

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 83]

Amendment of Rule 209 of the Rules of Disciplinary Enforcement; No. 102 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 14th day of June, 2011, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania; the proposal having been submitted without publication in the interests of justice pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 209 of the Pennsylvania Rules of Disciplinary Enforcement 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 30 days.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 209. Immunity.

(a) Complaints submitted to the Board or Disciplinary Counsel shall be confidential unless the matter results in the filing of formal charges. See Rule 402(a) (relating to access to disciplinary information and confidentiality). Members of the Board, members of hearing committees, special masters, Disciplinary Counsel and staff shall be immune from civil suit for any conduct in the course of their official duties. All communications to the Board, a hearing committee, special master, or Disciplinary Counsel relating to misconduct by a respondent-attorney and all testimony given in a proceeding conducted pursuant to these rules shall be absolutely privileged and the person making the communication or giving the testimony shall be immune from civil suit based upon such communication or testimony[, except that such immunity shall not extend to any action that violates Rule 402]. For purposes of this subdivision (a), the staff of the Board shall be deemed to include conservators and sobriety, financial or practice monitors appointed pursuant to these rules or the rules of the Board.

* * * * *

Official Note: The provisions of subdivision (a) of the rule recognize that the submission and receipt of complaints against attorneys, and the investigation, hearing, decision and disposition of such complaints, are all parts

of a judicial proceeding conducted pursuant to the inherent power of the Supreme Court of Pennsylvania. The immunity from civil suit recognized to exist in subsection (a) is that which exists for all participants in judicial proceedings under Pennsylvania law, so long as their statements and actions are pertinent, material and during the regular course of a proceeding. [**Communications made or revealed in violation of the confidentiality requirement of Rule 402 are not pertinent to the proceeding and, thus, do not entitle the person who publishes them to absolute immunity.**]

[Pa.B. Doc. No. 11-1088. Filed for public inspection July 1, 2011, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Amendment of Rule 1006 of the Rules of Civil Procedure; No. 543 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 15th day of June, 2011, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 39 Pa.B. 5412 (September 19, 2009) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 977 No. 2); and the Committee having reaffirmed its original proposal after reviewing the matter again after submission upon the request of this Court:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1006 of the Pennsylvania Rules of Civil 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 August 1, 2011.

Mr. Justice Saylor files a dissenting statement.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter A. CIVIL ACTION

VENUE AND PROCESS

Rule 1006. Venue. Change of Venue.

* * * * *

(a.1) Except as otherwise provided by subdivision (c), a medical professional liability action may be brought against a health care provider for a medical professional liability claim only in a county in which the cause of action arose. **This provision does not apply to a cause of action that arises outside the Commonwealth.**

Official Note: See Section 5101.1(c) of the Judicial Code, 42 Pa.C.S. § 5101.1(c), for the definitions of "health

care provider,” “medical professional liability action” and “medical professional liability claim.”

(b) Actions against the following defendants, except as otherwise provided in subdivision (c), may be brought in and only in the counties designated by the following rules: political subdivisions, Rule 2103; partnerships, Rule 2130; unincorporated associations, Rule 2156; corporations and similar entities, Rule 2179.

Official Note: Partnerships, unincorporated associations, and corporations and similar entities are subject to subdivision (a.1) governing venue in medical professional liability actions. See Rules 2130, 2156 and 2179.

Subdivision (a.1) is a venue rule and does not create jurisdiction in Pennsylvania over a foreign cause of action where jurisdiction does not otherwise exist.

(c)(1) Except as otherwise provided by paragraph (2), an action to enforce a joint or joint and several liability against two or more defendants, except actions in which the Commonwealth is a party defendant, may be brought against all defendants in any county in which the venue may be laid against any one of the defendants under the general rules of subdivisions (a) or (b).

(2) If the action to enforce a joint or joint and several liability against two or more defendants includes one or more medical professional liability claims, the action shall be brought in any county in which the venue may be laid against any defendant under subdivision (a.1). **This provision does not apply to a cause of action that arises outside the Commonwealth.**

* * * * *

Explanatory Comment

Currently, a lawsuit based on medical treatment furnished in another state cannot be brought in Pennsylvania even if the defendants have substantial contacts with the state whereas Pennsylvania defendants can be sued in any state in which they have at least minimum contacts. The amendment to this rule would eliminate this discrepancy.

By the Civil Procedural Rules Committee

HONORABLE ROBERT C. DANIELS,
Chair

Dissenting Statement

Mr. Justice Saylor

I understand and appreciate the reasoning behind the amendment exempting causes of action arising outside the Commonwealth from the operation of the special venue rule applicable in medical professional liability actions. Nevertheless, to my knowledge the Civil Procedural Rules Committee has presented no analysis of the disparate impact of the amendment on out-of-state defendants or attendant constitutional ramifications. Moreover, the Committee has been presented with a number of compromise alternatives, including a less strict application of the doctrine of *forum non conveniens* in medical malpractice suits premised on causes arising outside Pennsylvania. In this regard, notably, it was suggested that at least some Pennsylvania courts impose a uniquely high bar impeding transfer. The Committee, nonetheless, has offered nothing to address such concerns, other than to say it rejected them.

In light of the above, I would return the matter to the Committee for a recommendation which would provide a better predicate for informed decision-making.

[Pa.B. Doc. No. 11-1089. Filed for public inspection July 1, 2011, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendments to the Rules of Civil Procedure Relating to Domestic Relations Matters; Recommendation 113

The Domestic Relations Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend the Rules of Civil Procedure relating to domestic relations matters as set forth herein. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

Notes and explanatory comments which appear with proposed amendments have been inserted by the committee for the convenience of those using the rules. Reports, notes and comments will not constitute part of the rules and will not be officially adopted or promulgated by the Supreme Court.

The committee solicits and welcomes comments and suggestions from all interested persons prior to submission of this proposal to the Supreme Court of Pennsylvania. Please submit written comments no later than Monday August 29, 2011 directed to:

Patricia A. Miles, Esquire
Counsel, Domestic Relations Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635
Fax: 717 231-9531
E-mail: domesticrules@pacourts.us

Deleted material is bold and bracketed. New material is bold.

*By the Domestic Relations
Procedural Rules Committee*

CAROL A. BEHERS, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

(d)(1) The conference officer [**may**] shall make a recommendation to the parties of an amount of support which is calculated in accordance with the guidelines.

(2) **Except as set forth in this subdivision, in all cases, even where the parties have reached an agreement, the parties must provide income information to the domestic relations section so that a guidelines calculation can be performed. However, if both parties are represented by counsel and the parties knowingly waive their right to receive or to pay a guideline amount, income information need not be provided if the parties have reached an agreement and object to providing income information.**

(3) If an agreement for support is reached at the conference, **based on either the statewide guidelines or an amount stipulated by counsel for each party,** the officer shall prepare a written order substantially in

the form set forth in Rule 1910.27(e) and in conformity with the agreement for signature by the parties and submission to the court together with the officer's recommendation for approval or disapproval. The court may enter the order in accordance with the agreement without hearing the parties.

* * * * *

Explanatory Comment—2011

The rule has been amended to require that income information be provided in all cases, unless both parties are represented in reaching an agreement and object to providing income information, so that a guidelines calculation can be performed. The guidelines create a rebuttable presumption that the amount calculated pursuant to them is the correct amount, so there should be a calculation in every case. If parties are going to waive their right to receive or to pay an order reflecting the guideline amount, they should know what that amount is so that they can enter an agreement knowingly. If both parties are represented by counsel, it is assumed that their entry into the agreement for an amount other than a guidelines amount is knowing as it is counsels' responsibility to advise the parties. In addition, part of the mandatory quadrennial review of the support guidelines mandates a study of the number of cases in which the support amount ordered varies from the amount that would result from a guidelines calculation. Federal regulations presume that if a large percentage of cases vary from the guideline amount, then the guidelines are not uniform statewide.

Rule 1910.12. Office Conference. Hearing. Record. Exceptions. Order.

(a) There shall be an office conference as provided by Rule 1910.11(a) through (d). **The provisions of Rule 1910.11(d)(2) regarding income information apply in cases proceeding pursuant to Rule 1910.12.**

* * * * *

[Pa.B. Doc. No. 11-1090. Filed for public inspection July 1, 2011, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 5 AND 6]

Renumbering of Rule 520 to 620 and New Rules 622, 625 and 628

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the renumbering of Rule 520 to 620 and new Rules 622, 625, and 628 be adopted and prescribed. These proposed modifications and additions address *nunc pro tunc* relief.

The following Explanatory Report highlights the intent of these Rules. Please note that the Committee's Reports should not be confused with the official Committee Comments to the Rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Explanatory Reports.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this pro-

posal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

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

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

All comments shall be received no later than August 12, 2011.

By the Juvenile Court
Procedural Rules Committee:

GEORGE D. MOSEE, Jr., Esq.,
Chair

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 5. DISPOSITIONAL HEARING

PART C. [POST-DISPOSITIONAL MOTIONS] (Reserved)

(*Editor's Note:* As part of this proposal, the Committee is proposing to renumber Rule 520, which appears in 237 Pa. Code pages 5-5—5-10, serial pages (347943)—(347948), as Rule 620.)

Rule 520. [Post-Dispositional Motions] (Reserved and Renumbered).

CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

PART B. MODIFICATIONS[,] AND REVIEWS[, AND APPEALS]

Rule 605.	Detaining Juvenile for Modification of the Dispositional Order or Violation of Probation.
610.	Dispositional and Commitment Review.
612.	Modification or Revocation of Probation.
613.	Termination of Court Supervision (Reserved).
616.	Post-Dispositional Procedures; Appeal (Reserved).
617.	Release of Juvenile Pending Appeal (Reserved).

