

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[ 210 PA. CODE CH. 17 ]

Order Amending Rule 1736 of the Rules of Appellate Procedure; No. 214 Appellate Procedural Rules Doc.

#### Order

*Per Curiam*

*And Now*, this 20th day of September, 2011 upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published at 38 Pa.B. 1445 (March 29, 2008).

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.A.P. 1736 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 immediately.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE II. APPELLATE PROCEDURE

#### CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

#### STAY OR INJUNCTION IN CIVIL MATTERS

#### Rule 1736. Exemption from Security.

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(b) *Supersedeas automatic*.—Unless otherwise ordered pursuant to this chapter the taking of an appeal by any party specified in Subdivision (a) of this rule shall operate as a *supersedeas* in favor of such party, **which supersedeas shall continue through any proceedings in the United States Supreme Court.**

**Official Note:** This rule is self-executing, and a party entitled to its benefits is not required to bring the exemption to the attention of the court under Rule 1732 (application for stay or injunction pending appeal). However, the appellee may apply under Rule 1732 for elimination or other modification of the automatic *supersedeas* or under Rule 1737 (objections to security) for an order requiring security as a condition to the continuance of the stay, or for relief under any other applicable provision of this chapter.

The 1987 amendment eliminates the automatic *supersedeas* for political subdivisions on appeals from the common pleas court where that court has affirmed an arbitration award in a grievance or similar personnel matter.

The definition of “Appeal” in Pa.R.A.P. 102 does not reference proceedings in the United States Supreme Court. Rule 102 further defines “Determination” as “Action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise...”

While the word “otherwise” could be read broadly to include the United States Supreme Court, the more specific reference to the Pennsylvania Constitution as limiting the scope of the term suggests that the Federal Courts are not part of the definition when “court” is used in the Rules. In light of this ambiguity, the Rule has been amended to make clear that the automatic *supersedeas* in subsection (b) continues through any proceedings in the United States Supreme Court.

[Pa.B. Doc. No. 11-1720. Filed for public inspection October 7, 2011, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 10 ]

Order Amending Rule 1010 of the Rules of Criminal Procedure; No. 403 Criminal Procedural Rules Doc.

#### Order

*Per Curiam*

*And Now*, this 21st day of September, 2011, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 40 Pa.B. 4150 (July 24, 2010), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 995 No. 3 and 996 No. 1), and a Final Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Criminal Procedure 1010 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 November 1, 2011.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

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

#### PART A. Philadelphia Municipal Court Procedures

Rule 1010. [ Procedure on Appeal ] Procedures for Trial *De Novo*.

(A) [ The attorney for the Commonwealth, upon receiving the notice of appeal, shall prepare an information and the matter shall thereafter be treated in the same manner as any other court case. ] When a defendant appeals after conviction by a Municipal Court judge,

(1) in a non-traffic summary case, upon the filing of the transcript and other papers, the case shall be heard *de novo* by the judge of the Court of Common Pleas sitting without a jury.

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

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

(C) *Withdrawals of Appeals*

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

(2) In a Municipal Court case, the defendant may withdraw the appeal only with the written consent of the attorney for the Commonwealth.

(D) At the time of sentencing, the Common Pleas Court judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state the date on which payment is due. If the defendant is without the financial means to pay the amount in a single remittance, the Common Pleas Court judge may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the Common Pleas Court judge may set bail;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the Common Pleas Court judge. The order shall include the information specified in paragraphs (D)(1) through (D)(3), and a copy of the order shall be given to the defendant.

(E) After entry of judgment pursuant to paragraphs (B) or (C)(1), or after the trial *de novo* and imposition of sentence, the case shall remain in the Court of Common Pleas for the execution of sentence, including for the collection of any fines and restitution, for the collection of any costs, and for proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.

**Comment**

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

Paragraph (B) makes it clear that the Common Pleas Court judge may dismiss an appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the Common Pleas Court judge must enter judgment and order execution of any sentence imposed by the Municipal Court judge. Noth-

ing in this rule is intended to preclude the judge from issuing a bench warrant when the defendant fails to appear.

