THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

[204 PA. CODE CH. 83]

Amendments to the Pennsylvania Rules of Disciplinary Enforcement Relating to Attorneys Convicted of Crimes; Notice of Proposed Rulemaking

The Disciplinary Board of the Supreme Court of Pennsylvania (Board) is considering recommending to the Pennsylvania Supreme Court that it amend the Pennsylvania Rules of Disciplinary Enforcement as set forth in Annex A.

Rule 214 establishes the disciplinary procedure when an attorney has been convicted of a crime. Under Pennsylvania law, a "conviction" does not occur until sentencing. *Commonwealth ex rel. McClenachan v. Reading*, 336 Pa. 165, 168-169, 6 A.2d 776, 778 (1939). The addition of subsection (j) to Rule 214 redefines the term "conviction" to mean any guilty verdict after trial by judge or jury, or any plea of guilty or *nolo contendere* that has been accepted by the court, whether or not sentence has been imposed.

The effect of proposed subsection (j) is to accelerate the point in time at which the Office of Disciplinary Counsel may initiate disciplinary proceedings under Rule 214 in those instances where there has been a determination of criminal liability but the criminal court has not yet imposed the sentence. This procedural effect applies with equal force to a "serious crime," as defined by subsection (i), and to a crime other than a serious crime, which is controlled by subsection (g).

The Board has determined that there is no legal reason to wait until the criminal court imposes sentence before initiating an attorney disciplinary proceeding. In the case of a guilty plea, the plea is an acknowledgement by the defendant-attorney that he participated in the commission of certain acts with a criminal intent, *Commonwealth v. Anthony*, 504 Pa. 551, 558, 475 A.2d 1303, 1307 (1984), and entry of the plea constitutes a waiver of all defects and defenses except lack of jurisdiction, invalidity of the plea, and illegality of the sentence. *Commonwealth v. Tareila*, 895 A.2d 1266, 1267 (Pa. Super. 2006). A plea of *nolo contendere* is treated the same as a guilty plea, *Commonwealth v. Hayes*, 245 Pa. Super. 521, 523, 369 A.2d 750, 751 (1976), and their effect is equivalent, *Commonwealth v. Warner*, 228 Pa. Super. 31, 32, 324 A.2d 362, 363 (1974), in that the defendant-attorney does not expressly admit his guilt but authorizes the court for purposes of the case to treat him as if he were guilty. *North Carolina v. Alford*, 400 U.S. 25, 36 (1970). At the point at which a defendant-attorney is found guilty after trial by judge or jury, the criminal court has already afforded the defendant-attorney his due process right to a hearing in the form of a trial at which the government's burden of proof is beyond a reasonable doubt. The defendant-attorney has also had an opportunity to present a defense to the criminal charges.

Proposed subsection (j) does not affect the procedural due process protections that are currently contained in Rule 214. Upon receipt of notice that an attorney has been convicted of a crime, Disciplinary Counsel continues to be charged with the duty under subsection (c) of securing and filing a certificate of the conviction with the Supreme Court. If the conviction is for a "serious crime" as defined in subsection (i), the Supreme Court continues to have the discretion under subsection (d)(1) to enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension. If the Supreme Court enters an order placing the respondent-attorney on temporary suspension prior to the criminal sentencing, and thereafter the criminal trial court, either prior to or at sentencing, grants some form of relief that provides a basis for reconsideration of the Supreme Court's order to temporarily suspend, the respondent-attorney continues to have the right under subsection (d)(4) to petition the Supreme Court for dissolution or amendment of the order of temporary suspension. If the criminal trial court enters an order reversing the conviction, subsection (h) gives the Supreme Court the discretion to immediately reinstate the respondent-attorney.

Unless a respondent-attorney who has been temporarily suspended under the rule requests an accelerated disposition of the charges under subsection (f)(2), the amendment to subsection (f)(1) clarifies that Disciplinary Counsel will not file a petition for discipline or proceed to a hearing before a hearing committee prior to sentencing. If the respondent-attorney files a post-sentence appeal, Disciplinary Counsel will not proceed to a hearing until all direct appeals from the conviction are concluded, as required by subsection (f)(1) and consistent with current practice.

As a corollary to the acceleration effect of proposed subsection (j), the Pennsylvania Supreme Court will not have to wait until sentencing to temporarily suspend an attorney who has engaged in egregious criminal conduct. Thus, the new rule recognizes that some crimes are so offensive to the public and contrary to the ethical principles of the profession that swift action to suspend the attorney's law license is necessary if for no reason other than to preserve the integrity and standing of the Court and the profession. In some instances, the nature of the crime will be such that prompt action to temporarily suspend the attorney is necessary to protect the public, including the attorney's clients. In other instances, the attorney may already be incarcerated at the time of the guilty plea or guilty verdict, or have his or her bail revoked pending sentencing. An attorney who remains free on bail at the time of the guilty plea or guilty verdict may have already begun to wind up his or her law practice in anticipation of a term of incarceration or temporary suspension following sentencing. For reasons beyond the disciplinary system's control, a sentencing proceeding may be postponed or delayed for months or longer after the attorney has admitted to or been found guilty of a serious crime.

Finally, the proposed amendment to subsection (a) changes the point in time at which an attorney must make a report to the Secretary of the Board. Under the new rule, an attorney will be required to report within 20 days of the attorney's guilty or no contest plea, or verdict of guilt by judge or jury.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office

of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, P. O. Box 62625, Harrisburg, PA 17106-2625 on or before April 1, 2010.

ELAINE M. BIXLER,
Secretary of the Board
The Disciplinary Board of the Supreme Court of Pennsylvania

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 214. Attorneys convicted of crimes.

(a) An attorney convicted of a serious crime shall report the fact of such conviction **within 20 days** to the Secretary of the Board **[within 20 days after the date of sentencing]**. The responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to subdivision (b).

(b) The clerk of any court within the Commonwealth in which an attorney is convicted of any crime, or in which any such conviction is reversed, shall within 20 days after such disposition transmit a certificate thereof to Disciplinary Counsel, who shall file such certificate with the Supreme Court.

(c) Upon being advised that an attorney has been convicted of a crime within this Commonwealth, Disciplinary Counsel shall secure and file a certificate in accordance with the provisions of subdivision (b). If the conviction occurred in another jurisdiction, it shall be the responsibility of Disciplinary Counsel to secure and file a certificate of such conviction.

(d) (1) Upon the filing with the Supreme Court of a certified copy of an order demonstrating that an attorney has been convicted of a serious crime, the Court may enter a rule directing the respondent-attorney to show cause why the respondent-attorney should not be placed on temporary suspension, which rule shall be returnable within ten days.

(2) If a rule to show cause has been issued under paragraph (1), and the period for response has passed without a response having been filed, or after consideration of any response, the Court may enter an order requiring temporary suspension of the practice of law by the respondent-attorney pending further definitive action under these rules.

(3) Any order of temporary suspension issued under this rule shall preclude the respondent-attorney from accepting any new cases or other client matters, but shall not preclude the respondent-attorney from continuing to represent existing clients or existing matters during the 30 days following entry of the order of temporary suspension.