PART C. MOTIONS AND *NUNC PRO TUNC* RELIEF

620.	Post-Dispositional Motions.
622.	Motion for <i>Nunc Pro Tunc</i> Relief.
625.	Hearing and Findings on Motion for <i>Nunc Pro Tunc</i> Relief.
628.	Order of Court on Motion for <i>Nunc Pro Tunc</i> Relief.

(*Editor's Note:* The following rules are new and printed in regular type to enhance readability.)

Rule 620. Post-Dispositional Motions.

A. *Optional Post-Dispositional Motion.*

1) The parties shall have the right to make a post-dispositional motion. All requests for relief from the court shall be stated with specificity and particularity, and shall be consolidated in the post-dispositional motion.

2) Issues raised before or during the adjudicatory hearing shall be deemed preserved for appeal whether or not the party elects to file a post-dispositional motion on those issues.

B. Timing.

1) If a post-dispositional motion is filed, it shall be filed no later than ten days after the imposition of disposition.

2) If a timely post-dispositional motion is filed, the notice of appeal shall be filed:

a) within thirty days of the entry of the order deciding the motion;

b) within thirty days of the entry of the order denying the motion by operation of law in cases in which the judge fails to decide the motion; or

c) within thirty days of the entry of the order memorializing the withdrawal in cases in which a party withdraws the motion.

3) If a post-dispositional motion is not timely filed, a notice of appeal shall be filed within thirty days of the imposition of disposition.

C. Court Action.

1) *Briefing Schedule and Argument.* Within ten days of the filing of the post-dispositional motion, the court shall:

a) determine if briefs, memoranda of law, or oral arguments are required; and

b) set a briefing schedule and dates for oral argument, if necessary.

2) *Failure to Set Schedule.* If the court fails to act according to paragraph (C)(1), briefs and oral arguments are deemed unnecessary.

3) *Transcript.* If the grounds asserted in the post-dispositional motion do not require a transcript, neither the briefs nor arguments on the post-dispositional motion shall be delayed for transcript preparation.

D. Time Limits for Decision on Motion. The judge shall not vacate disposition pending the decision on the post-dispositional motion, but shall decide the motion as provided in this paragraph.

1) Except as provided in paragraph (D)(2), the judge shall decide the post-dispositional motion as soon as possible but within thirty days of the filing of the motion. If the judge fails to decide the motion within thirty days, or to grant an extension as provided in paragraph (D)(2), the motion shall be deemed denied by operation of law.

2) Upon motion of a party within the 30-day disposition period, for good cause shown, the judge may grant one 30-day extension for decision on the motion. If the judge fails to decide the motion within the 30-day extension period, the motion shall be deemed denied by operation of law.

3) When a post-dispositional motion is denied by operation of law, the clerk of courts shall enter an order on behalf of the court, and, as provided pursuant to Rule 167, shall serve a copy of the order on each attorney and the juvenile, if unrepresented, that the post-dispositional motion is deemed denied. This order is not subject to reconsideration.

4) If the judge denies the post-dispositional motion, the judge promptly shall issue an order and the order shall be filed and served as provided in Rule 167.

5) If a party withdraws a post-dispositional motion, the judge promptly shall issue an order memorializing the withdrawal, and the order shall be filed and served as provided in Rule 167.

E. Contents of order. An order denying a post-dispositional motion, whether issued by the judge pursuant to paragraph (D)(4) or entered by the clerk of courts pursuant to paragraph (D)(3), or an order issued following a party's withdrawal of the post-dispositional motion pursuant to paragraph (D)(5), shall include notice to the party of the following:

1) the right to appeal;

2) the time limits within which the appeal shall be filed; and

3) the right to counsel in the preparation of the appeal.

F. After-discovered evidence. A motion for a new adjudication on the grounds of after-discovered evidence shall be filed in writing promptly after such discovery. If an appeal is pending, the judge may grant the motion only upon remand of the case.

Comment

The purpose of this rule is to promote the fair and prompt resolution of all issues relating to admissions, adjudication, and disposition by consolidating all possible motions to be submitted for court review, and by setting reasonable but firm time limits within which the motion is to be decided. Because the post-dispositional motion is optional, a party may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

For the definition of "disposition," see Rule 120 and its Comment.

OPTIONAL POST-DISPOSITIONAL MOTION

See In re Brandon Smith, 393 Pa. Super. 39, 573 A.2d 1077 (1990), for motions on ineffective assistance of counsel.

Under paragraph (A)(2), any issue raised before or during adjudication is deemed preserved for appeal whether a party chooses to raise the issue in a post-dispositional motion. It follows that the failure to brief or argue an issue in the post-dispositional motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during adjudication. Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. *See Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (1998) (any issues not raised in a 1925(b) statement will be deemed waived).

Under paragraph (B)(1), if a party chooses to file a post-dispositional motion, the motion is to be filed within ten days of imposition of disposition. The filing of the written post-dispositional motion triggers the time limits for decision on the motion. *See* paragraph (D)(1).

TIMING

Paragraph (B) contains the timing requirements for filing the optional post-dispositional motion and taking an appeal. Under paragraph (B)(1), the post-dispositional motion is to be filed within ten days of imposition of disposition. Supplemental motions may be filed but the time requirements of paragraph (B)(1) are to be followed.

When a party files a timely post-dispositional motion, the 30-day period for the juvenile's direct appeal on all matters in that case is triggered by the judge's decision on the post-dispositional motion, the denial of the motion

by operation of law, or the withdrawal of the post-dispositional motion. The appeal period runs from the entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. No direct appeal may be taken by the party while the post-dispositional motion is pending. See paragraph (B)(2).

If no timely post-dispositional motion is filed, the party's appeal period runs from the date disposition is imposed. See paragraph (B)(3).

BRIEFS; TRANSCRIPTS; ARGUMENT

Under paragraph (C)(1), the judge should determine, on a case-by-case basis, whether briefs, memoranda of law, or arguments are required for a fair resolution of the post-dispositional motion. If they are not needed, or if a concise summary of the relevant law and facts is sufficient, the judge should so order. Any local rules requiring briefs or oral argument are inconsistent with this rule. See Rule 121(E).

Under paragraph (C)(3), the judge, in consultation with the attorneys, should determine what, if any, portions of the notes of testimony are to be transcribed so that the post-dispositional motion can be resolved. The judge should then set clear deadlines for the court reporter to insure timely resolution of the motion. Nothing in this rule precludes the judge from ordering the transcript or portions of it immediately after the conclusion of the adjudicatory hearing or the entry of an admission.

For the recording and transcribing of court proceedings generally, see Rule 127. The requirements for the record and the writing of an opinion on appeal are set forth in the Pennsylvania Rules of Appellate Procedure.

There is no requirement that oral argument be heard on every post-dispositional motion. When oral argument is heard on the post-dispositional motion, the juvenile need not be present.

DISPOSITION

Under paragraph (D), once a party makes a timely written post-dispositional motion, the judge retains jurisdiction for the duration of the disposition period. The judge may not vacate the order imposing disposition pending decision on the post-dispositional motion.

Paragraph (D)(2) permits one 30-day extension of the 30-day time limit, for good cause shown, upon motion of a party. In most cases, an extension would be requested and granted when new counsel has entered the case. Only a party may request such an extension. The judge may not, *sua sponte*, extend the time for decision: a congested court calendar or other judicial delay does not constitute "good cause" under this rule.

The possibility of an extension is not intended to suggest that thirty days are required for a decision in most cases. The time limits for resolution of the post-dispositional motion are the outer limits. Easily resolvable issues, such as a modification of disposition or an admission challenge, should ordinarily be decided in a much shorter period of time.

If the judge decides the motion within the time limits of this rule, the judge may grant reconsideration on the post-dispositional motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701(b)(3), but the judge may not vacate the disposition pending reconsideration. The reconsideration period may not be used to extend the timing requirements set forth in paragraph (D) for decision on the post-dispositional motion: the time limits imposed by paragraphs (D)(1) and (D)(2) continue to run from the

date the post-dispositional motion was originally filed. The judge's reconsideration, therefore, is to be resolved within the 30-day decision period of paragraph (D)(1) or the 30-day extension period of paragraph (D)(2), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-dispositional motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (D)(3).

Under paragraph (D)(1), on the date when the court disposes of the motion, or the date when the motion is denied by operation of law, the judgment becomes final for the purposes of appeal. See Judicial Code, 42 Pa.C.S. §§ 102, 722, 742, 5105(a) and *Commonwealth v. Bolden*, 472 Pa. 602, 373 A.2d 90 (1977). See Pa.R.A.P. 341.

An order entered by the clerk of courts under paragraph (D)(3) constitutes a ministerial order and, as such, is not subject to reconsideration or modification pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.

If the motion is denied by operation of law, paragraph (D)(3) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorneys, or the juvenile, if unrepresented, that the motion has been denied. This notice is intended to protect the party's right to appeal. The clerk of courts also is to comply with the filing, service, and docket entry requirements of Rule 167.

CONTENTS OF ORDER

Paragraph (E) protects a party's right to appeal by requiring that the judge's order denying the motion, the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a party's withdrawal of a post-dispositional motion, contain written notice of the party's appeal rights. This requirement ensures adequate notice to the party, which is important given the potential time lapse between the notice provided at disposition and the resolution of the post-dispositional motion. See also *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. Ct. 1998), concerning the contents of the order memorializing the withdrawal of a post-dispositional motion.

When a party withdraws a post-dispositional motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the party notice of the information required by paragraph (E). See *Commonwealth v. Miller*, *supra*.

MISCELLANEOUS

Under paragraph (A)(1), the grounds for the post-dispositional motion should be stated with particularity. Motions alleging insufficient evidence, for example, are to specify in what way the evidence was insufficient, and motions alleging that the court's findings were against the weight of the evidence are to specify why the findings were against the weight of the evidence.

Because the post-dispositional motion is optional, the failure to raise an issue with sufficient particularity in the post-dispositional motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during adjudication. See paragraph (A)(2).

