

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 15]

Amendment of Explanatory Comment to Rule 1513 of the Rules of Appellate Procedure; No. 210 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 31st day of March, 2011, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Explanatory Comment to Rule 1513 of the Pennsylvania Rules of Appellate Procedure is amended in the following form.

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

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1513. Petition for Review.

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Explanatory Comment—2011

With respect to the general statement of objections in an appellate jurisdiction petition for review required in subdivision (d)(5), see *Maier v. Unemployment Comp. Bd. of Review*, 983 A.2d 1264, 1266 (Pa. Cmwlth. 2009).

[Pa.B. Doc. No. 11-646. Filed for public inspection April 15, 2011, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 9]

Order Revising the Comments to Rules 121 and 904 of the Rules of Criminal Procedure; No. 401 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 29th day of March, 2011, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publi-

cation pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration, 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 the revisions of the Comments to Pennsylvania Rules of Criminal Procedure 121 and 904 are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective May 1, 2011.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART B. Counsel

Rule 121. Waiver of Counsel.

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Comment

Paragraph (A) recognizes that the right to self-representation is guaranteed by the sixth amendment to the Federal Constitution when a valid waiver is made, *Faretta v. California*, 422 U.S. 806 (1975).

In *Indiana v. Edwards*, 128 S.Ct. 2379, 2388 (2008), the Supreme Court recognized, as an exception to the right to self-representation, that, when a defendant is not mentally competent to conduct his or her own defense, the U. S. Constitution permits the judge to require the defendant to be represented by counsel.

The right of a defendant to waive counsel is not automatic. Under Pennsylvania's case law, the defendant's request must be clear and unequivocal. See, e.g., *Commonwealth v. Davido*, 582 Pa. 52, 64-65, 868 A.2d 431, 438, cert. denied, 546 U.S. 1020 (2005).

Concerning when "meaningful trial proceedings" commence for purposes of a request to waive counsel for a bench trial, see *Commonwealth v. El*, 602 Pa. 126, 977 A.2d 1158 (2009). In *El*, the Court held that "meaningful trial proceedings" commence "when a court has begun to hear motions which have been reserved for time of trial; when oral arguments have commenced; or when some other such substantive first step in the trial has begun." *Id.* at 139, 977 A.2d at 1165, citing *Commonwealth v. Dowling*, 598 Pa. 611, 959 A.2d 910 (2008) (trial commences, for purposes of the right to a trial by jury, when the trial judge determines that the parties are present and directs them to proceed to opening argument, or to the hearing of any motions that had been reserved for the time of trial, or to some other such first step in the trial).

Court decisions contain broad language in referring to the areas and matters to be encompassed in determining whether the defendant understands the full impact and consequences of his or her waiver of the right to counsel, but is nevertheless willing to waive that right. The appellate courts require, however, at a minimum, that the judge or issuing authority ask questions to elicit the information set forth in paragraph (A)(2).

Although it is advisable that the judge or issuing authority conduct the examination of the defendant, the rule does not prevent the attorney for the Commonwealth

or an already-appointed or retained defense counsel from conducting all or part of the examination of the defendant as permitted by the judge or issuing authority. See *Commonwealth v. McDonough*, 571 Pa. 232, 812 A.2d 504 (2002).

On the issue of waiver of counsel in general, see, e.g., *Commonwealth v. Tyler*, 468 Pa. 193, 360 A.2d 617 (1976); *Commonwealth ex rel. Fairman v. Cavell*, 423 Pa. 138, 222 A.2d 722 (1966) (mere execution of a waiver of counsel form, without more, is insufficient to establish a valid waiver); *Commonwealth ex rel. McCray v. Rundle*, 415 Pa. 65, 202 A.2d 303 (1964); *Commonwealth ex rel. O'Lock v. Rundle*, 415 Pa. 515, 204 A.2d 439 (1964).

