 1, 2000, effective April 1, 2001; amended February 12, 2002, effective July 1, 2002, 32 Pa.B. 1173; amended October 7, 2005, effective February 1, 2006; amended , 2010, effective , 2010.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments to paragraph (2)(c) concerning orders and the revision of the Comment concerning appeals *nunc pro tunc* published at 40 Pa.B. 4149 (July 24, 2010).

Rule 910. Appeal.

* * * * *

Comment

Disposition without a hearing under Rule 907(A) and (B), or under Rule 909(C)(3)(a), constitutes a final order under this rule. A partial disposition under Rule 907(C) is not a final order until the judge has fully disposed of all claims.

When the disposition reinstates a defendant's direct appeal rights *nunc pro tunc*, a new notice of appeal must be filed within 30 days of the order.

Official Note: Previously Rule 1509, adopted February 1, 1989, effective July 1, 1989; renumbered Rule 1510 and amended August 11, 1997, effective immediately; renumbered Rule 910 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised , 2010, effective , 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. [1477] 1478 (March 18, 2000).

Report explaining the proposed Comment revision concerning appeal *nunc pro tunc* published at 40 Pa.B. 4149 (July 24, 2010).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 907, 908, and 909, and the Revision of the Comment to Pa.R.Crim.P. 910

Time to File Appeal *Nunc Pro Tunc*

I. Introduction

The Committee is planning to propose to the Supreme Court revisions of the Comments to Rules of Criminal Procedure 907 (Disposition Without Hearing), 908 (Hearing), 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition), and 910 (Appeal) that clarify that a new notice of appeal must be filed within 30 days of the order reinstat-

ing the defendant's direct appeal rights *nunc pro tunc*. The Committee also is proposing amendments to Rules of Criminal Procedure 907, 908, and 909 that clarify the procedures for the issuing and filing of orders in PCRA dispositions.

The Appellate Court Procedural Rules Committee noted from case law and anecdotal information from its members that apparently there is confusion about the procedures for proceeding with a direct appeal *nunc pro tunc*. Specifically, some defendants do not understand that they must file a new notice of appeal and that the time for filing is within 30 days of the order reinstating the direct appeal right. The Appellate Court Rules Committee asked the Criminal Procedural Rules Committee to consider clarifying this issue in the Criminal Rules when the reinstatement of appellate rights occurs in procedures under the Post Conviction Relief Act (PCRA).

The Committee reviewed the rules in Chapter 9 (Post-Conviction Collateral Relief Proceedings), noting that Rules 907, 908, and 909 require the judge to advise the defendant of his or her appeal rights following the disposition the PCRA petition. The members initially thought the rules already provide adequate notice even for the reinstated appeal case following the granting of a PCRA petition. After further consideration, because there is confusion in practice, the members agreed something should be said in the rules. However, because this clarification would be how to handle a particular type of case—appeals *nunc pro tunc*—that already is covered generally in the rule requirements that the judge advise the defendant of his or her right to appeal, the clarification should be in the Comments to the rules. Accordingly, the Comments to Rules 907, 908, and 909 would be revised to emphasize that, when appellate rights have been reinstated, the PCRA judge must advise the defendant that a new notice of appeal is required to be filed within 30 days of the order reinstating the direct appeal rights *nunc pro tunc*. In addition, because Rule 910 addresses appeals following a PCRA disposition, a comparable provision would be added to the Rule 910 Comment.

During the Committee's examination of Rules 907, 908, and 909, several members opined that the provisions concerning the issuing of orders following the disposition of a petition are incomplete because the rules do not explicitly require an order when the petition is granted nor do the rules require the orders be filed. The Committee agreed the rules should be amended to clarify the procedures governing the issuing and filing of orders in PCRA cases to ensure there is no confusion about these procedures.

II. Discussion of Proposed Rule Changes

Rule 907

Rule 907 sets forth the procedures for the disposition of a PCRA petition without a hearing. Paragraph (4) requires a judge to issue an order when the petition is dismissed. The Committee is proposing the paragraph be amended to include the requirement that the judge act promptly and that the order be filed and served as provided in Rule 114. A new paragraph (5) would be added to set forth the procedures when a petition is granted. This new paragraph conforms with the provisions in Rule 908(D)(2) with regard to issuing supplementary orders appropriate to the disposition of the cases.

The Comment includes the new language emphasizing the judge's responsibility to advise the defendant to file a new notice of appeal when the disposition is the reinstatement of the defendant's appellate rights and that the

notice of appeal must be filed within 30 days of the order reinstating the appellate rights. Similar language is being included in the Comments to Rules 908 and 909.

In addition, an explanatory paragraph is added concerning the obligation of the clerk of courts to comply with the requirements for Rule 114 comparable to the paragraph in the Rule 909 Comment.

