THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4 AND 7]

Order Adopting Rules 490 and 790 and Rescinding Rule 722 of the Rules of Criminal Procedure; No. 394 Criminal Procedural Rules

Order

Per Curiam

And Now, this 22nd day of September, 2010, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 39 Pa.B. 4332 (7/25/2009), and in the Atlantic Reporter (Second Series Advance Sheets, Vol. 973), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Criminal Procedure 490 and 790 are adopted and Pennsylvania Rule of Criminal Procedure 722 is rescinded all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 90 days.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART H. Summary Case Expungement Procedures

490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

Rule 490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

(A) *Petition for Expungement*

(1) Except as provided in Rule 320, an individual who satisfies the requirements of 18 Pa.C.S. § 9122 for expungement of a summary case may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) A current copy of the petitioner's Pennsylvania State Police criminal record shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) *Objections; Hearing*

(1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) The order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) *Order*

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition.

A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.

"Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 594 Pa. 346, 936 A.2d 1 (2007); *Commonwealth v. J.H.*, 563 Pa. 248, 759 A.2d 1269 (2000).

***Official Note*:** Adopted September 22, 2010 effective in 90 days.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART B. Post-Sentence Procedures

Rule 722. **[Contents of Order for Expungement] Rescinded**.

[Every order for expungement shall include:

(1) the defendant's name, date of birth, and social security number;

(2) the OTN;

(3) the district justice docket number and the magisterial district number, or the Municipal Court docket number;

(4) the court of common pleas docket number, if any;

(5) the specific charges, as they appear on the charging document, to be expunged;

(6) the date of arrest and the criminal justice agency which made the arrest;

(7) the disposition;

(8) the reason for expungement; and

(9) the criminal justice agencies upon which certified copies of the order shall be served.

Comment

This rule sets forth the information that must be included in every expungement order, but is not intended to be an exclusive list.

When a summons instead of an arrest warrant is issued pursuant to Rule 518, the date of the summons constitutes the "date of arrest" for purposes of paragraph (6).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

The "reason for expungement" in paragraph (8) means, for example, acquittal, successful completion of ARD, or age.]

***Official Note*:** Rule 9017 adopted February 24, 1993, effective July 1, 1993; renumbered Rule 722 and Comment revised March 1, 2000, effective April 1, 2001**; rescinded September 22, 2010, effective in 90 days, and replaced by new Rules 490(C) and 790(C)**.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 1134 (March 13, 1993).

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 22, 2010 rescission of Rule 722 published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

PART C. Court Case Expungement Procedures

Rule 790. Procedure for Obtaining Expungement in Court Cases; Expungement Order.

(A) *Petition for Expungement*

(1) Except as provided in Rule 320 and 35 P. S. § 780-119, an individual who satisfies the requirements for expungement may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) A current copy of the petitioner's Pennsylvania State Police criminal record shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) *Objections; Hearing*

(1) Within 60 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 60-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) The order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) *Order*

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for expungement; and

(j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in court cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under this rule.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary case expungement procedures, and 35 P. S. § 780-119 for expungement procedures under The Controlled Substance, Drug, Device, and Cosmetic Act.

This rule sets forth the only information that must be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition.

An order for expungement under The Controlled Substance, Drug, Device, and Cosmetic Act, 35 P. S. § 780-119, also must include the information in paragraph (C).

A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.

"Petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

When a summons instead of an arrest warrant is issued pursuant to Rule 519, the date of the summons constitutes the "date of arrest" for purposes of paragraph (A)(2)(f).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 594 Pa. 346, 936 A.2d 1 (2007); *Commonwealth v. J.H.*, 563 Pa. 248, 759 A.2d 1269 (2000).

***Official Note*:** Adopted September 22, 2010, effective in 90 days.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 790 providing the procedures for expungements in court cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

FINAL REPORT[1]

New Pa.Rs.Crim.P. 490 and 790 and Rescission of Pa.R.Crim.P. 722

Procedures for Requesting and Ordering Expungement

On September 22, 2010, effective in 90 days, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rules of Criminal Procedure 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure for Obtaining Expungement in Court Cases; Expungement Order), and rescinded Pa.R.Crim.P. 722 (Contents of Order for Expungement). These new rules establish uniform procedures for petitioning and ordering expungement in summary and court cases.

I. Background

The Committee undertook an examination of the issue of providing in the rules the procedures for requesting expungement after the enactment of Act 134 of 2008. Act 134 amends Section 9122 of the Criminal History Record Information Act (18 Pa.C.S. § 9122) ("CHRIA") by providing that a defendant's summary offenses may be expunged when the defendant "has been free of arrest or prosecution for five years following the conviction for that offense."

When Act 134 became effective, the Committee received several communications asking us to consider rule changes that would provide the procedures for requesting expungement under the statute.[2] The Committee was cognizant that the current Rules of Criminal Procedure only establish procedures for expungement following the successful completion of an Accelerated Rehabilitation Disposition (ARD) program (Rule 320) and provide the contents of an expungement order (Rule 722). The members also opined that many defendants in summary cases likely will proceed *pro se* in seeking expungement. In view of these considerations, and recognizing that without a uniform statewide rule, the procedures may vary significantly among the judicial districts, the members agreed to explore statewide uniform procedures for requesting expungement.

II. Discussion

Initially, the Committee considered several options for how to proceed. The members considered merely retaining Rule 722 (Contents of Order for Expungement) and adding a reference to the summary expungement provisions in CHRIA in the Rule 722 Comment. The Committee also discussed adding to Rule 722 a section for procedures for summary case expungements; establishing a separate summary case expungement rule; or developing procedures for both summary and court case expungements. Ultimately, the Committee agreed (1) that the provisions for expungement following completion of ARD should continue to be handled separately under Rule 320; (2) offenses entitled to expungement under 35 P. S. § 780-119 ("Section 19") would continue to proceed under the statute; and (3) there should be separate rules establishing the procedures for summary case expungements and for court case expungements. By retaining the separate procedures for ARD cases and for cases under Section 19 and having separate new rules for all other summary and court cases, it will be easier for the members of the bench, bar, and the public to utilize the correct procedures.

The next question the Committee considered was the placement of the new rules. Because an expungement request ordinarily will not occur until after sentencing, the new summary case expungement rule has been placed at the end of Chapter 4 as new Rule 490 and the new court case expungement rule has been placed at the end of Chapter 7 as new Rule 790. To distinguish both new rules from the rules immediately preceding these new rules, new subchapters have been added to Chapter 4 and Chapter 7 governing expungement.

In determining what the procedures for summary and court case expungements should be, the Committee looked at the provisions for ARD expungements in Rule 320, the contents of the order set forth in Rule 722, the expungement procedures set forth in local rules, and the expungement procedures in other jurisdictions. Drawing from these resources, the members recommended and the Court agreed that the new rules should provide the following:

- the petition should be filed with the clerk of courts in the court of common pleas in which the offense was disposed, and a copy must be served on the attorney for the Commonwealth;
- the contents of the petition should include the information that must be included in the order required by Rule 722 and the verification language from Rule 575(2)(g);
- the attorney for the Commonwealth should have the right to file objections to the petition;
- the court should conduct a hearing when there are objections and the parties should have an opportunity to respond;
- there should be a separate section in the rules for the order that would require the judge to enter an order and the order must include all the contents from Rule 722;
- the clerk of courts must serve copies of the expungement order on the criminal justice agencies specified in the court's order.

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

[2] The Committee received communications about summary case expungements from John Heaton, Secretary to the Board of Pardons, Representative Thomas R. Caltagirone, and private citizens.

A. *New Rule 490*

New Rule 490 sets out the procedures for requesting and ordering expungement in all summary cases.

Paragraph (A)(1) and the second paragraph of the Comment make it clear that summary case ARD expungements are to proceed pursuant to Rule 320. Paragraph (A)(1) also requires the expungement petition to be filed with the clerk of courts in the judicial district in which the offenses were disposed.[3] Although the requested expungement is of summary offenses that are within the jurisdiction of the magisterial district judges, the Committee believes the CHRIA contemplates that the judges of the courts of common pleas should order expungements, even though this is not spelled out specifically in the CHRIA. Furthermore, the expungement proceedings should be in the court of common pleas because (1) there is not a rule-governed motion practice in the summary case rules; and (2) the magisterial district courts are not courts of record.[4] As a matter of uniform procedure, the term "motion" is used in the Criminal Rules whenever feasible.[5] However, for these new expungement procedures, the term "petition" is used to avoid confusion because this is the term used in the statute and in many of the local rules providing expungement procedures. To clarify this variation further, a provision has been added to the Comment explaining that "petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

Paragraph (A)(2) sets forth the contents of the petition. All the information required to be in the petition is necessary to aid the attorney for the Commonwealth and the court to identify accurately the defendant and the offense(s) the defendant is asking to have expunged. The contents are the mandatory contents and may not be supplemented or modified by local rule or practice. This prohibition against modification was added to the new rules in response to points raised in the publication responses concerning the importance of having uniformity in the expungement procedures. The correspondents noted that, if the counties are able to add to the information required on the petition, defendants will be hindered in their efforts to obtain expungement, and preclude the use of a statewide uniform form of petition that will be developed in conjunction with the adoption of these new rules. This prohibition is made clear in the last sentence of paragraph (A)(2).

Most of the required information is the same as the information that was required under Rule 722 for the expungement order. In paragaraph (A)(2)(a), the requirement of including "any aliases that the petitioner has used" has been added as an additional identifier. Paragraph (A)(2)(j) includes the requirement that the petitioner verify the facts set forth in the petition, which is consistent with all other motions. *See* Rule 575(2)(g).

Rule 722(1) required the defendant's social security number be included on the order for expungement. The Committee debated at length whether the social security number should be required on the petition and order in the new expungement rules. The members are aware that section 213.7 of the Court's new Public Access Policy governing the official case records of the magisterial district courts direct parties and their attorneys to refrain from including social security numbers on documents filed with the court. We also noted many other governmental agencies are taking the position that social security numbers should not appear on public documents, although as a compromise, some governmental agencies will require only the last four digits of the social security number. Furthermore, in their publication comments, the AOPC's automation staff reiterated the concerns about including social security numbers on the expungement petitions and orders.

Although the concerns about protecting a defendant's privacy and protecting the defendant from identity theft and other misuse of the social security number are legitimate concerns and worthy of consideration, in the context of the criminal justice system, the social security number continues to be a necessary identifier of defendants. In fact, communications from the AOPC and the Pennsylvania State Police indicate that the State Police and the FBI require the full social security number for purposes of ensuring accurate identification before these criminal justice agencies are able to expunge a defendant's criminal record. After carefully weighing the need to protect a defendant's privacy and to protect the defendant from misuse of the social security number against the stated need of various criminal justice agencies to continue to use the full social security number as an identifier, it was determined that the full social security number should be retained as an identifier in expungement cases, at least in the immediate future until such time as the social security number no longer is used as an identifier.

Paragraph (A)(3) requires the defendant to attach to the petition a copy of his or her Pennsylvania State Police criminal record. Two of the publication respondents suggested this addition because they believe providing the court with a copy of the criminal record maintained by the State Police will ensure the court has accurate information concerning the offenses the defendant is requesting be expunged. In addition, to ensure the information on the criminal record is accurate, the rule requires that the copy of the criminal record be obtained by the defendant within 60 days before filing the petition.

Paragraph (A)(4) requires that the defendant serve a copy of the petition on the attorney for the Commonwealth concurrently with filing. This requirement is consistent with Rule 576(B)(1). The requirement for concurrent service ensures the attorney for the Commonwealth receives timely notice of the petition.

Paragraph (B) sets forth the procedures for the attorney for the Commonwealth and the judge to follow after the petition is filed and served. Paragraph (B)(1) provides that after the attorney for the Commonwealth receives the petition, he or she has 30 days within which to exercise one of three options for how to proceed. Recognizing that most summary cases are not complicated and do not have extensive court records to be reviewed, the Committee reasoned a 30-day time period was an adequate amount of time for the attorney for the Commonwealth to determine if he or she is going to consent to or object to a petition for summary case expungement. The attorney for the Commonwealth, of course, may take action in less than 30 days in a given case.