Once a judgment is entered and sentence is imposed, paragraph (E) makes it clear that the case is to remain in the Court of Common Pleas for execution of the sentence and collection of any costs, and the case may not be returned to the Municipal Court judge. The execution of sentence includes the collection of any fines and restitution and any proceedings for violation of probation, intermediate punishment, or parole as provided by Rule 708.

**Official Note:** Rule 6010 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended August 28, 1998, effective immediately; renumbered Rule 1010 March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended February 12, 2010, effective April 1, 2010; amended September 21, 2011, effective November 1, 2011.

*Committee Explanatory Reports:*

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

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

Final Report explaining the March [ 3 ] 9, 2006 Comment revision concerning joinder of summary offenses with misdemeanor charges published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).

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

Final Report explaining the September 21, 2011 amendments to paragraphs (A)—(C) and adding new paragraphs (D) and (E) concerning the procedures for trials *de novo* in the Court of Common Pleas published with the Court's Order at 41 Pa.B. 5353 (October 8, 2011).

**FINAL REPORT<sup>1</sup>**

**Amendments to Rule 1010 (Procedures for Trial *De Novo*)**

***Procedures for Trials *De Novo* in Philadelphia Court of Common Pleas***

On September 21, 2011, effective November 1, 2011, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Pa.R.Cim.P. 1010 to provide the procedures for appeals for trials *de novo* in non-traffic summary cases and in Municipal Court cases in Philadelphia, conforming these procedures with the statewide procedures for appeals for trials *de novo*.

The Municipal Court handles both non-traffic summary cases and Municipal Court cases ("misdemeanor cases").<sup>2</sup>

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

<sup>2</sup> A "Municipal Court Case" is any case in which the only offense or offenses charged are misdemeanors under the Crimes Code or other statutory criminal offenses for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years, including any offense under the Vehicle Code other than a summary offense. See Rule 1001(A).

Appeals for a trial *de novo* from the disposition of the non-traffic summary and misdemeanor cases in the Municipal Court are conducted in the Court of Common Pleas.<sup>3</sup> The amendments to Rule of Criminal Procedure 1010 (Procedures for Trial *De Novo*) provide the procedures for appeals from Philadelphia Municipal Court to Philadelphia Common Pleas Court for trials *de novo* in non-traffic summary cases and misdemeanor cases. These changes conform the procedures for appeals from Philadelphia Municipal Court for trials *de novo* to the statewide procedures for appeals for trials *de novo*.

### I. Background

The impetus for the Committee's proposal was communications from the legal department of the Administrative Office of Pennsylvania Courts (AOPC) in 2009 about appeals for trials *de novo* in Philadelphia suggesting that, because there are no rules setting forth the procedures for appealing for a trial *de novo* from Philadelphia Municipal Court to the Philadelphia Common Pleas Court, there is little uniformity in how these appeals for a trial *de novo* are handled.<sup>4</sup>

The Committee reviewed the statewide procedures for the trial *de novo* set forth in Rule 462 and the appeal procedures in Municipal Court set forth in Rule 1010.<sup>5</sup> The Rule 462 procedures for conducting appeals for trials *de novo* in the other judicial districts govern appeals from both traffic and non-traffic summary cases. Rule 1010 at that time provided only that an information is to be prepared after an appeal is filed.<sup>6</sup> The Committee agreed that this limited application of Rule 1010 was the cause of the confusion about the appeal procedures in Municipal Court<sup>7</sup>, and that Rule 1010 should be amended to clarify these procedures.

### II. Discussion of Proposed Rule 1010 Amendments<sup>8</sup>

Paragraph (A)(1) is identical to Rule 462(A) and provides that, in non-traffic summary cases, the case is to be heard *de novo* by a Common Pleas Court judge sitting without a jury. Paragraph (A)(2) addresses misdemeanor cases, and incorporates the current language from Rule 1010 requiring the preparation of the information by the attorney for the Commonwealth, and that, thereafter, the case is to be treated in the same manner as any other court case.