(4) The respondent-attorney may at any time petition the Court for dissolution or amendment of an order of temporary suspension. A copy of the petition shall be served upon Disciplinary Counsel and the Secretary of the Board. A hearing on the petition before a member of the Board designated by the Chair of the Board shall be held within ten business days after service of the petition on the Secretary of the Board. The designated Board member shall hear the petition and submit a transcript of the hearing and a recommendation to the Court within five business days after the conclusion of the hearing. Upon receipt of the recommendation of the designated Board member and the record relating thereto, the Court shall dissolve or modify its order, if appropriate.

(5) At any time before a plea or verdict or after a guilty plea or verdict of guilt in the criminal proceeding, Disciplinary Counsel and the respondent-attorney may file with the Court a joint petition for temporary suspension of the respondent-attorney on the ground that the respondent-attorney's temporary suspension is in the best interest of the respondent and the legal system.

***Official Note*:** The subject of the summary proceedings authorized by subdivision (d) is limited to whether the conditions triggering the application of subdivision (d) exist, i.e., proof that the respondent-attorney is the same person as the individual convicted of the offense charged and that the offense is a serious crime, and will not include such subjects as mitigating or aggravating circumstances. The provision of subdivision (d)(3) permitting the respondent-attorney to continue representing existing clients for 30 days is intended to avoid undue hardship to clients and to permit a winding down of matters being handled by the respondent-attorney, and the permissible activities of the respondent-attorney are intended to be limited to only those necessary to accomplish those purposes.

(e) A certificate of conviction of an attorney for a crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against the attorney based upon the conviction.

(f)(1) Upon the receipt of a certificate of conviction of an attorney for a serious crime, the Court shall, in addition to any order of suspension it may enter in accordance with the provisions of subdivision (d), also refer the matter to the Board for the institution of a formal proceeding before a hearing committee in the appropriate disciplinary district in which the sole issue to be determined shall be the extent of the final discipline to be imposed, except that a disciplinary proceeding so instituted shall not be brought to hearing until **sentencing and** all appeals from the conviction are concluded.

(2) Notwithstanding the provision of paragraph (1) that a hearing shall not be held until all appeals from a conviction have been concluded, a respondent-attorney who has been temporarily suspended pursuant to this rule shall have the right to request an accelerated disposition of the charges which form the basis for the temporary suspension by filing a notice with the Secretary of the Board and Disciplinary Counsel requesting accelerated disposition. Within 30 days after filing of such a notice, Disciplinary Counsel shall file a petition for discipline, if such a petition has not already been filed, and the matter shall be assigned to a hearing committee for accelerated disposition. The assignment to a hearing committee shall take place within seven (7) days after the filing of such a notice or the filing of a petition for discipline, whichever occurs later. Thereafter the matter shall proceed and be concluded by the hearing committee, the Board and the Court without appreciable delay. If a petition for discipline is not timely filed or assigned to a hearing committee for accelerated disposition under this

paragraph, the order of temporary suspension shall be automatically dissolved, but without prejudice to any pending or further proceedings under this rule.

***Official Note*:** The "without appreciable delay" standard of subdivision (f)(2) of the rule is derived from *Barry v. Barchi*, 443 U. S. 55, 66 (1979). Appropriate steps should be taken to satisfy this requirement, such as continuous hearing sessions, procurement of daily transcript, fixing of truncated briefing schedules, conducting special sessions of the Board, etc.

(g) Upon receipt of a certificate of conviction of any attorney for a crime other than a serious crime, the Court shall take such action as it deems warranted. The Court may in its discretion take no action with respect to convictions for minor offenses.

***Official Note*:** The actions the Court may take under subdivision (g) include reference of the matter to the Office of Disciplinary Counsel for investigation and possible commencement of either a formal or informal proceeding, or reference of the matter to the Board with direction that it institute a formal proceeding.

(h) An attorney suspended under the provisions of subdivision (d) may be reinstated immediately upon the filing by the Board with the Court of a certificate demonstrating that the underlying conviction has been reversed, but the reinstatement will not terminate any formal proceeding then pending against the attorney.

(i) As used in this rule, the term "serious crime" means a crime that is punishable by imprisonment for one year or upward in this or any other jurisdiction.

(j) For the purposes of this rule and Rule 203(b)(1), "conviction" means any guilty verdict, whether after trial by judge or jury, or finding of guilt, and any plea of guilty or *nolo contendere* that has been accepted by the court, whether or not sentence has been imposed.

[Pa.B. Doc. No. 10-351. Filed for public inspection February 26, 2010, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5 AND 10]

In Re: Amendment of Rules 515, 541, 543, 561, 589 and 1010, and Approval of the Revision of the Comment to Rule 1002; Criminal Procedural Rules; No. 385

Order

Per Curiam:

And Now, this 12th day of February, 2010, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 38 Pa.B. 865 (February 16, 2008), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 939), 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:

(1) Rules of Criminal Procedure 515, 541, 543, 561, 589 and 1010 are amended; and

(2) the revision of the Comment to Rule of Criminal Procedure 1002 is approved, all as follows.

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

JOHN A. VASKOV,
Deputy Prothonotary

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(3). Arrest Procedures in Court Cases

(a) Arrest Warrants

Rule 515. Execution of Arrest Warrant.

* * * * *

(C) When the warrant has been issued by a magisterial district judge, and the defendant cannot be found, the case shall remain in the magisterial district, and shall not be forwarded to the court of common pleas for further proceedings.

Comment

No substantive change in the law is intended by paragraph (A) of this rule; rather, it was adopted to carry on those provisions of the now repealed Criminal Procedure Act of 1860 that had extended the legal efficacy of an arrest warrant beyond the jurisdictional limits of the issuing authority. The Judicial Code now provides that the territorial scope of process shall be prescribed by the Supreme Court's procedural rules. 42 Pa.C.S. §§ 931(d), 1105(b), 1123(c), 1143(b), 1302(c), 1515(b).

For the definition of police officer, see Rule **[3] 103**.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. *See also Commonwealth v. Mason*, **507 Pa. 396,** 490 A.2d 421 (**[Pa.]** 1985).

Pursuant to Rule 540, the defendant is to receive a copy of the warrant and the supporting affidavit at the time of the preliminary arraignment.

For purposes of executing an arrest warrant under this rule, warrant information transmitted by using advanced communication technology has the same force and effect as an original arrest warrant. This rule does not require that the transmitted warrant information be an exact copy of the original warrant. Nothing in this rule, however, is intended to curtail the Rule 540(C) requirement that the issuing authority provide the defendant with an exact copy of the warrant. *See* Rule 513 (Requirements for Issuance).

Paragraph (C) abolishes the traditional practice known as "*NEI*" or "*no est inventus*" as being no longer necessary.

***Official Note*:** Formerly Rule 124, adopted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 122 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 515 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002**; amended February 12, 2010, effective April 1, 2010**.

Committee Explanatory Reports:

Report explaining the August 9, 1994 Comment revisions published at 22 Pa.B. 6**, 18** (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. **4325,** 4342 (August 27, 1994).