Issues properly preserved at the dispositional hearing need not, but may, be raised again in a motion to modify disposition in order to preserve them for appeal. In deciding whether to move to modify disposition, counsel carefully is to consider whether the record created at the dispositional hearing is adequate for appellate review of

the issues, or the issues may be waived. *See Commonwealth v. Jarvis*, 444 Pa. Super. 295, 663 A.2d 790 (1995). As a general rule, the motion to modify disposition under paragraph (A)(1) gives the dispositional judge the earliest opportunity to modify the disposition. This procedure does not affect the court's inherent powers to correct an illegal disposition or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. *See, e.g., Commonwealth v. Jones*, 520 Pa. 385, 554 A.2d 50 (1989) (court can, *sua sponte*, correct an illegal sentence even after the defendant has begun probation or placement) and *Commonwealth v. Cole*, 437 Pa. 288, 263 A.2d 339 (1970) (inherent power of the court to correct obvious and patent mistakes).

Once a disposition has been modified or reimposed pursuant to a motion to modify disposition under paragraph (A)(1), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify disposition in order to preserve an issue for appeal, as long as the issue was properly preserved at the time disposition was modified or reimposed.

Official Note: Rule 520 adopted May 17, 2007, effective August 20, 2007; amended July 28, 2009, effective immediately. Amended January 11, 2010, effective March 1, 2010.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 520 published with the Court's Order at 37 Pa.B. 2506 (June 2, 2007).

Final Report explaining the amendment to Rule 520 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009).

Rule 622. Motion for *Nunc Pro Tunc* Relief.

A. *Timing.* A motion for *nunc pro tunc* relief shall be filed with the clerk of courts in the court in which the alleged error occurred as soon as possible but no later than sixty days after the date that the error was known or reasonably should have been known through the exercise of due diligence.

B. *Counsel.*

1) The juvenile is to retain the same counsel as assigned pursuant to Rule 151 unless ineffective assistance of counsel is alleged.

2) If alleged ineffective assistance of counsel is the basis for the appeal, counsel is to withdraw pursuant to Rule 150(C) and the judge shall assign new counsel.

C. *Contents of Motion.* A motion for relief under this rule shall include:

- 1) the name of the juvenile and case docket number;
- 2) the location of the juvenile;
- 3) the delinquent acts for which the juvenile was adjudicated delinquent;
- 4) if ineffective assistance of counsel is alleged, the name of counsel who allegedly rendered ineffective assistance;
- 5) the relief requested;
- 6) a statement that one of the following requirements for the relief has been met:
 - a) there is a need for correction of an error to accurately reflect the court's findings; or
 - b) allegations that:
 - 1) the juvenile has been adjudicated delinquent and is under the court's supervision;
 - 2) there is a legitimate basis for the relief requested; and
 - 3) there are sufficient facts upon which to conclude the delay for the motion was justified and should be overlooked in the interest of justice.

7) the facts supporting the grounds for relief and sufficient facts to support the delay of the motion for relief that:

a) appear in the record, and the place in the record where they appear; and

b) do not appear in the record, and an identification of any affidavits, documents, and other evidence showing such facts;

8) whether the grounds for the relief requested were raised before, and if so, at what stage of the proceedings;

9) a verification that the facts set forth in the motion are true and correct to the best of the movant's personal knowledge or information and belief and that any false statements are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

10) if applicable, any request for an evidentiary hearing, including:

a) a signed certification by counsel as to each intended witness, stating the:

- i) witness's name;
- ii) witness's address;
- iii) witness's date of birth; and
- iv) the substance of the witness's testimony; and

b) any documents material to the witness's testimony, attached to the motion; and

11) if applicable, any request for discovery.

D. *Answer.*

1) The Commonwealth may answer the motion. If the Commonwealth chooses to respond to the motion, such response shall:

a) be submitted within ten days of receipt of the motion; and

b) include a verification that the facts set forth in the answer are true and correct to the best of the attorney's personal knowledge or information and belief and that any false statements are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

2) The court may order the Commonwealth to file an answer within a timeframe established by the court.

Comment

Relief under this rule is to be filed with the clerk of courts in the court in which the alleged error occurred. Rule 120 defines "court" as the Court of Common Pleas. *See* Rule 120. Because the court has continual supervision over a juvenile until court supervision is terminated pursuant to Rules 631 or 632, the juvenile court is the appropriate forum for such relief.

This process allows the juvenile court to accept late motions when there is a sufficient basis for the delay. *See* paragraph (C)(6) for requirement of the grounds for the motion. Because the court is providing relief *nunc pro*

tunc, the requirements of 42 Pa.C.S. § 5505 do not apply. See *City of Philadelphia Police Dept. v. Civil Service Comm'n of City of Philadelphia*, 702 A.2d 878 (Pa. Commw. Ct. 1997) (absent specific rule, only technical errors may be corrected after 30-day period). See also *Justice v. Justice*, 612 A.2d 1354, 417 Pa.Super. 581 (1992) (after a 30-day period the order can be opened or vacated if there is fraud or some other circumstance so grave or compelling as to constitute extraordinary cause which justifies intervention by the court); *Com., Dept. of Transp., Bureau of Driver Licensing v. Duncan*, 601 A.2d 456, 144 Pa.Comm.w. 261 (1991) (after a 30-day period order can be opened or vacated upon extraordinary cause).

Pursuant to paragraph (A), the motion is to be filed as soon as possible but no later than sixty days of the date the error was made known or discovered. It is best practice to file the motion within thirty days. The juvenile is to allege facts to support the delay for the relief pursuant to paragraph (C)(7). Pursuant to paragraph (B), counsel is to remain in the case until court supervision of the juvenile is terminated, including any proceedings upon appeal. See Rule 150(B).

If ineffectiveness of counsel is alleged, counsel is to file a motion to withdraw pursuant to Rule 150(C) and the judge is to assign new counsel.

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

Rule 625. Hearing and Findings on Motion for *Nunc Pro Tunc* Relief.

A. Hearing.

1) The judge may grant an evidentiary hearing to resolve material questions of fact.

2) The hearing shall be conducted as soon as possible but no later than thirty days of the filing of the motion for *nunc pro tunc* relief unless, upon good cause shown, the judge determines more time is necessary for investigation and preparation.

B. Grant with No Hearing. If sufficient facts exist in the record to warrant relief, the judge may grant the motion without a hearing. If the judge grants the motion, it shall be granted within thirty days unless an extension is granted.

C. Dismiss with No Hearing.

1) The judge shall give notice to the parties of the intention to dismiss the motion, stating the reasons for the dismissal in the notice upon conclusion that:

- a) there are no genuine issues concerning any material fact;
- b) the juvenile is not entitled to relief; or
- c) no purpose would be served by any further proceedings.

2) The juvenile may respond to the proposed dismissal within twenty days of the date of the notice.

3) The judge shall order the motion dismissed, grant leave to file an amended motion, or direct that the proceedings continue.

4) The judge may dispose of only part of a motion without a hearing by ordering dismissal of or granting relief on only some of the issues raised, while ordering a hearing on other issues.

D. Findings. The judge shall:

1) state its findings and conclusions of law for all material issues raised:

- a) on the record when there is a hearing; or
- b) in the order when there is no hearing; and

2) issue an order denying relief or granting a specific form of relief, and issue any supplementary orders or modification of dispositional orders appropriate to the proper disposition of the case.

E. Dismissed by Operation of Law. If the judge fails to decide the motion within thirty days, or to grant an extension:

1) the motion shall be deemed denied by operation of law and not subject to reconsideration; and

2) the clerk of courts shall forthwith:

a) enter an order on behalf of the court; and

b) as provided pursuant to Rule 167, shall serve a copy of the order on each attorney and the juvenile, if the juvenile has waived counsel, that the motion is deemed denied.

F. Appellate Rights.

1) If the judge disposes of the case in open court at the conclusion of the hearing, the judge shall advise the juvenile on the record of the right to appeal from the final order disposing of the motion and of the time within which the appeal must be taken.

2) If the case is taken under advisement or the judge denies the motion without a hearing, the judge shall notify the juvenile of the right to appeal.

Comment

The judge is permitted, pursuant to paragraph (C), to summarily dismiss a motion in certain cases. To determine whether a summary dismissal is appropriate, the judge should review the motion, the answer, if any, and all other relevant information included in the record. If, after this review, the judge determines that the motion is patently frivolous and without support in the record, or that the facts alleged would not, if proven, entitle the juvenile to relief, or that there are no genuine issues of fact, the judge may dismiss the motion.

A summary dismissal would also be authorized under this rule if the judge determines that a previous motion involving the same issue or issues was filed and determined adversely to the juvenile. See Comment to Rule 622 for second or subsequent motions.

Additionally, relief may be granted without a hearing pursuant to paragraph (D)(2) after an answer has been filed.

Rule 628. Order of Court on Motion for *Nunc Pro Tunc* Relief.

A. Order by court. The court order shall:

- 1) state the judge's findings and conclusions of law;
- 2) provide for appropriate relief and supplementary orders or modifications of the dispositional order as to:

- a) the detention of the juvenile;
 - b) whether a new adjudicatory hearing is granted;
 - c) correction of the adjudication of delinquency;
 - d) correction of the disposition;
 - e) termination of court supervision; and/or
 - f) other matters that are appropriate.
- 3) include a statement explaining the right to appeal from the final order disposing of the motion, and of the time within which the appeal must be taken.

B. *Order by clerk of courts for deemed denied by operation of law.* When the clerk of courts has entered an order providing that the motion for *nunc pro tunc* relief is deemed denied by operation of law pursuant to Rule 625(E), the court order shall:

- 1) state that the motion is denied by operation of law pursuant to Rule 625(A)(2); and
- 2) include a statement explaining the right to appeal from the final order disposing of the motion, and of the time within which the appeal must be taken.