Paragraph (B) addresses failures to appear for the trial *de novo* in both non-traffic summary cases and in misdemeanor cases. The paragraph was amended by the addition of "thereafter shall" before "enter judgment." This change makes it clear in the rule that in cases in which an appeal is dismissed for failure to appear, the Common Pleas Court judge must enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge. The Comment elaborates on this provision. The Comment also explains that the rule does not preclude the Common Pleas Court judge from issuing a bench

warrant in these cases. The Committee recognized that, although paragraph (B) provides that the case may be disposed by the Common Pleas Court judge entering judgment on the judgment of the Municipal Court judge, there may be situations in which it is necessary to issue a bench warrant to bring the defendant before the court, such as when the Municipal Court judgment included a sentence of imprisonment.

Paragraph (C) addresses withdrawals of appeals in both non-traffic summary cases and in misdemeanor cases. Paragraph (C) was divided into two subparagraphs with current paragraph (C) becoming (C)(1). Paragraph (C)(2) is new and adds the requirement in misdemeanor cases that to withdraw an appeal in these cases, the defendant must obtain the written consent of the attorney for the Commonwealth. This requirement was added because in the misdemeanor cases the attorney for the Commonwealth, for example, will have to file a motion with the court for permission to *nolle prosequi* the informations.

Paragraph (D) is identical to Rule 462(G). The paragraph sets forth the Common Pleas Court judge's responsibilities at the time of sentencing, including issuing a written order imposing the sentence. The judge also must state the date on which payment of any fines, costs, and restitution must be paid, and that the judge may provide for payment in installments. Finally, the judge is required to advise the defendant of his or her appeal rights.

Paragraph (E) incorporates the provisions of Rule 462(H), and requires that any case in which the Common Pleas judge enters the Municipal Court judgment in Common Pleas court or imposes sentence following a trial *de novo* must remain in the Common Pleas Court for the execution of sentence and collection of any fines, restitution, and costs. In addition, to accommodate the misdemeanor cases, paragraph (E) provides that the case must remain in Common Pleas Court for any proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.

[Pa.B. Doc. No. 11-1721. Filed for public inspection October 7, 2011, 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

#### [ 237 PA. CODE CH. 1 ]

### Order Amending Rules 120 and 140 of the Rules of Juvenile Court Procedure; No. 546 Supreme Court Rules Doc.

#### Order

#### *Per Curiam*

*And Now*, this 20th day of September, 2011, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 40 Pa.B. 5562 (October 2, 2010), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 3, No. 1, October 15, 2010), and on the Supreme Court's web-page, and an Explanatory Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 120 and 140 of the Rules of Juvenile Court Procedure are approved in the following form.

<sup>3</sup> Pursuant to Article V, Section 26 of the Constitution, the parties may petition for a writ of *certiorari* (only in misdemeanor cases) or may appeal for a trial *de novo*. See Rule 1008 (Contents of Notice of Appeal or Petition for *Certiorari*).

<sup>4</sup> The February 2010 amendments to Rule 1010 that were part of a package of rule amendments that addressed the issue of returning cases to Municipal Court are the same as the procedures in Rule 462(D) and (E) but govern Municipal Court cases. These changes however did not fully respond to the issues raised by the AOPC.

<sup>5</sup> In Philadelphia, the procedures for appeals in traffic summary cases are governed by Rule 1037.

<sup>6</sup> Paragraph (B), governing failures to appear for a trial *de novo*, and Paragraph (C), governing withdrawals of appeals, were added to Rule 1010 in 2010 as part of a larger package of amendments to the statewide rules. See 40 Pa.B. 1068.

<sup>7</sup> See Rule 1000(B) that provides "[a]ny procedure that is governed by a statewide Rule of Criminal Procedure that is not specifically covered in Chapter 10 or by a Philadelphia local rule authorized by these rules and adopted pursuant to Rule 105 shall be governed by the relevant statewide rule."

<sup>8</sup> Unless specifically provided otherwise in the amendments to Rule 1010, the procedures explained in the "discussion" section are the same for the non-traffic summary appeals and the appeals in misdemeanor cases.

