

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 3 AND 15]

Proposed Amendments to Pa.R.A.P. 313 and 1501

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule of Criminal Procedure 587 and revise the Comments to Rules of Criminal Procedure 580 and 605. The proposed rule changes clarify the procedures when a defendant files a motion to dismiss based on double jeopardy grounds. At the same time, the Appellate Court Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania also amend Rules of Appellate Procedure 313 and 1501 to codify the procedure for seeking appellate review of the trial court's pretrial determination that the motion to dismiss based on double jeopardy grounds is frivolous. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The two Committees worked jointly in developing these proposals, and the following Explanatory Comment highlights the joint considerations in formulating this proposal, as well as the specific appellate considerations. It precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

The text of the proposed changes to the rules follows the Explanatory Comment. Additions are shown in bold; deletions are in bold and in brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel. All communications in reference to the proposed amendment should be sent no later than, Monday, May 1, 2012 to:

Dean R. Phillips, Counsel
D. Alicia Hickok, Deputy Counsel
Scot Withers, Deputy Counsel
Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P. O. Box 62635
Harrisburg, Pennsylvania 17106-2635

or Fax to (717) 231-9551
or E-Mail to appellaterules@pacourts.us

By the Appellate Court Procedural Rules Committee
HONORABLE RENÉE COHN JUBELIRER,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 313. Collateral Orders.

* * * * *

(c) *Exception for double jeopardy determinations of frivolousness.*—Where the trial court denies a pretrial motion seeking dismissal of criminal charges on double jeopardy grounds (including grounds raised under 18 Pa.C.S. §§ 109–111) and also determines that the double jeopardy claim is frivolous, the order denying dismissal is not immediately appealable as a collateral order unless the determination of frivolousness is found to be erroneous. Accordingly, immediate review can be secured only if the affected party files a petition for review from the determination of frivolousness under Chapter 15, subject to the following procedures.

(1) *Manner of Obtaining Judicial Review of Frivolousness Determinations.*—In order to secure pretrial review, a petition for review must be filed in the appellate court that would have jurisdiction over an appeal from a final order in the case within thirty (30) days of the trial court's determination of frivolousness. If the petition for review is transmitted to the prothonotary of the appellate court by means of first class, express, or priority United States Postal Service mail, the petition shall be deemed received by the prothonotary for the purposes of Rule 121(a) (filing) on the date deposited in the United States mail, as shown on a United States Postal Service Form 3817 Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified.

(2) *Contents.*—The petition for review need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(i) A statement of the basis for the jurisdiction of the appellate court.

(ii) The text of the order in question, and the date of its entry in the trial court. If the order is voluminous, it may, if more convenient, be appended to the petition.

(iii) A concise statement of the case containing the facts necessary to an understanding of the frivolousness issue(s) presented.

(iv) The question(s) presented, expressed in the terms and circumstances of the case but without unnecessary detail.

(v) A concise statement of the reasons why the trial court erred in its determination of frivolousness.

(vi) There shall be appended to the petition a copy of any opinions delivered relating to the order sought to be reviewed, including findings of fact and conclusions of law in support of the frivolousness determination, as well as a copy of any transcripts or other record documents necessary to the appellate court's review.

(vii) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations or other similar enactments which the case

involves, and the citation to the volume and page where they are published, including the official edition, if any.

(viii) There shall be appended to the petition any briefs filed in the trial court in support of the motion to dismiss.

(3) *Caption and parties.*—The parties in the trial court shall be named as parties in the appellate court. If there are multiple defendants but the order for which review is sought adjudicates the motion of only a single defendant, only that defendant may file a petition for review.

(4) *No supporting brief.*—All contentions in support of a petition shall be set forth in the body of the petition as prescribed by Paragraph (c)(2)(v) of this rule. No separate brief in support of the petition for review will be received, and the prothonotary of the appellate court will refuse to file any petition for review to which is annexed or appended any brief other than the briefs filed in the trial court.

(5) *Essential requisites of petition.*—The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

(6) *Effect of filing petition.*—A petition for review shall not stay the proceedings before the trial court, unless the trial court or the appellate court or a judge thereof shall so order.

(7) *Answer to petition for review.*—Within 14 days after service of a petition for review the Commonwealth or other adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading, but it shall set forth any procedural, substantive or other argument or ground why the petition for review should be denied. No separate motion to dismiss a petition for review will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that the party does not intend to file an answer to the petition for review. The failure to file an answer will not be construed as concurrence in the petition for review. The appellate court may, however, direct the respondent to file an answer.