On the issue of forfeiting the right to representation, see *Commonwealth v. Lucarelli*, 601 Pa. 185, 971 A.2d 1173 (2009), in which the Court held that Rule 121 and its colloquy requirements do not apply to situations in which forfeiture is found. The Court explained "where a defendant's course of conduct demonstrates his or her intention not to seek representation by private counsel, despite having the opportunity and financial wherewithal to do so, a determination that the defendant be required to proceed *pro se* is mandated because that defendant has forfeited the right to counsel." *Id.* at 195, 971 A.2d at 1179.

In referring to summary cases, paragraph (B) refers only to those summary cases in which there exists a right to counsel. See Rule 122.

* * * * *

Official Note: Rule 318 adopted October 21, 1977, effective January 1, 1978; amended November 9, 1984, effective January 2, 1985; renumbered Rule 121 and amended March 1, 2000, effective April 1, 2001; amended December 19, 2007, effective February 1, 2008; **Comment revised March 29, 2011, effective May 1, 2011.**

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 December 19, 2007 changes to paragraph (A) concerning areas of inquiry for waiver colloquy published with the Court's Order at 38 Pa.B. 62 (January 5, 2008).

Final Report explaining the March 29, 2011 changes to the Comment adding citations to recent case law concerning right to counsel, time for withdrawal of waiver, and forfeiture of right to counsel published with the Court's Order at 41 Pa.B. 2000 (April 16, 2011).

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 904. Entry of Appearance and Appointment of Counsel; In Forma Pauperis.

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Comment

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Pursuant to paragraphs (F)(2) and (H)(2)(b), appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the

standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. See *Commonwealth v. Liebel*, 573 Pa. 375, 825 A.2d 630 ([Pa.] 2003). Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

Paragraph (H) was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.

Paragraph (H)(1)(a) recognizes that a defendant may proceed *pro se* if the judge finds the defendant competent, and that the defendant's election is knowing, intelligent, and voluntary. In *Indiana v. Edwards*, 128 S.Ct. 2379, 2388 (2008), the Supreme Court recognized that, when a defendant is not mentally competent to conduct his or her own defense, the U. S. Constitution permits the judge to require the defendant to be represented by counsel.

An attorney may not represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

Official Note: Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; amended February 26, 2002, effective July 1, 2002; Comment revised March 12, 2004, effective July 1, 2004; Comment revised June 4, 2004, effective November 1, 2004; amended April 28, 2005, effective August 1, 2005; **Comment revised March 29, 2011, effective May 1, 2011.**

Committee Explanatory Reports:

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Final Report explaining the March 29, 2011 revision of the Comment concerning right to counsel published with the Court's Order at 41 Pa.B. 2000 (April 16, 2011).

FINAL REPORT¹

Revisions of the Comments to Pa.Rs.Crim.P. 121 and 904

Qualified Right to Proceed Pro Se; Forfeiture of Right to Counsel; Timeliness of Request to Proceed Pro Se

On March 29, 2011, effective May 1, 2011, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the revision of the Comments to Rules of Criminal Procedure 121 (Waiver of Counsel) and 904 (Entry of Appearance and Appointment of Counsel; *In Forma Pauperis*). The revisions add citations to recent case law that address the defendant's right to proceed *pro se*, defendant's forfeiture of the right to appointed counsel by his or her behavior, and the timeliness of a defendant's request to proceed *pro se*.

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.

In *Indiana v. Edwards*, 128 S.Ct. 2379, 2388 (2008), the United States Supreme Court held that “the Constitution permits judges to take realistic account of the particular defendant’s mental capacities by asking whether a defendant who seeks to conduct his own defense at trial is mentally competent to do so. That is to say, the Constitution permits States to insist upon representation by counsel for those competent enough to stand trial under *Dusky*² but who still suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves.”

In *Commonwealth v. Lucarelli*, 601 Pa. 185, 971 A.2d 1173 (2009), the Court held that “where a defendant’s course of conduct demonstrates his or her intention not to seek representation by private counsel, despite having the opportunity and financial wherewithal to do so, a determination that the defendant be required to proceed *pro se* is mandated because that defendant forfeited the right to counsel.” The Court further held that Rule 121 “and its colloquy requirements do not apply to situations where forfeiture is found.” *Id.* at 195, 971 A.2d at 1179.