The attorney for the Commonwealth may file a consent to the petition, file an objection to the petition, or take no action. During its discussions, the Committee noted that there will be cases in which the attorney for the Commonwealth will agree with the defendant that the case should be expunged. In these cases, the Committee reasoned the attorney for the Commonwealth would want to move the

[3] Pursuant to Rules 575 and 576, the petition must be filed with the clerk of courts first rather than taking the petition to a judge or the court administrator before filing.

[4] It should be noted, however, that under local procedures implementing Rules 300 and 301, some magisterial district judges may have the authority to expunge summary ARD records after successful completion in the same manner as common pleas judges under Rule 320.

[5] See the Rule 103 definition of "motion."

case along. Therefore, the "Commonwealth consents" language in the rules makes it clear that the attorney for the Commonwealth may affirmatively consent at any time after he or she receives the petition rather than allowing the full 30-day period to expire before proceeding. The "take no action" language also was added to the rule to address those cases in which the attorney for the Commonwealth determines that he or she is taking no position on the petition.

When the attorney for the Commonwealth takes action, he or she is required to file the consent or the objections with the clerk of courts. The attorney for the Commonwealth also must serve copies of the consent or objections on the petitioner's attorney, or the petitioner if unrepresented.

Paragraph (B)(2) sets forth the procedures the judge is to follow in these cases. The judge is required to take action upon receipt of the attorney for the Commonwealth's consent or objections, but in no case may the judge act later than fourteen days after the expiration of the 30-day time period in paragraph (B)(1). The issue of a time limit on the judge's action was raised in the publication responses. The Committee debated at length adding a time limit on the judge's action. Some members expressed concern that a time limit places too much of a burden on the judge. Other members expressed concern that without a time limit, these cases could languish. They also noted that the judge will have received a copy of the petition when the defendant files it, so the judge will be aware of the petition for at least 30 days before any time limit is applied. Ultimately, a 14-day time limit was included in the rule.

The judge has the discretion to enter an order granting the petition for expungement, to enter an order denying the petition, or to schedule a hearing. Although, in most cases, the judge will take action based on the petition and any response from the attorney for the Commonwealth without holding a hearing, the judge may identify issues with the petition or the attorney for the Commonwealth's response that warrant holding a hearing to resolve.

Paragraph (B)(3) requires that, when a judge schedules a hearing, the parties must be given an opportunity to be heard. At the conclusion of the hearing, the judge is required to enter an order granting or denying the petition.

Paragraph (B)(4) addresses the procedures when the judge grants the petition. The judge must enter an order and the order must contain the contents required in paragraph (C). Paragraph (B)(4)(b) provides for the stay of the expungement order during the 30-day time period within which the attorney for the Commonwealth may file an appeal. If the attorney for the Commonwealth does file an appeal, then the order will be stayed pending the disposition of the appeal and further order of the court. Although providing for the stay during the time for taking an appeal will delay the defendant's record being expunged, the stay is necessary, because, once the defendant's records are expunged, the records cannot be retrieved.

Paragraph (B)(5) addresses the procedures when the judge denies the petition. The judge is required to enter an order denying the petition. The order must state the judge's reasons for denying the petition. The judge's reasons for the denial are necessary to make a record for appeal.

Paragraph (C) sets forth the contents of the expungement order. As previously explained, the information required in paragraph (C) is the same as the information required in Rule 722. It should be noted that the judge is required to name in the order the criminal justice agencies upon which the certified copies of the order are to be served. In addition, paragraph (C)(2) requires the clerk of courts to serve the order on the criminal justice agencies listed in the order. Although the practice in some judicial districts is to require the defendant to provide the criminal justice agencies' information for the order and to do the service of the order, this practice has been rejected because these functions are court functions, and the responsibility should not be placed on the defendant.[6]

The Comment provides further elaboration on the provisions of the new rule, including emphasizing the requirement in the rule that the list of information required in the petition and the order may not be modified by local rule or practice.

One of the concerns expressed to the Committee about the new summary case expungements under the CHRIA is that many defendants in summary cases will seek to have their records expunged without the assistance of counsel. Because of this, it was suggested that the new rule include the form of the expungement petition. The Committee, when considering this suggestion, noted that, except in a few cases in which the Committee agreed the identical form must be used in all judicial districts (*e.g.* Rule 632—juror information questionnaire), the Committee has not included the actual forms in the rules since the forms were deleted from the rules in 1985.[7] The members agreed petitions to expunge a record do not fit into the category of forms that must be identical in all judicial districts, and declined to devise a form and include it in the rules. However, we did agree that having a form available for the use of petitioners is a sound idea. Accordingly, as explained in the Comment, the Administrative Office of Pennsylvania Courts will design a form, in consultation with the Committee as provided in Rule 104, that incorporates the required contents that are set forth in paragraph (A)(2). It is anticipated that this form will be easily accessible for petitioners.

Addressing one of the issues raised in the publication responses, the Comment includes a clarification about the procedures for expungement when a summary offense is joined with a misdemeanor or felony. Under the rules, when a summary offense is joined with misdemeanor or felony offenses, the case is a court case. Thus, in cases in which the summary offense has been joined with misdemeanor or felony charges, petitions to expunge these summary offenses must proceed under new Rule 790.

The Committee also discussed whether the rule should address standing to challenge expungement. The members agreed this was not something that should be addressed in the Criminal Rules, but thought it would be helpful if the Comment included a cross-reference to the cases on standing in the expungement context.

B. *New Rule 790*

Except when modification of language is necessary to conform with procedures for court cases,[8] the provisions in paragraphs (A)(2), (A)(3), (A)(4), and (C) in new Rule 790 are the same as paragraphs (A)(2), (A)(3), (A)(4), and (C) in new Rule 490 discussed above.

[6] See also Rule 114(D) prohibiting local rules requiring a party to file or serve orders and Rule 575(D) prohibiting any local rules requiring a party to attach a proposed order to a motion.

[7] The Committee's Report explaining the deletion of the forms was published at 13 Pa.B. 3813 (December 10, 1983).

[8] For example, in paragraph (A)(2)(b), the defendant is required to provide in the petition the name of the judge of the court of common pleas rather than the magisterial district judge, and paragraph (A)(2)(e) requires the OTN, a number not assigned to summary cases.

Paragraph (A)(1) of new Rule 790 and the second paragraph of the Comment make it clear that court case ARD expungements are to proceed pursuant to Rule 320,[9] and expungements arising under 35 P. S. § 780-119 are to proceed pursuant to that statute. Paragraph (A)(1) also requires the expungement petition to be filed with the clerk of courts in the judicial district in which the offenses were disposed.[10]

Paragraph (B) sets forth the procedures in court cases for the attorney for the Commonwealth to file a consent to the petition to expunge, any objections to the petition to expunge, and for the judge to take action. In court cases, the attorney for the Commonwealth is given 60 days to decide whether to file a consent, file objections, or to take no action on the petition. The attorney for the Commonwealth is afforded additional time in court cases because there may be more extensive records to review and more complicated issues to address. Paragraphs (B)(1) and (B)(2) incorporate the 60-day time period. In all other respects, paragraph (B) is the same as paragraph (B) in Rule 490 discussed above.

The Rule 790 Comment includes the same provisions that are in the Rule 490 Comment discussed above. One point the Committee discussed in the context of new Rule 790 is whether the order expunging a record under 35 P. S. § 780-119 must include the same contents as orders issued pursuant to new Rule 790. The AOPC representative to the Committee pointed out that currently, under Rule 722, these expungement orders do comply with Rule 722. Although cases under 35 P. S. § 780-119 are excluded from the application of the new rules, the Section 19 orders will continue to be required to include the same information as all other court case expungements, that is, the contents set forth in Rule 790(C) must be included in the Section 19 expungement order. To make this clear, a provision to that effect has been added to the fifth paragraph of the Rule 790 Comment.

[Pa.B. Doc. No. 10-1920. Filed for public inspection October 8, 2010, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 2, 3, 4, 5, 6, 11, 12, 13, 14, 15 AND 16]

Proposed Rules and Amendments for Procedures Regarding Advanced Communication Technology

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 120, 160, 242, 345, 394, 406, 512, 610, 1120, 1128, 1140, 1160, 1242, 1345, 1406, 1512, 1608; renumbering of Rules 130 to 136 and 1130 to 1136; and new Rules 129, 130, 1129 and 1130 be adopted and prescribed. These proposed modifications set forth the procedures regarding advanced communication technology.

The following Explanatory Report highlights the intent of these Rules. 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, Nov. 5, 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.

ADVANCED COMMUNICATION TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations and includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication; closed circuit television; telephone and facsimile equipment; and electronic mail.

ADULT is any person, other than a juvenile, eighteen years old or older.

AFFIANT is any responsible person, capable of taking an oath, who signs, swears to, affirms, or when permitted by these rules, verifies a written allegation and appreciates the nature and quality of that person's act.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law or local practice to maintain the official court record and docket, without regard to that person's official title.

COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means and includes, but is not limited to, copies reproduced by a photocopier, transmission using facsimile equipment, or by scanning into and printing out of a computer.

COURT is the Court of Common Pleas, a court of record, which is assigned to hear juvenile delinquency matters. Court shall include masters when they are

[9] This point also is addressed in the second paragraph of the proposed new Rule 490 Comment.

[10] Pursuant to Rules 575 and 576, the petition must be filed with the clerk of courts first rather than taking the petition to a judge or the court administrator before filing.

permitted to hear cases under these rules and magisterial district judges when issuing an arrest warrant pursuant to Rule 210. Juvenile Court shall have the same meaning as Court.

DETENTION FACILITY is any facility, privately or publicly owned and operated, designated by the court and approved by the Department of Public Welfare to detain a juvenile temporarily. The term detention facility, when used in these rules, shall include shelter-care.

DISPOSITION is a final determination made by the court after an adjudication of delinquency or any determination that ceases juvenile court action on a case.

ELECTRONIC FILING is the electronic transmission of a document to the clerk of courts for filing in a proceeding, including but not limited to, motions, proposed orders, requests, exhibits, and attachments, by means other than facsimile transmission.

ELECTRONIC SERVICE is the electronic transmission of a document to a party, attorney, or representative under these rules.

GUARDIAN is any parent, custodian, or other person who has legal custody of a juvenile, or person designated by the court to be a temporary guardian for purposes of a proceeding.

INTAKE STAFF is any responsible person taking custody of the juvenile on behalf of the court, detention facility, or medical facility.

ISSUING AUTHORITY is any public official having the power and authority of a magistrate, a Philadelphia bail commissioner, or a Magisterial District Judge.

JUVENILE is a person who has attained ten years of age and is not yet twenty-one years of age who is alleged to have committed a delinquent act before reaching eighteen years of age.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for juvenile delinquency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a juvenile medically or psychologically.

MINOR is any person, other than a juvenile, under the age of eighteen.

OFFICIAL COURT RECORD is the juvenile court file maintained by the clerk of courts which contains all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each juvenile case.

ORDINANCE is a legislative enactment of a political subdivision.

PARTIES are the juvenile and the Commonwealth.

PENAL LAWS include all statutes and embodiments of the common law, which establish, create, or define crimes or offenses, including any ordinances that may provide for placement in a juvenile facility upon a finding of delinquency or upon failure to pay a fine or penalty.

PETITION is a formal document by which an attorney for the Commonwealth or the juvenile probation officer alleges a juvenile to be delinquent.

PETITIONER is an attorney for the Commonwealth or a juvenile probation officer, who signs, swears to, affirms, or verifies and files a petition.

PLACEMENT FACILITY is any facility, privately or publicly owned and operated, that identifies itself either by charter, articles of incorporation or program description, to receive delinquent juveniles as a case disposition. Placement facilities include, but are not limited to, residential facilities, group homes, after-school programs, and day programs, whether secure or non-secure.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of the person's employment.

POLITICAL SUBDIVISION shall mean county, city, township, borough, or incorporated town or village having legislative authority.