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 May 10, 2002 Comment revision concerning advanced communication technology published with the Court's Order at 32 Pa.B. **2582,** 2591 (May 25, 2002).

Final Report explaining the February 12, 2010 changes adding new paragraph (C) and the Comment revision published with the Court's Order at 40 Pa. B. 1068, 1071 (February 27, 2010).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 541. Waiver of Preliminary Hearings.

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(D) Once a preliminary hearing is waived and the case bound over to the court of common pleas, if the right to a preliminary hearing is subsequently reinstated, the preliminary hearing shall be held at the court of common pleas unless the parties agree, with the consent of the common pleas judge, that the preliminary hearing be held before the issuing authority.

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***Official Note*:** Rule 140A adopted April 26, 1979, effective July 1, 1979; amended November 9, 1984, effective January 2, 1985; renumbered Rule 541 and amended March 1, 2000, effective April 1, 2001**; amended February 12, 2010, effective April 1, 2010**.

Committee Explanatory Reports:

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

Final Report explaining the February 12, 2010 amendments adding new paragraph (D) concerning reinstatement of a waived preliminary hearing published with the Court's Order at 40 Pa.B. 1068, 1071 (February 27, 2010).

Rule 543. Disposition of Case at Preliminary Hearing.

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(G) Except as provided in Rule 541(D), once a case is bound over to the court of common pleas, the case shall not be remanded to the issuing authority.

Comment

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In those cases in which a *prima facie* case is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the defendant unless there are outstanding detainers against the defendant that would prevent the defendant's release.

Paragraph (G) emphasizes the general rule that once a case has been bound over to the court of common pleas, it shall not be remanded to the issuing authority. There is a limited exception to the general rule in the situation in which the right to a previously waived preliminary hearing is reinstated and the parties agree, with the consent of the common pleas judge, that the preliminary hearing be held before the issuing authority. *See* Rule 541(D).

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***Official Note*:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009**; amended February 12, 2010, effective April 1, 2010**.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6**, 18** (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. **4325,** 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with the Court's Order at 25 Pa.B. **4100,** 4116 (September 30, 1995).

Final Report explaining the October 8, 1999 renumbering of Rule 143 published with the Court's Order at 29 Pa.B. **5505,** 5509 (October 23, 1999).

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

Final Report explaining the August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. **5016,** 5025 (September 11, 2004).

Final Report explaining the December 30, 2005 changes adding references to bench warrants published with the Court's Order at 36 Pa.B. **181,** 184 (January 14, 2006).

Final Report explaining the March 9, 2006 amendments adding new paragraphs (E) and (F) published with the Court's Order at 36 Pa.B. **1385,** 1392 (March 25, 2006).

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. **2631,** 2633 (June 3, 2006).

Final Report explaining the May 1, 2007 changes clarifying the procedures when a defendant fails to appear published with the Court's Order at 37 Pa.B. **2496,** 2503 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraphs (C) and (D)(2)(c) concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. **3971,** 3975 (July 26, 2008).

Final Report explaining the February 12, 2010 amendments adding new paragraph (G) prohibiting remands to the issuing authority published with the Court's Order at 40 Pa.B. 1068, 1071 (February 27, 2010).

PART E. Procedures Following a Case Held for Court

Rule 561. Withdrawal of Charges by Attorney for the Commonwealth.

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(C) In any case in which all the misdemeanor, felony, and murder charges are withdrawn pursuant to this rule, any remaining summary offenses shall be disposed of in the court of common pleas.

Comment

Court approval is not required for the withdrawal of charges prior to the filing of an information. Cf. 42 Pa.C.S. § 8932 and Rule 585 (*Nolle Prosequi*).

***Official Note*:** Former Rule 224 adopted November 22, 1971, effective immediately; amended February 15, 1974, effective immediately; amended April 26, 1979, effective July 1, 1979; rescinded August 12, 1993, effective September 1, 1993. New Rule 224 adopted August 14, 1995, effective January 1, 1996; renumbered Rule 561 and amended March 1, 2000, effective April 1, 2001**; amended February 12, 2010, effective April 1, 2010**.

Committee Explanatory Reports:

Report explaining the August 12, 1993 rescission published at 22 Pa.B. 3826**, 3836** (July 25, 1992).

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468**, 3471** (August 26, 1995).

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 February 12, 2010 amendments adding new paragraph (C) concerning disposition of summary offenses at the court of common pleas published at 40 Pa.B. 1068, 1071 (February 27, 2010).

PART F(1). Motion Procedures

Rule 589. Pretrial Disposition of Summary Offenses Joined with Misdemeanor, Felony, or Murder Charges.

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(B) **[In no event shall the trial judge remand the summary offense to the issuing authority for disposition] In any case in which all the misdemeanor, felony, and murder charges are withdrawn pursuant to Rule 561, any remaining summary offenses shall be disposed of in the court of common pleas**.

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***Official Note*:** Adopted March 9, 2006, effective September 1, 2006**; amended February 12, 2010, effective April 1, 2010**.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 36 Pa.B. **1385,** 1392 (March 25, 2006).

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

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

PART A. Philadelphia Municipal Court Procedures

Rule 1002. Procedure in Summary Cases.

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Comment

This rule, which replaced former Rule 1002 in 2005, was developed to accommodate the procedures Philadelphia Municipal Court has implemented to address the issues in non-traffic summary cases unique to Philadelphia to more efficiently handle the vast number of non-traffic summary cases, to protect the defendants' rights to a fair and prompt disposition of their cases, and, when appropriate, to provide the necessary rehabilitations or social services. Municipal Court is required to implement local rules pursuant to Rule 105 (Local Rules) enumerating the details of the summary proceedings following the issuance of a citation or a summons. For purposes of this rule, "local rule" includes all memoranda of understanding and administrative orders that affect non-traffic summary case procedures.

Once a summary case is appealed to the Court of Common Pleas for trial *de novo*, the case shall remain in the Court of Common Pleas. *See also* Rule 462 and its Comment.

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***Official Note*:** Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002; amended May 12, 2009, effective February 1, 2010**; Comment revised February 12, 2010, effective April 1, 2010**.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6**, 18** (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. **4325,** 4342 (August 27, 1994).

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 provisions of the new rule published with the Court's Order at 35 Pa.B. **4914,** 4918 (September 3, 2005).

Final Report explaining the May 12, 2009 changes to paragraph (B) concerning issuing citations and arrest without warrants in summary cases published at 39 Pa.B. **2568,** 2569 (May 23, 2009).

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

Rule 1010. Procedure on Appeal.

