

THE COURTS

Title 207—JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

[207 PA. CODE CH. 51]

Proposed Amendments to Rule 15 of the Rules Governing Standards of Conduct for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania revise Rule 15 of the Pennsylvania Rules Governing Standards of Conduct for Magisterial District Judges. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

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

Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635

Fax: 717-231-9546

or email to: minorcourt.rulespa@courts.us

no later than November 5, 2010.

By the Minor Court Rules Committee

MARK A. BRUNO,
Chair

Annex A

TITLE 207. JUDICIAL CONDUCT

PART II. CONDUCT STANDARDS

CHAPTER 51. STANDARDS OF CONDUCT OF MAGISTERIAL DISTRICT JUDGES

PENNSYLVANIA RULES FOR MAGISTERIAL DISTRICT JUDGES

Rule 15. Public Office and Political Activity.

A. Magisterial district judges shall not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof, except in the armed services of the United States or the Commonwealth.

B. (1) **As used in this paragraph, "partisan political activity" includes, but is not limited to, serving as a committee-person, working at a polling place on Election Day, performing volunteer work in a political campaign, making political speeches, making or soliciting contributions for a political campaigns, political action committee or organization, attending political gatherings, dinners or other**

functions, but shall not include involvement in non-partisan or public community organizations or professional groups.

(2) Magisterial district judges or a candidate for such office shall not:

[(1)] (a) hold office in a political party or political organization or publicly endorse candidates for political office.

[(2)] (b) engage in partisan political activity, **[deliver political speeches, make or solicit political contributions (including purchasing tickets for political party dinners or other functions) or attend political or party conventions or gatherings,]** except as authorized in subdivision C of this rule. Nothing herein shall prevent magisterial district judges or candidates for such offices from making political contributions to a campaign of a member of their immediate family.

C. Magisterial district judges or candidates for such offices may **[in the year they run for office,]** attend political or party conventions or gatherings, speak to such gatherings or conventions on their own behalf, identify themselves as members of a political party, and contribute to **[their own campaign,]** a political party or political organization (including purchasing tickets **with their own personal funds** for political party dinners or other functions) **beginning immediately following the General Election in the year prior to the calendar year in which they may become a candidate for such office. Magisterial district judges or candidates for such offices may contribute to their own campaigns at such time as permitted by law.**

D. With respect to their campaign conduct, magisterial district judges or candidates for such office shall:

(1) maintain the dignity appropriate to judicial office, and shall encourage members of their family to adhere to the same standards of political conduct that apply to them.

(2) prohibit public officials or employees subject to their direction or control from doing for them what they are prohibited from doing under this rule; and except to the extent authorized under subdivision D(4) of this rule shall not allow any other person to do for them what they are prohibited from doing under this rule.

(3) not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; make statements that commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or misrepresent their identity, qualifications, present position, or other fact.

Commentary: The United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002) concluded that a canon of judicial conduct prohibiting judicial candidates from "announcing their views on disputed legal or political issues" is violative of the First Amendment of the United States Constitution.

(4) not themselves solicit or accept campaign funds, or solicit publicly stated support, but they may establish committees of responsible persons to secure and manage the expenditure of funds for their campaign, **including the purchase of tickets for political party dinners or other functions**, and to obtain public statements of

support for their candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. Candidates' committees may solicit funds for their campaign no earlier than thirty (30) days prior to the first day for filing nominating petitions, and all fundraising activities in connection with such campaign shall terminate no later than the last calendar day of the year in which the election is held. Candidates should not use or permit the use of a campaign contribution for the private benefit of themselves or members of their family.

E. Magisterial district judges shall resign their office when they become candidates either in a party primary or in a general election for a non-judicial office.

Official Note: This rule is derived from former Rule 15 and from Canon 7 of the American Bar Association and Pennsylvania Supreme Court Code of Judicial Conduct, as well as Guidelines Regarding Political Activity By Court-Appointed Employees, see 204 Pa. Code 29.471—474. This rule prohibits only political activity that is partisan in nature and consequently there is no objection to magisterial district judges becoming engaged in political activity of a public service nature, such as, for example, political activity in behalf of measures to improve the law, the legal system or the administration of justice.

Nothing in paragraph C is intended to promote the ability of a magisterial district judge or candidate for such office to announce candidacy for office, form a committee or raise funds prior to the date prescribed by law.

REPORT

Proposed Amendments to the Pennsylvania Rules Governing Standards of Conduct for Magisterial District Judges

General Prohibition on Partisan Political Activity and Permitted Political Activity Prior to Initiation of Campaign

I. Background

The Minor Court Rules Committee (“the Committee”) was contacted by the chair and vice-chair of the Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania with a request to discuss possible amendments to Rule 15 of the Pennsylvania Rules Governing Standards of Conduct for Magisterial District Judges (“Rule 15”) to clarify the point in time at which magisterial district judges and candidates for such office may begin undertaking otherwise prohibited political activity prior to the formal start of campaign activities. While considering those amendments, the Committee also examined the undefined term “partisan political activity,” and drafted a non-inclusive definition to clarify the prohibition on such activity.