PROCEEDING is any stage in the juvenile delinquency process occurring once a written allegation has been submitted.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

VERIFICATION is a written statement made by a person that the information provided is true and correct to that person's personal knowledge, information, or belief and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

WRITTEN ALLEGATION is the document that is completed by a law enforcement officer or other person that is necessary to allege a juvenile has committed an act of delinquency.

Comment

"Clerk of courts" is the person given the power under state law or local practice to maintain the official court record. *See* Rule 166 for additional responsibilities of the clerk of courts.

Under the term "court," to determine if masters are permitted to hear cases, see Rule 187. See Rule 210 for the power of magisterial district judges to issue arrest warrants.

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 "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.

Neither the definition of "law enforcement officer" nor the definition of "police officer" gives the power of arrest to any person who is not otherwise given that power by law.

A "petition" and a "written allegation" are two separate documents and serve two distinct functions. A "written allegation" is the document that initiates juvenile delinquency proceedings. Usually, the "written allegation" will be filed by a law enforcement officer and will allege that the juvenile has committed a delinquent act that comes within the jurisdiction of the juvenile court. This document may have been formerly known as a "probable cause affidavit," "complaint," "police paper," "charge form," "allegation of delinquency," or the like. Once this document is submitted, a preliminary determination of the juvenile court's jurisdiction is to be made. Informal adjustment and other diversionary programs may be pursued. If the attorney for the Commonwealth or the juvenile probation officer determines that formal juvenile court action is necessary, a petition is then filed.

For definition of "delinquent act," see 42 Pa.C.S. § 6302.

***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).

Rule 129. **[Open Proceedings (Reserved)] Appearance by Advanced Communication Technology**.

A. *Generally*. The juvenile or a witness may appear at a proceeding by utilizing advanced communication technology. At a minimum, the juvenile shall appear in person at least once a year.

B. *Requirements*. Advanced communication technology shall be utilized only upon:

1) direction or approval of the court; and

2) good cause shown or by agreement of the parties.

C. *Counsel*.

1) The juvenile shall be permitted to confer with counsel before entering into an agreement under paragraph (B)(2).

2) The juvenile shall be permitted to communicate fully and confidentially with counsel immediately prior to and during the proceeding.

Comment

Paragraph (A) requires that every juvenile is to appear in court at least once a year. This includes juveniles who are not removed from their homes but who are under the court's supervision. *See also* Rule 610 for requirements of dispositional and commitment review hearings.

It is best practice to conduct hearings every three months and for the judge to see the juvenile in person every six months, especially if a long-term disposition is anticipated.

This rule is not intended to compel the use of advanced communication technology but rather permit the use of appearance by telephone or by a system providing two-way simultaneous audio-visual communication. Advanced communication technology may be utilized for the convenience of witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or at a remote location.

Pursuant to paragraph (C)(2), the juvenile is to be permitted to confer with counsel privately. The juvenile is to be afforded all the same rights as if the hearing was held with all parties present in the courtroom.

Rule 130. **[Public Discussion by Court Personnel of Pending Matters] Court Fees Prohibited for Advanced Communication Technology**.

[All court personnel including, among others, juvenile probation officers, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending juvenile case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.]

The court shall not impose any fees upon a party or witness for utilizing advanced communication technology.

Comment

***See* March 13, 2002 Order of the Supreme Court of Pennsylvania (No. 241 Judicial Administration; Doc. No. 1) which provides that no fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology.**

Rule 136. Public Discussion by Court Personnel of Pending Matters.

All court personnel including, among others, juvenile probation officers, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending juvenile case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

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 designated by the President Judge to hear bench warrants.

b) If the juvenile is not brought before a judge, 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 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 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 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 designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge, 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 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 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 of the county where the witness is found.

c) The judge 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. ***Advanced Communication Technology*. A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.**

F. *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 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 designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, 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).

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 designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (D)(1)(b), if the judge 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).

Pursuant to paragraph (D)(4)(b), a witness is to be brought before an out-of-county judge 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)] (F)(2)**, the bench warrant is to be returned to the judge who issued the warrant or to the judge designated by the President Judge to hear warrants by the arresting officer executing a return of warrant. *See* paragraph **[(E)(3)] (F)(3)**.

Pursuant to paragraph **[(E)(4)] (F)(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)] (F)(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.

Rule 141. Bench Warrants for Absconders.

A. *Issuance of warrant.* The juvenile probation officer shall immediately notify the court upon notification or recognition that a juvenile has absconded from the supervision of the court. The court may issue a bench warrant for the juvenile.

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. *Where to take the juvenile.* The juvenile shall be detained in a detention facility or other facility designated in the bench warrant pending a hearing pursuant to paragraph (D).

D. *Prompt hearing.*

1) The juvenile shall have a detention hearing within seventy-two hours of the placement in detention.

2) A juvenile may appear by utilizing advanced communication technology pursuant to Rule 129.

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

F. *Notification of guardian.* When the 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.

G. *Return and execution of the warrant.*

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 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 court shall order the probation officer or other court designee to remove or request that a law enforcement officer remove the warrant from all appropriate registries.

Comment

Pursuant to paragraph (A), when a juvenile: 1) escapes from a placement facility, detention facility, shelter care facility, foster-care, or other court-ordered program or placement; 2) fails to report to juvenile probation; 3) cannot be located by juvenile probation; or 4) otherwise leaves the jurisdiction of the court, the court may issue a warrant for the juvenile.

Pursuant to paragraph (B), the court is to notify the juvenile probation officer or another court designee to enter or request that a law enforcement officer enter the bench warrant in all appropriate registries, such as JNET, CLEAN, PCIC, and NCIC.

Pursuant to paragraph (C), the juvenile is to be detained in a detention facility or any other facility designated in the bench warrant. If a juvenile is taken into custody pursuant to the bench warrant in a county other than the county of issuance, the juvenile is to be transported back to the county of issuance prior to the seventy-two-hour detention hearing mandated pursuant to paragraph (D)**(1)**.

Pursuant to paragraphs (D)**(1)** and (E), the time requirements of the Rules of Juvenile Court Procedure are to apply, including the seventy-two hour detention hearing. *See, e.g.*, Rules 240, 391, 404, 510, and 605.

The arresting officer is to notify the juvenile's guardian of the arrest, the reasons for the arrest, and the juvenile's whereabouts under paragraph (F).

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

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

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 160. Inspection of the Official Court Record.

A. *General Rule.* The official court record is only open to inspection by:

1) the judges, masters, juvenile probation officers, and staff of the court;

2) the attorney for the Commonwealth, the juvenile's attorney, and the juvenile, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information, except at the discretion of the court;

3) a public or private agency or institution providing supervision or having custody of the juvenile under order of the court;

4) a court, its probation officers, other officials or professional staff, and the attorney for the defendant for use in preparing a pre-sentence report in a criminal case in which the defendant is convicted and the defendant previously was adjudicated delinquent;

5) a judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions, orders resulting from dispositional review hearings, and histories of bench warrants and escapes;

6) the Administrative Office of Pennsylvania Courts;

7) the judges, juvenile probation officers, and staff of courts of other jurisdictions when necessary for the discharge of their official duties;

8) officials of the Department of Corrections, a state correctional institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

9) a parole board, court**,** or county probation official in considering an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

10) the State Sexual Offenders Assessment Board for use in completing assessments; and

11) with leave of court, any other person, agency, or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

B. *Public availability*. Upon request, a public document shall be created by the clerk of courts if the case is designated eligible for public inspection pursuant to Rule 330 or 515.

1) For cases deemed eligible pursuant to Rule 330, the public document shall contain only the following information:

a) the juvenile's name;

b) the juvenile's age;

c) the juvenile's address; and

d) the offenses alleged in the juvenile's petition.

2) For cases deemed eligible pursuant to Rule 515, the public document shall contain only the following information:

a) the juvenile's name;

b) the juvenile's age;

c) the juvenile's address;

d) the offenses alleged in the juvenile's petition;

e) the adjudication on each allegation; and

f) the disposition of the case.

C. *Electronic records*. Unless authorized by the court, there shall be no public access to juvenile case records maintained in electronic format in the court information systems.

Comment

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of the juvenile's file and 42 Pa.C.S. § 6352.1 for disclosure of treatment records.

See Rule 120 for definition of the "official court record."

This rule is meant to include the contents of the official court record as described in Rule 166.

When delinquency proceedings are commenced pursuant to Rule 200(4), the entire criminal court file is to be transferred with the case to juvenile court. This criminal case file is now the juvenile court file, which is the official court record, and the disclosure requirements of this rule apply.

Under paragraph (B), there is one document for each eligible case that is open for public inspection. The public document should be clearly marked for employees of the clerks of courts' office as the only document available for inspection by the general public. All other information contained in the official court record is not open for public inspection but only open to inspection to the persons enumerated in paragraph (A).

See Rule 330 for designation of public availability status in the juvenile petition. *See* Rule 515 for designation of public availability status in the dispositional order.

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART D. PRE-ADJUDICATORY DETENTION

Rule 242. Detention Hearing.

A. *Informing juvenile of rights*. Upon commencement of the hearing, the court shall:

1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;

2) inform the juvenile of the right to counsel and to assigned counsel; and

3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing*.

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The juvenile's attorney, the juvenile, if unrepresented, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) ***Presence at hearing.*** The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if unrepresented, may:

a) cross-examine witnesses offered against the juvenile; and

b) offer evidence or witnesses, if any, pertinent to the probable cause or detention determination.

5) *Advanced Communication Technology.* A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.

C. *Findings.* The court shall determine whether:

1) there is probable cause that a delinquent act was committed by the juvenile; and

2) detention of the juvenile is warranted.

D. *Filing of petition.* If a juvenile remains detained after the hearing, a petition shall be filed with the clerk of courts within twenty-four hours or the next court business day.

Comment

A detention hearing consists of two stages. The first stage of a detention hearing is a probable cause hearing. If probable cause is not found, the juvenile is to be released. If probable cause is found, then the court is to proceed to the second stage.

The second stage of a detention hearing is a detention determination hearing. The court should hear pertinent evidence concerning the detention status of the juvenile, review and consider all alternatives to secure detention, and determine if the detention of the juvenile is warranted.

The procedures of paragraph (D) deviate from the procedures of the Juvenile Act. *See* 42 Pa.C.S. § 6331. Under paragraph (D), a petition does not have to be filed within twenty-four hours of the juvenile's detention; rather, the petition should be filed within twenty-four hours of the conclusion of the detention hearing if the juvenile is detained. *See* Rule 800. If the juvenile is not detained, a petition may be filed at any time prior to the adjudicatory hearing. However, the juvenile's attorney should have sufficient notice of the allegations prior to the adjudicatory hearing to prepare for the defense of the juvenile. *See* Rule 363 for time of service. *See* Rule 331 for service of the petition. *See* Rule 330 for petition requirements.

See 42 Pa.C.S. §§ 6332, 6336, and 6338 for the statutory provisions concerning informal hearings and other basic rights.

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES
PART D(1). MOTION PROCEDURES

Rule 345. Filing and Service.

A. **[** ***Filings*** **]** ***Generally***.

1) **[** ***Generally*** **]** ***Filings***. Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

[2)] a) *Clerk of courts' duties.* Except as provided in paragraph **[(A)(3)] (A)(1)(b)**, the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

[3)] b) *Filings by represented juveniles.* In any case in which a juvenile is represented by an attorney, if the juvenile submits for filing a written motion, notice, or document that has not been signed by the juvenile's attorney, the clerk of courts shall not file the motion, notice, or document in the official court record or make a docket entry, but shall forward it promptly to the juvenile's attorney.

2) ***Service.*** **The party filing the document shall serve the other party concurrently with the filing.**

3) ***Proof of service.*** **All documents that are filed and served pursuant to this rule shall include a certificate of service.**

B. ***By Paper.***

[4)] 1) *Method of filing.* Filing may be accomplished by:

a) personal delivery to the clerk of courts; or

b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

[B. ***Service.***

1) ***Generally.*** **The party filing the document shall serve the other party concurrently with the filing.]**

2) *Method of service* **[** ***to parties*** **]**. Service on the parties shall be by:

a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or

b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or

d) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement.