PART D. CESSATION OF COURT JURISDICTION OR SUPERVISION

Rule	
630.	Loss of Court Jurisdiction.
631.	Termination of Court Supervision.
632.	Early Termination of Court Supervision by Motion.

Explanatory Report

Background

Testimony from hearings conducted by the Interbranch Commission on Juvenile Justice (ICJJ) revealed a number of constitutional and procedural rule violations occurred, more than just the violation of the right to counsel. One such violation involved the notice of the right to file a post-dispositional motion and appeal.

Pa.R.J.C.P. 512(C) requires that the court determine on the record that the juvenile has been advised of the following: 1) the right to file a post-dispositional motion; 2) the right to file an appeal; 3) the time limits for a post-dispositional motion and appeal; 4) the right to counsel to prepare the motion and appeal; 5) the time limits within which the post-dispositional motion shall be decided; and 6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.

The ICJJ recommended that a form be developed to give to juveniles that would refer them to the statewide appellate office. Currently, there is no statewide appellate office that handles all juvenile appeals. Whether an office is ultimately established by the General Assembly as recommended by the ICJJ for this purpose is outside the scope of this Committee and its recommendations.

As stated *supra*, the court should determine if the juvenile has been advised of his or her rights regardless of whether there is a statewide appellate office. The Supreme Court of Pennsylvania requires under Pa.R.J.C.P. 150(B) that counsel shall represent the juvenile until final judgment, including any proceeding upon direct appeal. Therefore, counsel for the juvenile is required to file any post-dispositional motions and to perfect an appeal for the juvenile. The attorney for the juvenile should also explain the post-dispositional and appellate process.

The ICJJ also recommended that consideration be given to creating a mechanism which would afford a juvenile an avenue to petition for relief from a wrongful adjudication even though the period for direct appeal has expired. In the adult system, the use of the Post Conviction Relief Act (PCRA) permits those who have been convicted of a crime and have exhausted their direct appeal rights, to bring their case to the attention of the court under certain limited circumstances.

These proposed rule additions address *nunc pro tunc* relief for juveniles. Currently, issues similar to PCRA claims, such as ineffective assistance of counsel, are raised on direct appeal for juveniles. However, claims that are raised must be filed through the normal appellate process which can take several months only to be remanded to the juvenile court for an evidentiary hearing. Additionally, if the appeal is not filed within thirty days as required, the case will be dismissed as untimely.

These rule additions specifically address allowance of untimely appeals when good cause has been shown. The additions also provide for an expedited review by the juvenile court to avoid the delays inherent in the direct appeal process. For example, a juvenile claims that counsel was ineffective. The juvenile court could order an evidentiary hearing and ultimately find the counsel was ineffective. A new adjudicatory hearing would be ordered and the case would progress through the normal juvenile court process, eliminating the need for an appeal to Superior Court.

In other instances, the juvenile court could allow an appeal to the Superior Court even though the appeal is untimely. For example, the juvenile may claim he or she advised counsel to file an appeal and counsel did not file an appeal. If the juvenile court finds that the appeal should have been perfected, the appeal would be allowed even though the time for filing an appeal has passed.

Rule Discussion

Rule 520 to 620—Post-Dispositional Motions

The Committee is recommending that the Rule on Post-Dispositional Motions be placed in Chapter Six under new Part C, Motions. This new Part will include post-dispositional motions and motions for *nunc pro tunc* relief.

Rule 622—Motion for Nunc Pro Tunc Relief

This new proposed rule sets forth the requirements for filing a motion for *nunc pro tunc* relief. The allegations must contain that: 1) there is a need for correction of an error to accurately reflect the court's findings; or 2) the juvenile has been adjudicated delinquent for a delinquent act and is currently under the court's supervision; there is a legitimate basis for the appeal; and there are sufficient facts upon which to conclude the delay for the motion was justified and should be overlooked in the interest of justice. See paragraph (C)(6)(a) and (b).

Rule 625—Hearing and Findings on Motion for Nunc Pro Tunc Relief

This new proposed rule allows the judge to grant an evidentiary hearing if it is clear there is no evidence or insufficient evidence on the record upon which the Superior Court could base its decision. This is important because if an appeal was taken and there was no evidence in the record for the Superior Court to review, the case would be remanded for an evidentiary hearing. This is common for ineffective assistance of counsel claims because there would be no evidence in the record.

Also, there may be new evidence that was just made available and it did not appear in the record.

This bypass procedure streamlines the process and will prevent an overload of cases to the Superior Court. It also saves time and money to have the juvenile court judge or another Common Pleas judge hear cases that would otherwise be remanded.

The judge may also grant or deny a motion without a hearing. Before the judge denies the motion under paragraph (C), the judge is to give notice of the intention to dismiss the motion and state the reasons for the dismissal in the notice. The juvenile may respond to the notice within twenty days, whereupon the judge will make his or her final ruling.

Rule 628—Order of Court on Motion for Nunc Pro Tunc Relief

This new proposed rule governs the contents of the court order. The order must include the judge's findings and conclusions of law; any appropriate relief and supplementary orders or modifications of the dispositional order; and advise the parties of the right to appeal and time within which the appeal must be taken.

[Pa.B. Doc. No. 11-1091. Filed for public inspection July 1, 2011, 9:00 a.m.]

Title 249— PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Philadelphia Criminal Rule No. 122-1; Rescission of Philadelphia Criminal Rules 406-1, 406-2, 406-4, 410, 420, and 421; and Amendment of Philadelphia Criminal Rules 406(A) and 424(B)(1); President Judge General Court Regulation No. 2011-01

Order

And Now, this 10th day of June, 2011, the Board of Judges of Philadelphia County having voted at the Board of Judges' meeting held on March 10, 2011 to adopt Philadelphia Criminal Rule 122-1; to rescind Philadelphia Criminal Rules 406-1, 406-2, 406-4, 410, 420, and 421; and to amend Philadelphia Criminal Rules 406(A) and 424(B)(1), *It Is Hereby Ordered* that Philadelphia Criminal Rule 122-1; Philadelphia Criminal Rules 406-1, 406-2, 406-4, 410, 420, 421; and Philadelphia Criminal Rules 406(A) and 424(B)(1) are adopted, rescinded and amended as follows.

As required by Pa.R.Crim.P. No. 105(D), the proposed amended rule has been submitted to the Supreme Court's Criminal Procedural Rules Committee for review and written notification has been received from the Committee certifying that the proposed amended rule is not inconsistent with any general rule of the Supreme Court. The original Administrative Order and amended local rule shall be filed with the Prothonotary and the Clerk of Courts in a docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas, and, as required by Pa.R.Crim.P. No. 105(E), two certified copies of this Administrative Order and amended local rule as well as a copy on a computer diskette shall be distributed to the Legislative Reference

Bureau for publication in the *Pennsylvania Bulletin*. The adopted, rescinded and amended local rules will become effective on the dates noted therein. As required by Pa.R.Crim.P. No. 105(F) one certified copy of this General Court Regulation and amended local rules shall be filed with the Administrative Office of Pennsylvania Courts and the local rule will also be published on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx> and posted on the First Judicial District's website at <http://courts.phila.gov>. Copies of this General Court Regulation and amended local rules shall be published in *The Legal Intelligencer* and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE PAMELA PRYOR DEMBE,
President Judge

COURT OF COMMON PLEAS

CRIMINAL DIVISION

PHILADELPHIA CRIMINAL RULES

Rule 122-1. Homicide Appointment System.

The Judges of the First Judicial District (FJD) adopt the following Homicide Appointment System (HAS) Plan for the competent representation of any person otherwise financially unable to obtain competent representation in cases wherein a charge of homicide has been filed.

I. Provision for Furnishing Counsel

A. This Plan provides for the continued appointment of private counsel in homicide cases for which the Defender Association of Philadelphia (Defender Association) is not appointed.

B. This Rule is promulgated to insure that counsel who participate in homicide cases possess the ability, knowledge and experience to do so in a competent and professional manner.

C. To that end, although not the focus of this Rule, privately retained and pro bono counsel must meet the educational and experiential requirements of Pa.R.Crim.P. 801 or, if counsel is licensed to practice law in a jurisdiction other than Pennsylvania, the court is satisfied that the attorney has equivalent experience and educational qualifications and is a member in good standing of the Bar of the attorney's home jurisdiction, before counsel may enter an appearance at any stage of the proceedings in which he or she wishes to represent a defendant charged with a capital case.

D. The office of Active Criminal Records¹ shall determine whether any person entitled to representation (hereinafter, defendant) will be represented by a private attorney appointed pursuant to this Rule or by the Defender Association.

II. Selection of Attorneys

A. Panels of Attorneys

1. *Approval.* The FJD, through the process promulgated by the Selection Committee described in paragraph C herein, shall establish Panels of attorneys who are eligible and willing to be appointed to provide representation to defendants under the FJD Homicide Appointment System (FJD-HAS) Plan.

¹ When the office of Active Criminal Records is mentioned in this Rule, it is understood to include any successor office to the office of Active Criminal Records.

2. *Equal Opportunity.* All qualified attorneys shall be and are encouraged to participate in the furnishing of representation under the FJD-HAS Plan, without regard to race, color, religion, gender, age, national origin, sexual orientation or disabling condition.

3. Seven panels of Homicide attorneys will be created. These shall be known as the "Capital Trial Panel," the "Non-capital Trial Panel," the "Defender Association Panel,"² the "Capital Appeals Panel," the "Non-capital Appeals Panel," the "Capital PCRA"³ Panel," and the "Non-capital PCRA Panel." Attorneys on each Panel must demonstrate substantial familiarity with the ethics, practice, procedure and rules of the trial and reviewing courts of the Commonwealth of Pennsylvania. Although the term of service for a private attorney who becomes a member of a Panel pursuant to this Rule may expire, the appointments that have been made during the course of the term shall remain in full force and effect as set forth by Pa.R.Crim.P. 120(A)(4), Pa.R.Crim.P. 122(B)(2) and Pa.R.Crim.P. 904(F)(2).