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

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 120. Definitions.

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JUDGE is a judge of the Court of Common Pleas.

\* \* \* \*

Comment

\* \* \* \*

“Health care” includes, but is not limited to, routine physical check-ups and examinations; emergency health care; surgeries; exploratory testing; psychological exams, counseling, therapy and treatment programs; drug and alcohol treatment; support groups; routine eye examinations and procedures; teeth cleanings, fluoride treatments, fillings, preventative dental treatments, root canals, and other dental surgeries; and any other examination or treatment relating to any physical, mental, and dental needs of the juvenile.

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

\* \* \* \*

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

\* \* \* \*

Official Note: Rule 120 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended July 28, 2009, effective immediately. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. Amended September 7, 2011, effective immediately. Amended September 20, 2011, effective November 1, 2011.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 120 with the Court’s Order at 41 Pa.B. 5355 (October 8, 2011).

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

\* \* \* \*

C. Juvenile.

1) Where to take the juvenile.

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

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

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

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

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

2) Prompt hearing.

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

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

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

4) Out-of-county custody.

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

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

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

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

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

D. Witnesses.

1) Where to take the witness.

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

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

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

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

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

2) *Prompt hearing*.

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

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

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

4) *Out-of-county custody*.

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

**Comment**

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

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

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

Pursuant to paragraph (C)(1)(a), the juvenile is to be taken immediately to the judge who issued the bench warrant or a judge **or master** designated by the President Judge of that county to hear bench warrants. **[ Pursuant ] This provision allows the judge or master the discretion to postpone a hearing, for example, the adjudicatory hearing, until later in the same day while the police officer, sheriff, or juvenile probation officer retrieves the juvenile. If taken into custody on the same day, the juvenile is to be brought immediately before the court for the hearing. However, pursuant to paragraph (C)(1)(b), if a bench warrant specifically provides that the juvenile may be detained in a detention facility, or there are circumstances apparent at the time of the surrender or apprehension that merit detention of the juvenile, the juvenile may be detained without having to be brought before the judge or master until a hearing within seventy-two hours under paragraph (C)(2)(a). The juvenile is not to languish in a detention facility. Pursuant to this paragraph, if a hearing is not held promptly, the juvenile is to be released. See paragraph (C)(2)(b).**

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

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

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

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

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

**At the hearing pursuant to paragraph (D)(2)(a), the judge or master may determine that the witness willfully failed to appear and find or recommend that the witness is in contempt of court, or that the witness is in need of protective custody. If the judge or master has made one of these findings, the judge may continue the detention of the witness until the rescheduled hearing. The judge or master should schedule the hearing as soon as possible. In any event, if the witness is detained, the rescheduled hearing must be conducted by the specific time requirements provided elsewhere in these rules. See Rules 240, 391, 404, 510 and 605.**

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

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

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

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

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

**If there is a bench warrant issued, masters may hear cases in which the petition alleges only misde-**

**meanors. See Rule 187(A)(2) and (3). The purpose of the hearing for juveniles pursuant to paragraph (C)(2)(a) or the hearing for witnesses pursuant to paragraph (D)(2)(a) is to determine if the juvenile or witness willfully failed to appear and if continued detention is necessary.**

**Pursuant to Rule 191, the master is to submit his or her findings and recommendation to the court. In bench warrant cases, the master should immediately take his or her recommendation to the judge so the judge can make the final determination of whether the juvenile or witness should be released. See Rule 191(C).**

**If the findings and recommendation are not taken immediately to the judge, the master is to submit the recommendation within one business day. See Rule 191(B).**

**Official Note:** Rule 140 adopted February 26, 2008, effective June 1, 2008. Amended September 30, 2009, effective January 1, 2010. Amended April 21, 2011, effective July 1, 2011. **Amended September 20, 2011, effective November 1, 2011.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the amendments to Rule 140 with the Court's Order at 41 Pa.B. 5355 (October 8, 2011).**

## EXPLANATORY REPORT

September 2011

The Supreme Court of Pennsylvania has adopted the modifications to Rules 120 and 140 with this Recommendation. These changes are effective November 1, 2011.