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

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

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

Comment

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

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

Committee Explanatory Reports:

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

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

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

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

FINAL REPORT[1]

Amendments to Pa.Rs.Crim.P. 515, 541, 543, 561, 589, 1002 and 1010

REMANDS OF CASES FROM THE COURT OF COMMON PLEAS

On February 12, 2010, effective April 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 515 (Execution of Arrest Warrant), 541 (Waiver of Preliminary Hearing), 543 (Disposition of Case at Preliminary Hearing), 561 (Withdrawal of Charges By Attorney for the Commonwealth), 589 (Pretrial Disposition of Summary Offenses Joined With Misdemeanor, Felony, or Murder Charges), and 1010 (Procedure on Appeal) and approved the revisions to the *Comment* to Rule of Criminal Procedure 1002 (Procedure in Summary Cases) to preclude the practice of remanding cases from the court of common pleas to the magisterial district judge or the Philadelphia Municipal Court in several situations. The amendments address three areas in which remands from the court of common pleas to the issuing authority still are occurring despite the Court's policy that prohibits such remands: (1) the practice of remanding cases for a preliminary hearing where a defendant who was designated as "NEI" is apprehended; (2) use of remands as remedies for a waived preliminary hearing; and (3) the practice of remanding cases without court involvement when the district attorney withdraws felony/misdemeanor prior to the filing of the information.

I. *Introduction*

It has been a long-standing general requirement reflected in the Rules of Criminal Procedure that once a summary case moves to the court of common pleas, the case must stay in the court of common pleas and may not be remanded to the issuing authority.[2] This requirement applies both to summary cases on appeal for a trial *de novo*, Rule 462, and in cases in which the summary offenses have been joined with misdemeanor or felony charges, even when only summary charges remain. *See*, for example, Rules 313, 585, 589 and 622.

As a result of reports of several counties violating these requirements, on September 28, 2006, then-Chief Justice Cappy sent a letter to all President Judges emphasizing this point. After the Chief Justice's letter went out, the Committee received several inquiries from different judicial districts seeking clarification on whether certain remand practices violated the prohibition. Several counties raised scenarios in which cases are being remanded in circumstances that potentially were in contravention of Rules 589 and 622.

The Committee reviewed these scenarios and determined that rules changes were needed to make it clear in the rules that remands are improper in the following three situations:

1) The case is forwarded to the court of common pleas under the "*NEI*" practice. In these cases, the defendant has not been apprehended when the case is forwarded, nor has the defendant had a preliminary hearing. The defendant subsequently is apprehended before the filing of the criminal information occurs pursuant to Rule 565(A). In these situations, in some judicial districts, the case is remanded to the issuing authority for a preliminary hearing.

2) An originally unrepresented defendant initially waives the right to preliminary hearing and later, presumably after representation is obtained, requests such a hearing. It appears that these cases are being remanded to the issuing authority to hold the preliminary hearing as a matter of course.

3) In cases in which summary offenses are joined with misdemeanor and felony charges, and, pursuant to Rule 561, the district attorney withdraws all the misdemeanor and/or felony charges prior to the filing of the information, leaving only summary offenses, the district attorney remands the case, without any court involvement, to the issuing authority for disposition of the summary offenses.

While the specifics of each of the rules changes for these scenarios are addressed separately below, the gen-

[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] This policy has been set forth specifically in several of the Committee's Recommendations adopted by the Court. For example, it may be found in the *Final Reports* to Recommendation 3 of 2003 (292 Criminal Procedural Rules Doc. 2, February 28, 2003, see 33 Pa.B. 1324), and Recommendation 5 of 2006, (342 Criminal Procedural Rules Doc. 2, see 36 Pa.B. 1385). There is also the above-mentioned then-Chief Justice Cappy's letter of September 28, 2006 to all President Judges emphasizing this policy. Despite these clear statements, the Committee continued to receive reports from Clerks of Courts and the AOPC automation staff that common pleas judges still are remanding in many cases which clearly should remain in the court of common pleas.

eral concept of the changes is that, once a case has been transferred from the issuing authority to the court of common pleas, the cases must remain at the court of common pleas for further proceedings.

There are several reasons for the strong policy against remanding cases. First, there is the question of jurisdiction; once a case has moved from the issuing authority, the power of the issuing authority to hear the case comes into question. Second, any time a case moves from one level of court to another, there will be delays and complications that result from the physical requirements of the transfer.

II. *Discussion of Proposed Amendments*

1. NEI

The first remand situation occurs in cases declared "*NEI*," where the defendant never had a preliminary hearing, and is then apprehended before the filing of the information occurs pursuant to Rule 565(A).

"NEI," an abbreviation for the phrase "*non est inventus*," is the procedure used in some counties when a warrant has been issued for the defendant's arrest, the defendant cannot be found, and the case is transferred to the common pleas court for further proceedings. While the terminology is traditional, there is no written authority in the rules or statutes for the practice.

Presently, the practice is used in a limited number of counties to ensure that warrants initially issued by magisterial district judges are placed on law enforcement computer systems such as National Criminal Information Center (NCIC) system and the Commonwealth Law Enforcement Assistance Network (CLEAN). Another reason for its use is to transfer the warrant to a central fugitive unit at the county level.

The Court has approved the abolition of the practice of NEI, believing that there is no justification for the transfer of jurisdiction at this stage in the proceedings for essentially administrative law enforcement purposes. Currently, there is nothing to prevent the entry of issuing authority warrants on law enforcement systems such as CLEAN and NCIC except limited manpower. Additionally, with advances in systems technology, issuing authority warrant information will soon be routinely added to these systems via Magisterial District Justice System feeds to law enforcement networks. Furthermore, there is nothing to prevent a county from adopting a policy of providing all issuing authority warrants to a centralized fugitive unit upon their issuance.

Therefore, a new paragraph (C) is added to Rule 515 that abolishes the practice of transferring "NEI" cases to the court of common pleas solely on the basis of the defendant being a fugitive. Since these types of cases will no longer be transferred to the court of common pleas, upon apprehension, the case still will be within the jurisdiction of the issuing authority and will not need to be remanded.

2. Remand as Remedy for Waived Preliminary Hearing

The second remand scenario arises when an originally unrepresented defendant initially waives the right to have a preliminary hearing and later, presumably after representation is obtained, requests such a hearing. The Committee received reports that these requests are being granted as a matter of course despite appropriate waiver colloquies having been conducted.

The Court has concluded that, ordinarily, there is no need to remand for a preliminary hearing in these situations; rather, if it is determined that the defendant should be granted a preliminary hearing, the preliminary hearing should be held in the court of common pleas. The one exception to this "no remands" policy is when all the parties, with the consent of the court, agree to a return of the case to the magisterial district judge. The Committee had received several publication responses arguing for this exception. The majority of the Committee members, after an extensive debate, ultimately concluded that it makes sense to carve out this limited exception. The Committee considered the suggestion that such an exception would emasculate the provision since the parties will always agree and the court will always consent to have the case returned to the issuing authority. The Court has concluded that this dire prediction is unlikely, believing that the requirement that all parties and the court must agree to the remand would limit its use to appropriate cases.

Accordingly, Rule 541(D) is amended to provide that, after the defendant has waived the preliminary hearing and the case is held for court, there are no remands from common pleas court to the magisterial district judge for a preliminary hearing absent an agreement of the parties with the consent of the common pleas judge. Also, a new paragraph is added to Rule 543 to emphasize further the "no remands" policy.