4. *Capital Trial Panel*

A. To be approved for this Panel, it is required that an attorney:

(1) is a member in good standing of the Bar of the Pennsylvania Supreme Court, or admitted to practice *pro hac vice* and a member in good standing of the Bar of the jurisdiction in which the attorney is admitted to practice;

(2) is an active trial practitioner with a minimum of 5 years criminal litigation experience;

(3) has maintained a practice of which, during the 5 year period immediately preceding the date of the filing of the application for membership in this Panel, 75% has consisted of serving as trial counsel in criminal cases before the FJD or before any trial court of record of the Commonwealth of Pennsylvania, or before any federal court within the boundaries of Pennsylvania;

(4) has served as lead counsel in a minimum of 10 felony cases⁴ that were given to the jury for deliberations, and

(a) 4 of which were non-capital homicide cases and

(b)(i) at least one in which the death penalty was sought and was tried through the penalty phase, or

(b)(ii) 2 in which the death penalty was sought and where, although resolved prior to trial or at the guilt phase, a thorough investigation was performed for a potential penalty phase;

(5) is familiar with the practice and procedure of the Pennsylvania Supreme Court, as pertains to the appeal of capital cases;

(6) demonstrates, by training or experience, knowledge of principles of criminal and constitutional law as they apply to death penalty cases;

(7) has extensive knowledge of the Pennsylvania Rules of Criminal Procedure, the Pennsylvania Rules of Evidence, and the case law as promulgated by the Pennsylvania Courts and the U.S. Supreme Court, and has

² This Panel is made up of attorneys from the Defender Association who are assigned to that organization's Homicide Unit, which handles both capital and non-capital matters. The Defender Association's Appeals Unit will also handle appeals as regards those matters. This Plan does not address the selection process for the attorneys of the Defender Association. Nor does anything in this Plan imply that the City of Philadelphia will continue its current contractual arrangements with the Defender Association.

³ The Post-Conviction Relief Act, 42 Pa.C.S. §§ 9541 et seq.

⁴ A "felony case" for purposes of this Panel requires that the defendant was arraigned before the jury on a charge of murder, manslaughter, vehicular homicide, or a felony of the first degree.

substantial familiarity with and extensive experience in the use of expert witnesses, and forensic, psychiatric, scientific and medical evidence including, but not limited to, mental health, pathology and DNA profiling evidence.

(8) is in full and current compliance with the minimal educational requirements mandated by the Pennsylvania Supreme Court in Pa.R.Crim.P. 801(2)⁵;

B. Members of the Capital Trial Panel will be appointed to represent defendants charged with capital homicide as either Lead Counsel or as Mitigation Counsel. Lead Counsel appointed to a capital case shall select Mitigation Counsel for the case, which selection shall be from the members of the Capital Trial Panel, but not before the case has reached the Homicide Calendar Room. If the case is still designated as a capital case at that time, Lead Counsel shall then immediately confer with the Mitigation Counsel to be selected to ensure his or her availability. Once a member of the Capital Trial Panel agrees to serve as Mitigation Counsel, Lead Counsel shall immediately, in writing, notify the Calendar Judge⁶ and the office of Active Criminal Records. The Calendar Judge shall then appoint Mitigation Counsel and enter an order of appointment in accord with Pa.R.Crim.P. 122.

C. The Capital Trial Panel shall initially consist of not more than 18 members, which number may be adjusted based on the needs of the Court. Panel members shall serve staggered terms, with each Panel member serving for a term of 3 years, except that the initial Panel shall serve staggered terms as follows: 1/3 of the initial Panel shall serve for 1 year, 1/3 shall serve for 2 years, and the remaining 1/3 shall serve the full 3-year term.⁷ Any member of the initial Panel or subsequent Panels whose term expires may be reappointed or replaced, pursuant to an evaluation and selection by the Selection Committee. Members of this Panel shall also be members of the Non-capital Trial Panel.

5. *Non-capital Trial Panel*

A. To be approved for this Panel, it is required that an attorney:

(1) is a member in good standing of the Bar of the Pennsylvania Supreme Court, or admitted to practice *pro hac vice* and a member in good standing of the Bar of the jurisdiction in which the attorney is admitted to practice;

(2) is an active trial practitioner for whom, during the 5 year period immediately preceding the date of the filing of the application for membership in this Panel, not less than 75% of his or her practice has consisted of serving as trial counsel in criminal cases before the FJD or before any trial court of record of the Commonwealth of Pennsylvania, or before any federal court within the boundaries of Pennsylvania;

⁵ Every attorneys who accepts a capital homicide appointment at any stage of the proceedings must be Rule 801 certified at the time of the appointment and must remain certified throughout the entire period of the representation, at every stage of the proceedings, including pretrial, trial, appellate and post-conviction.

⁶ Mitigation Counsel should, as a general practice, have been identified and have been appointed by order of the Calendar Judge prior to the case leaving the Homicide Calendar Room. In an extraordinary case, if the selection is made after the case has left the Calendar Room, Lead Counsel shall then immediately notify the assigned trial judge in writing instead of the Calendar Judge. The assigned trial judge shall then appoint Mitigation Counsel and enter an order of appointment in accord with Pa.R.Crim.P. 122. Although these are distinct areas of the trial which must be addressed consistent with the law, the trial court will view the two attorneys as co-counsel, and will not segregate their responsibilities; the two attorneys will function as a team, shepherding the case as a whole.

⁷ The Selection Committee shall make every effort to select the attorneys with the highest qualifications and greatest experience to serve in the initial three year staggered term, rather than in the one or two year staggered terms. This same principle shall be applied by the Selection Committee to each of the additional Panels with staggered terms.

(3) has served as Lead Counsel in a minimum of 10 felony cases⁸ that were given to the jury for deliberations, at least one of which was a non-capital homicide case, except that if the attorney only sat as second chair in that non-capital homicide case, the attorney must have participated as second chair in at least 2 non-capital homicide cases;

(4) is familiar with the practice and procedure of the Pennsylvania Superior Court;

(5) has extensive knowledge of the Pennsylvania Rules of Criminal Procedure, the Pennsylvania Rules of Evidence, and Pennsylvania case law and has substantial familiarity with and extensive experience in the use of expert witnesses, and forensic and medical evidence including, but not limited to, mental health, pathology and DNA profiling evidence;

(6) is in full and current compliance with the educational requirements of Pa.R.Crim.P. 801(2), which are mandated by the Pennsylvania Supreme Court in capital cases.

B. The Non-capital Trial Panel shall initially consist of not more than 36 members, which number may be adjusted based on the needs of the Court. Panel members shall serve staggered terms, with each Panel member serving for a term of 3 years, except that the initial Panel shall serve staggered terms as follows: 1/3 of the initial Panel shall serve for 1 year, 1/3 shall serve for 2 years, and the remaining 1/3 shall serve the full 3-year term. Any member of the initial Panel or subsequent Panels whose term expires may be reappointed or replaced, pursuant to an evaluation and selection by the Selection Committee.

6. *Second Chair Counsel*

In order to meet the required "non-capital case" experience, attorneys seeking to attain membership on a Panel or Panels of this HAS Plan may participate as second chair counsel to Lead Counsel in non-capital cases. In order for this experience to qualify, such attorney must:

- At or before the scheduling conference of the case for which she or he seeks to sit as second chair, submit to the trial judge a request to sit as second chair, certifying that 10 felony jury trials⁹ have in fact been tried by him or her to completion within the past 5 years, or that 10 non-capital homicide appeals (direct or PCRA appeals) have been filed by him or her, through to a decision of the Superior Court, or that she or he has handled 10 non-capital homicide PCRA matters for which an evidentiary hearing was held, or a combination thereof, and listing those cases on the appropriate application.

- Request that the trial court designate the case as one in which the second chair experience will be appropriate.

- Obtain a certification from the Lead Counsel Non-capital Trial Panel member that the applicant participated in every aspect of the trial, beginning with the initial trial Scheduling Conference.

- Be present at all substantive proceedings regarding the case, through conclusion of the trial.

- Actively participate in the preparation and examination of at least one witness at trial.

7. *Defender Association Panel*

⁸ A "felony case" for purposes of this Panel requires that the defendant was arraigned before the jury on at least a felony of the second degree or an offense which is punishable by a maximum sentence of 10 years.

⁹ Felony jury trial means that the defendant was arraigned on a felony of the second degree or an offense which is punishable by a maximum sentence of ten years.

This Panel shall consist of the staff attorneys of the Defender Association assigned to that organization's Homicide Unit and certified by the Chief Public Defender to be qualified to fulfill the duties of staff attorney. The Defender Association will be appointed to represent defendants charged with capital as well as non-capital homicide in accordance with any allocation agreement then in effect and established between the Defender Association, the City of Philadelphia, and the FJD.

8. *Capital Appeals Panel*¹⁰

A. An attorney who is appointed at the post-sentence motions/appeal stage of a case for a defendant who has received a sentence of death shall only be appointed if the attorney:

(1) is a member in good standing of the Bar of the Pennsylvania Supreme Court, or admitted to practice *pro hac vice* and a member in good standing of the Bar of the jurisdiction in which the attorney is admitted to practice;

(2) has represented clients in appellate or post conviction matters in at least 8 "significant cases", as defined in Pa.R.Crim.P. 801(1)(c), has had primary responsibility for at least 5 briefs in those significant cases, and has prior experience within the last 5 years as appellate or PCRA counsel, in federal or state court, in at least one case in which a sentence of death was imposed.