C. **[** ***Proof of service.*** **All documents that are filed and served pursuant to this rule shall include a certificate of service.]** ***Local Rule.*** **If a county has promulgated a local rule regarding electronic filing, the local rule shall comply with Rule 121 and include, at a minimum, provisions which address the following:**

1) whether the electronic filing system is permissive or mandatory;

2) if a local rule provides that electronic filing is mandatory, the necessary technical assistance that will be provided to those parties lacking the capability to file documents electronically;

3) methods of accessing the electronic filing systems;

4) which proceedings and documents are subject to the local rule;

5) the specified formats in which all documents shall be submitted to the clerk of courts for filing;

6) the manner in which the clerk of courts will acknowledge receipt, including date and time, of the filed documents to the filing party;

7) the specific time deadline for making electronic filings;

8) the manner in which payment will occur and the costs of the electronic filing;

9) procedures for sending filing status messages to the filing party;

10) whether the clerk of courts will maintain an electronic file only or an electronic file and a hard copy file;

11) procedures for extending the filing time if there is a failure in the county's electronic filing system;

12) back-up procedures if there is a prolonged failure in the county's electronic filing system; and

13) any additional procedures, if necessary, to ensure the security of the website and electronic files.

D. ***By Electronic Means or Facsimile Transmission.*** **Documents may be filed or served by electronic means and/or facsimile transmission if a county has promulgated a local rule permitting or mandating such filings and service.**

1) ***Electronic Fling.*** **If a county has promulgated a local rule pursuant to paragraph (C) and Rule 121, electronic filing shall be permitted or mandated.**

a) Any document that is submitted for electronic filing shall be deemed the original document;

b) The electronic filing of a document constitutes a certification by the filing party that a hard copy was properly signed and, when applicable, verified;

c) The clerk of courts shall provide electronic access at all times;

d) The clerk of courts shall provide, through the electronic filing system, an acknowledgement of receipt of a document, including the date and time of receipt, in a form that can be printed for retention by the filing party;

e) If a document is not accepted for filing by the clerk of courts or electronic filing system, the clerk of courts or electronic filing system shall immediately notify the filing party of this fact and the reason(s); and

f) Except when caused by the failure of a county's electronic filing system, the filing party shall be responsible for any delay, disruption, interruption of the electronic signals, and legibility of the document that is electronically filed.

2) *Electronic service.*

a) If a person has electronically filed a document, then parties may be served by electronic service if the parties agree and provide electronic mail addresses to the court.

b) Service by electronic transmission is complete when a document is sent to:

i) the recipient's electronic mail address; or

ii) to the county's electronic filing system website, which in return sends a message to the recipient stating that the document has been filed and is available for review on the system's web site.

3) *Facsimile Transmission.*

a) A party may be served by facsimile transmission, if the parties agree and provide a telephone number for the facsimile transmission to the court.

b) The facsimile cover sheet shall include the:

i) names, firms, addresses, telephone numbers, facsimile telephone numbers of the party making service and the party being served;

ii) title(s) of the document being served; and

iii) number of pages transmitted.

c) Service by facsimile transmission is complete when a document is confirmed as sent.

Comment

See Rule 166 for maintaining records in the clerk of courts.

Under paragraph **[(A)(2)] (A)(1)(a)**, the court is to designate a court official to process motions and other matters for appropriate scheduling and resolution.

Under paragraph **[(B)] (A)(2)**, the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the juvenile, if unrepresented, by the clerk of courts as provided in Rule 167.

Pursuant to paragraph (C), a county may promulgate a local rule permitting or mandating electronic filing. The local rule is to provide specific guidelines on every aspect of the procedure and a means to accommodate those who may assistance during the process.

Specific time requirements are to be set under paragraph (C)(7). For example, the county is to specify whether a document is due at the close of the business day, listing the specific time, or whether the document is due by the end of the actual day at midnight.

Pursuant to paragraph (C)(12), the county is to implement back-up procedures due to a system failure.

Paragraph (D)(1) sets forth the requirements for electronic filings. Pursuant to paragraph (D)(1)(e), if the electronic filing system fails, the party is to be notified immediately. This notification could be an automatic transmission from the electronic filing system that the transmission failed or the clerk of courts may relay this fact to the filing party as soon as it is realized that there was a failure in the system.

If there was not a failure in a county's electronic filing system, all delays, disruptions, interruptions of electronic signals, and legibility of a document are to be the sole responsibility of the filing party. Any time requirements of these rules not met because of such errors are to be the sole responsibility of the filing party. The filing party should ensure the receipt of electronic filing pursuant to paragraph (D)(1)(d) to alleviate any concerns.

Pursuant to paragraph (D)(2) & (3), a party may be served by electronic service or facsimile transmission. If the parties have agreed to electronic service, the attorneys are to provide the court with an electronic mail address or phone number for facsimile transmission.

This rule is not intended to compel the use of electronic filing. The purpose of this rule is not to provide a comprehensive manual but, rather, a framework upon which a local court can proceed with the electronic filing and service of legal papers, while allowing the flexibility to adapt the process on the basis of actual experience.

***See* Rule 121 for procedures of local rules.**

For service of petitions, see Rule 331.

PART G. TRANSFER FOR CRIMINAL PROSECUTION

Rule 394. Transfer Hearing.

A. *Scheduling.* The court shall conduct a transfer hearing no earlier than three days after the notice of request for transfer to criminal proceedings is served unless this time requirement is waived.

B. ***Advanced Communication Technology.* A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.**

C. *Findings.* At the hearing, if the court finds:

1) the juvenile is fourteen years old or older at the time of the alleged delinquent act;

2) notice has been given pursuant to Rule 390;

3) there is a *prima facie* showing of evidence that the juvenile committed a felony delinquent act;

4) there are reasonable grounds to believe that transfer of the case for criminal prosecution will serve the public interest by considering all the relevant factors; and

5) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill,

[Then] then the court shall transfer the case to the division or a judge of the court assigned to conduct criminal proceedings for prosecution. Otherwise, the court shall schedule an adjudicatory hearing.

Comment

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the "*prima facie* phase." The court should determine if there is a *prima facie* showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a *prima facie* showing of evidence is found, the court proceeds to the second phase, known as the "public interest phase." During the "public interest phase," the court should determine if the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile and what is in the public's interest.

In determining public interest, the court should balance the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile's culpability; 6) the adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that the juvenile is not amenable to treatment, supervision, or rehabilitation in the juvenile system rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was fourteen years of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a *prima facie* case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii)(relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping, voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. *See* 42 Pa.C.S. § 6355.

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

CHAPTER 4. ADJUDICATORY HEARING

Rule 406. Adjudicatory Hearing

A. *Manner of hearing.* The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.

B. *Recording.* The adjudicatory hearing shall be recorded. The recording shall be transcribed:

1) at the request of a party;

2) pursuant to a court order; or

3) when there is an appeal.

C. *Advanced Communication Technology.* A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.

Comment

Under paragraph (A), the juvenile does not have the right to trial by jury. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

1) *Evidence.* The court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the juvenile and the victim an opportunity to make a statement.

3) *Advanced Communication Technology.* A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129.

B. *Recording.* The dispositional hearing shall be recorded. The recording shall be transcribed:

1) at the request of a party;

2) pursuant to a court order; or

3) when there is an appeal.

C. *Duties of the court.* The court shall determine on the record that the juvenile has been advised of the following:

1) the right to file a post-dispositional motion;

2) the right to file an appeal;

3) the time limits for a post-dispositional motion and appeal;

4) the right to counsel to prepare the motion and appeal;

5) the time limits within which the post-dispositional motion shall be decided; and

6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

Comment

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P. S. § 11.201 *et seq*.

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS, REVIEWS, AND APPEALS

Rule 610. Dispositional and Commitment Review.

A. *Dispositional Review Hearing.*

1) A court may schedule a review hearing at any time.

2) In all cases **[when the juvenile is removed from the home]**, the court shall **[hold] conduct** dispositional review hearings at least every six months.

B. *Change in dispositional order.* Whenever there is a request for a change in the dispositional order, other than a motion to revoke probation as provided in Rule 612, the court shall give the parties notice of the request and an opportunity to be heard.

1) The juvenile may be detained pending a court hearing.

2) A detention hearing shall be held within seventy-two hours of the juvenile's detention, if detained.

3) The juvenile shall be given a statement of reasons for the discharge from a placement facility or request for change in the dispositional order.

4) A review hearing shall be held within twenty days of the discharge from the placement facility or request for change in the dispositional order.

C. *Advanced Communication Technology.* **[If the parties agree, commitment and dispositional review hearings may be held by teleconferencing, two-way simultaneous audio-visual communication, or another similar method when a juvenile is committed to a placement facility. The juvenile shall be permitted to communicate fully and confidentially with the juvenile's attorney immediately prior to and during the proceeding] A juvenile or witness may appear by utilizing advanced communication technology pursuant to Rule 129**.

Comment

Under paragraph (A), the court may hold a review hearing at any time; however, **[if the juvenile is removed from the home,]** the court is to conduct a hearing at least every six months. *See* Rule 800.

Nothing in this rule is intended to prohibit the emergency transfer of a juvenile from a placement facility to a detention facility pending reconsideration of the dispositional order and this rule is not intended to preclude a motion for modification of a dispositional order after the juvenile has been detained.

Some placement facilities are hours away from the dispositional court. Paragraph (C) allows a hearing, when a juvenile is in a placement facility, to be conducted via teleconferencing, two-way simultaneous audio-visual communication, or similar method. The juvenile is to be afforded all the same rights and privileges as if the hearing was held with all present in the courtroom.

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 1120. Definitions.

ADVANCED COMMUNICATION TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations and includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication; closed circuit television; telephone and facsimile equipment; and electronic mail.

ADULT is any person, other than a child, eighteen years old or older.

AGGRAVATED CIRCUMSTANCES are those circumstances specifically defined pursuant to the Juvenile Act, 42 Pa.C.S. § 6302.

CHILD is a person who is under the age of eighteen who is the subject of the dependency petition, or who was adjudicated dependent before reaching the age of eighteen years and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall remain in a course of instruction or treatment past the age of twenty-one years.

CLERK OF COURTS is that official in each judicial district who has the responsibility and function under state law or local practice to maintain the official court record and docket, without regard to that person's official title.

COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means and includes, but is not limited to, copies reproduced by transmission using facsimile equipment, or by scanning into and printing out of a computer.

COUNTY AGENCY is the county children and youth social service agency established pursuant to the County Institution District Law, 62 Pa.C.S. § 2305 or established through the county commissioners in the judicial districts where the County Institution District Law was abolished, 16 P. S. §§ 2161, 2168, and supervised by the Department of Public Welfare pursuant to the Public Welfare Code, 62 Pa.C.S. § 901 *et seq*.

COURT is the Court of Common Pleas, a court of record, which is assigned to hear dependency matters. Court shall include masters when they are permitted to hear cases under these rules. Juvenile court shall have the same meaning as court.

ELECTRONIC FILING is the electronic transmission of a document filed in a proceeding, including but not limited to, motions, proposed orders, requests, exhibits, and attachments, by means other than facsimile transmission.

ELECTRONIC SERVICE is the electronic transmission of a document to a party, attorney, or representative under these rules.

FAMILY SERVICE PLAN is the document in which the county agency sets forth the service objectives for a family and services to be provided to a family by the county agency.

GUARDIAN is any parent, custodian, or other person who has legal custody of a child, or person designated by the court to be a temporary guardian for purposes of a proceeding.

JUDGE is a judge of the Court of Common Pleas.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MASTER is an attorney with delegated authority to hear and make recommendations for dependency matters. Master has the same meaning as hearing officer.

MEDICAL FACILITY is any hospital, urgent care facility, psychiatric or psychological ward, drug and alcohol detoxification or rehabilitation program, or any other similar facility designed to treat a child medically or psychologically.