3. Withdrawal of felony/misdemeanor prior to information.

The third circumstance in which cases are being remanded from common pleas to the issuing authority is cases in which the summary offense has been joined with misdemeanor or felony charges, and, pursuant to Rule 561, the Commonwealth withdraws all the misdemeanor and/or felony charges, leaving only summary offenses. In some instances, the district attorney "remands" the case, without any court involvement, to the issuing authority for disposition of the summary offenses. Similarly, pursuant to Rule 589, when the misdemeanor and felony charges are dismissed and the Commonwealth does not appeal the dismissal, in some instances, the court will remand the summary offenses to the magisterial district judge for disposition.

The Court has concluded that there is no reason why these types of cases should be remanded. Since the case has gone up as a court case, the case remains a court case, and should be disposed of in common pleas court. Therefore, Rules 561 and 589 have been amended to provide that summary charges must be handled in common pleas court when the attorney for the Commonwealth decides to withdraw all non-summary charges and not to file an information.

Several publication comments were received that suggested that a complete ban on remands in this situation when only the summary offenses remain creates a problem in cases in which the defendant is on state parole and charged with a summary offense. The Pennsylvania Board of Probation and Parole (PBPP) interpreted the Parole Act, 61 P. S. § 331.1 *et seq.*, as differentiating between convictions in a court of record and those in a magistrate's court, with the former resulting in a revocation of a defendant's street time. On the other hand, the Board would not count a summary conviction at common pleas as a conviction by a court of record if the common pleas judge were declared to have been sitting as a magistrate but only when that declaration is made by the president judge. The Committee considered adding a provision to the *Comments* to Rules 561 and 589 explaining that for purposes of 61 P. S. § 331.21a(a), the common

pleas court is not a court of record when disposing of summary offenses and 3rd degree misdemeanors. However, the Committee ultimately rejected this suggestion, believing that the relative rarity of this problem should not be the basis for such a broad interpretation to be added to the rules. Subsequently, the case of *Jackson v. Pennsylvania Bd. of Probation and Parole*, 951 A.2d 1238 (Pa.Cmwlth. 2008), which determined that the Parole Board's interpretation is incorrect, appears to have addressed this concern.

4. Applicability to the Philadelphia Municipal Court

Following the publication of the proposed rule changes, the Committee considered in detail whether the proposal should be made specifically applicable to the Philadelphia Special Courts. Rule 1000 provides that, absent a specific rule applicable to practice in the Special Courts or local rule, the general rules of procedure would apply. The Committee was concerned that the unique requirements of the Philadelphia Special Court would be adversely impacted by a casual application of these changes. The Committee therefore discussed this matter with representatives of the Municipal Court and the Traffic Court and reviewed their procedures regarding the practice of having cases remanded from the Philadelphia Court of Common Pleas.

In the case of the Municipal Court, it was determined that there are no reasons why this clarification of the "no-remands" policy should not be stated to be applicable to appeals from the Municipal Court. Therefore, the Rule 1002 *Comment* is revised to state that summary appeals shall not be remanded to the Municipal Court.

Additionally, Rule 1010 is amended to clarify that the procedures in an appeal from the Municipal Court where the defendant subsequently fails to appear for the trial *de novo* or withdraws the appeal are consistent with the procedures contained in Rule 462 and that the judgment of the Municipal Court may be entered in the Court of Common Pleas.

The Committee's examination of appeal practice from the Traffic Court raised additional issues that were addressed in a separate proposal that was developed in conjunction with representatives of the Traffic Court and the First Judicial District. This proposal was adopted by the Court on October 16, 2009.[3]

[Pa.B. Doc. No. 10-352. Filed for public inspection February 26, 2010, 9:00 a.m.]

Title 237—JUVENILE RULES

[237 PA. CODE CHS. 3 AND 8]

In Re: Amendment of Rules 312 and 800 of the Rules of Juvenile Court Procedure; Supreme Court Rules; Doc. No. 492

Order

Per Curiam:

And Now, this 12th day of February, 2010, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 39 Pa.B. 3319 (July 4, 2009), in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 971, No. 1, June 26, 2009), and on the Supreme Court's web page, and an *Explanatory Report* to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 312 and 800 of the Rules of Juvenile Court Procedure are approved as follows.

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

[3] See 39 Pa.B. 6327 (October 31, 2009).

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

PART B. INTAKE AND INFORMAL ADJUSTMENT

Rule 312. Informal Adjustment.

A. *Participation.* At any time prior to the filing of a petition, the juvenile probation officer may informally adjust the allegation(s) if it appears:

1) an adjudication would not be in the best interest of the public and the juvenile;

2) the juvenile and the juvenile's guardian consent to informal adjustment with knowledge that consent is not obligatory; and

3) the admitted facts bring the case within the jurisdiction of the court.

B. *Completion.*

1) If the juvenile successfully completes the informal adjustment, the case shall be dismissed and prosecution is barred.

2) If the juvenile does not successfully complete the informal adjustment, a petition shall be filed.

Comment

[Informal] Pursuant to paragraph (A), informal adjustments may not occur after the filing of a petition. ***See* Rule 800(12), which suspends 42 Pa.C.S. § 6323(a) only to the extent that it conflicts with this rule. *See also*** *Commonwealth v. J.H.B.*, 760 A.2d 27 (Pa. Super. Ct. 2000). **[*See* 42 Pa.C.S. § 6323(a).]**

The juvenile probation officer or other agencies may give "counsel and advice" as to the informal adjustment. *See* 42 Pa.C.S. § 6323(b). "Counsel and advice" may include referral to a social service agency or other conditions as agreed to by the juvenile probation officer and the juvenile.

A juvenile's participation in an informal adjustment may not exceed six months, unless extended by order of the court for an additional period not to exceed three months. *See* 42 Pa.C.S. § 6323(c). Any incriminating statements made by the juvenile to the juvenile probation officer and in the discussions or conferences incident thereto are not to be used against the juvenile over objection in any criminal proceeding or hearing under the Juvenile Act. *See* 42 Pa.C.S. § 6323(e).

Prior to informally adjusting the written allegation, the juvenile probation officer is to give the victim an opportunity to comment. In addition, the victim is to be notified of the final outcome of the hearing. *See* Victim's Bill of Rights, 18 P. S. § 11.201 *et seq*.

If a petition is filed because the juvenile has not successfully completed the requirements of an informal adjustment, the procedures of Rule 330 are to be followed.

***Official Note*:** Rule 312 adopted April 1, 2005, effective October 1, 2005. **Amended February 12, 2010, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 312 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 312 published with the Court's Order at 40 Pa.B. 1073, 1075 (February 27, 2010).

CHAPTER 8. SUSPENSIONS

Rule 800. Suspensions of Acts of Assembly.

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

1) The Act of November 21, 1990, P. L. 588, No. 138, § 1, 42 Pa.C.S. § 8934, which authorizes the sealing of search warrant affidavits, and which is implemented by Pa.R.Crim.P. Rule 211, through Pa.R.J.C.P. Rule 105, is suspended only insofar as the Act is inconsistent with Pa.R.Crim.P. Rules 205, 206, **and** 211.

2) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335(c), which provides for the issuance of arrest warrants if the juvenile may abscond or may not attend or be brought to a hearing, is suspended only insofar as the Act is inconsistent with Rules 124, 140, and 364, which require a summoned person to fail to appear and the court to find that sufficient notice was given.

3) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(c), which provides that if a proceeding is not recorded, full minutes shall be kept by the court, is suspended only insofar as the Act is inconsistent with Rule 127(A), which requires all proceedings to be recorded, except for detention hearings.

4) The Public Defender Act, Act of December 2, 1968, P. L. 1144, No. 358, § 1 *et seq.* as amended through Act of December 10, 1974, P. L. 830, No. 277, § 1, 16 P. S. 9960.1 *et seq.*, which requires the Public Defender to represent all juveniles who for lack of sufficient funds are unable to employ counsel is suspended only insofar as the Act is inconsistent with Rules 150 and 151, which requires separate counsel if there is a conflict of interest.

5) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6337, which provides that counsel must be provided unless the guardian is present and waives counsel for the juvenile, is suspended only insofar as the Act is inconsistent with Rule 152, which does not allow a guardian to waive the juvenile's right to counsel.

6) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6305(b), which provides that the court may direct hearings in any case or class or cases be conducted by the master, is suspended only insofar as the Act is inconsistent with Rule 187, which allows masters to hear only specific classes of cases.

7) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6321, which provides for commencement of a proceeding by the filing of a petition, is suspended only insofar as the Act is inconsistent with Rule 200, which provides the submission of a written allegation shall commence a proceeding.

8) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6303(b), which provides that a district judge or judge of the minor judiciary may not detain a juvenile, is suspended only insofar as the Act is inconsistent with Rule 210, which allows Magisterial District Judges to issue an arrest warrant, which may lead to detention in limited circumstances.

9) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6334, which provides that any person may bring a petition, is suspended only insofar as the Act is inconsistent with Rules 231, 233, and 330, which provide for a person other than a law enforcement officer to submit a private written allegation to the juvenile probation office or an attorney for the Commonwealth, if elected for approval; and that only a juvenile probation officer or attorney for the Commonwealth may file a petition.

10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

12) **The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged* delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.**

13) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

[13)] 14) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

[14)] 15) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

[15)] 16) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months when a juvenile is removed from the home.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 102.

***Official Note*:** Rule 800 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 March 19, 2009, effective June 1, 2009, 39 Pa.B. 1614. **Amended February 12, 2010, effective immediately.**

Committee Explanatory Reports:

Final Report explaining the amendments to Rule 800 published with the Court's Order at 36 Pa.B. **186,** 187 (January 14, 2006).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 37 Pa.B. **1483,** 1485 (April 7, 2007).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 38 Pa.B. 1142**, 1145** (March 8, 2008).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 39 Pa.B. **1614,** 1619 (April 4, 2009).

Final Report explaining the amendments to Rule 800 published with the Court's Order at 40 Pa.B. 1073, 1075 (February 27, 2010).

INTRODUCTION

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 312 and 800 with this Recommendation. The changes are effective immediately.

EXPLANATORY REPORT FEBRUARY 2010

The additions to the *Comment* of Rule 312 and Rule 800 (12) clarify that an informal adjustment may only occur prior to the filing of a petition. An informal adjustment is a diversionary process used to dispose of cases that should not come before the court. If a case should go to court, a petition is filed and the normal procedures of a case will follow.

As drafted, the Juvenile Act provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer. 42 Pa.C.S. § 6323(a)(2). A child is not delinquent until there has been an adjudication of delinquency. If a child is not delinquent until after the adjudication of delinquency, then an informal adjustment would occur after that determination. However, this is not the intent of the diversionary process or an informal adjustment.

The Juvenile Act at 42 Pa.C.S. § 6323(a)(2) is suspended to clarify that **alleged** delinquents may be referred for an informal adjustment. Once a petition is filed, informal adjustment is precluded as provided in Rule 312. *See* Rule 800(12).

[Pa.B. Doc. No. 10-353. Filed for public inspection February 26, 2010, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

In Re: Objections to Nomination Petitions—Primary Election, May 18, 2010; President Judge Administrative Order; No. 2010-01

Order

And Now, this 12th day of February 2010, *It Is Hereby Ordered, Adjudged* and *Decreed* that as required by 25 P. S. § 2937, any petition raising objections to Nomination Petitions ("petition") of candidates for the May 18, 2010 Primary Election shall be filed, scheduled and disposed as follows:

(1) the petition and Exhibits shall be electronically filed with the Court, pursuant to Pa.R.C.P. No. 205.4 and Philadelphia Civil Rule *205.4, no later than 5:00 PM on March 16, 2010. The petition shall be in the format attached as "Exhibit 1;"

(2) a copy of the petition shall be served on the Philadelphia County Board of Elections and on the candidate-nominee-respondent. A copy of the petition may be served on the Philadelphia County Board of Elections before or after the petition is filed with the Court, at their office, Room 142 City Hall, Philadelphia, PA; and, on March 16, 2010 may also be served on their representative, who has agreed to be available in the Prothonotary's Office, Room 280 City Hall, Philadelphia, PA from 3:00 PM to 5:00 PM;

(3) On March 16, 2010, the Office of the Prothonotary, Room 280 City Hall, will be open from 8:30 AM to 5:00 PM. Prothonotary staff will assist any party who wishes to electronically file petitions utilizing public access computers located in the Prothonotary's office. At precisely 5:00 PM, the Prothonotary shall close the office but shall continue to assist any party or counsel who was in line in the Prothonotary's office before 5:00 PM. Consistent with prior practice, any petition filed by these parties and/or counsel shall be deemed timely filed even if filed after 5:00 PM on March 16, 2010;

(4) Any petition filed electronically by any party after 5:00 PM on March 16, 2010 will be date and time stamped to reflect the actual time of receipt;

(5) Once the petition has been filed with the Prothonotary, an Order to Show Cause shall be issued scheduling a hearing date for March 19, 2010. The Order must be served by the petitioner before the hearing date as provided in the Order. The Order to Show Cause shall be in the format attached as "Exhibit 2;"

(6) The petitioner shall bring at the hearing, or file before the hearing, an Affidavit of Service indicating the date and time of service of the petition and of the Order to Show Cause. The Affidavit of Service shall be in the format attached as "Exhibit 3;" and

(7) The Court may reschedule the hearing for good cause, including inability to serve the petition or Order to Show Cause. The hearing must be concluded and a final order issued no later than March 24, 2010. The final order shall be in the format attached as "Exhibit 4."

This Administrative Order shall become effective immediately. The original Administrative Order shall be filed with the Prothonotary in a docket maintained for Administrative Orders issued by the President Judge of the

Court of Common Pleas, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, and to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order will be provided to American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Library and the Law Library for the First Judicial District, and shall be posted on the web site of the First Judicial District of Pennsylvania: http://courts.phila.gov.