In *Commonwealth v. El*, 602 Pa. 126, 977 A.2d 1158 (2009), the Court, in determining whether a defendant’s request to proceed *pro se* was timely, clarifies what is meant by “meaningful trial proceedings” in the context of the timeliness of a request to proceed *pro se*. The Court explains

While this Court’s holding in *Dowling* is not controlling, its rationale is persuasive. The *Dowling* Court held that in the context of the right to a trial by jury, trial commences “when a court has begun to hear motions which have been reserved for time of trial; when oral arguments have commenced; or when some other such substantive first step in the trial has begun.” *Dowling*, 959 A.2d at 915. We hold that these same events constitute the beginning of “meaningful trial proceedings” in the context of the right to self-representation. Just as this Court observed in *Dowling* we likewise observe that meaningful trial proceedings should be “marked by a substantive, rather than a *pro forma*, event.” *Id.* at 139, 977 A.2d at 1165.

Rule 121 sets forth the criteria for waiver of counsel and for proceeding *pro se*. Both *Edwards* and *Lucarelli* apply substantive procedures that are new to Pennsylvania law. These decisions impact defendants’ rights to counsel and right to waive counsel by (1) permitting a judge to deny a defendant’s request to waive counsel when the judge determines the defendant is not competent to do so, and (2) permitting a judge to find that a defendant has forfeited his or her right to appointed counsel by his or her behavior. In view of this, the Committee agreed that these two cases should be cited in the Rule 121 Comment to alert to the bench and bar to the application of the new substantive procedures.

The *El* Court is clarifying the time for making a request to waive counsel, not making new law *per se*. However, the Committee reasoned that because the time for making a waiver request has been the subject of confusion in the case law, this case also should be cited in the Rule 121 Comment to alert the bench and bar to this clarification.

A reference to the *Edwards* case also has been added to the Rule 904 Comment. Rule 904(H)(1)(a) allows a judge to permit a defendant to proceed *pro se* if the judge finds the defendant competent and the waiver of counsel is

² *Dusky v. United States*, 362 U.S. 402 (1960).

voluntary, knowing, and intelligent. Although Rule 904 is not a waiver of counsel rule, because this paragraph addresses waiver of counsel in death penalty cases in the context of the PCRA, the Committee agreed the *Edwards* cross-reference is important for the bench and bar.

[Pa.B. Doc. No. 11-647. Filed for public inspection April 15, 2011, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BERKS COUNTY

Administrative Order Relative to Amendment of Rules of Civil Procedure and Judicial Administration; No. 11-38 Prothonotary; No. CP-06-AD- 000011-2011 Clerk of Courts

Order

And Now, this 9th day of March, 2011, the undersigned Judges of the Berks County Court of Common Pleas hereby adopt the Amended Berks County Rules of Civil Procedure and Rules of Judicial Administration last revised January 7, 2005, as the Rules of this Court. All prior Berks County Rules of Civil Procedure and Judicial Administration are rescinded as of the effective date of the new Rules. *It Is Further Ordered* that these Rules shall take effect thirty (30) days after publication in the *Pennsylvania Bulletin*.

The District Court Administrator of Berks County is further *Ordered* and *Directed* to provide copies to the appropriate offices and departments as stated in the Rules.

1. File ten (10) certified copies of this Order with the Administrative Office of Pennsylvania Courts for distribution in accordance with Pa. R.J.A. 103(c);
2. File two (2) certified copies of this Order with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;
3. File one (1) certified copy of this Order with the Civil Procedural Rules Committee;
4. File one (1) certified copy of this Order with the Berks County Law Library;
5. File one (1) certified copy of this Order with the Berks County Prothonotary; and
6. File one (1) certified copy of this Order with the Clerk of Courts.

By the Court

JEFFREY L. SCHMEHL,
President Judge

[Pa.B. Doc. No. 11-648. Filed for public inspection April 15, 2011, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1989 CV 1793

Order

And Now, this March 30, 2011, Dauphin County Local Rules 206.1(a) and 206.4(c) are amended as follows:

Rule 206.1(a). Petitions.