II. Discussion

The Committee reviewed Rule 15C, which provides that “[m]agisterial district judges or candidates for such offices may in the year they run for office” engage in otherwise prohibited political activities. (Emphasis added.) The Committee found the phrase “in the year they run” ambiguous, and agreed that setting a date certain for the permissible initiation of political activities would clarify the matter for both incumbents and candidates.

During its discussion of Rule 15, the Committee examined the term “partisan political activity” as used in Rule 15B(2), and noted that it was not a defined term.

Accordingly, the Committee endeavored to draft a non-inclusive definition of “partisan political activity” to aid magisterial district judges in identifying proscribed conduct.

III. Proposed Rule Changes

To address the issues discussed above, the Committee proposes adding a definition of “partisan political activity” to Rule 15, and amending the permitted period for engaging in political activities to “immediately following the General Election in the year prior to the calendar year in which they may become a candidate for such office.” However, the Committee does not intend for these changes to promote the ability of a magisterial district judge or candidate to announce candidacy for office, to form a committee, or to raise funds prior to the date prescribed by law.

[Pa.B. Doc. No. 10-1866. Filed for public inspection October 1, 2010, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Proposed Amendments to Rules 120 and 140

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120 and 140 be adopted and prescribed. These proposed modifications address a definition for “court” and make clarifications in the bench warrant rule.

The following Explanatory Report highlights the intent of this Rule. Please 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 Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Friday, October 29, 2010.

By the Juvenile Court Procedural Rules Committee

CYNTHIA K. STOLTZ, Esq.,
Chair

Annex A
TITLE 237. JUVENILE RULES
PART I. RULES

Subpart A. DELINQUENCY MATTERS
CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

* * * * *

JUDGE is a judge of the Court of Common Pleas.

* * * * *

Comment

* * * * *

The term “disposition” includes all final determinations made by the court. A disposition includes a response to an adjudication of delinquency, such as sending the juvenile to a placement facility or placing the juvenile on probation. It also includes other types of final determinations made by the court. Other final determinations include a finding that the juvenile did not commit a delinquent act pursuant to Rule 408(B), a finding that the juvenile is not in need of treatment, rehabilitation, or supervision pursuant to Rule 409(A)(1), dismissing the case “with prejudice” prior to an adjudicatory hearing, or any other final action by the court that closes or terminates the case.

The term “judge” is a judge of the Court of Common Pleas, including senior judges when they are properly commissioned. It does not include magisterial district judges. Magisterial district judges; however, are included within the definition of “court” when they have the power to issue arrest warrants pursuant to Rule 210. Arrest warrants are distinguished from Bench Warrants pursuant to Rules 140 & 141. Only judges of the Court of Common Pleas may issue bench warrants if the juvenile: 1) fails to appear at a hearing; or 2) absconds from the court’s supervision.

The “official court record” is to contain all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case. The court may also designate any document to be a part of the record. It does not include items contained in juvenile probation’s reports and files unless they are made a part of the official record by being filed with the clerk of courts.

* * * * *

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 36 Pa.B. 186 (January 14, 2006).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 37 Pa.B. 1483 (April 7, 2007).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendment to Rule 120 published with the Court’s Order at 39 Pa.B. 4743 (August 8, 2009).

Final Report explaining the amendments to Rule 120 published with the Court’s Order at 40 Pa.B. 222 (January 9, 2010).

Rule 140. Bench Warrants for Failure to Appear at Hearings.

A. Issuance of warrant.

1) Before a bench warrant may be issued by a judge, the judge shall find that the subpoenaed or summoned person received sufficient notice of the hearing and failed to appear.

2) For the purpose of a bench warrant, a judge may not find notice solely based on first-class mail service.

B. Entry of warrant information. Upon being notified by the court, the juvenile probation officer or other court designee shall enter or request that a law enforcement officer enter the bench warrant in all appropriate registries.

C. Juvenile.

1) *Where to take the juvenile.*

a) When a juvenile is taken into custody pursuant to a bench warrant, the juvenile shall be taken without unnecessary delay to the judge who issued the warrant or a judge **or master** designated by the President Judge to hear bench warrants.

b) If the juvenile is not brought before a judge **or master**, the juvenile shall be released unless:

i) the warrant specifically orders detention of the juvenile; or

ii) there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile.

c) If a juvenile is detained, the juvenile shall be detained in a detention facility or other facility designated in the bench warrant by the judge pending a hearing.

2) *Prompt hearing.*

a) If a juvenile is detained [**pursuant to a specific order in the bench warrant**], the juvenile shall be brought before the judge who issued the warrant, a judge **or master** designated by the President Judge to hear bench warrants, or an out-of-county judge pursuant to paragraph (C)(4) within seventy-two hours.

b) If the juvenile is not brought before a judge **or master** within this time, the juvenile shall be released.