By the Court

HONORABLE PAMELA PRYOR DEMBE,
President Judge
Court of Common Pleas

EXHIBIT 1

IN RE : COURT OF COMMON PLEAS
NOMINATION PETITION OF : PHILADELPHIA COUNTY
:
AS ____________ CANDIDATE FOR OFFICE OF : ELECTION MATTER
MEMBER OF WARD EXECUTIVE COMMITTEE : ____________ TERM,
FOR THE ________ WARD, ________ DIVISION : NO. ______________

PETITION TO SET ASIDE NOMINATION PETITION

The Petitioner, by and through counsel, respectfully avers that:

1. The Petitioner, ____________ , is a duly qualified elector, lives at ____________ Philadelphia, PA ________ , and is a registered in the above Ward and Division.

2. The Respondent is the above referenced Candidate for the stated position in the identified Ward and Division.

3. On or before ____________ , 20 _____ , above captioned Candidate filed a Nomination Petition for the Office of Member of the Executive Committee for the ____________ Party, in the above-captioned Ward and Division. A copy of the Nominating Petition is attached as Exhibit "A".

4. For the reasons set forth in greater detail in the attached Exhibit "B", the Candidate's Nominating Petition is improperly drawn, fails to contain the required number of properly ascribed signatures, and/or was improperly or untimely filed.

5. The Nomination Petition therefore fails to conform to the requirements of the Election Code, 25 Pa.C.S.A. § 2867, et seq., and must be set aside and the Candidate's name not be placed on the ballot.

6. Petitioner respectfully reserves the right to add such additional objections as are appropriate at the time of hearing.

WHEREFORE, Petitioner prays this Honorable Court to issue a Rule upon the Candidate and upon the Philadelphia County Board of Elections to show cause why the Nomination Petition should not be set aside and the Candidate's name not be placed on the ballot.

____
Petitioner/Attorney for Petitioner

VERIFICATION

I, ____________________ , hereby verify that the facts contained in the within Petition are true and correct to the best of my knowledge or information and belief.

I understand that the statements made herein are made subject to the provisions of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date:______________________

____
PETITIONER/COUNSEL

EXHIBIT "B"

IN RE ____________________________ : COURT OF COMMON PLEAS
NOMINATION PETITION OF ________ : PHILADELPHIA COUNTY
:
AS ____________ CANDIDATE FOR OFFICE OF : ELECTION MATTER
MEMBER OF WARD EXECUTIVE COMMITTEE : ____________ TERM,
FOR THE ________ WARD, ________ DIVISION : NO. ______________

LINE NO.	NAME	REASON

LINE NO.	NAME	REASON

SCHEDULE OF OBJECTION

NR Not Registered
REP Registered Republican
N-P Registered Non-Partisan
OD Out of District
BA Bad Address
PS Printed name on petition. Signed name on registration record
S Signature on petition is not the signature of voter on record
IL Name or address illegible

EXHIBIT 2

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
Court of Common Pleas of Philadelphia County

In Re ______________________________	:	Election Matter
Nomination Petition of ____________	:	
	:	**MARCH TERM, 2010**
	:	
As ____________ Candidate for Office of	:	
Member of Ward Executive Committee	:	
For the _______ WARD _______ DIVISION	:	**NO. _______**

ORDER TO SHOW CAUSE

AND NOW, this _______ day of March, 2010, upon consideration of the *Petition to Set Aside Nomination Petition* filed on ____________ , it is hereby ordered that:

(1) a rule is issued upon the Philadelphia County Board of Elections and the Respondent-Nominee, ____________ , to show cause why the above-referenced Nomination Petition should not be set aside and/or why the name of the Respondent-Nominee should not be removed from the ballot as a candidate for the ______________________________
(Democratic/Republican/Other)
Party Nomination for ______________________________ , in the City of Philadelphia;
(Office sought by Nominee)

(2) a hearing shall be held the _____ day of March, 2010, at _____ AM/PM at the Riverview Place, 520 North Delaware Avenue, 6th Floor, City Commissioner's Hearing Room, Philadelphia, Pennsylvania;

(3) a copy of this Order and a copy of the Petition (if it has not already been served) shall be served upon the County Board of Elections by personal service on an employee in charge, in Room 142 City Hall, Philadelphia, Pennsylvania, on or before the _____ day of March, 2010, at 4:00 PM. An Affidavit of Service shall be filed on or before the hearing date; and

(4) a copy of this Order and a copy of the Petition (if it has not already been served) shall be served upon the Respondent-Nominee, ____________ , personally or upon an adult at his/her residence, or upon the person in charge of his/her place of business, on or before the _____ day of March, 2010, at 4:00 PM. An Affidavit of Service shall be filed on or before the hearing date.

BY THE COURT:
PAMELA PRYOR DEMBE,
P. J.

EXHIBIT 3

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
Court of Common Pleas of Philadelphia County

In Re ______________________________	:	Election Matter
Nomination Petition of ____________	:	
	:	**MARCH TERM, 2010**
	:	
As ____________ **Candidate for Office of**	:	
Member of Ward Executive Committee	:	
For the _______ **WARD** _______ **DIVISION**	:	**NO.** _______

AFFIDAVIT OF SERVICE

I, ____________ , hereby certify that I have served a copy of the pleadings as follows:

Petition to Set Aside Nomination Petition on ____________ , an employee of the County Board of Elections on March _____ , 2010 at _____ AM/PM at the following location:

____

Order to Show Cause on ____________ , an employee of the County Board of Elections on March _____ , 2010 at _____ AM/PM at the following location:

____

and

Petition to Set Aside Nomination Petition on Respondent, ____________ on March _____ , 2010 at _____ AM/PM at the following location: Name

____

Order to Show Cause on Respondent, __________ , on March _____ ,2010 at _____ AM/PM at the following location:

____

I verify that the facts contained herein are true and correct to the best of my knowledge or information and belief.

I understand that the statements made herein are made subject to the provisions of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: ________________________ ______________________________________

EXHIBIT 4

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
Court of Common Pleas of Philadelphia County

In Re ______________________________	:	Election Matter
Nomination Petition of ____________	:	
	:	**MARCH TERM, 2010**
	:	
As ____________ **Candidate for Office of**	:	
Member of Ward Executive Committee	:	
For the _______ **WARD** _______ **DIVISION**	:	**NO.** _______

FINAL ORDER

AND NOW, this _____ day of March, 2010, upon consideration of the *Petition to Set Aside Nomination Petition* filed on March _____, 2010, after a hearing held thereon, and upon consideration of the evidence and/or legal arguments presented, **IT IS HEREBY ORDERED, ADJUDGED and DECREED** that:

☐ The Court finds that:

☐ the Nomination Petition is defective; and/or

☐ the Nomination Petition does not contain a sufficient number of genuine signatures of electors entitled to sign; and/or

☐ the Nomination Petition was not filed by persons entitled to file the same

the objections to the Nominating Petition of Respondent-Nominee ____________, are granted, and the Nomination Petition is set aside, and/or the name of the Respondent-Nominee should be removed from the ballot as a candidate for the above-referenced position.

☐ The Objections to the Nomination Petition of Respondent-Nominee ____________, are denied, and the Nomination Petition shall be accepted by the County Board of Elections.

☐

BY THE COURT:

____

J.