(1) The only applications designated to proceed as petitions are:

- (a) Petitions to Open Judgment;
- (b) Non Pros Petitions;

(c) **Applications filed to commence an action where it is not appropriate to file a writ of summons or a complaint;** and

(d) Any other applications so designated by statute or rule of court.

All other applications shall proceed as motions. If an application is designated by statute or rule of court to proceed as a petition, the statutory basis or specific rule must be specifically set forth in the petition.

(2) All issues relating to the administration, filing and processing of judicial assignments relating to petitions shall be under the direction and supervision of the Civil Calendar Judge.

Rule 206.4(c). Applications Designated to Proceed as Petitions—Rules to Show Cause

(1) Except for Petitions in Forfeiture under 42 Pa.C.S.A. § 6801 and § 6802, an original and one copy of a Petition [**to Open Judgment or a Non Pros Petition or other application designated by statute or rule of court to proceed as a petition**] shall be filed with the Prothonotary and a copy shall be served on all other parties.

(a) The Prothonotary shall forward the original petition to the Court Administrator's Office and shall retain the copy in the file. The petition shall be assigned to a judge for disposition by the Court Administrator's Office.

(b) The assigned judge may issue a rule to show cause pursuant to Pa.R.C.P. 206.5 (Discretionary Issuance). The judge may also issue a scheduling order, which may include any discovery deadlines, briefing schedule, argument or hearing dates and a stay of proceedings as the judge deems necessary upon review of the petition.

(c) Parties shall provide a copy of all subsequent pleadings, filings, briefs and memoranda related to the petition to the Court Administrator's Office for distribution to the assigned judge. No cover letter is necessary.

(2) Petitions in Forfeiture filed pursuant to 42 Pa.C.S.A. § 6801 and § 6802 shall be filed with the Prothonotary.

(a) Petitions in Forfeiture shall contain a notice as set forth in 42 Pa.C.S.A. § 6802(b). No rule to show cause should be attached. The Caption shall include a cross-reference by defendant name and docket number to any criminal action. The case shall thereafter proceed in accordance with the procedures set forth in 42 Pa.C.S.A. § 6802.

(b) If a response is not filed within thirty (30) days, the moving party shall file a Motion for Default Judgment with the Prothonotary. The Motion for Default Judgment will be assigned by the Court Administrator's Office to the Motions Judge for review.

(c) If a response is filed within thirty (30) days, either party may thereafter file a Certificate of Readiness listing the case for arbitration pursuant to Dauphin County Local Rule 1301 et seq. Arbitration shall be applicable to all actions in forfeiture.

These amendments shall be effective upon posting on the UJS portal.

By the Court

TODD A. HOOVER,
President Judge

[Pa.B. Doc. No. 11-649. Filed for public inspection April 15, 2011, 9:00 a.m.]

MONROE COUNTY**Amendment of R.C.P. 212.5—Mediation****Order**

And Now, this 22nd day of March, 2011, it is hereby Ordered and Directed that the Monroe County Rule of Civil Procedure 212.5, governing the mediation program for civil cases in the Court of Common Pleas of Monroe County, shall be amended as follows. (New material is in bold face text; material to be deleted is in brackets and in bold face text.)

It is further Ordered and Directed that the District Court Administrator shall:

a. Shall file seven (7) certified copies of the within Order and Local Rule with the Administrative Office of Pennsylvania Courts.

b. 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*.

c. File one (1) certified copy with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

d. One (1) copy shall be forwarded to the Monroe County *Legal Reporter* for publication.

e. Copies shall be kept continuously available for public inspection in the Office of the Monroe County Prothonotary, the Office of the Court Administrator and the Monroe County Law Library.

f. Revisions shall become effective thirty (30) days after the publication of this order in the *Pennsylvania Bulletin*.

By the Court

RONALD E. VICAN,
President Judge

212.5. Mediation.

(a) *Certification of Mediators*

(1) The President Judge shall certify as many mediators as determined to be necessary. It is anticipated that 10 to 15 mediators shall be initially certified.

(2) All mediators will be members of the Monroe County Bar Association.