MINOR is any person under the age of eighteen.

OFFICIAL COURT RECORD is the juvenile court file maintained by the clerk of courts which contains all court orders, court notices, docket entries, filed documents, evidence admitted into the record, and other court designated documents in each case.

PARTY is a person who is legally entitled to participate in the proceedings but nothing in these Rules confers standing upon a person.

PERMANENCY PLAN is a comprehensive plan that will result in a permanent home for the child.

PETITION is a formal document by which a child is alleged to be dependent.

PETITIONER is any person, who signs or verifies, and files a petition.

POLICE OFFICER is any person, who is by law given the power to arrest when acting within the scope of that person's employment.

PROCEEDING is any stage in the dependency process occurring once a shelter care application has been submitted or a petition has been filed.

PROTECTIVE CUSTODY is when a child is taken into custody for protection as an alleged dependent child pursuant to the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.* or custody may be assumed pursuant to 23 Pa.C.S. § 6315.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

SHELTER CARE FACILITY is a physically unrestricted facility that provides temporary care of a child and is approved by the Department of Public Welfare.

VERIFICATION is a written statement made by a person that the information provided is true and correct to that person's personal knowledge, information, or belief and that any false statements are subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Comment

The county agency is a party to the proceeding and should not function as the "Clerk of Courts."

The definition of "clerk of courts" should not necessarily be interpreted to mean the office of clerk of courts as set forth in 42 Pa.C.S. § 102, but instead refers to that official who maintains the official court record and docket regardless of the person's official title in each judicial district. It is to be determined locally which official is to maintain these records and the associated docket.

The county institution districts in counties of the fourth, fifth, sixth, seventh, and eighth classes were abolished pursuant to 16 P. S. § 2161. It is the county commissioners' duties in the fourth, fifth, sixth, seventh, and eighth classes to provide the children and youth social service agency with the necessary services for the agency to provide care for the child. See 16 P. S. § 2168.

Under the term "court," to determine if masters are permitted to hear cases, see Rule 1187.

For the family service plan, see 55 Pa. Code § 3130.61

The definition of "law enforcement officer" does not give the power of arrest to any person who is not otherwise given that power by law.

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 case. The court may also designate any document to be a part of the record. It does not include items contained in county agency's records unless they are made a part of the official record by being filed with the clerk of courts.

The term "petitioner" may include any person; however, if the person is not the county agency, an application to file a petition pursuant to Rule 1320 is to be made. If the court, after a hearing, grants the application, the applicant may file a petition.

Rule 1128. Presence at Proceedings.

A. *General Rule.* All parties shall be present at any proceeding unless the exceptions of paragraph (B) apply.

B. *Exceptions.*

1) *Absence from proceedings.* The court may proceed in the absence of a party upon good cause shown except that in no case shall a hearing occur in the absence of a child's attorney. If a child has a guardian *ad litem* and legal counsel, both attorneys shall be present.

2) *Exclusion from proceedings.* A party may be excluded from a proceeding only for good cause shown. If a party is so excluded, counsel for the party shall be permitted to be present.

C. ***Advanced Communication Technology.*** **A child or guardian may appear by utilizing advanced communication technology pursuant to Rule 1129.**

D. *Order appearance.* The court may order any person having the physical custody or control of a child to bring the child to any proceeding.

Comment

Under paragraph (B)(1), if a child is an infant, that would qualify as good cause. In no case is a proceeding to occur in the absence of the child's attorney. The court has discretion whether to proceed if the court finds that a party received proper notice of the hearing and has willfully failed to appear.

See In re Adoption of S.B.B. and E.P.R., 372 Pa.Super. 456, 539 A.2d 883 (1988).

Nothing in these rules creates a right of a child to have his or her guardian present. *See* 42 Pa.C.S. §§ 6310, 6335(b), 6336.1.

***Official Note*:** Rule 1128 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1128 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).

Rule 1129. **[Open Proceedings (Reserved)] Appearance by Advanced Communication Technology**.

A. *Generally.* The child, guardian, or a witness may appear at a proceeding by utilizing advanced communication technology.

B. *Requirements.* Advanced communication technology shall be utilized only upon:

1) direction or approval of the court; and

2) good cause shown or by agreement of the parties.

C. *Counsel.*

1) The child or guardian shall be permitted to confer with counsel before entering into an agreement under paragraph (A)(2).

2) The child shall be permitted to communicate fully and confidentially with counsel immediately prior to and during the proceeding.

Comment

Paragraph (A) requires that every child is to appear in court at least once a year. There may be instances in which the child is excused from attending pursuant to Rule 1128; for example, the child is too young.

It is best practice to conduct hearings every three months and for the judge to see the child and guardian in person every six months.

This rule is not intended to compel the use of advanced communication technology but rather permit the use of appearance by telephone or by a system providing two-way simultaneous audio-visual communication. Advanced communication technology may be utilized for the convenience for witnesses; efficient use of resources; or when a party or witness has an illness, is incarcerated, or at a remote location.

Pursuant to paragraph (C), the child or guardian is to be given time to confer with counsel privately. The child is to be afforded all the same rights as if the hearing was held with all parties present in the courtroom.

Rule 1130. **[Public Discussion by Court Personnel of Pending Matters] Court Fees Prohibited for Advanced Communication Technology**.

[All court personnel including, among others, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending dependency case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.]

The court shall not impose any fees upon any party or witness for utilizing advanced communication technology.

Comment

***See* March 13, 2002 Order of the Supreme Court of Pennsylvania (No. 241 Judicial Administration; Doc. No. 1) which provides that no fees shall be imposed against a defendant in a criminal proceeding for the utilization of advanced communication technology.**

Rule 1136. Public Discussion by Court Personnel of Pending Matters.

All court personnel including, among others, court clerks, bailiffs, tipstaffs, sheriffs, and court stenographers, are prohibited from disclosing to any person, without authorization from the court, information relating to a pending dependency case that is not part of the court record otherwise available to the public or not part of the record in an open proceeding. This rule specifically prohibits the divulgence of information concerning arguments and proceedings that are closed proceedings, held in chambers, or otherwise outside the presence of the public.

Rule 1140. Bench Warrants for Failure to Appear.

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. *Party.*

1) *Where to take the party.*

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

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

c) If the warrant specifically orders detention of a party, the party shall be detained pending a hearing.

i) *Minor.* If the party is a minor, the party shall be detained in a shelter-care facility or other placement as deemed appropriate by the judge.

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

2) *Prompt hearing.*

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

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

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

4) *Out-of-county custody.*

a) If a party 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 party shall be made immediately.

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

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

5) *Time requirements.* The time requirements of Rules 1242, 1404, 1510, and 1607 shall be followed.

C. *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 designated by the President Judge to hear bench warrants.

b) If the witness is not brought before a judge, 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 may order detention of the witness pending a hearing.

i) *Minor.* If a detained witness is a minor, the witness shall be detained in a shelter-care facility or other placement as deemed appropriate by the judge.

ii) *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 (C)(1)(c) or brought back to the county of issuance pursuant to paragraph (C)(4)(f), the witness shall be brought before the judge 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 of the county where the witness is found.

c) The judge 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 shelter-care facility or other placement as deemed appropriate by the judge.

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.

D. ***Advanced Communication Technology.*** **A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.**

E. *Return & execution of the warrant for parties 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 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.

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 1800, 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 party or witness may abscond or may not attend or be brought to a hearing is not sufficient evidence for a bench warrant. The normal rules of procedure in these rules are to be followed if a child is detained. *See* Chapter Twelve, Part D.

Pursuant to paragraph (B)(1)(a), the party is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (B)(1)(b), if a bench warrant specifically provides that the party may be detained, the party may be detained without having to be brought before the judge until a hearing within seventy-two hours under paragraph (B)(2)(a). Pursuant to this paragraph, if a hearing is not held promptly, the party is to be released. *See* paragraph (B)(2)(b).

In paragraphs (B)(1)(c)(i), (C)(1)(c)(i), & (C)(4)(e)(i), "other placement as deemed appropriate by the judge" does not include a detention facility if a child is only alleged to be dependent because the use of detention facilities for dependent children is strictly prohibited. *See* 42 Pa.C.S. §§ 6302 & 6327(e).

Under paragraphs (B)(2) and (B)(4), a party taken into custody pursuant to a bench warrant is to have a hearing within seventy-two hours regardless of where the party is found. *See* Rule 1242(D).

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

Pursuant to paragraph (B)(5), the time requirements of all other rules are to apply to children who are detained. *See, e.g.*, Rules 1242, 1404, 1510, and 1607.

Pursuant to paragraph (C)(1)(a), the witness is to be taken immediately to the judge who issued the bench warrant or a judge designated by the President Judge of that county to hear bench warrants. Pursuant to paragraph (C)(1)(b), if the judge is not available, the witness is to be released immediately unless the warrant specifically orders detention. Pursuant to paragraph (C)(1)(c), a motion for detention as a witness may be filed. If the witness is detained, a prompt hearing pursuant to paragraph (C)(2) is to be held by the next business day or the witness is to be released. *See* paragraph (C)(2)(b).

Pursuant to paragraph (C)(4)(b), a witness is to be brought before an out-of-county judge 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 (C)(4)(f).

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

Pursuant to paragraph **[(D)(4)] (E)(4)**, the bench warrant is to be vacated after the return of the warrant is executed so the party or witness is not taken into custody on the same warrant if the party or witness is released. "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.

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

Throughout these rules, the "child" is the subject of the dependency proceedings. When a witness or another party is under the age of eighteen, the witness or party is referred to as a "minor." When "minor" is used, it may include a child. This distinction is made to differentiate between children who are alleged dependants and other minors who are witnesses. *See* also Rule 1120 for the definitions of "child" and "minor."

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE COURT RECORDS

Rule 1160. Inspection of the Official Court Record.

A. *General Rule.* The official court record is only open to inspection by:

1) The judges, officers, and professional staff of the court;

2) The parties to the proceeding and their counsel and representatives, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

3) A public or private agency or institution providing supervision or having custody of the child under order of the court;

4) A court, its probation officers, other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*;

5) The Administrative Office of Pennsylvania Courts;

6) The judges, officers and professional staff of courts of other jurisdictions when necessary for the discharge of their official duties;

7) Officials of the Department of Corrections or a State Correctional Institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court;

8) A parole board, court or county probation official in considering an individual's parole or in exercising supervision over any individual who was previously adjudicated delinquent in a proceeding under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

9) The State Sexual Offenders Assessment Board for use in completing assessments; and

10) With leave of court, any other person or agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

B. *Electronic records.* Unless authorized by the court, there shall be no public access to juvenile case records maintained in electronic format in the court information systems.

Comment

See the Juvenile Act, 42 Pa.C.S. § 6307, for the statutory provisions on inspection of all files and records of the court in a proceeding.

Persons specified in 23 Pa.C.S. § 6340 as having access to reports may qualify as persons having a legitimate interest in the proceedings under paragraph (10). *See* 23 Pa.C.S. § 6340.

This rule is meant to include the contents of the official court record as described in Rule 1166, which does not include agency records.

***Official Note*:** Rule 1160 adopted August, 21, 2006, effective February 1, 2007. Amended December 24, 2009, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1160 published with the Court's Order at 36 Pa.B. **[5571] 5599** (September 2, 2006).

Final Report explaining the amendments to Rule 1160 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

CHAPTER 12. COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-ADJUDICATORY PLACEMENT

PART C. SHELTER CARE

Rule 1242. General Conduct of Shelter Care Hearing.

A. *Informing of rights.* Upon commencement of the hearing, the court shall ensure that:

1) a copy of the shelter care application is provided to the parties; and

2) all parties are informed of the right to counsel.

B. *Manner of hearing.*

1) *Conduct.* The hearing shall be conducted in an informal but orderly manner.

2) *Recording.* If requested, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.* All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition. The child's attorney, the guardian, if unrepresented, and the attorney

for the guardian shall be afforded an opportunity to examine and controvert written reports so received.

4) *Advanced Communication Technology.* A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.