[Pa.B. Doc. No. 10-354. Filed for public inspection February 26, 2010, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CUMBERLAND COUNTY

In Re: Local Rule 212-4; Civil Term; Civil 96-1335

Order of Court

And Now, this 5th day of February, 2010, and effective July 1, 2010, or thirty (30) days after publication in the *Pennsylvania Bulletin*, whichever is later, Cumberland County Local Rule of Court 212-4 is amended to read as follows:

Rule 212-4. Each party to a civil action shall submit a pretrial memorandum to the Court Administrator and serve a copy on all other parties, no later than Friday prior to the pretrial conference. The memorandum shall set forth in the following order:

1) A statement of the basic facts as to liability.

2) A statement of the basic facts as to damages.

3) A statement as to the principal issues of liability and damages.

4) A summary of legal issues regarding admissibility of testimony, exhibits or any other matter, and legal authorities relied on.

5) The identity of witnesses to be called.

6) A list of exhibits with brief identification of each.

7) The current status of settlement negotiations including a statement as to whether an Alternative Dispute Resolution option has been utilized.

Adopted and effective August 28, 1981.

Amended December 1, 1991, effective December 1, 1991.

Amended February 5, 2010, effective July 1, 2010.

Pursuant to Pa.R.C.P. 239, the Court Administrator is directed to forward seven (7) certified copies of this order to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau, for publication in the *Pennsylvania Bulletin* together with a diskette, formatted in Microsoft Word for Windows reflecting the text in hard copy version, on (1) copy to the Supreme Court Civil Procedural Rules Committee and/or the Supreme Court Domestic Relations Committee, and one (1) copy to the Cumberland Law Journal.

By the Court

KEVIN A. HESS,
President Judge

[Pa.B. Doc. No. 10-355. Filed for public inspection February 26, 2010, 9:00 a.m.]

CUMBERLAND COUNTY

In Re: Local Rule 213-2; Civil Term; Civil 96-1335

Order of Court

And Now, this 5th day of February, 2010, and effective July 1, 2010, or thirty (30) days after publication in the *Pennsylvania Bulletin*, Cumberland County Local Rule of Court 213-2 is amended to read as follows:

Rule 213-2. At the call of the trial list, counsel for all parties shall indicate that discovery has been completed, that Alternative Dispute Resolution options have been considered and, if agreed to, have been completed or will be completed so as not to delay trial, and that the case is otherwise ready for trial in all respects. Any case not ready for trial in all respects shall, at the option of the court, be placed at the foot of the list or stricken from it.

Adopted August 21, 1980, effective August 21, 1980.

Amended April 1, 1995, effective April 30, 1995.

Amended February 5, 2010, effective July 1, 2010.

Pursuant to Pa.R.C.P. 239, the Court Administrator is directed to forward seven (7) certified copies of this order to the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau,

for publication in the *Pennsylvania Bulletin* together with a diskette, formatted in Microsoft Word for Windows reflecting the text in hard copy version, on (1) copy to the Supreme Court Civil Procedural Rules Committee and/or the Supreme Court Domestic Relations Committee, and one (1) copy to the Cumberland Law Journal

By the Court

KEVIN A. HESS,
President Judge

[Pa.B. Doc. No. 10-356. Filed for public inspection February 26, 2010, 9:00 a.m.]

JEFFERSON COUNTY

In Re: Administrative Order Designating the Secretary of the Juvenile Probation Department Under Pa.R.J.C.P. 1604(B) to Receive Reports Regarding Adjustment, Progress and Condition of a Child; No. 3-2010 O.C.

Order

And Now, this 8th day of February, 2010, *It Is Ordered That* the Secretary of the Juvenile Probation Department of Jefferson County be and hereby is named as the designee to receive reports regarding a child's adjustment, progress, and condition pursuant to Pa.R.J.C.P. 1604(B) and 42 Pa.C.S. § 63316.1(b).

The Law Clerk shall: (1) submit two certified copies of the Order, along with one copy of the same on a computer diskette, CD-ROM, or an electronic copy that complies with the requirements of 1 Pa. Code § 13.11(b)—(f), to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; (2) forward one copy of the written notification, received from the Juvenile Court Procedural Rules Committee, providing that this Order is not inconsistent with the Pennsylvania Rules of Juvenile Court Procedure, to the Legislative Reference Bureau; and (3) contemporaneously with the publishing of this Order in the *Pennsylvania Bulletin*, file one certified copy of the Order with the Administrative Office of Pennsylvania Courts.

This Order shall become effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

By the Court

HONORABLE JOHN HENRY FORADORA,
President Judge

[Pa.B. Doc. No. 10-357. Filed for public inspection February 26, 2010, 9:00 a.m.]

MERCER COUNTY

Administrative Order; 3 A.D. 2010

Administrative Order

And Now, February 10, 2010, pursuant to newly enacted Rule 1604B of the Rules of Juvenile Court Procedure, the President Judge hereby appoints the Mercer County Court Administrator as designee to receive reports of a foster parent, pre-adoptive parent or relative providing care for a child, submitted regarding the child's adjustment progress and condition for view by the Court in dependency hearings.

The report to the herein appointed designee shall be submitted at least seven days prior to the hearing. The Court Administrator, upon receipt, shall promptly distribute the report to the Judge before whom the hearing will be held, but no later than within one (1) business day of receiving the report. The Court Administrator shall further file a copy of the report with the Clerk of Courts and distribute copies to the attorneys, parties and, if one is appointed, to the Court Appointed Special Advocate. This order shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

FRANCIS J. FORNELLI,
President Judge

[Pa.B. Doc. No. 10-358. Filed for public inspection February 26, 2010, 9:00 a.m.]

MONROE COUNTY

Re: Administrative Order 2010; No. AD 21; 5-CU-2010

Order

And Now, this 4th day of February, 2010, in accordance with the Judicial Code, 42 Pa.C.S. § 4301(b), *It Is Ordered* that the following procedures shall be utilized to ensure a policy is in place to govern public access to the paper records of the Magisterial District Courts within the Forty-Third Judicial District. This policy supplants the existing *Public Access Policy of the Unified Judicial System of Pennsylvania: Magisterial District Courts,* found at 204 Pa. Code §§ 213.1 and 213.11.

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

1. Public Request Access

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

(b) Information subject to a sealing order, restricted by law or court rule, and the court's work product is not accessible to the public.

(c) Magisterial district courts have the discretion to require that a 'complex or voluminous' request be submitted in writing on a form supplied by AOPC. Exactly what is 'complex or voluminous' may vary from court to court depending on factors such as court resources and caseload.

(d) All denials for record requests must be issued in writing and the requestor, within 10 business days of notification of the decision, can appeal such a denial to the Deputy Administrator Special Courts.

2. Fee Schedule

(a) Copying per page—$.25

(b) Preparing, copying and refiling requested court documents—$8 per 1/4 hour

(c) Estimated costs are to be prepaid

(d) Fees paid for services rendered are nonrefundable

5. The effective date of this Order shall be July 1, 2010.

By the Court

RONALD E. VICAN,
President Judge

[Pa.B. Doc. No. 10-359. Filed for public inspection February 26, 2010, 9:00 a.m.]