### *Rule 120—Definitions*

A new definition of "judge" has been added to clarify that when using that term throughout the Rules, it is referring to a judge of the Court of Common Pleas. The term includes Senior Judges when they are properly certified by the Administrative Office of Pennsylvania Courts. The term does NOT include masters or magisterial district judges.

### *Rule 140—Bench Warrants for Failure to Appear at Hearings*

The term "master" was added in several places in this rule to allow masters to hear cases if the President Judge has designated the master to hear bench warrant cases in his or her judicial district. *See* paragraphs (C), (D), and (E).

At the bench warrant hearing, the judge or master determines whether: 1) the juvenile willfully failed to attend the hearing for which the bench warrant was issued; and 2) the juvenile should continue to be detained until further court proceedings.

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

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

trieves and transports the juvenile or witness to court for the hearing. For example, a juvenile is scheduled for an adjudicatory hearing at 9:00 a.m. but fails to show for the hearing. If all the witnesses are present, the judge may issue a bench warrant and order the juvenile to be brought directly to the courtroom for the adjudicatory hearing on the same day.

This provision represents the current practice in some judicial districts. If all court participants are present and ready to proceed except the juvenile or witness, the police officer, sheriff, or juvenile probation officer can retrieve and transport the juvenile or witness to court, thereby alleviating the need of a continuance.

In addition, the Committee firmly believes that juveniles and witnesses must be brought to court without unnecessary delay, and that warrants must specifically authorize detention. Witnesses are to appear before a judge or master by the next business day, whereas, the juvenile must appear within seventy-two hours. This time difference distinguishes witnesses from juveniles.

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

[Pa.B. Doc. No. 11-1722. Filed for public inspection October 7, 2011, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### DAUPHIN COUNTY

Promulgation of Local Rules; No. 10-6-MD11; No. 2011-CV-00003-AO; No. AO-10-2011

#### Order

*And Now*, this 26th day of September, 2011, Dauphin County Local Rule of Criminal Procedure 115, Rule of Civil Procedure 227.3 and Rule of Civil Procedure 1930.2 are promulgated as follows:

#### **Rule 115. Transcripts (All Requests Not Associated with an Appeal).**

(a) Where the transcript request is not made pursuant to an appeal, transcription of Notes of Testimony shall occur only upon order of court following the filing of a motion.

(b) The motion shall designate which portion of the record is requested to be transcribed and the reasons for the transcript.

(c) The court shall by order designate which portion of the record shall be transcribed and direct the filing party to contact the Official Court Reporter to make arrangements for payment.

*Note:* Rule of Appellate Procedure 1911 should be followed for requests for transcripts when a notice of an appeal is filed.

#### **Rule 227.3. Transcripts (All Requests Not Associated with an Appeal).**

(a) Where the transcript request is not made pursuant to an appeal, transcription of Notes of Testimony shall occur only upon order of court following the filing of a motion.

(b) The motion shall designate which portion of the record is requested to be transcribed and the reasons for the transcript.

(c) The court shall by order designate which portion of the record shall be transcribed and direct the filing party to contact the Official Court Reporter to make arrangements for payment.

*Note:* Rule of Appellate Procedure 1911 should be followed for requests for transcripts when a notice of an appeal is filed.

#### **Rule 1930.2. Transcripts (All Requests Not Associated with an Appeal).**

(a) Where the transcript request is not made pursuant to an appeal, transcription of Notes of Testimony shall occur only upon order of court following the filing of a motion.

(b) The motion shall designate which portion of the record is requested to be transcribed and the reasons for the transcript.

(c) The court shall by order designate which portion of the record shall be transcribed and direct the filing party to contact the Official Court Reporter to make arrangements for payment.

*Note:* Rule of Appellate Procedure 1911 should be followed for requests for transcripts when a notice of an appeal is filed.

These amendments shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

*By the Court*

TODD A. HOOVER,  
*President Judge*

[Pa.B. Doc. No. 11-1723. Filed for public inspection October 7, 2011, 9:00 a.m.]