C. *Findings.* The court shall determine whether:

1) there are sufficient facts in support of the shelter care application;

2) custody of the child is warranted;

3) a) remaining in the home would be contrary to the welfare and best interests of the child;

b) reasonable efforts were made by the county agency to prevent the child's placement; or

c) in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable; and

4) if a shelter care application is submitted by a person other than the county agency, the court shall make a determination if the person is a party to the proceedings.

D. *Prompt hearing.* The court shall conduct a hearing within seventy-two hours of taking the child into protective custody.

E. *Court order.* At the conclusion of the shelter care hearing, the court shall enter a written order as to the following:

1) its findings pursuant to paragraph (C);

2) any conditions placed upon any party;

3) any orders for placement or temporary care of the child; and

4) any orders of visitation.

Comment

Under paragraph (C)(4), the court is to determine whether or not a person is a proper party to the proceedings. Regardless of the court's findings on the party status, the court is to determine if the application is supported by sufficient evidence.

Under paragraph (D), the court is to ensure a timely hearing.

Under paragraph (E), the court is to include in its order specific findings that: 1) there are sufficient facts in support of the dependency petition; 2) custody of the child is warranted; and 3) remaining in the home would be contrary to the welfare and best interests of the child, or reasonable efforts were made by the county agency to prevent the child's placement, or in the case of an emergency placement where services were not offered, whether the lack of efforts were reasonable.

See 42 Pa.C.S. § 6332.

Nothing in this rule prohibits informal conferences, narrowing of issues, if necessary, and the court making appropriate orders to expedite the case through court. The shelter care hearing may be used as a vehicle to discuss the matters needed and narrow the issues. The court is to insure a timely adjudicatory hearing is held.

See 42 Pa.C.S. § 6339 for orders of physical and mental examinations and treatment.

See Rule 1330(A) for filing of a petition.

CHAPTER 13. PRE-ADJUDICATORY PROCEDURES

PART D(1). MOTION PROCEDURES

Rule 1345. Filing and Service.

A. **[** ***Filings*** **]** ***Generally***.

1) **[** ***Generally*** **]** ***Filings***. Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

[2)] a) *Clerk of courts' duties.* Except as provided in paragraph **[(A)(3)] (A)(1)(b)**, the clerk of courts shall docket a written motion, notice, or document when it is received and record the time of filing in the docket. The clerk of courts promptly shall transmit a copy of these papers to such person as may be designated by the court.

[3)] b) *Filings by represented parties.* In any case in which a party is represented by an attorney, if the party submits for filing a written motion, notice, or document that has not been signed by the party's attorney, the clerk of courts shall not file the motion, notice, or document in the child's official court record or make a docket entry, but shall forward it promptly to the party's attorney.

2) *Service.* The party filing the document shall serve the other party(s) concurrently with the filing.

3) *Proof of service.* All documents that are filed and served pursuant to this rule shall include a certificate of service.

B. *By Paper.*

[4)] 1) *Method of filing*. Filing may be accomplished by:

a) personal delivery to the clerk of courts; or

b) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

[B. *Service.*

1) *Generally.* The party filing the document shall serve the other party concurrently with the filing.]

2) *Method of service* **[** ***to parties*** **]**. Service on the parties shall be by:

a) personal delivery of a copy to a party's attorney, or, if unrepresented, the party; or

b) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

c) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box; or

d) sending a copy to an unrepresented party by first class mail addressed to the party's place of residence.

C. **[** ***Proof of service.*** **All documents that are filed and served pursuant to this rule shall include a certificate of service.]** ***Local Rule.*** **If a county has promulgated a local rule regarding electronic filing, the local rule shall comply with Rule 121 and include, at a minimum, provisions which include the following:**

1) whether the electronic filing system is permissive or mandatory;

2) if a local rule provides that electronic filing is mandatory, the necessary technical assistance that will be provided to those parties lacking the capability to file documents electronically;

3) methods of accessing the electronic filing systems;

4) which proceedings and documents are subject to the local rule;

5) the specified formats in which all documents shall be submitted to the clerk of courts for filing;

6) the manner in which the clerk of courts will acknowledge receipt, including date and time, of the filed documents to the filing party;

7) the specific time deadline for making electronic filings;

8) the manner in which payment will occur and the costs of the electronic filing;

9) procedures for sending filing status messages to the filing party;

10) whether the clerk of courts will maintain an electronic file only or an electronic file and a hard copy file;

11) procedures for extending the filing time if there is a failure in the county's electronic filing system;

12) back-up procedures if there is a prolonged failure in the county's electronic filing system; and

13) any additional procedures, if necessary, to ensure the security of the website and electronic files.

D. *By Electronic Means or Facsimile Transmission.* Documents may be filed or served by electronic means and/or facsimile transmission if a county has promulgated a local rule permitting or mandating such filings and service.

1) *Electronic Fling.* If a county has promulgated a local rule pursuant to paragraph (C) and Rule 1121, electronic filing shall be permitted or mandated.

a) Any document that is submitted for electronic filing shall be deemed the original document;

b) The electronic filing of a document constitutes a certification by the filing party that a hard copy was properly signed and, when applicable, verified;

c) The clerk of courts shall provide electronic access at all times;

d) The clerk of courts shall provide, through the electronic filing system, an acknowledgement of receipt of a document, including the date and time of receipt, in a form that can be printed for retention by the filing party;

e) If a document is not accepted for filing by the clerk of courts or electronic filing system, the clerk of courts or electronic filing system shall immediately notify the filing party of this fact and the reason(s); and

f) Except when caused by the failure of a county's electronic filing system, the filing party shall be responsible for any delay, disruption, interruption of the electronic signals, and legibility of the document that is electronically filed.

2) *Electronic service.*

a) If a person has electronically filed a document, then parties may be served by electronic service if the parties agree and provide electronic mail addresses to the court.

b) Service by electronic transmission is complete when a document is sent to:

i) the recipient's electronic mail address; or

ii) to the county's electronic filing system website, which in return sends a message to the recipient stating that the document has been filed and is available for review on the system's website.

3) *Facsimile Transmission.*

a) A party may be served by facsimile transmission, if the parties agree and provide a telephone number for the facsimile transmission to the court.

b) The facsimile cover sheet shall include the:

i) the names, firms, addresses, telephone numbers, facsimile telephone numbers of the party making service and the party being served;

ii) the title(s) of the document being served; and

iii) the number of pages transmitted.

c) Service by facsimile transmission is complete when a document is confirmed as sent.

Comment

See Rule 1166 for maintaining records in the clerk of courts.

Under paragraph **[(A)(2)] (A)(1)(a)**, the court is to designate a court official to process motions and other matters for appropriate scheduling and resolution.

Under paragraph **[(B)(1)] (A)(2)**, the party filing a document is required to serve the other party.

This rule does not affect court orders, which are to be served upon each party's attorney and the guardian, if unrepresented, by the clerk of courts as provided in Rule 1167.

Pursuant to paragraph (C), a county may promulgate a local rule permitting or mandating electronic filing. The local rule is to provide specific guidelines on every aspect of the procedure and a means to accommodate those who may assistance during the process.

Specific time requirement are to be set under paragraph (C)(7). For example, the county is to specify whether a document is due at the close of the business day, listing the specific time, or whether the document is due by the end of the actual day at midnight.

Pursuant to paragraph (C)(12), the county is to implement back-up procedures due to a system failure.

Paragraph (D)(1) sets forth the requirements for electronic filings. Pursuant to paragraph (D)(1)(e), if the electronic filing system fails, the party is to be notified immediately. This notification could be an automatic transmission from the electronic filing system that the transmission failed or the clerk of courts may relay this fact to the filing party as soon as it is realized that there was a failure in the system.

If there was not a failure in a county's electronic filing system, all delays, disruptions, interruptions of electronic signals, and legibility of a document are to be the sole responsibility of the filing party. Any time requirements of these rules not met because of such errors are to be the sole responsibility of the filing party. The filing party should ensure the receipt of electronic filing pursuant to paragraph (D)(1)(d) to alleviate any concerns.

Pursuant to paragraph (D)(2) & (3), a party may be served by electronic service or facsimile transmission. If the parties have agreed to electronic service, the attorneys are to provide the court with an electronic mail address or phone number for facsimile transmission.

This rule is not intended to compel the use of electronic filing. The purpose of this rule is not to provide a comprehensive manual but, rather, a framework upon which a local court can proceed with the electronic filing and service of legal papers, while allowing the flexibility to adapt the process on the basis of actual experience.

***See* Rule 1121 for procedures of local rules.**

For service of petitions, see Rule 1331.

CHAPTER 14. ADJUDICATORY HEARING

Rule 1406. Adjudicatory Hearing.

A. *Manner of hearing.* The court shall conduct the adjudicatory hearing in an informal but orderly manner.

1) *Notification.* Prior to commencing the proceedings, the court shall ascertain:

[1)] a) whether notice requirements pursuant to Rules 1360 and 1361 have been met; and

[2)] b) whether unrepresented parties have been informed of the right to counsel pursuant to 42 Pa.C.S. § 6337.

2) *Advanced Communication Technology.* A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.

B. *Recording.* The adjudicatory hearing shall be recorded. The recording shall be transcribed:

1) pursuant to a court order; or

2) when there is an appeal.

C. *Evidence.* Each party shall be given the opportunity to:

1) introduce evidence;

2) present testimony; and

3) to cross-examine any witness.

D. *Ex parte Communication.*

1) Except as provided by these rules, no person shall communicate with the court in any way.

2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

Comment

Due process requires that the litigants receive notice of the issues before the court and an opportunity to present their case in relation to those issues. *In re M.B.*, 356 Pa.Super. 257, 514 A.2d 599 (1986), *aff'd*, 517 Pa. 459, 538 A.2d 495 (1988).

A full record of the hearing is to be kept. *In re J.H.*, 788 A.2d 1006 (Pa. Super. Ct. 2001). *See* also 42 Pa.C.S. § 6336.

Under paragraph (B), notes of testimony should be provided to counsel for a party upon good cause shown. The court may place conditions of release on the notes of testimony. Under paragraph (B)(2), when an appeal is taken, the record is to be transcribed pursuant to Pa.R.A.P. 1922. *See* Pa.R.A.P. 1911 for request of transcript.

Under paragraph (C), the court is to receive evidence from all interested parties and from objective, disinterested witnesses. The judge's findings should be supported by a full discussion of the evidence. *See In Re Clouse*, 244 Pa.Super. 396, 368 A.2d 780 (1976).

For application of the Rules of Evidence, see Pa.R.E. 101.

Under paragraph (D), no *ex parte* communications regarding the facts and merits of the case with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications. *See* Pa.R.P.C. Rules 3.5. 3.3(d), and 8.3(a) and the Code of Judicial Conduct, Canons 1, 2, and 3.

CHAPTER 15. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 1512. Dispositional Hearing.

A. *Manner of hearing.* The court shall conduct the dispositional hearing in an informal but orderly manner.

1) *Evidence.* The court shall receive any oral or written evidence which is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.

2) *Opportunity to be heard.* Before deciding disposition, the court shall give the parent, child's foster parent, preadoptive parent, relative providing care for the child and court appointed special advocate, if assigned, an opportunity to make a statement.

3) *Advanced Communication Technology.* A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.

B. *Recording.* The dispositional hearing shall be recorded. The recording shall be transcribed:

1) pursuant to a court order; or

2) when there is an appeal.

C. *Ex parte Communication.*

1) Except as provided by these rules, no person shall communicate with the court in any way.

2) If the court receives any *ex parte* communication, the court shall inform all parties of the communication and its content.

Comment

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a child should preside over the dispositional hearing for the same child.

Paragraph (A)(2) does not infringe on the right to call witnesses to testify, in addition to those specified individuals. *See* Rule 1123 for subpoenaing a witness.

For transcription of the record under paragraph (B), see also Rule 1127.

Under paragraph (C), no *ex parte* communications with the court are to occur. Attorneys and judges understand the impropriety of *ex parte* communications but many participants are not attorneys or judges. This rule ensures that all parties have received the same information that is being presented to the court so that it may be challenged or supplemented. Normal methods of practice and procedure such as motions, scheduling, communications with court personnel, are not considered *ex parte* communications.