3) *Notification of guardian.* If a juvenile is taken into custody pursuant to a bench warrant, the arresting officer shall immediately notify the juvenile’s guardian of the juvenile’s whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a juvenile is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) Arrangements to transport the juvenile shall be made immediately.

c) If transportation cannot be arranged immediately, then the juvenile shall be taken without unnecessary delay to a judge **or master** of the county where the juvenile is found.

d) The judge will identify the juvenile as the subject of the warrant, decide whether detention is warranted, and order that arrangements be made to transport the juvenile to the county of issuance.

5) *Time requirements.* The time requirements of Rules 240, 391, 404, 510, and 605 shall be followed.

D. *Witnesses.*

1) *Where to take the witness.*

a) When a witness is taken into custody pursuant to a bench warrant, the witness shall be taken without unnecessary delay to the judge who issued the warrant or a judge **or master** designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge **or master**, the witness shall be released unless the warrant specifically orders detention of the witness.

c) A motion for detention as a witness may be filed anytime before or after the issuance of a bench warrant. The judge **or master** may order detention of the witness pending a hearing.

1) *Minor.* If a detained witness is a minor, the witness shall be detained in a detention facility.

2) *Adult.* If a detained witness is an adult, the witness shall be detained at the county jail.

2) *Prompt hearing.*

a) If a witness is detained pursuant to paragraph (D)(1)(c) or brought back to the county of issuance pursuant to paragraph (D)(4)(f), the witness shall be brought before the judge **or master** by the next business day.

b) If the witness is not brought before a judge within this time, the witness shall be released.

3) *Notification of guardian.* If a witness who is taken into custody pursuant to a bench warrant is a minor, the arresting officer shall immediately notify the witness's guardian of the witness's whereabouts and the reasons for the issuance of the bench warrant.

4) *Out-of-county custody.*

a) If a witness is taken into custody pursuant to a bench warrant in a county other than the county of issuance, the county of issuance shall be notified immediately.

b) The witness shall be taken without unnecessary delay and within the next business day to a judge **or master** of the county where the witness is found.

c) The judge **or master** will identify the witness as the subject of the warrant, decide whether detention as a witness is warranted, and order that arrangements be made to transport the witness to the county of issuance.

d) Arrangements to transport the witness shall be made immediately.

e) If transportation cannot be arranged immediately, the witness shall be released unless the warrant or other order of court specifically orders detention of the witness.

i) *Minor.* If the witness is a minor, the witness may be detained in an out-of-county detention facility.

ii) *Adult.* If the witness is an adult, the witness may be detained in an out-of-county jail.

f) If detention is ordered, the witness shall be brought back to the county of issuance within seventy-two hours from the execution of the warrant.

g) If the time requirements of this paragraph are not met, the witness shall be released.

E. *Return and execution of the warrant for juveniles and witnesses.*

1) The bench warrant shall be executed without unnecessary delay.

2) The bench warrant shall be returned to the judge who issued the warrant or to the judge **or master** designated by the President Judge to hear bench warrants.

3) When the bench warrant is executed, the arresting officer shall immediately execute a return of the warrant with the judge.

4) Upon the return of the warrant, the judge shall vacate the bench warrant.

5) Once the warrant is vacated, the juvenile probation officer or other court designee shall remove or request that a law enforcement officer remove the bench warrant in all appropriate registries.

Comment

Pursuant to paragraph (A), the judge is to ensure that the person received sufficient notice of the hearing and failed to attend. The judge may order that the person be served in-person or by certified mail, return receipt. The judge may rely on first-class mail service if additional evidence of sufficient notice is presented. For example, testimony that the person was told in person about the hearing is sufficient notice. Before issuing a bench warrant, the judge should determine if the guardian was notified.

Under Rule 800, 42 Pa.C.S. § 6335(c) was suspended only to the extent that it is inconsistent with this rule. Under paragraph (A)(1), the judge is to find a subpoenaed or summoned person failed to appear and sufficient notice was given to issue a bench warrant. The fact that the juvenile or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. This rule, however, does not prohibit probation from recommending detention for a juvenile. The normal rules of procedure in these rules are to be followed if a juvenile is detained. *See* Chapter Two, Part D.

Pursuant to paragraph (C), the "juvenile" is the subject of the delinquency proceedings. When a witness is a child, the witness is referred to as a "minor." This distinction is made to differentiate between children who are alleged delinquents and children who are witnesses. *See* paragraph (C) for alleged delinquents and paragraph (D) for witnesses. *See* also Rule 120 for definition of "juvenile" and "minor."

Pursuant to paragraph (C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge **or master** designated by the President Judge of that county to hear bench warrants.