Rule 908

Rule 908 sets forth the procedures for the hearing on a PCRA petition. Paragraph (D) addresses what is to occur at the conclusion of the hearing. The Committee is proposing that the paragraph be restructured and amended to more clearly enumerate the judge's responsibilities at the conclusion of the hearing. Current paragraph (D)(1) would be moved into paragraph (D) to read:

Upon the conclusion of the hearing, the judge shall determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any.

Current paragraph (D)(2) would be reorganized into two subparagraphs. New paragraph (D)(1) would provide the procedures when the judge dismisses the petition and new paragraph (D)(2) would provide the procedures when the judge grants the petition. In both situations, the judge is required to act promptly and the order must be filed and served as provided in Rule 114.

The Committee also is proposing some clarifying amendments to paragraph (E). Paragraph (E) permits the judge to announce the decision in open court or to take the matter under advisement. The proposed amendments emphasize the difference in the method of providing notice to the defendant of the appellate rights (1) when the decision is announced in open court with the defendant present and (2) when the defendant is not present, or when the matter is taken under advisement.

Rule 909

Rule 909 governs procedures specifically related to death penalty cases. Paragraph (B)(2)(c) sets forth the actions the judge must take following giving notice of an intention to dismiss the petition. The Committee is proposing a few housekeeping amendments and the addition of the requirement that the judge's order be filed and served as provided in Rule 114.

Rule 910

Rule 910 provides that the orders under the PCRA rules granting, denying, dismissing, or otherwise finally disposing of the PCRA petition is a final order for purposes of appeal. The only change being proposed for Rule 910 is the addition to the Comment of the provision clarifying that when the disposition is the reinstatement of the defendant's appellate rights, the new notice of appeal must be filed within 30 days of the order.

[Pa.B. Doc. No. 10-1319. Filed for public inspection July 23, 2010, 9:00 a.m.]

[234 PA. CODE CH. 10]

Proposed Amendments to Pa.R.Crim.P. 1010

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule of Criminal Procedure 1010 (relating to procedure on appeal) to conform the procedures for appeals for trials *de novo* in cases in Philadelphia with

the Statewide procedures for appeals for trials *de novo*. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed amendments to Rule 1010 precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Counsel
 Supreme Court of Pennsylvania
 Criminal Procedural Rules Committee
 Pennsylvania Judicial Center
 601 Commonwealth Avenue, Suite 6200
 P. O. Box 62635
 Harrisburg, PA 17106-2635

fax: (717) 231-9521
 e-mail: criminalrules@pacourts.us

no later than Friday, September 17, 2010.

By the Criminal Procedural Rules Committee

RISA VETRI FERMAN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA TRAFFIC COURT

PART A. Philadelphia Municipal Court Procedures Rule 1010. Procedure on Appeal.

[(A) The attorney for the Commonwealth, upon receiving the notice of appeal, shall prepare an information and the matter shall thereafter be treated in the same manner as any other court case.

(B) If the defendant fails to appear for the trial *de novo*, the Common Pleas Court judge may dismiss the appeal and enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

(C) If the defendant withdraws the appeal, the Common Pleas Court judge shall enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.]

(A) When a defendant appeals after conviction by a Municipal Court judge:

(1) in a non-traffic summary case, upon the filing of the transcript and other papers, the case shall be heard *de novo* by the judge of the Court of Common Pleas sitting without a jury; or

(2) in a Municipal Court case, the attorney for the Commonwealth, upon receiving the notice of appeal, shall prepare an information and the matter shall thereafter be treated in the same manner as any other court case.

(B) If the defendant fails to appear, the Common Pleas Court judge may dismiss the appeal and thereafter shall enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

(C) Withdrawals of Appeals:

(1) if the defendant withdraws the appeal, the Common Pleas Court judge shall enter the judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

(2) in a Municipal Court case, the defendant may withdraw the appeal only with the written consent of the attorney for the Commonwealth.

(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial.

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

(1) if the defendant's sentence includes restitution, a fine, or costs, state the date on which payment is due. If the defendant is without the financial means to pay the amount in a single remittance, the Common Pleas Court judge may provide for installment payments and shall state the date on which each installment is due;

(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 Common Pleas Court 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 Common Pleas Court judge. The order shall include the information specified in paragraphs (E)(1) through (E)(3), and a copy of the order shall be given to the defendant.

(F) After sentence is imposed by the Common Pleas Court judge, the case shall remain in the Court of Common Pleas for the execution of sentence, including for the collection of any fine and restitution, for the collection of any costs, and for proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.