(3) submits to the Selection Committee at least one appellate brief written primarily by herself/himself and demonstrates to the Selection Committee excellence in written legal advocacy;

(4) is familiar with the practice and procedure of the Pennsylvania Supreme Court, particularly as pertains to the appeal of capital cases;

(5) demonstrates, by training or experience, knowledge of principles of criminal and constitutional law as they apply to death penalty cases;

(6) is in full and current compliance with Pa.R.Crim.P. 801(2);

B. The Capital Appeals Panel shall initially consist of not more than 9 members, which number may be adjusted based on the needs of the Court. Panel members shall serve staggered terms, with each Panel member serving for a term of 3 years, except that the initial Panel shall serve staggered terms as follows: 1/3 of the initial Panel shall serve for 1 year, 1/3 shall serve for 2 years, and the remaining 1/3 shall serve the full 3-year term. Any member of the initial Panel or subsequent Panels whose term expires may be reappointed or replaced, pursuant to an evaluation and selection by the Selection Committee.

9. *Non-capital Appeals Panel*

A. An attorney who is appointed at the post-sentence motions/appeal stage of a case for a defendant who has not received a sentence of death shall only be appointed if the attorney:

(1) is a member in good standing of the Bar of the Pennsylvania Supreme Court, or admitted to practice *pro hac vice* and a member in good standing of the Bar of the jurisdiction in which the attorney is admitted to practice;

¹⁰ Although appointed counsel are required to represent defendants through direct appeal, Pa.R.Crim.P. 122, it is understood that in some cases it will serve a defendant's best interests to have new counsel appointed for a defendant upon being sentenced to death. Attorneys serving on this Panel will help meet that need, in addition to being available for appointment opportunities when the court otherwise must appoint counsel at the appellate stage.

(2) is familiar with the practice and procedure of the Pennsylvania Superior Court;

(3) is an experienced and active trial or appellate practitioner (whether via direct appeals or appeals of PCRA cases) with at least 5 years experience in the field of criminal defense;

(4) has filed briefs within the past 5 years as appellate counsel in either the Pennsylvania Supreme or Superior Court in no fewer than 3 capital or non-capital homicide matters and 5 felony matters;

(5) submits a writing sample to the Selection Committee for which she/he was primarily responsible.

B. The Non-Capital Appeals Panel shall initially consist of not more than 15 members, which number may be adjusted based on the needs of the Court. Panel members shall serve staggered terms, with each Panel member serving for a term of 3 years, except that the initial Panel shall serve staggered terms as follows: 1/3 of the initial Panel shall serve for 1 year, 1/3 shall serve for 2 years, and the remaining 1/3 shall serve the full 3-year term. Any member of the initial Panel or subsequent Panels whose term expires may be reappointed or replaced, pursuant to an evaluation and selection by the Selection Committee.

10. Capital PCRA Panel

A. An attorney may be appointed to represent a post-conviction petitioner under sentence of death only if that attorney:

(1) is a member in good standing of the Bar of the Pennsylvania Supreme Court, or admitted to practice pro hac vice and a member in good standing of the Bar of the jurisdiction in which the attorney is admitted to practice;

(2) is an active practitioner with at least 5 years criminal litigation (trial and/or appellate) experience in this or any other jurisdiction;

(3) has maintained a practice of which, during the 5 year period immediately preceding the date of the filing of the application for membership in this Panel, 75% has consisted of serving as trial or appellate or PCRA counsel regarding criminal cases before the FJD or before any court of the Commonwealth of Pennsylvania or before any federal court within the boundaries of Pennsylvania;

(4) has served as lead counsel in a minimum of 8 "significant cases" that were given to the jury for deliberations and or has represented clients in appellate or post conviction matters in at least 8 "significant cases, as defined in Pa.R.Crim.P. 801(1)(c); has had primary responsibility for at least 5 briefs in those significant cases; and has prior experience, within the last 5 years, as PCRA or appellate counsel before any court in the Commonwealth of Pennsylvania, including federal court, in at least one case in which a sentence of death was imposed;

(5) submits to the Selection Committee at least one sample of legal writing for which she/he was primarily responsible. This writing must advocate the position of a party in an adversary proceeding and must demonstrate excellence in written legal advocacy;

(6) is familiar with the practice and procedure of the Philadelphia Court of Common Pleas and of the Pennsylvania Supreme Court, particularly as it pertains to the handling of appeals in post-conviction matters in which a sentence of death has been imposed;

(7) demonstrates, by training or experience, knowledge of principles of criminal and constitutional law as they apply to death penalty cases;

(8) has extensive knowledge of the Pennsylvania Rules of Criminal Procedure, the Pennsylvania Rules of Evidence, and the case law of not only Pennsylvania but also of the U.S. Supreme Court, and has substantial familiarity with, and extensive experience in, the use of expert witnesses, and forensic, psychiatric and medical evidence including, but not limited to, mental health, pathology and DNA profiling evidence;

(9) Is in full and current compliance with the minimal educational requirements mandated by the Pennsylvania Supreme in Pa.R.Crim.P. 801(2).

B. The Capital PCRA Panel shall initially consist of not more than 9 members, which number may be adjusted based on the needs of the Court. Panel members shall serve staggered terms, with each Panel member serving for a term of 3 years, except that the initial Panel shall serve staggered terms as follows: 1/3 of the initial Panel shall serve for 1 year, 1/3 shall serve for 2 years, and the remaining 1/3 shall serve the full 3-year term. Any member of the initial Panel or subsequent Panels whose term expires may be reappointed or replaced, pursuant to an evaluation and selection by the Selection Committee. No member of this Panel may be appointed in any 12 month period to represent more than 1 death penalty PCRA petitioner.

11. Non-capital PCRA Panel

A. To be approved for this Panel, it is required that an attorney:

(1) is a member in good standing of the Bar of the Pennsylvania Supreme Court, or admitted to practice pro hac vice and a member in good standing of the Bar of the jurisdiction in which the attorney is admitted to practice;

(2) has maintained a practice of which, during the 3 year period immediately preceding the date of the filing of the application for membership in this Panel, not less than 25% has consisted of serving as counsel representing petitioners who have filed a post-conviction petition pursuant to the PCRA before any court in the Commonwealth of Pennsylvania;

(3) has experience, within the past 3 years, as PCRA counsel in no fewer than 10 felony cases, including 2 cases in which a PCRA hearing was held, or in 1 case in which a PCRA hearing was held and has completed one CLE program on Pennsylvania post-conviction practice within the past year;

(4) has participated in the preparation and litigation of 3 adversary hearings where factual issues were contested. (This may include the 2 PCRA hearings required in (3));

(5) submits to the Selection Committee an Amended Petition and a *Finley* letter that was filed by him or her within the past 2 years;

(6) is familiar with the practice and procedure of the Pennsylvania Superior Court.

B. The Non-capital PCRA Panel shall initially consist of not more than 18 members, which number may be adjusted based on the needs of the Court. Panel members shall serve staggered terms, with each Panel member serving for a term of 3 years, except that the initial Panel shall serve staggered terms as follows: 1/3 of the initial Panel shall serve for 1 year, 1/3 shall serve for 2 years, and the remaining 1/3 shall serve the full 3-year term. Any member of the initial Panel or subsequent Panels

whose term expires may be reappointed or replaced, pursuant to an evaluation and selection by the Selection Committee.

12. *Initial Year Consideration of Alternative Qualifications*

In the initial year of this Rule, due to respect for the body of work an experienced attorney may have achieved and who may nevertheless not meet the technical requirements of this new local rule, such experienced attorney may petition the Selection Committee to review his or her credentials and to allow such attorney to explain how that attorney will be able to meet the spirit if not the letter of this new Rule. There are no exceptions to the requirements of Pa.R.Crim.P. 801 as regards any of the Capital Panels. If, after a determination that the attorney's experience, knowledge and training are clearly equivalent to the standards for the Panel to which the attorney seeks admission, the Selection Committee approves the attorney for inclusion on a Panel, such attorney must thereafter comply with all the performance standards of this Rule which pertain to the Panel for which the attorney has been selected.

13. *Continuing Legal Education*

Every attorney selected to serve on any Panel is required to, and agrees to, obtain a minimum of 6 hours annually of CLE courses, as approved by the Selection Committee, which are relevant to the Panel for which that attorney was selected to represent defendants facing homicide charges, above and beyond, where applicable, the CLE requirements of Pa.R.Crim.P. 801. The additional CLE hours may be obtained as either participants or presenters. The number of CLE hours and the nature of the continuing legal education may be increased or modified by the Selection Committee as may be relevant and appropriate for the adequate representation of indigent defendants in homicide matters.

In addition, as approved by the Selection Committee, all attorneys selected for the Capital Trial Panel must complete a live¹¹ capital homicide course during the first year on the Panel, except that any attorney intending to serve only as Mitigation Counsel must complete a 6 hour course in mitigation advocacy during the first year on the Panel; all attorneys selected for the Non-capital Trial Panel must complete a live homicide course during the first year on the Panel.

14. *Exclusive Compensation*

Every attorney who is selected to be a member of any Panel under this FJD-HAS Plan agrees not to request or accept any payment, or promise of payment, from the defendant or the defendant's family or from any source other than from the FJD, in connection with his or her representing a defendant whom they were appointed to represent pursuant to this Rule.

B. *Application for Admission to a Panel*

1. Every admission to a Panel must be by application.
2. Application forms will be available annually from the Chair of the Selection Committee and from the office of Active Criminal Records.

C. *Selection Committee*

1. The Selection Committee shall consist of thirteen members as follows:

(a) 6 judges of the FJD, at least 3 of whom are presently assigned to the Homicide Program; 2 of whom are currently assigned to the Majors Program of the Trial Division—Criminal; and the Supervising Judge of the Trial Division—Criminal;

(b) 1 attorney who is a member of the FJD-HAS Capital Panel¹²;

(c) the Chair of the Screening Committee for Court Appointed Counsel, who must be a member of the Criminal Justice Section of the Philadelphia Bar Association;

(d) the Chair of the Criminal Justice Section of the Philadelphia Bar Association, or his or her "permanent designee"¹³;

(e) the President of the Philadelphia Chapter of the Pennsylvania Association of Criminal Defense Lawyers, or his or her "permanent designee";

(f) the Chief of the Homicide Unit of the Defender Association, or his "permanent designee" and the Chief of the Appeals Unit of the Defender Association, or his "permanent designee";

(g) the Chief of the PCRA Unit of the Philadelphia District Attorney's Office, or her "permanent designee".