[Pursuant] This provision allows the judge the discretion to postpone a hearing until later in the same day while the police officer, sheriff, or probation officer retrieves the juvenile. The juvenile is to be brought immediately before the court for the hearing. However, pursuant to paragraph (C)(1)(b), if

a bench warrant specifically provides that the juvenile may be detained in a detention facility, **or there are circumstances learned at the time of the surrender or apprehension that warrant detention of the juvenile**, the juvenile may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (C)(2)(a). The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. *See* paragraph (C)(2)(b).

However, at the seventy-two hour hearing, the judge or master may determine that the juvenile willfully failed to appear and may continue the detention of the juvenile until the rescheduled hearing. If the juvenile is detained, the rescheduled hearing is governed by the time requirements of all the other rules of procedure. *See* Rules 240, 391, 404, 510 and 605.

Under paragraphs (C)(2) and (C)(4), a juvenile taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the juvenile is found. *See* Rule 240(C).

Pursuant to paragraph (C)(4), the juvenile may be detained out-of-county until transportation arrangements can be made.

Pursuant to paragraph (C)(5), the time requirements of all other rules are to apply to juveniles who are detained. *See, e.g.,* Rules 240, 391, 404, 510, and 605.

Pursuant to paragraph (D)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge **or master** designated by the President Judge of that county to hear bench warrants. **[Pursuant] This provision allows the judge the discretion to postpone a hearing until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the witness. The witness is to be brought immediately before the court for the hearing. However, pursuant to paragraph (D)(1)(b), if the judge or master is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (D)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (D)(2) is to be held by the next business day or the witness is to be released. *See* paragraph (D)(2)(b).**

However, at the twenty-four hour hearing, the judge or master may determine that the witness willfully failed to appear and is in contempt of court, or that the witness is in need or protective custody. If the judge or master has made one of these findings, the judge or master may continue the detention of the witness until the rescheduled hearing. The judge or master should schedule the hearing as soon as possible. In any event, if the witness is detained, the rescheduled hearing must be conducted by the specific time requirements of all the other rules of procedure. *See* Rules 240, 391, 404, 510 and 605.

Pursuant to paragraph (D)(4)(b), a witness is to be brought before an out-of-county judge **or master** by the next business day unless the witness can be brought before the judge who issued the bench warrant within this time. When the witness is transported back to the county of issuance within seventy-two hours of the execution of the bench warrant, the witness is to be brought

before the judge who issued the bench warrant by the next business day. *See* paragraph (D)(4)(f).

Pursuant to paragraph (E)(2), the bench warrant is to be returned to the judge who issued the warrant or to the judge **or master** designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. *See* paragraph (E)(3).

Pursuant to paragraph (E)(4), the bench warrant is to be vacated after the return of the warrant is executed. "Vacated" is to denote that the bench warrant has been served, dissolved, executed, dismissed, canceled, returned, or any other similar language used by the judge to terminate the warrant. The bench warrant is no longer in effect once it has been vacated.

Pursuant to paragraph (E)(5), once the warrant is vacated, the juvenile probation officer, other court designee, or law enforcement officer is to remove the warrant from all appropriate registries so the juvenile is not taken into custody on the same warrant if the juvenile is released.

See 42 Pa.C.S. § 4132 for punishment of contempt for juveniles and witnesses.

Official Note: Rule 140 adopted February 26, 2008, effective June 1, 2008[; amended]. Amended September 30, 2009, effective January 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 140 published with the Court's Order at 38 Pa.B. 1142 (March 8, 2008).

Final Report explaining the amendments to Rule 140 with the Court's Order at 39 Pa.B. [6033] 6029 (October 17, 2009).

EXPLANATORY REPORT

Rule 120—Definitions

The Committee wanted to clarify that when it uses the term "court" throughout the Rules, it is referring to the Court of Common Pleas. The term includes Senior Judges when they are properly commissioned. It does NOT include magisterial district judges.

Rule 140—Bench Warrants for Failure to Appear at Hearings

The term "master" was added in several places in this Rule to allow masters to hear cases if the President Judge of each judicial district has designated the master to hear bench warrant cases in their jurisdiction. *See* paragraphs (C)(2)(a) and (D)(2)(a).

The Committee is proposing that masters should be able to preside at detention hearings on bench warrants. The judge or master determines whether: 1) the juvenile willfully failed to attend the hearing for which the bench warrant was issued; and 2) the juvenile should continue to be detained until further court proceedings.

Only a judge has the authority to issue a bench warrant. However, once the juvenile is detained, the master may conduct the detention hearing when so designated by the President Judge.

Also, several provisions were added to the Comment to explain the intent of the Rule. This Rule was designed to not only allow a judge to issue a bench warrant to detain a juvenile or witness until a hearing was rescheduled, but to also allow the judge to postpone the hearing until later in the same day while a police officer, sheriff, or probation

officer retrieves the juvenile or witness and brings the juvenile or witness to court for the hearing.

This provision is helpful if everyone is present and ready to testify except the juvenile or the witness. The police officer, sheriff, or probation officer can retrieve the juvenile or witness and bring them to court to begin the proceedings. This is the current practice in some counties and is helpful in alleviating the continuances of proceedings.