Comment

In any case in which there are summary offenses joined with the misdemeanor charges that are the subject of the appeal, the attorney for the Commonwealth must include the summary offenses in the information. *See Commonwealth v. Speller*, 311 Pa. Super. 569, 458 A.2d 198 (1983).

See Rule 1001(A) for the definition of "Municipal Court case."

Paragraph (B) makes it clear that the Common Pleas Court judge may dismiss an appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the Common Pleas Court judge should enter judgment and order execution of any sentence imposed by the Municipal Court judge.

Once sentence is imposed, paragraph (F) 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 Municipal Court judge. The execution of sentence includes the collection of any fines and restitution and any proceedings for violation of probation, intermediate punishment, or parole as provided by Rule 708.

Official Note: Rule 6010 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended August 28, 1998, effective immediately; renumbered Rule 1010 March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended February 12, 2010, effective April 1, 2010; **amended** , 2010, **effective** , 2010.

Committee Explanatory Reports:

Final Report explaining the August 28, 1998 amendment published with the Court's Order at 28 Pa.B. [4625] 4627 (September 12, 1998).

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 March [3] 9, 2006 **Comment revision concerning joinder of summary offenses with misdemeanor charges published with the Court's Order at 36 Pa.B. [1385] 1392** (March 25, 2006).

Final Report explaining the February 12, 2010 amendments to paragraph (B) concerning the disposition of summary offenses at the court of common pleas published with the Court's Order at 40 Pa.B. [1068] 1071 (February 27, 2010).

Report explaining the proposed amendments concerning failure to appear for and withdrawal of appeals published at 40 Pa.B. 4152 (July 24, 2010).

REPORT

Proposed Amendments to Pa.R.Crim.P. 1010

Appeals for Trial *De Novo* in Philadelphia

I. Introduction

The Committee is planning to propose to the Supreme Court amendments to Rule of Criminal Procedure 1010 (Procedure for Appeals) that would conform the procedures for appeals for trials *de novo* in Philadelphia to the statewide procedures for appeals for trials *de novo*. The Committee undertook a review of the procedures for trials *de novo* in Philadelphia after receiving communications from the legal staff of the Administrative Office of Pennsylvania Courts (AOPC) suggesting that, because there are no rules setting forth the procedures for appealing for a trial *de novo* from Philadelphia Municipal Court to the Philadelphia Common Pleas Court, there is little uniformity in how these appeals for a trial *de novo* are handled.

The Municipal Court handles both non-traffic summary cases and all misdemeanor cases. Appeals from the disposition of the non-traffic summary and misdemeanor cases in the Municipal Court are to the Court of Common Pleas for a trial *de novo*.¹ Rule 1010 (Procedure on Appeal) only addresses the filing of an information by the Commonwealth after receiving the notice of appeal. The procedures for conducting appeals for trials *de novo* in the other judicial districts are limited to appeals from both

traffic and non-traffic summary cases and are governed by Rule 462 (Trial *De Novo*).²

The Committee reviewed the statewide procedures for the trial *de novo* set forth in Rule 462, and agreed, for the most part, these procedures should be adapted to govern the trial *de novo* in Philadelphia. The members recognized that some of the statewide procedures would have to be modified for the appeals in misdemeanor cases. For example, Rule 1010 already requires that an information be filed after a notice of appeal is filed in a misdemeanor case, and this requirement has been incorporated into the proposed amendments. Unless specifically provided otherwise in the Rule 1010, the procedures are the same for the non-summary traffic appeals and the appeals in misdemeanor cases.

II. Discussion of Proposed Rule 1010 Amendments

Paragraph (A)(1) is identical to Rule 462(A) and provides that, in non-traffic summary cases, the case is to be heard *de novo* by a common pleas court judge sitting without a jury. Paragraph (A)(2) addresses misdemeanor cases, and incorporates the current language from Rule 1010 requiring the preparation of the information by the attorney for the Commonwealth. In addition, the case is to be treated in the same manner as any other court case.

Paragraph (B) is identical to Rule 462(D) and permits the Common Pleas Court judge to dismiss the appeal if the defendant fails to appear for the trial *de novo*. The Comment explains that the judge may dismiss the appeal if the judge determines that the defendant is absent without cause. If the judge does dismiss the appeal in this circumstance, the rule requires the judge to enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

Paragraph (C)(1) is identical to Rule 462(E) permitting the withdraw of an appeal in a non-traffic summary case, and requiring the Common Pleas Court judge to enter judgment in the Common Pleas Court on the judgment of the Municipal Court judge. Paragraph (C)(2) permits a defendant to withdraw an appeal in a misdemeanor case, but only with the written consent of the attorney for the Commonwealth. The Committee added this requirement because, for example, in the misdemeanor cases, the attorney for the Commonwealth will have to move the court to *nolle prosequi* the informations.