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B. PERMANENCY HEARING

Rule 1608. Permanency Hearing.

A. *Purpose of hearing.* For every case, the court shall conduct a permanency hearing for purposes of determining or reviewing:

1) the permanency plan of the child;

2) the date by which the goal of permanency for the child might be achieved; and

3) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Court's findings.* At the permanency hearing, the court shall making findings consistent with 42 Pa.C.S. § 6351(f).

C. *Recording.* The permanency hearing shall be recorded. The recording shall be transcribed:

1) pursuant to a court order; or

2) when there is an appeal.

D. *Evidence.*

1) Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court.

2) If a report was submitted pursuant to Rule 1604, the court shall review and consider the report as it would consider all other evidence.

E. ***Advanced Communication Technology.*** **A child, guardian, or witness may appear by utilizing advanced communication technology pursuant to Rule 1129.**

F. *Family Service Plan or Permanency Plan.* The county agency shall review the family service plan or permanency plan at least every six months. If the plan is modified, the county agency shall provide all parties and when requested, the court, with the modified plan at least fifteen days prior to the permanency hearing.

Comment

See 42 Pa.C.S. §§ 6341, 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and reunite the family in a reasonable time, and failing in this, to free the child for adoption. *In re M.B.*, 449 Pa.Super. 507, 674 A.2d 702 (1996) *quoting In re Quick*, 384 Pa.Super. 412, 559 A.2d 42 (1989).

To the extent practicable, the judge or master that presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearing for the same child.

Under paragraph (B), the court is to make a finding consistent with 42 Pa.C.S. § 6351(f), in that the court is to determine all of the following: 1) the continuing necessity for and appropriateness of the placement; 2) the appropriateness, feasibility, and extent of compliance with the permanency plan developed for the child; 3) the extent of progress made toward alleviating the circumstances which necessitated the original placement; 4) the appropriateness and feasibility of the current placement goal for the child; 5) the likely date by which the placement goal for the child might be achieved; 6) whether reasonable efforts were made to finalize the permanency plan in effect; 7) whether the child is safe; 8) if the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child; 9) the services needed to assist a child who is sixteen years of age or older to make the transition to independent living; and 10) if the child has been in placement for at least fifteen of the last twenty-two months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the child's guardian or to preserve and reunify the family need not be made or continue to be made, whether the county agency has filed or sought to join a motion to terminate parental rights and to identify, recruit, process, and approve a qualified family to adopt the child unless: a) the child is being cared for by a relative best suited to the physical, mental, and moral welfare of the child; b) the county agency has documented a compelling reason for determining that filing a motion to terminate parental rights would not serve the needs and welfare of the child; or c) the child's family has not been provided with necessary services to achieve the safe return to the child's guardian within the time frames set forth in the permanency plan.

For family service plan requirements, see 55 Pa. Code §§ 3130.61 and 3130.63.

Explanatory Report

"The future is here." This statement has been used widely in the last decade by several companies to describe their state-of-the-art products and new technologies invented by their technical gurus.

As advanced technologies emerge while budgets continue to shrink, courts are increasingly utilizing new technologies to help manage their court systems, and to help reduce costs. However, costs are not the only benefit to new technology.

Witnesses, parents, and others, who could not previously attend a hearing, may now participate in the court process. In past years, a non-custodial parent in a remote

state prison would not participate in his or her child's hearing. Technology now allows a parent inmate to appear via video conference and participate in the proceedings. Expert witnesses, who otherwise were unavailable, can testify from across the world without any need for travel or waiting in courthouses for their cases to be called.

These proposed Rule additions and modifications begin to address the use of advanced communication technology in juvenile court and the procedures that must be followed when utilizing advanced communication technology.

These Rules provide that a juvenile, child, guardian, or witness may appear at a proceeding via advanced communication technology. However, pursuant to proposed Rules 129(B) and 1129(B), advanced communication technology may only be utilized upon: 1) direction of the court; and 2) good cause shown or by agreement of the parties. If a person wishes to appear in person, the court may not require participation via advanced communication technology.

Prior to agreeing to a hearing utilizing advanced communication technology, a juvenile or child must be permitted to consult with his or her attorney. In addition, the juvenile shall communicate fully with his or her attorney prior to and during the proceedings.

Many judicial districts are allowing attorneys to use their cell phones to speak privately with their client during a hearing. In other districts, the hearing room is being vacated so the juvenile or child can communicate with counsel.

In addition, courts across the country are developing techniques for allowing parties, including the juvenile or child, to speak in private with their attorneys during the proceedings. Judicial districts are encouraged generally to be creative in utilizing advanced communication technology; however, courts may not impose fees for the use of that technology. *See* new Rules 130 and 1130.

In addition, there shall be no *public* access to electronic juvenile case records. *See* Rules 160(C) and 1160(B). Once the public is given access to a case record through electronic means, it is impossible for the court to control the information and to retrieve it, when necessary.

Finally, Rules 345(C) and 1345(C) permit electronic filing if a judicial district has promulgated a local rule. *See* Rules 345 and 1345(C)(1)—(13). Rules 345(D) and 1345(D) set forth the procedures for electronic filing and service.

[Pa.B. Doc. No. 10-1921. Filed for public inspection October 8, 2010, 9:00 a.m.]

Title 255—LOCAL COURT RULES

FRANKLIN COUNTY

39th Judicial District Rule of Criminal Procedure Rule 1000; Administrative Doc. 6-2010

Order of Court

Now This 15th day of September 2010 it appearing that a "County-wide Booking Center Plan" has been adopted by the County and the Criminal Justice Advisory Board pursuant to Section 1725.6 of the Judicial Code, 42 Pa.C.S.A. 1725.6,

It Is Hereby Ordered pursuant to Section 1725.5 of the Judicial Code that the Clerk of Courts shall assess in addition to any other fines, penalties or costs imposed by law, $150.00 Booking Center Fund Fee against any person who is processed at any Booking Center in Franklin County on or after December 1, 2010 if the person is:

1. placed on probation without verdict pursuant to section 17 of the act of April 14, 1972 (P. L. 233, No. 64), known as The Controlled Substance, Drug, Device or Cosmetic Act; or

2. receives Accelerated Rehabilitative Disposition for, pleads guilty to or nolo contendere to or is convicted of a crime under the following:

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

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

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

d. A violation of The Controlled Substance, Drug, Device and Cosmetic Act.

The Booking Center Fee shall be paid to Franklin County Clerk of Courts or the Payment Division of the Franklin County Adult Probation Department and deposited into a special booking center fund established by the Franklin County Criminal Justice Advisory Board. Moneys in the fund shall be disbursed, pursuant to procedures promulgated by the Franklin County Criminal Justice Advisory Board and used solely for the implementation of a "County-wide Booking Center Plan" and the start-up, operation or maintenance of the regional booking centers.

The District Court Administrator will make appropriate distribution of this Order.

By the Court

DOUGLAS W. HERMAN,
President Judge

[Pa.B. Doc. No. 10-1922. Filed for public inspection October 8, 2010, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

In the Matter of the Adoption and Amendment of Local Rules of Civil Procedure; Misc. Doc. 2010-4218

September 20th, 2010, *It Is Hereby Ordered* that the following Rules of the Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin and Fulton County Branches, Civil Division, are amended, rescinded or adopted as indicated this date, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Local Rule of Civil Procedure 212.7 is amended and shall now read as follows.

It Is Further Ordered that The District Court Administrator shall

1. Distribute two (2) certified paper copies and one (1) computer diskette or CD-ROM copy to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

2. File one (1) certified copy of the local rule changes with the Administrative Office of Pennsylvania Courts.

3. Provide one (1) certified copy of the local rule changes to the Supreme Court of Pennsylvania Civil Procedural Rules Committee.

4. Publish a copy of the local rule changes as required on the Unified Judicial System's web site at http://ujsportal.pacourts.us/localrules/ruleselection.aspx.

5. Provide one (1) certified copy of the Local Rule changes to the Franklin County Law Library and one (1) certified copy to the Fulton County Law Library.

6. Keep such local rule changes, as well as all local civil rules, continuously available for public inspection and copying in the Office of the Prothonotary of Franklin County and the Office or the Prothonotary of Fulton County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

7. Arrange to have the local rule changes published on the Franklin County Bar Association web site at www.franklinbar.org.

By the Court

DOUGLAS W. HERMAN,
President Judge

Local Rule 39-212.7. Scheduling Conference and Case Management.

(a) This Rule shall be applicable to all civil actions other than family law matters governed by Pa.R.C.P. 1901 through 1940.9, credit card collection cases, cases for and appeals from compulsory arbitration, administrative agency appeals, appeals from labor arbitration, landlord-tenant appeals, appeals from boards of view, mortgage foreclosures and cases in which judgment has been entered.

(b) In all cases to which this rule is applicable, the plaintiff shall, not later than sixty (60) days after service of the complaint upon defendant(s), file and transmit to the assigned judge a proposed order of court in substantially the following form:

Order of Court

(Date), the Complaint filed in this case having been served upon the Defendant(s),

IT IS HEREBY ORDERED that the Plaintiff shall initiate discussion among all parties who shall make a good faith effort to agree upon a proposed Joint Case Management Order which shall be submitted to the assigned judge not later than _____ . In the event that the parties cannot agree upon a proposed Joint Case Management Order, they shall submit separate proposed Case Management Orders to the assigned judge in chambers not later than the foregoing date. After the foregoing date, the assigned judge may enter a Case Management Order or may schedule a Case Management Conference.

IT IS FURTHER ORDERED that in considering joint or separate proposed Case Management Orders, counsel and the parties shall be guided by the Court's guidelines set forth in the Note to Local Rule 212.7 and be prepared to support any requested deviation from such guidelines.

IT IS FURTHER ORDERED that the parties shall begin engaging in discovery pending the entry of a Case Management Order if they have not already done so; and that the Plaintiff promptly serve copies of this order upon all other parties.

By the Court,

_____
J.

(c) Not later than 14 days after the deadline for the completion of discovery pursuant to any Case Management Order, Plaintiff's counsel shall arrange with the chambers of the assigned judge for a telephone conference between the Court and counsel for all parties for the express purpose of [1] making a good faith estimate as to the number of trial days—excluding jury selection date—that will be required for trial; [2] securing trial dates; and [3] considering mediation as a settlement tool.

NOTE: The purpose of the Court in adopting this Rule providing for case management is to better assure the progress of cases through the judicial system without unreasonable delay by fixing deadlines for completion of the various stages of cases. Deadlines, for example, for completion of discovery, the filing of expert reports, and the filing of dispositive motions, will be set at the scheduling conference. Thereafter, a party seeking extension of a deadline will have the burden of establishing good cause for such extension.

The following are guidelines for various types of cases:

CASE EVENT	SIMPE CASE (e.g. admitted liability, minimal discovery)	STANDARD (e.g. motor vehicle, contracts, some equity)	COMPLEX (e.g. product liability, some equity, extensive discovery)	MEDICAL MALPRACTICE
Discovery Completion	5 months	9 months	12 months	12 months
Plaintiff Expert Reports	6 months	10 months	13 months	13 months
Defense Expert Reports	7 months	11 months	14 months	14 months
Dispositive Motions	8 months	12 months	15 months	15 months
Pretrial Conference	10 months	14 months	17 months	17 months

[Pa.B. Doc. No. 10-1923. Filed for public inspection October 8, 2010, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

In the Matter of the Adoption and Amendment of Local Rules of Civil Procedure; Misc. Doc. 2010-4219

September 20, 2010, *It Is Hereby Ordered* that the following Rules of the Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin and Fulton County Branches, Civil Division, are amended, rescinded or adopted as indicated this date, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

Local Rule of Civil Procedure 205.1.2 is rescinded and Rule 205.1(a) is adopted.

Local Rule of Civil Procedure 205.2(a) is adopted.

Local Rule of Civil Procedure 206.1(a) is amended and shall now read as follows.