In addition, the Committee would like to stress that juveniles and witnesses must be brought to court without unnecessary delay and the warrants must specifically authorize detention. Witnesses are to appear before a judge or master within twenty-four hours; whereas, the juvenile must appear within seventy-two hours. This time difference distinguishes witnesses from juveniles.

Witnesses should be treated with higher priority and should be released unless the judge or master finds that the witness willfully failed to appear or needs protective custody. Even if the judge or master finds that the witness willfully failed to appear, a witness may be released in the court's discretion.

[Pa.B. Doc. No. 10-1867. Filed for public inspection October 1, 2010, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CHS. 300 AND 500]

Proposed Rule 326 and Amendments to Rules 324 and 514 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt an entirely new Rule 326, as well as revisions to Rules 324 and 514 of the Pennsylvania Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

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

Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635

Fax: 717-231-9546

or email to: minorcourt.rules@pacourts.us

no later than November 12, 2010.

By the Minor Court Rules Committee

MARK A. BRUNO,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 324. Notice of Judgment [**or Dismissal**] and the Right to Appeal.

A. Upon the entry of the judgment, the magisterial district court shall promptly give or mail to the parties written notice of judgment [**or dismissal**].

B. The written notice of judgment [**or dismissal**] shall contain:

* * * * *

(Editor's Note: The following rule is new and printed in regular type to enhance readability.)

Rule 326. Plaintiff Request to Withdraw Complaint; Settlement.

A.(1) A plaintiff may withdraw the complaint prior to the commencement of the hearing by filing a written notice of withdrawal with the magisterial district court. Upon receipt of such notice, the magisterial district court shall note the withdrawal of the complaint on the docket, cancel any scheduled hearing, and notify the parties.

(2) A withdrawal of the complaint filed prior to the commencement of the hearing shall be deemed to be without prejudice. The plaintiff may file a new complaint on the same cause of action upon payment of all applicable fees and costs.

B.(1) The parties may file a written notice of settlement with the magisterial district court at any time prior to the entry of judgment. Upon receipt of such request, the magisterial district court shall note the case settled on the docket, cancel any scheduled hearings, and notify the parties.

(2) Where the parties have filed a notice of settlement with the magisterial district court and a subsequent breach of the settlement agreement occurs, a party may file a new complaint citing breach of the settlement agreement as the cause of action.

Official Note: A complaint filed pursuant to subparagraph A(2) or B(2) shall not be treated as a "reinstatement" of the underlying action, and is subject to all prescribed costs for filing and service of a complaint. *Compare with* Rule 314, which provides for reinstatement of the complaint under the limited circumstance of failure to make timely service.

This rule also applies to the withdrawal or settlement of a counterclaim.

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 514. Judgment; Notice of Judgment [**or Dismissal**] and the Right to Appeal.

* * * * *

C. (1) Judgment shall be given at the conclusion of the hearing or within three days thereafter.

(2) Upon the entry of the judgment, the magisterial district court shall promptly give or mail to the parties written notice of judgment [**or dismissal**].

D. The written notice of judgment [or dismissal] shall contain:

* * * * *

REPORT

Proposed New Rule 326 and Revisions to Rules 324 and 514 of the Pennsylvania Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges

Withdrawal of Complaint by Plaintiff and Settlement Between the Parties

I. Background

As part of its long term planning process, the Minor Court Rules Committee (“the Committee”) discussed the need for a rule based practice in the magisterial district courts for withdrawal of the complaint and settlement of the action. It was noted that the Pennsylvania Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges (“the Rules”) do not provide for such actions, resulting in inconsistent statewide practice, and uncertainty for litigants. Moreover, the Committee wished to distinguish civil actions resulting in withdrawals and settlements from complaints dismissed without prejudice, which is limited in the Rules to the circumstances of failure of service under Rule 314(D). Finally, the Committee noted the use of the term “dismissal” in Rules 324 and 514 was misleading, as a judgment for either party is the outcome of a hearing in magisterial district court.

II. Discussion and Proposed Rule Changes

The Committee identified the need for two procedures addressing withdrawal of complaints and settlement of actions. First, the Committee addressed the situation where a plaintiff seeks to withdraw a complaint prior to the start of the hearing. The Committee proposes a new rule establishing that a plaintiff may withdraw a complaint prior to the start of the hearing upon written notice to the magisterial district court. Following receipt of such notice, the court would note the withdrawal on the docket, cancel any scheduled hearing, and notify the parties. With respect to the future rights of the parties, the Committee proposes that a withdrawal of the complaint would be deemed to be without prejudice, and a plaintiff may file a new complaint on the same cause of action upon payment of all applicable fees and costs. Under no circumstances would a new complaint filed pursuant to this rule be handled as a reinstatement, which is limited to the circumstances set forth in Rule 314 (failure to make timely service).