Paragraph (D) is taken from Rule 462(F). The paragraph requires the Common Pleas Court judge at the conclusion of the trial to announce the verdict and sentence, if any, in open court.

Paragraph (E) is identical to Rule 462(G). The paragraph sets forth the Common Pleas Court judge's responsibilities at the time of sentencing, including issuing a written order imposing the sentence. The judge also must state the date on which payment of any fines, costs, and restitution must be paid, and may provide for payment in installment. Finally, the judge is required to advise the defendant of his or her appeal rights.

Paragraph (F) incorporates the provisions of Rule 462(H) requiring the case to remain in the Common Pleas Court for the execution of sentence. In addition, to accommodate the misdemeanor cases, paragraph (F) provides that the case would remain in Common Pleas Court for any proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.

[Pa.B. Doc. No. 10-1320. Filed for public inspection July 23, 2010, 9:00 a.m.]

¹ Pursuant to Article V, Section 26 of the Constitution, the parties may petition for a writ of certiorari (only in misdemeanor cases) or may appeal for a trial *de novo*.

² In Philadelphia, the procedures for appeals in traffic summary cases are governed by Rule 1037.

Title 255—LOCAL COURT RULES

MERCER COUNTY

Public Access Policy; Official Case Records of the Magisterial District Courts; No. 2010-2504

Order

And Now, this 29th day of June, 2010, in accordance with the Judicial Code, 42 Pa.C.S. § 4301(b), and pursuant to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts*, adopted by the Pennsylvania Supreme Court effective July 1, 2010, the Court Hereby Approves, Adopts and Promulgates Mercer County Administrative Order 4 A.D. 2010, effective thirty (30) days after the date of publication of this Order in the *Pennsylvania Bulletin*, pursuant to Rule 239 of the Pennsylvania Rules of Civil Procedure. This Order shall be utilized to ensure a policy is in place to govern public access to the records of the Magisterial District Courts of the Thirty-fifth Judicial District.

It is also *Ordered and Directed* that the Court Administrator of Mercer County shall file seven (7) certified copies of this Order with the Administrative Office of Pennsylvania Courts, furnish two (2) certified copies and one (1) diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and file one certified copy with the Minor Court Procedural Rules Committee.

It is further *Ordered and Directed* that Local Rules shall be kept continuously available for public inspection and copying in the Office of the Prothonotary of Mercer County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of the Local Rules.

A copy of this Administrative Order shall be published in the *Mercer County Law Journal*.

By the Court

FRANCIS J. FORNELLI,
President Judge

IN THE COURT OF COMMON PLEAS OF MERCER
COUNTY, THIRTY-FIFTH JUDICIAL DISTRICT OF
PENNSYLVANIA

ADMINISTRATIVE ORDER # 4 2010

Public Access Policy: Official Case Records of the
Magisterial District Courts of Mercer County

1. Public Access Request.

(a) Verbal requests for records are to be filled within 48 hours.

(b) Information subject to a sealing order, restricted by law or court rule, and the courts notes, drafts and work product are not accessible to the public.

(c) Magisterial District Courts have the discretion to require that a "complex or voluminous" request be submitted in writing on a form supplied by the Administrative Office of Pennsylvania Courts. Exactly what is "complex or voluminous" may vary from court to court depending on factors such as court resources and case load.

(d) All denials for record requests must be issued in writing and the requestor, within 15 business days of notification of the decision, can appeal such denial to the Mercer County Court of Common Pleas.

2. Fee Schedule

(a) Copy per page—\$.25.

(b) Preparing, copying and refilling requested court documents—\$8.00 per 1/4 hour with a minimum of 1/4 hour.

(c) Postage—at cost.

(d) Estimated costs to be prepaid.

(e) Fees paid for services rendered are nonrefundable

[Pa.B. Doc. No. 10-1321. Filed for public inspection July 23, 2010, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Brian Baum having been permanently disbarred on consent from the practice of law in the Southern District of Texas by Order of the United States District Court for the Southern District of Texas dated April 14, 2006, the Supreme Court of Pennsylvania issued an Order on July 8, 2010, disbaring Brian Baum from the Bar of this Commonwealth, effective August 7, 2010. 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. 10-1322. Filed for public inspection July 23, 2010, 9:00 a.m.]

Notice of Disbarment

Notice is hereby given that Ward Shaffer Taggart having been disbarred by consent from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated June 23, 2009, the Supreme Court of Pennsylvania issued an Order on July 8, 2010, disbaring Ward Shaffer Taggart from the Bar of this Commonwealth, effective August 7, 2010. 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. 10-1323. Filed for public inspection July 23, 2010, 9:00 a.m.]