(3) An attorney may be certified at the discretion of the President Judge as a mediator if:

(i) he or she has been a member of the Pennsylvania bar for a minimum of ten (10) years;

(ii) he or she has been admitted to practice before the Monroe County Court of Common Pleas; and

(iii) he or she has been determined by the President Judge to be competent to perform the duties of a mediator;

(iv) he or she has professional liability insurance in the minimum amount \$100,000 per occurrence and \$300,000 in the aggregate per year; and

(v) he or she has successfully completed a mediation training program approved by the Monroe County Court of Common Pleas.

(vi) The training requirement may be waived by the President Judge when the qualifications and experience of the applicant are deemed sufficient.

(4) The court shall solicit qualified individuals to serve as mediators.

(5) Each individual certified as a mediator shall take the oath or affirmation prescribed by 42 Pa.C.S.A. § 3151 before serving as a mediator.

(6) A list of all persons certified as mediators shall be maintained in the office of the court administrator.

(7) A member of the bar certified as a mediator may be removed from the list of certified mediators by the President Judge for any reason.

(b) *Mediator Training*

Unless waived by the President Judge, all mediators shall take at least six hours of instruction in alternative dispute resolution in a program that is eligible for Continuing Legal Education Credit (CLE) for members of the Pennsylvania bar.

(c) *Payment of Mediators*

(1) All terms and conditions of the mediator's fee agreement must be set forth in writing. The parties shall pay the mediator directly. The court assumes no responsibility for the supervision or enforcement of the parties' agreement to pay for mediation services.

(2) Any charges relating to the mediator's services shall be shared equally by the parties.

(3) The mediator shall be paid on an hourly basis at the mediator's regular hourly rate or, in the absence of a standard hourly rate, at the rate of \$200.00 per hour. The mediator shall disclose to the parties and/or their attorneys the rate at which his/her charges will be billed.

(4) Prior to the beginning of mediation, the parties shall pay to the mediator a non-refundable fee representing three hours of the mediator's time. This shall be the minimum fee for the mediator's time regardless of whether the mediation is concluded before three hours of time have been expended.

(5) Except as provided herein, a mediator shall not accept anything of value from any source for services provided under the court-annexed mediation program.

(d) *Types of Cases Eligible for Mediation*

Every civil action filed in the Monroe County Court of Common Pleas is eligible for mediation except any case which the assigned judge determines, after application by any party or by the mediator, is not suitable for mediation.

(e) *Mediation Conference Scheduling*

(1) When the court makes a determination that referral to mediation is appropriate, it shall issue an order referring the case to mediation, appointing the mediator, directing the mediator to establish the date, time and place for the mediation session and setting forth the name, address, and telephone number of the mediator. The order will also direct the mediator to fix the date for the initial mediation session to be a date within sixty (60) days from the date of the order of referral unless otherwise extended by the court.

(2) The mediation session shall be held before a mediator selected by the assigned judge from the list of mediators certified by the President Judge.

(3) The [**court administrator**] **Prothonotary/Clerk of Courts** shall provide the mediator with a current docket sheet.

(4) The mediator shall advise the [**court administrator**] **Prothonotary/Clerk of Courts** as to which documents in the case file the mediator desires copies of for the mediation session. The [**clerk**] **Prothonotary/Clerk of Courts** shall provide the mediator with all requested copies at no charge to the mediator. However, the assigned Judge, in his or her discretion, may require that the parties share in the cost of providing the necessary copies.

(5) Any continuance of the mediation session beyond the period prescribed in the referral order must be approved by the assigned judge.

(6) A person selected as a mediator shall be disqualified for bias or prejudice as if he or she were a district justice or judge. A party may assert the bias or prejudice of an assigned mediator by filing an affidavit with the assigned judge stating that the mediator has a personal bias or prejudice. The judge may in his or her discretion end alternative dispute resolution efforts, refer the case to another mediator, refer the case back to the original mediator or initiate another alternative dispute resolution mechanism.

(f) *The Mediation Session and Confidentiality of Mediation Communications.*

(1) The mediation session shall take place as directed by the court and the assigned mediator. The mediation session shall take place in a neutral setting designated by the mediator.