Second, the Committee addressed the situation where the parties seek to settle the action prior to the entry of judgment. As with a withdrawal, the court would note the settlement on the docket, cancel any scheduled hearings, and notify the parties. If a subsequent breach of the settlement agreement should occur, it would be necessary for a party to file a new complaint citing breach of the settlement agreement as the cause of action, subject to all applicable fees and costs, and would not be handled as a reinstatement of the original case.

The Committee also intends that proposed Rule 326 would also apply to the withdrawal or settlement of a counterclaim.

Finally, in reviewing other rules that use the term “dismissed,” the Committee noted that the outcome of a hearing in the magisterial district courts is a judgment for the plaintiff or defendant, not a dismissal of the

action. Accordingly, the Committee recommends deleting references to “dismissals” as used in Rules 324 and 514.

[Pa.B. Doc. No. 10-1868. Filed for public inspection October 1, 2010, 9:00 a.m.]

Title 25—LOCAL COURT RULES

ARMSTRONG COUNTY

Adoption of New Local Rules of Court; No. CP-03-AD-0000189-2002

Order of Court

And Now, this 13th day of August, 2010, effective November 1, 2010, it is hereby *Ordered* that Armstrong County Local Orphans’ Court Rule 15.4 be amended to read as follows

Rule 15.4A. Involuntary Termination of Parental Rights. Form of Notice.

(a) The notice required by 23 Pa.C.S. § 2513(b) shall state the following in italics, which will be in addition to the language explicitly called for by said statute:

Should you appear and indicate that you intend to oppose the termination of your rights, the time will be used as a pre-trial conference and a new hearing date will be set.

The language shall be added as the last sentence of the first paragraph of the statutorily prescribed notice.

(b) The notice required by 23 Pa.C.S. § 2513(b) shall designate the “Prothonotary of Armstrong County, Room 103, Armstrong County Courthouse, Kittanning, PA 16201 (telephone: 724-543-2500)” as the person from whom information can be obtained about legal help.

Comment

The Local Rules of Civil Procedure designate the Prothonotary as the person from whom information can be obtained about legal help. This rule makes the Prothonotary the source of similar information in orphans’ court matters, as well.

The Court Administrator is hereby *Directed* to:

(1) file seven certified copies of the rule with the Administrative Office of Pennsylvania Courts;

(2) distribute two certified copies of the rule and a computer diskette containing the text of the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(3) file one certified copy of the rule with the Orphan’s Court Procedural Rules Committee; and

(4) keep the rule continuously available in the Office of the Clerk of Orphans’ Court Division for public inspection and copying.

By the Court

KENNETH G. VALASEK,
President Judge

[Pa.B. Doc. No. 10-1869. Filed for public inspection October 1, 2010, 9:00 a.m.]

ARMSTRONG COUNTY

Adoption of New Local Rules of Court—2002; No. CP-03-AD-0000189-2002

Order of Court

And Now, this 13th day of August, 2010, effective November 1, 2010, it is hereby *Ordered* that Armstrong County Local Rule of Civil Procedure No. 1910.12 be amended to read as follows

Rule 1910.12. Office Conference. Hearing. Continuances. Appearances by Attorneys. Exceptions to Hearing Officer's Report. Transcript.

(a) An office conference scheduled as a result of the filing of a complaint shall be continued by the conference officer one time upon written request of a party. Each party shall be entitled to one such continuance. Thereafter, an additional continuance shall be allowed by the conference officer only if the parties agree thereto in writing or if an order of Court is obtained directing the same.

(b) The continuance of an office conference scheduled as a result of the filing of a petition to modify shall be allowed by the conference officer only if the parties agree thereto in writing or if an order of Court is obtained directing the same.

(b.1) Notwithstanding the provisions of subsections (a) and (b) of this Rule, if litigation on a current complaint or current petition to modify, including exceptions or appeals thereon, is still pending at the time a new petition to modify is filed, the office conference will not be scheduled until after the current litigation has been disposed of, unless otherwise directed by special order of Court.

(c) The continuance of a hearing to be conducted by a hearing officer may be allowed at the hearing officer's discretion.

(c.1) Notwithstanding the provisions of subsections (a), (b), (b.1), or (c) of this Rule, a general continuance or its equivalent may only be obtained by order of court. The Court, in its order granting a general continuance or its equivalent, may provide for the automatic dismissal of the cause then before it if no further action is requested or directed by a party within 180 days of the Order of Court granting the continuance.

(d) An application for a court order directing a continuance of either an office conference or a hearing shall be presented in Motions Court.

(d.1) The failure of a party to appear at a hearing after receiving notice thereof may be deemed by the hearing officer as the withdrawal of that party's complaint for support, petition to modify, or demand for hearing, as the case may be.

(e) An attorney who represents a party in any action for support shall file a written appearance. Except as otherwise provided in Pa.R.C.P. No. 1910.6, the withdrawal of an appearance shall be governed by Pa.R.C.P. No. 1012(b).