2. The President Judge, or his/her designee, shall be an ex-officio member of the Selection Committee. The Court Administrator, or his/her "permanent designee", will attend all meetings in a non-voting capacity.

3. The Committee members described in subparagraphs 1(a) and (b) above shall be appointed by the Administrative Judge of the Trial Division, with the exception of the Supervising Judge.

4. Any Judge who resigns from the Committee prior to the expiration of his or her term due to a transfer in judicial assignment will be replaced by an appropriate appointment by the Administrative Judge of the Trial Division.

5. The Supervising Judge of the Trial Division—Criminal shall be the Chair of the Selection Committee.

6. Each Committee member shall serve for a period of 3 years and may be reappointed for succeeding terms at the discretion of the Administrative Judge of the Trial Division.

7. Eight members of the Committee shall be deemed a quorum.

8. Each member of the Committee shall be committed to ensuring that, prior to approving any applicant for inclusion on a Panel, the applicant has fully met the requirements set forth in this FJD-HAS Plan as to the Panel for which he or she is applying.

9. The Committee shall thoroughly review all applications for admission to the Panels, and shall conduct the necessary interviews or other inquiry into any matter deemed by the Committee to be necessary to make its determinations in regard to any applicant.

10. a. The Committee shall prepare an Evaluation Form, which will be distributed to all judges hearing Homicide cases.

¹² In the initial year, an attorney who has handled at least 5 homicide appointments within the past 3 years as court-appointed counsel will fill this position.

¹³ As used in this sub-section, the "permanent designee" must be someone who, for effectiveness, commits to attending all meetings of the Committee for the duration of the entire selection process in at least that calendar year.

¹¹ "Live" as used in this section require attendance "in person" and not via broadcast or by viewing a previously recorded presentation.

b. This Evaluation Form will also be available to attorneys who seek to obtain evaluations from Judges in the Majors Program or other appropriate forum.

D. Additions to the Panel

The submission of an application to the Selection Committee shall be confidential unless the applicant is accepted to a Panel. Notification of acceptance or rejection shall be made in writing to the applicant. The membership of the Panels shall be published at least annually.

E. Removal from the Panel

The Selection Committee may determine from time to time, prior to the expiration of a Panel member's term that, by reason of information received by the Committee and concerning a Panel member's ability to continue to perform as competent counsel, a Panel member should be recommended for removal from the Panel. In such instance, the Panel member shall first have the opportunity for a hearing before the Selection Committee, pursuant to procedures to be established by the Selection Committee. Upon a two-thirds vote by the Selection Committee, a Panel member shall be removed from receiving any further appointments pursuant to this Rule. Any Panel member so removed will not be barred from reapplying in the future for appointment to a Panel for which he or she is qualified. A copy of such removal decision shall be furnished to the President Judge as well as to the Court Administrator, who shall cause that attorney's name to be removed from each Panel on which his or her name appeared.

III. Determination of Need for Counsel and Appointment of Counsel

A. When Appearing Before the Court in a Criminal Case.

1. In every criminal case in which a defendant is charged with homicide and appears without counsel at any stage of the trial proceedings, the presiding judge shall advise the defendant that he or she has the right to be represented by counsel throughout the case and that counsel will be appointed to represent the defendant if the defendant is financially unable to retain counsel. Any statements elicited from a defendant regarding such an inquiry by the presiding judge are inadmissible in any criminal proceeding against the defendant, except as may be provided by law.

It shall be the duty of the presiding Judge to direct that the appropriate entity within the FJD which makes inquiry into whether a defendant meets the criteria for court-appointed counsel do so, in a timely manner.

In every criminal case in which a determination is made that a defendant charged with homicide qualifies for court-appointed counsel, it is the duty of the presiding judge to promptly cause counsel to be appointed to represent the defendant by forthwith communicating electronically with the office of Active Criminal Records, which will effectuate the appointment.¹⁴ An order of appointment shall be entered and served in accord with Pa.R.Crim.P. 122. The defendant shall not have the right to select his or her attorney from the Panel of attorneys or otherwise.

2. The presiding judge shall cause separate counsel to be appointed for defendants having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

¹⁴ Nothing in this paragraph or in local Rule 122-1 is intended to modify current law that a petitioner will ordinarily not be eligible for court appointed counsel concerning second and subsequent PCRA petitions. See Pa.R.Crim.P. 904(C), (D) and (E).

3. If at any time after the appointment of counsel pursuant to this FJD-HAS Plan the presiding judge finds that the defendant is financially able to retain counsel, the judge shall terminate the appointment of counsel. Being able to "retain counsel" includes the ability to pay for all investigators, experts or other services, including mitigation evidence in a capital case. Prior to terminating the appointment of counsel, the presiding judge shall conduct a colloquy both with the defendant for whom representation is to be terminated because the defendant is able to retain counsel, and with the attorney to be retained, and ensure that both acknowledge, on the record, that they are fully able to meet the responsibility for the provision of these services.

4. Any counsel appointed to represent a defendant charged in a homicide pursuant to the FJD-HAS Plan who wishes to withdraw his appearance and be relieved of further representation of a particular defendant shall comply with the requirements of Pa.R.Crim.P. 120(B) and shall immediately make a motion for withdrawal to the judge before whom the case is then pending. If new counsel is to be appointed, pursuant to Pa.R.Crim.P. 120(B)(3), the judge before whom the case is pending shall promptly communicate electronically with the office of Active Criminal Records of the need for new counsel and of the appropriate Panel from which the appointment is to be made. An order of appointment shall be entered and served in accord with Pa.R.Crim.P. 122.

B. Appointment of Appellate Counsel

Although it is anticipated that an attorney who has been appointed to represent a defendant will continue to represent that individual for appellate purposes, as set forth in Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2), in an appropriate case (including the defendant having retained counsel), the court may permit the attorney to withdraw from further representation pursuant to Pa.R.Crim.P. 120(B); additionally, an appellate court may direct that new counsel be appointed to represent a defendant whose case is already on appeal. In all such cases, the trial judge shall promptly communicate electronically with the office of Active Criminal Records, and notify that office that an appointment is necessary and the appropriate Panel from which the appointment is to be made. An order of appointment shall be entered and served in accord with Pa.R.Crim.P. 122.

C. The Court Administrator and the office of Active Criminal Records

1. The Court Administrator may delegate to the office of Active Criminal Records the responsibility for effectuating the appointments of counsel as regards this FJD-HAS Plan, but maintains the responsibility for ensuring that their duties are properly discharged.

2. In effecting the appointment of counsel for a defendant, the office of Active Criminal Records shall verify that a determination of financial inability to retain counsel has been made and the office of Active Criminal Records shall then arrange for the appointment of counsel consistent with the system provided in subsection 4 and 5 of this Section C.

3. The Court Administrator shall collect data regarding this FJD-HAS Plan to document that the Rule is being complied with. In addition, the Court Administrator will maintain the names of all attorneys, and the defendant they were representing, whom the appellate courts order removed, and the reason therefor, as well as all attorneys, and the defendants they were representing, found to have been ineffective in a post-conviction matter, and the

reason therefor. The Court Administrator will provide this information annually to the President Judge and, upon request, to the Selection Committee.

4. The office of Active Criminal Records shall maintain a current list of all attorneys selected to serve on each Panel. For each Panel, the office of Active Criminal Records shall maintain a "wheel" of all attorneys admitted to serve on such Panel, which will operate alphabetically from A to Z. After making a determination of which Panel is the appropriate Panel from which an appointment shall be made, the office of Active Criminal Records shall go to the next name on the wheel and contact that attorney electronically to see if that attorney is able to accept that appointment. The attorney shall be provided with sufficient information about the case/prospective defendant so as to be able to conduct a conflict check, to ensure there will be no problem with the representation of a prospective defendant. The attorney must respond electronically to the office of Active Criminal Records within 48 hours of being contacted.

5. If an attorney fails to respond electronically within 48 hours of being contacted, the office of Active Criminal Records shall go on to the next name on the wheel, and the attorney who failed to respond timely shall be placed at the bottom of the wheel, as if an appointment had in fact been made. Any attorney on any Panel has the ability to decline or reject a prospective appointment when contacted by the office of Active Criminal Records. Such declination or rejection will cause that attorney to be placed at the bottom of the wheel, as if an appointment had in fact been made. The exception to this is when a true conflict exists, in which case the attorney shall be required to provide the name of the other defendant or client as to whom the conflict exists. In the event of such a conflict, the office of Active Criminal Records will go on to the next name or names until an appointment has successfully been made, but shall then go back to the attorney who was conflicted out.

6. The Court Administrator will have responsibility for overseeing the promulgation of standard forms for the submission of requests for counsel fees and fees for investigative, expert and other services.

IV. Investigative, Expert and Other Services¹⁵

An attorney appointed under this HAS Plan who seeks investigative, expert or other services necessary for an adequate defense in the case, in accordance with Phila.Crim.R. 424 B(3)(a) and 425 G(4), must seek prior authorization, which must be presented in a written application, ex parte, to the Homicide Calendar Judge, if the case has not yet been assigned to a trial judge, or to the trial judge. Upon finding, after appropriate inquiry in such ex parte proceeding, that the services are necessary, the Court shall issue an Order authorizing counsel to obtain the services. The Judge may establish a limit on the amount which may be expended for such services within the maximum prescribed by the FJD, subject to the provider of such services providing proper and detailed accounting for the services rendered in a fee petition. Phila.Crim.R. 424 B and 425 shall continue to govern these services.