(2) To the extent that space is available and the Executive Board of the Monroe County Bar Association agrees, the mediator may schedule the mediation at the offices of the Monroe County Bar Association, which shall be entitled to charge a reasonable fee for use of its facilities.

(3) The parties shall not contact or forward documents to the mediator except as directed by the mediator or the court.

(4) Prior to the Mediation, the parties and/or their attorneys shall be required to prepare and submit a Confidential Position Paper disclosed only to the mediator in the format attached or as modified by the mediator or the assigned judge. The Confidential position paper shall not become a part of the court record and shall be destroyed at the conclusion of the mediation.

(5) If the mediator determines that no settlement is likely to result from the mediation session, the mediator shall terminate the session and promptly thereafter file a report with the assigned Judge stating that there has been compliance with the requirements of mediation in accordance with the local rules, but that no settlement has been reached.

(6) In the event that a settlement is achieved at the mediation session, the mediator shall file a report with the assigned Judge stating that a settlement has been achieved. The order of referral may direct the mediator to file the report in a specific form.

(7) Unless stipulated in writing by all parties and the mediator or except as required by law or otherwise ordered by the court, all discussions which occur during mediation shall remain strictly confidential and no communication at any mediation session (including, without

limitation, any verbal, nonverbal or written communication which refers to or relates to mediation of the pending litigation) shall be disclosed to any person not involved in the mediation process, and no aspect of the mediation session shall be used by anyone for any reason.

(8) No one shall have a recording or transcript made of the mediation session, including the mediator.

(9) The mediator shall not be called to testify as to what transpired in the mediation.

(10) Prior to the beginning of the mediation, all parties and their attorneys shall be required to sign a form developed by the Court in which the parties agree:

(i) to the terms of the mediation; and

(ii) to waive any professional liability claims that they might assert against the mediator, the assigned Judge, the Court of Common Pleas of the 43rd Judicial District, or Monroe County, as a result of their participation in the mediation process.

(g) *Duties of Participants at the Mediation Session.*

(1) *Parties.* All named parties and their counsel are required to attend the mediation session, participate in good faith and be prepared to discuss all liability issues, all defenses and all possible remedies, including monetary and equitable relief. Those in attendance shall possess complete settlement authority, independent of any approval process or supervision, except as set forth in subparagraphs (A) and (B) below.

Unless attendance is excused under paragraph (d), willful failure to attend the mediation session will be reported by the mediator to the court and may result in the imposition of sanctions.

(A) *Corporation or Other Entity.* A party other than a natural person (e.g. a corporation or association) satisfies this attendance requirement if represented by a person (other than outside counsel) who either has authority to settle or who is knowledgeable about the facts of the case, the entity's position, and the policies and procedures under which the entity decides whether to accept proposed settlements.

(B) *Government Entity.* A unit or agency of government satisfies this attendance requirement if represented by a person who either has authority to settle or who is knowledgeable about the facts of the case, the government unit's position, and the policies and procedures under which the governmental unit decides whether to accept proposed settlements. If the action is brought by or defended by the government on behalf of one or more individuals, at least one such individual also shall attend.

(2) *Counsel.* Each party shall be accompanied at the mediation session by the attorney who will be primarily responsible for handling the trial of the matter.

(3) *Insurers.* Insurer representatives are required to attend in person unless excused under paragraph (d), below, if their agreement would be necessary to achieve a settlement. Insurer representatives shall possess complete settlement authority, independent of any approval process or supervision.

(4) *Request to be Excused.* A person who is required to attend a mediation session may be excused from attending in person only after a showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. A person seeking to be excused must submit, no fewer than ten (10) days before the date set for the mediation, a written request to the mediator, simultaneously copying all counsel. The written request shall set forth all considerations that support the request and shall indicate whether the other party or parties join

in or object to the request. A proposed order prepared for the signature of the Judge shall be submitted to the mediator with the request. The mediator shall promptly consider the request and shall submit the proposed order to the Judge with a recommendation that the request be granted or denied. In the absence of an order excusing attendance, the person must attend.