(f) A party who files exceptions to a hearing officer's report shall order, pay for, and file with the Prothonotary, a transcript of the hearing. The hearing officer shall contact the exceptant's lawyer, or if there is none, the exceptant, by mail regarding the amount and method of payment. A down payment of \$100.00 or one-half of the estimated cost of the transcript is hereby deemed to be reasonable. The Court will enforce payment of a delinquent balance for a transcript with its contempt papers.

If a transcript is not filed with the Prothonotary before argument on the exceptions, the exceptions may be dismissed for that reason.

The Court Administrator is hereby *Directed* to:

(1) file seven certified copies of the rule with the Administrative Office of Pennsylvania Courts;

(2) distribute two certified copies of the rule and a computer diskette containing the text of the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(3) file one certified copy of the rule with the Domestic Relations Procedural Rules Committee; and

(4) keep the rule continuously available in the Office of Prothonotary for public inspection and copying.

By the Court

KENNETH G. VALASEK,
President Judge

[Pa.B. Doc. No. 10-1870. Filed for public inspection October 1, 2010, 9:00 a.m.]

ARMSTRONG COUNTY

Adoption of New Local Rules of Court—2002; No. CP-03-AD-0000189-2002

Order of Court

And Now, this 13th day of August, 2010, effective November 1, 2010, it is hereby *Ordered* that Armstrong County Local Rule of Civil Procedure No. 1920.51 be amended to read as follows

Rule 1920.51. Appointment of Master. Preliminary Conference. Security for Payment of Master's Fees and Costs. Allocation.

(a) In all divorce or annulment actions where there are unresolved issues properly referable to a master under applicable statutes or rules of court, a party may move for the appointment of a master. The form of the motion shall be as prescribed by Pa.R.C.P. No. 1920.51(a)(3). The moving party shall pay a sum of money to the Prothonotary at the time the motion is filed, which sum shall be determined from time to time by order of Court, as security for payment of master's fees and costs.

(b) The master shall schedule a preliminary conference immediately after the order of appointment has been entered. The preliminary conference shall occur within sixty (60) days of the date of appointment, and it shall be attended by the parties and their counsel. At the preliminary conference, those present shall explore the possibility of resolving the issues in dispute without further litigation. At least three (3) days in advance of the preliminary conference, the parties shall exchange memoranda expressing their perceptions of and position on the issues, providing the master with a copy of the same. If a party fails to appear either personally or through counsel at a preliminary conference, the costs of the conference shall be assessed against such party in any ultimate equitable distribution award recommended by the master.

(c) After payment to the Prothonotary of an additional sum of money as security for payment of the master's fees and costs, the master shall schedule an evidentiary hearing to receive evidence on all issues which were not resolved at the preliminary conference. The master shall schedule the evidentiary hearing only after a party has

presented satisfactory proof to him that the additional security for costs have been paid. The amount of the additional security shall be determined from time to time by order of Court.

(d) The Court may, upon motion of the master presented at Motions Court, require a party to enter security for the master's fees and costs in addition to that required under subsections (a) and (c) of this rule.

(e) The master's fees and costs shall be regarded as costs of the case, and the master may recommend and the Court may order an equitable allocation of the same as part of the final adjudication and order, even if the security already paid is sufficient to pay them in full.

(f) The provisions of this rule shall apply to instances where the Court appoints a master pursuant to its own motion.

(g) The master's fee and costs incurred as a result of the scheduling or conducting of a preliminary conference or a hearing shall be paid by the Prothonotary upon approval of the court.

Comment

See L.R.C.P. No. 1920.31 for the procedure to be followed in claims for alimony pendente lite asserted in a divorce proceeding.

The Court Administrator is hereby *Directed to*:

(1) file seven certified copies of the rule with the Administrative Office of Pennsylvania Courts;

(2) distribute two certified copies of the rule and a computer diskette containing the text of the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(3) file one certified copy of the rule with the Domestic Relations Procedural Rules Committee; and

(4) keep the rule continuously available in the Office of Prothonotary for public inspection and copying.

By the Court

KENNETH G. VALASEK,
President Judge

[Pa.B. Doc. No. 10-1871. Filed for public inspection October 1, 2010, 9:00 a.m.]

ARMSTRONG COUNTY

Order Designating the Court Administrator to Receive Reports Regarding Adjustment, Progress and Condition of Child, Pursuant to Pa.R.J.C.P. 1604(B); CP-03-AD-000008-2010

Order of Court

And Now, this 13th day of August, 2010, the Court Administrator of Armstrong County is *Hereby Designated* to receive reports regarding a child's adjustment, progress, and condition, pursuant to Pa.R.J.C.P. 1604(B). The Court Administrator is hereby directed to

(1) file seven certified copies of the Order with the Administrative Office of Pennsylvania Courts;

(2) distribute two certified copies of the Order and a computer diskette containing the text of the Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(3) file one certified copy of the Order with the Juvenile Court Procedural Rules Committee; and

(4) keep the Order continuously available in the Office of the Prothonotary for public inspection and copying.