¹⁵ An attorney who is retained by a client to represent him or her in a homicide case must be able to certify to the Court that the entire defense is funded by the client, including all investigative and expert services, whether the case is capital or not. There is no provision under this Rule for retained counsel to obtain funds from the Court for these services. *Pro bono* counsel may apply to the Court for funds for these services, provided that *pro bono* counsel is certified pursuant to Pa.R.Crim.P. 801. Any such funds will be within the limits set by the FJD.

V. Compensation

Payment of fees and expenses to private counsel appointed under this FJD-HAS Plan, and payments for investigative, expert and other services incurred pursuant to Title IV hereof, shall be made in accordance with Phila.Crim.R. 424 B and 425, and such rules and regulations and guidelines as have been or may be prescribed by the President Judge and in accordance with the fiscal policies of the FJD.

VI. Forms

Where standard forms have been approved and promulgated, such forms shall be used by the court and by attorneys appointed pursuant to this Rule.

Adopted at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

Explanatory Note: Implementation of the Homicide Appointment System will commence immediately upon the effective date of this Rule, thirty (30) days after publication in the *Pennsylvania Bulletin*. However, the actual appointment of counsel in Homicide Cases pursuant to this Rule will commence on January 2, 2012, the effective date of the amendment to Rule 424(B)(1) and the rescission of Rule 410.

Amendments to Philadelphia Criminal Rules; Board of Judges Meeting: 3-10-2011

Deletions are bold and bracketed; additions are bold.

Rule 406. Standards for Appointment of Counsel.

(A) *Lists of Qualified Attorneys.* The Appointment Clerk in the Office of the Secretary of the Board of Judges will maintain a list of attorneys qualified for appointment in each of the following five categories of cases:

(1) [**Homicide**]. **Rescinded effective January 2, 2012.**

Amended at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective on January 02, 2012.

Rule 406-1. Standards for Appointment in Homicide Cases.

Rescinded at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective on January 02, 2012.

Rule 406-2. Appeals in Death Penalty Cases.

Rescinded at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective on January 02, 2012.

Rule 406-4. Post-Conviction Petitions by Prisoners under Sentence of Death.

Rescinded at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective on January 02, 2012.

Rule 410. Appointment of Counsel in Homicide Cases.

Rescinded at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective on January 02, 2012.

Rule 420. Appointment of Counsel for Cases Appealed to the Supreme Court or Superior Court of Pennsylvania.

Rescinded at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective on January 02, 2012.

Rule 421. Petition for Leave to Withdraw as Private or Court-Appointed Counsel in Homicide Cases.

Rescinded at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective on January 02, 2012.

Rule 424. Compensation Rates for Court-Appointed Counsel.

* * * * *

B. Homicide Cases

(1) The appointment of counsel in homicide cases shall be made in accordance with the procedures contained in Phila.Crim.R. [410] 122-1.

Amended at the March 10, 2011 meeting of the Board of Judges of the Court of Common Pleas, effective on January 02, 2012.

[Pa.B. Doc. No. 11-1092. Filed for public inspection July 1, 2011, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ADAMS COUNTY

Local Orphans' Court Rule of Procedure 15.2, 15.4 and 15.5; Administrative Order No. 19 of 2011

Order of Court

And Now, this 14th day of June, 2011, Adams County Rule of Orphans' Court Procedure 15.2, 15.4 and 15.5 are hereby amended to provide as follows:

15.2 Voluntary Relinquishment To Agency

A. The caption for all pleadings and the docket entry shall carry the given name of the child.

B. The petition shall contain an averment that notification has been given to the birth parents and child of the right to enter into a voluntary agreement for post-adoption continuing contact or communication as required by 23 Pa.C.S.A. § 2733(c), or an averment setting forth why such notification is not applicable. In addition, a copy of the notification shall be attached as an exhibit.

15.4 Termination of Parental Rights

* * * * *

C. The petition shall contain an averment that notification has been given to the birth parents and child of the right to enter into a voluntary agreement for post-adoption continuing contact or communication as required by 23 Pa.C.S.A. § 2733(c), or an averment setting forth why such notification is not applicable. In addition, a copy of the notification shall be attached as an exhibit.

15.5 Adoption

A. Petition

* * * * *

3. The petition shall contain an averment that notification has been given to the birth parents and child of the right to enter into a voluntary agreement for post-adoption continuing contact or communication as required by 23 Pa.C.S.A. § 2733(c), or an averment setting forth why such notification is not applicable. In addition, a copy of the notification shall be attached as an exhibit.

4. The petition shall aver whether a voluntary agreement for post-adoption continuing contact or communication authorized by 23 Pa.C.S.A. § 2731, et seq., is anticipated or executed and if executed a copy thereof shall be attached as an exhibit. Additionally, any such agreement must be presented to the Court at least 15 days prior to the hearing on the petition.

These rules shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further directed that:

a. This Order shall be filed in the Office of Prothonotary of Adams County and a copy thereof shall be filed with the Adams County Clerk of Courts and the Adams County Law Library for inspection and copying;

b. Seven (7) certified copies of this Order shall be forwarded to the Administrative Office of the Pennsylvania Court for distribution in accordance with the provisions of Pa.R.J.A. No. 103(c)(2); and

c. Two (2) certified copies of this Order together with a computer diskette that complies with the requirement of 1 Pa. Code § 13.11(b) containing the text of the local rule(s) adopted hereby shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

By the Court

JOHN D. KUHN,
President Judge

[Pa.B. Doc. No. 11-1093. Filed for public inspection July 1, 2011, 9:00 a.m.]

SCHUYLKILL COUNTY

Adopted Civil Rule of Procedure 1915.15(2) Form of Complaint; S-1304-11

Order of Court

And Now, this 14th day of June, 2011 at 11:15 a.m., Schuylkill County Civil Rule of Procedure No. 1915.15(2) is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

1) File seven (7) certified copies of this Order and Rule with the Administrative Office of the Pennsylvania Courts.

2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau.

3) Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.

4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the

effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

IN THE COURT OF COMMON PLEAS FOR
SCHUYLKILL COUNTY
CIVIL ACTION—LAW

Plaintiff : No: S-
vs. : Custody
Defendant :

ORDER OF COURT

AND NOW, this _____ day of _____, 20____, at _____ o'clock ____ .m.; you are hereby ORDERED to appear as follows:

You have been sued in Court to obtain Custody, Partial Custody or Visitation of the child(ren) named in the Complaint.

I. PARENT EDUCATION PROGRAM

1. ALL PARTIES NAMED ABOVE SHALL ATTEND AND COMPLETE THE "KIDS FIRST" PROGRAM. THE PROGRAM IS REQUIRED FOR ALL PARTIES PARTICIPATING IN A CUSTODY ACTION. PARTICIPATION IS REQUIRED WHETHER OR NOT AN AGREEMENT IS SUBMITTED.

2. EACH OF YOU SHALL CONTACT "KIDS FIRST" WITHIN TEN (10) DAYS OF RECEIVING THIS ORDER TO REGISTER AND ATTEND THE NEXT AVAILABLE PROGRAM. IF YOU FAIL TO COMPLY WITH THE PROVISIONS OF THIS ORDER, CONTEMPT CHARGES AGAINST YOU SHALL BE FILED WITH THE COURT.

TO SCHEDULE AND REGISTER FOR THE "KIDS FIRST" PROGRAM CONTACT ANTHONY LIBASSI BY ONE OF THE FOLLOWING:

- (a) internet: WWW.LIBASSIMEDIATION.COM
- (b) telephone: 570-558-1002
888-215-7445 (toll free)
- (c) mail: ANTHONY LIBASSI
200 Adams Avenue, First Floor
Scranton, PA 18503

YOU ARE EACH REQUIRED TO PAY A FEE OF FORTY DOLLARS (\$40.00) DIRECTLY TO THE "KIDS FIRST" PROGRAM AT THE TIME OF REGISTRATION.

3. LOCATION OF "KIDS FIRST" PROGRAMS:

SCHUYLKILL COUNTY COURTHOUSE
401 N. 2ND STREET
POTTSVILLE, PA 17901

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN FINES, IMPRISONMENT OR OTHER SANCTIONS.

II. CUSTODY CONCILIATION CONFERENCE

You are ORDERED to appear in person at the Custody Conciliation Office, of the Schuylkill County Courthouse on _____, for a Custody Conciliation Conference.

You are further ORDERED to bring with you the fully completed conciliation questionnaire provided by the Court.

If you fail to appear as provided by the Order, an Order of Custody, Partial Custody or Visitation may be entered against you or the Court may issue a Warrant for your arrest.

III. GENERAL PROVISIONS

YOU SHOULD TAKE THIS PAPER (and the attached papers) TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Pennsylvania Bar Association Lawyer Referral Service
100 South Street, P. O. Box 186, Harrisburg, PA 17108
1-800-692-7375

Counsel and pro se litigants without counsel are ORDERED to immediately consult their schedules for conflicts and to promptly request a continuance where necessary because of a prior attachment or emergency situation. All requests for a continuance of a Custody Conciliation Conference must be made on the APPLICATION FOR CONTINUANCE form available from the offices of the Court Administrator, Custody Conciliator or Prothonotary in the Schuylkill County Courthouse. The application must be filed in the Prothonotary Office. A continuance will be granted only upon good cause shown.

The moving party shall immediately serve on all interested parties a copy of the original pleading, this order, "Kids First" registration and information, and a custody conciliation questionnaire; and shall further file an affidavit verifying service.

Americans With Disabilities Act of 1990: The court of Common Pleas of Schuylkill County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

BY THE COURT,

Date: _____ WILLIAM E. BALDWIN, P.J.

[Pa.B. Doc. No. 11-1094. Filed for public inspection July 1, 2011, 9:00 a.m.]