Where an individual requests to be excused from personal participation at the mediation, a preference shall be given to attending by telephone at the expense of the excused party rather than complete excusal from the mediation.

(h) *Use of mediators for Private Employment*

The Monroe County Bar Association shall maintain a copy of the list of mediators certified by the President Judge. To the extent agreed to by the individual mediators, the list of mediators may be made available to litigants to hire for alternative dispute resolution including arbitrations and mediations. To the extent that the certified mediators are privately hired, the mediators shall make direct arrangements for compensation with the hiring litigants and the work they perform shall not be governed by the rules of the court-annexed mediation program.

Appendix A: Form for Confidential Position Paper Confidential Position Paper

Case Caption:

Docket #:

Assigned Judge:

Date of Report:

A. Summary of Critical Facts

B. Insurance Coverage

C. Prior demands and offers of settlement

D. Issues That May Assist The Mediator

[Pa.B. Doc. No. 11-650. Filed for public inspection April 15, 2011, 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 Rupert A. Hall, Jr. and will be the subject of a hearing on May 11, 2011, 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 April 29, 2011. 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. 11-651. Filed for public inspection April 15, 2011, 9:00 a.m.]

SUPREME COURT

Modification of the Magisterial Districts Within the Eighth Judicial District; No. 275 Magisterial Rules Doc.

Amended Order

Per Curiam

And Now, this 1st day of March, 2011, upon consideration of the Request of the President Judge of Northumberland County to eliminate Magisterial District 08-3-01 and reconfigure Magisterial Districts 08-2-01, 08-3-02, 08-3-03 and 08-3-04 of the Eighth Judicial District (Northumberland County) of the Commonwealth of Pennsylvania, it is hereby *Ordered* and *Decreed* that the Request is granted. This Order is effective March 1, 2011. The vacancy for District 08-3-01 shall not appear on the ballot for the primary or general election in 2011.

Said Magisterial Districts shall be as follows:

Magisterial District 08-2-01: Kulpmont Borough
 Magisterial District Judge Marion Heights Borough
 Hugh A. Jones Mount Carmel Borough
 Mount Carmel Township
 Riverside Borough
 East Cameron Township
 Ralpho Township
 Rush Township
 West Cameron Township

Magisterial District 08-3-02: McEwensville Borough
 Magisterial District Judge Delaware Township
 Robert J. Bolton East Chilisquaque
 Township
 Lewis Township
 Milton Borough
 Point Township
 Turbot Township
 Turbotville Township
 Watsontown Borough
 West Chilisquaque
 Township

Magisterial District 08-3-03: Snyderstown Borough
 Magisterial District Judge Shamokin City
 John Gembic Coal Township
 Shamokin Township
 Zerbe Township

Magisterial District 08-3-04:
 Magisterial District Judge
 Carl B. Rice

Herndon Borough
 Northumberland Borough
 Sunbury City
 Jackson Township
 Jordan Township
 Little Mahanoy Township
 Lower Augusta Township
 Lower Mahanoy Township
 Rockefeller Township
 Upper Augusta Township
 Upper Mahanoy Township
 Washington Township

[Pa.B. Doc. No. 11-652. Filed for public inspection April 15, 2011, 9:00 a.m.]

Modification of the Magisterial Districts Within the Twenty-First Judicial District; No. 276 Magisterial Rules Doc.

Amended Order

And Now, this 1st day of April, 2011, the Order dated February 15, 2011 that eliminated Magisterial District 21-3-02 and reconfigured Magisterial Districts 21-2-01, 21-3-01, 21-3-03, 21-3-04, 21-3-06 and 21-3-07 of the Twenty-first Judicial District (Schuylkill County) of the Commonwealth of Pennsylvania, is hereby *Amended* as follows: The effective date of the elimination and reconfiguration is April 1, 2011. Union Township shall be added to the list of municipalities contained in Magisterial District 21-2-01 and Landingville Borough shall be added to the municipalities contained in Magisterial District 21-3-03. The order of February 15, 2011 shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 11-653. Filed for public inspection April 15, 2011, 9:00 a.m.]