Local Rule of Civil Procedure 206.4(c) is amended and shall now read as follows.

Local Rule of Civil Procedure 208.2 is amended and shall now read as follows.

Local Rule of Civil Procedure 208.3 is amended and shall now read as follows.

Local Rule of Civil Procedure 211 is amended and shall now read as follows.

It Is Further Ordered that The District Court Administrator shall

1. Distribute two (2) certified paper copies and one (1) computer diskette or CD-ROM copy to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

2. File one (1) certified copy of the local rule changes with the Administrative Office of Pennsylvania Courts.

3. Provide one (1) certified copy of the local rule changes to the Supreme Court of Pennsylvania Civil Procedural Rules Committee.

4. Publish a copy of the local rule changes as required on the Unified Judicial System's web site at http://ujsportal.pacourts.us/localrules/ruleselection.aspx.

5. Provide one (1) certified copy of the Local Rule changes to the Franklin County Law Library and one (1) certified copy to the Fulton County Law Library.

6. Keep such local rule changes, as well as all local civil rules, continuously available for public inspection and copying in the Office of the Prothonotary of Franklin County and the Office or the Prothonotary of Fulton County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

7. Arrange to have the local rule changes published on the Franklin County Bar Association web site at www.franklinbar.org.

By the Court

DOUGLAS W. HERMAN,
President Judge

Local Rule 211. Oral Arguments.

39-211.1 Except as otherwise provided by the Court, arguments in the Franklin County Branch shall be held on the first Thursday of each month excluding August, except when that Thursday is a legal holiday, in which case the argument shall be held on as scheduled by the Court; and in the Fulton County Branch, arguments shall be held on days as established by the annual Court calendar or as scheduled by the Court.

39-211.2 In the Franklin County Branch, causes for argument shall be listed in the Prothonotary's office in a docket to be provided for that purpose, on or before the Thursday which is six (6) weeks preceding the day for argument. Any party may list a cause by filing a Praecipe directing the Prothonotary to list the cause for argument. In the Fulton County Branch, causes for argument may be listed in the Prothonotary's office in a docket to be provided for that purpose upon Praecipe of a party filed at least six (6) weeks before the argument is to be scheduled before the assigned judge. The party entering a cause for argument shall forthwith, by ordinary mail, notify all other parties that the cause has been listed for argument; and shall file proof of service of such notice. Failure to give such notice shall be grounds for striking the cause from the list upon Motion.

39-211.3 The parties may agree in writing to add a cause to the argument list at any time so long as service of briefs may be made in accordance with the time requirements of Rule 39-211.7. The Court may order a cause listed for argument at the next scheduled argument court or on such other day as it may direct and, in that event, it may set the time for service of briefs.

39-211.4 When the ascertainment of facts is necessary for the proper disposition of a cause listed for argument, such facts may be determined by deposition or as otherwise provided in the Pennsylvania Rules of Civil Procedure.

39-211.5 The person seeking the order applied for shall argue first, and may also argue in rebuttal, if permitted by the Court, but such rebuttal shall be limited to answering arguments advanced by the opposing party. In causes where there is more than one responding party, the order of argument by the responding parties shall be as directed by the Court.

39-211.6 Each party shall furnish to every other party a typewritten brief in the form set forth in Local Rule 210, Form and content of Briefs.

39-211.7 When a case is listed for argument, the moving party shall file and serve a copy of his brief upon all other parties in the manner set forth in Pa.R.C.P. 440(a) to insure receipt by the responding party not later than the thirty-fifth (35th) day preceding the day scheduled for argument. The responding party shall, in return, serve a copy of his brief upon the moving party in the manner set forth in Pa.R.C.P. 440(a) to insure receipt by the moving party not later than the twenty-eighth (28th) day preceding the day scheduled for argument. At the time each party serves his brief, he shall furnish two copies thereof to the assigned judge.

39-211.8 Unless the time for filing and serving briefs is extended by the Court for cause shown, where briefs have not been timely filed and served as required by Rule 39-211.7, the Court may upon its own motion or upon request of a party:

(1) Deny the relief requested where the moving party has failed to comply;

(2) Grant the requested relief where the responding party has failed to comply;

(3) Permit oral argument, but only by the complying party;

(4) Grant such other relief or impose such other sanctions as it shall deem proper.

39-211.9 With the approval of the Court, oral argument may be dispensed with by agreement of the parties and the matter shall be submitted to the Court on briefs filed.

39-211.10 Cases shall be continued or stricken from the argument list only pursuant to order of Court. A party may request such an order of Court by petition setting forth the basis for the request. Such petition must include certification regarding concurrence or non-concurrence of all other parties as required by Local Rule 39-206.1.

Local Rule 205.1(a). Filing Legal Papers. Presentation to the Court.

A legal paper requiring the signature of, or action by a Judge may be filed, delivered or mailed to the Prothonotary as in Pa.R.C.P. 205.1. When such paper is received by the Prothonotary it shall be marked filed and then delivered to the Court Administrator for distribution to the appropriate Judge's Law Clerk for judicial consideration.

Local Rule 205.2(a). Assignment to Judge upon Filing of Complaint.

Upon the filing of a complaint, the Prothonotary shall assign the case to a specific judge and shall indicate the name of the particular judge assigned in the caption. The name of the judge to whom the case is assigned shall be noted in the caption of each service copy of the complaint.

(i) All pleadings and papers filed subsequent to the complaint shall have the name of the judge to whom the case is assigned noted in the caption.

(ii) Subsequent to the filing of a complaint, motions and petitions shall be directed to the assigned judge for disposition unless such judge is unavailable.

Local Rule 206.1(a). Purpose and Designation.

The procedure after issuance of rules to show cause shall be as set forth in Pa.R.C.P. 206.7. If argument is ordered by the Court, the case shall be listed, briefed and decided as set forth in the Court's order. All applications for which the procedure for the relief sought is not otherwise specifically addressed elsewhere in the rules and which require the assertion of facts not of record are hereby designated as petitions. A petition, generally speaking, is a request for relief ancillary to a given cause of action. Each petition shall be accompanied by a verification or affidavit verifying the facts stated in the petition. Every petition shall contain a certification noting whether it is contested or uncontested or, if the petitioning party is unable to so indicate, a description of the efforts which have been made to determine the position of the responding party. References to phone calls and emails shall include date and time.

Local Rule 206.4(c). Petition with Issuance of Rule to Show Cause.

(1) Rules to show cause shall be issued at the discretion of the Court pursuant to the procedure set forth in Pa.R.C.P. 206.5. The petition for the rule to show cause may be filed, delivered or mailed to the Prothonotary as set forth in Pa.R.C.P. 205.1. Upon receipt, the Prothonotary shall mark it filed and deliver it to the Court Administrator. In the alternative, a petition for a rule to show cause may be presented to the court at any open session, or to the assigned judge's law clerk or to the assigned judge in chambers at such time as the court may set.

(2) The procedure after issuance of the rule to show cause shall be as set forth in Pa.R.C.P. 206.7. If hearing or argument is ordered by the court the case shall be listed, briefed and decided as set forth in Local Rule 211 et seq.

(3) The Rule to Show Cause shall be substantially in the following form:

RULE TO SHOW CAUSE

AND NOW, this ___ day of _____ , 20____ , upon consideration of the foregoing petition, it is hereby ordered that

1. A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested;

2. The respondent shall file a verified Answer to the Petition within ___ days of service upon the respondent;

3. The Petition shall be decided under Pa.R.C.P. No. 206.7;

4. Depositions shall be completed within _____ days of service upon petitioner of the Answer;

5. Hearing and/or argument, if any, shall be held on _____ , _____ , 20____ , at ____ o'clock ____ .m. in the assigned Courtroom of the Franklin/Fulton County Courthouse, Chambersburg/McConnellsburg, PA;

6. If Items 4 and 5 above are left blank, depositions and/or argument or hearing will be considered upon the request of any party; and

7. Notice of entry of this order shall be provided to all parties by the petitioner.

8. In the case of Preliminary Objections [Local Rule 1028(a)], Motions for Judgment on the Pleadings [Local Rule 1034(a)] and Motions for Summary Judgment [Local Rule 1035(a)], parties shall follow the procedures for disposition set forth in those rules.

By the Court,

Committee Comment:

No applications are designated as "petitions" other than applications to open a default judgment or a judgment of non pros as required by Pa.R.C.P. 206.1(a)(1). The issuance of a rule to show cause shall be discretionary with the court as provided in Pa.R.C.P. 206.5. A petitioner seeking the issuance of a rule to show cause shall attach to the petition a Rule in the form designated by this rule and a proposed order granting the relief sought. Under Pa.R.C.P. 206.7, the issue raised in the petition may be decided without the necessity of argument. However, if the court orders argument on the petition, the matter shall be listed for argument, briefed and decided pursuant to Local Rule 211, et seq.

Local Rule 208.2. Motions.

Local Rule 208.2(c). A motion shall include a brief statement of the applicable authority, including reference to any applicable local or state rule or statute; or shall be accompanied by a brief at the time of filing.

Local Rule 208.2(d). Every motion shall contain a certification noting whether it is contested or uncontested or, if the moving party is unable to so indicate, a description of the efforts which have been made to determine the position of the responding party. References to phone calls shall include date and time.

Local Rule 208.2(e). Every motion relating to discovery shall attach a certificate, signed by counsel for the moving party, certifying that counsel has conferred or attempted to confer with all interested parties in order to resolve the matter without court action. The attached

certificate shall detail the efforts made by the moving party, detailing time, place and manner of conversations and shall include copies of any related correspondence.

Local Rule 208.3(a)(i). A motion or answer may be filed, delivered or mailed to the Prothonotary as set forth in Pa.R.C.P. 205.1. Upon receipt, the Prothonotary shall mark it filed and deliver it to the Court Administrator. Alternatively, a motion may be presented to the court at any open session, or to the assigned judge's law clerk or to the assigned judge in chambers at such time as the court may set.

(ii) Emergency motions in cases already assigned to a specific judge should be filed and then delivered directly to Court Administration or to the assigned judge's chambers for handling and, in cases not already assigned, should be directed to the Court Administrator for assignment.

(iii) Unless permitted by the court to be made or taken orally, all motions shall be in writing and shall be verified if the facts do not appear on the face of the record.

(iv) The proper order to be made by the court upon a motion shall be prepared by counsel and attached to the motion at the time of filing. Any order signed by the court shall be promptly filed.

(v) All motions other than those made at trial shall be served, along with any order entered or any order proposed to be entered, upon all other parties in accordance with Pa.R.C.P. 440(a). All such service shall be evidenced by either a certificate of service attached at the time of filing or by an affidavit of service filed separately.

(vi) Motions may be decided with out without oral argument. For those Motions for which a party requests argument of for which the Court requires argument, the Court may issue an order scheduling argument or the motion may be argued by following the procedure set forth in Local Rule 211 et seq.

Local Rule 208.3. Answers to Motions.

Local Rule 208.3(b). Except for those Motions which are uncontested by their terms, each responding party shall file an Answer which shall contain supporting authority for the relief sought or which shall be accompanied by a brief at the time of filing. Each Answer shall also have attached at the time of filing the order which is sought by the answering party. Answers other than those to Motions for Summary Judgment shall be filed not later than 20 days after the date of service of the Motion as evidenced by a certificate or affidavit of service unless the time for filing is modified by court order; or unless earlier required in the interests of justice; or as soon as possible in the case of emergency motions.

[Pa.B. Doc. No. 10-1924. Filed for public inspection October 8, 2010, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Hearing

A Petition for Reinstatement to the active practice of law has been filed by Brian P. Raney and will be the subject of a hearing on November 16, 2010, before a hearing committee designated by the Board. Anyone wishing to be heard in reference to this matter should contact the District I Office of the Disciplinary Board of the Supreme Court of Pennsylvania, 16th Floor, Seven Penn Center, 1635 Market Street, Philadelphia, PA 19103, (215) 560-6296, on or before November 5, 2010. In accordance with Board Rule § 89.274(b), 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. 10-1925. Filed for public inspection October 8, 2010, 9:00 a.m.]