By the Court

KENNETH G. VALASEK,
President Judge

[Pa.B. Doc. No. 10-1872. Filed for public inspection October 1, 2010, 9:00 a.m.]

BEAVER COUNTY

Procedures to Govern Public Access to the Records of the Magisterial District Courts within the 36th Judicial District; Administrative Doc. No. 68 of 2010

Administrative Order

And Now, this 15th day of September, 2010, 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, it is hereby Ordered and Directed that the following procedures shall be utilized to govern public access to the records of the Magisterial District Courts within the 36th Judicial District.

A. FEES: Fee Schedule for Responding to Public Access Requests

The following fees shall be charged to the public in response to requests for public access to the official case records of the Magisterial District Courts:

(1) Photocopying/printing: \$.25/page

(2) Retrieval/Redaction: \$7.00/15 minutes
No fee shall be charged for the initial 15 minutes of staff time required to respond to a public access request.

(3) CD: \$5.00 each

(4) Postage: Actual cost

(5) Court Records Manager may require a requestor to prepay an estimate of the fees associated with the request, if the fees are expected to exceed \$100.

(6) Arrangements may be made for approved requests to be viewed by appointment at no charge.

(7) Fees under this paragraph may be waived by either the Court Records Manager or the Magisterial District Judge if it is determined that the requestor is indigent.

B. Public Access Request Procedures

(1) A request for access to official case records of the Magisterial District Courts may be made to either the Magisterial District Court from which the record is sought or from the Court Records Manager.

Any written request, regardless if submitted to a Magisterial District Court or to the Court Records Manager, shall be submitted on an AOPC Request Form. You may access this form from the following UJS web site:

<http://www.aopc.org/t/specialcourts/localrules.htm>. Such form is also available in any Magisterial District Court or may be downloaded from the Beaver County Court web site: www.beavercountycourts.org.

If a request is submitted directly to a Magisterial District Court, that court shall notify the Court Records Manager to ensure a timely and efficient response to the request.

(2) The requestor, within fifteen (15) business days of notification of the decision, may appeal a denial to the President Judge, Beaver County Courthouse, 810 Third Street, Beaver, PA 15009.

The Court Administrator of Beaver County shall file or distribute copies of this Administrative Order as follows:

1. One (1) certified copy shall be filed with the Administrative Office of Pennsylvania Courts.

2. Two (2) certified copies and a computer diskette that complies with the requirements of 1 Pa. Code § 13.11(b) shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. One (1) certified shall be kept continuously available for public inspection and copying in the office of each Magisterial District Court.

This Administrative Order shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

HONORABLE JOHN D. McBRIDE,
President Judge

[Pa.B. Doc. No. 10-1873. Filed for public inspection October 1, 2010, 9:00 a.m.]

MONROE COUNTY

Administrative Order 2010; No. AD24 5CV2010

Order

And Now, this 10th day of September, 2010, Administrative Order 21 signed February 4, 2010, (*Public Access to Magisterial District Court Records*) is rescinded, effective with the publication of this order in the *Pennsylvania Bulletin*.

It Is Further Ordered that seven (7) certified copies of this Order shall be filed with the Administrative Office of Pennsylvania Courts; that two (2) certified copies and one (1) diskette shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania; one copy to the *Monroe County Legal Reporter* for

publication, and that one copy shall be filed with the Prothonotary—Civil of the Court of Common Pleas of Monroe County.

By the Court

RONALD E. VICAN,
President Judge

[Pa.B. Doc. No. 10-1874. Filed for public inspection October 1, 2010, 9:00 a.m.]

MONROE COUNTY

Administrative Order 2010; No. AD25 5CV2010

Order

And Now, this 10th day of September, 2010, in accordance with the Judicial Code 42 Pa.C.S. § 4301(b), *It Is Ordered* that the following procedures shall be utilized to ensure a policy is in place to govern public access to the paper records of the Magisterial District Courts within the Forty-Third Judicial District.

It Is Further Ordered that seven (7) certified copies of this Order shall be filed with the Administrative Office of Pennsylvania Courts; that two (2) certified copies and one (1) diskette shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania; one copy to the *Monroe County Legal Reporter* for publication, and that one copy shall be filed with the Prothonotary—Civil of the Court of Common Pleas of Monroe County.

1. Public Request Access.

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

(b) 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 a denial to the Deputy Administrator Special Courts.

2. Fee Schedule.

(a) Copying per page—\$.25

(b) Preparing, copying and re-filing requested court documents—\$8.00 per 1/4 hour

(c) Estimated costs are to be pre-paid

(d) Fees paid for services rendered are non-refundable

5. The effective date of this Order is after publication in the *Pennsylvania Bulletin*.

By the Court

RONALD E. VICAN,
President Judge

[Pa.B. Doc. No. 10-1875. Filed for public inspection October 1, 2010, 9:00 a.m.]