(8) *Grant of petition for review and transmission of record.*—If the petition for review is granted, the prothonotary of the appellate court shall immediately give written notice of the entry of the order to the clerk of the trial court and to each party who has appeared in the appellate court. The grant of the petition for review shall operate as a stay of all trial court proceedings. The clerk of the trial court shall docket the notice in the same manner as a notice of appeal and shall mail that notice to all parties to the trial court proceeding. The certified record shall be transmitted and filed in accordance with Chapter 19 (preparation and transmission of the record and related matters). The times fixed by those provisions for transmitting the record shall

run from the date of the entry of the order granting the petition for review. No party needs to file a separate notice of appeal.

(9) *Denial of petition for review.*—If the petition for review is denied, the prothonotary of the appellate court shall immediately give written notice of the order to the clerk of the trial court and to each party who has appeared in the appellate court.

Official Note: Rule 313 is a codification of existing case law with respect to collateral orders. See *Pubar v. Greco*, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Corp.*, 337 U.S. 541 (1949)). Examples of collateral orders include an order denying a pre-trial motion to dismiss based on double jeopardy, *Commonwealth v. Brady*, 510 Pa. 363, 508 A.2d 286, 289—91 (1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court makes a finding that motion is not frivolous); an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 338 Pa. Super. 442, 487 A.2d 1363 (1985); and an order denying a petition for removal of an executor, *Re: Estate of Georgianna*, 312 Pa. Super. 339, 458 A.2d 989 (1983), *aff'd*, 504 Pa. 510, 475 A.2d 744. Thorough discussions of the collateral order doctrine as it has been applied by Pennsylvania appellate courts are found in the following sources: *Darlington, McKeon, Schuckers and Brown, 1 Pennsylvania Appellate, Practice Second Edition, §§ 313:1—313:201* (1994) and *Byer, Appealable orders under the Pennsylvania Rules of Appellate Procedures in Practice and Procedures in Pennsylvania Appellate Courts* (PBI No. 1994-869); *Pines, Pennsylvania Appellate Practice: Procedural Requirements and the Vagaries of Jurisdiction*, 91 Dick. L. Rev. 55, 107—115 (1986).

If an order falls under Rule 313, an immediate appeal may be taken as of right simply by filing a notice of appeal, **except where a determination of frivolousness has been made by a trial court in resolving a double jeopardy motion.** The procedures set forth in Rule 341(c) and 1311 do not apply under Rule 313.

Subsection (c) prescribes the procedures for securing review of a trial court order denying a pretrial motion seeking dismissal of criminal charges on double jeopardy grounds, where the trial court makes a finding that the double jeopardy claim is frivolous. *Commonwealth v. Orié*, 22 A.3d 1021 (Pa. 2011); *Commonwealth v. Brady*, 510 Pa. 336, 508 A.2d 286 (1986). The trial court's determination and the procedure for determining a motion to dismiss on double jeopardy grounds is set forth in Pennsylvania Rule of Criminal Procedure 580. A trial court order denying a pretrial motion seeking dismissal of criminal charges on double jeopardy grounds that does not make a finding that the double jeopardy claim is frivolous is appealable as of right as a collateral order. *Commonwealth v. Bolden*, 472 Pa. 602, 373 A.2d 90 (Pa. 1977); *Commonwealth v. Orié*, 22 A.3d 1021 (Pa. 2011); Note, *supra*, listing examples of collateral orders. There is, however, no collateral order if the motion is determined to be frivolous, and the trial court may proceed, even if a party files an improper notice of appeal. See Rule of Appellate Procedure 1701(b)(6). Accordingly, the only means for securing pretrial review of a double jeopardy determination that has been deemed to be frivolous is to file a petition for review of the frivolousness determination.

This is a petition for review pursuant to Rule 1501(a)(4). The petition for review procedure specified in subsection (c) is modeled after the procedures in Chapter 13 for seeking, responding to, and acting on petitions for review from orders of lower tribunals refusing to amend otherwise unappealable interlocutory orders to permit the filing of a petition for permission to appeal with the appellate court. Where the petition for review of the determination of frivolousness is granted, the grant automatically initiates a separate appeal on the merits from the order denying the pretrial motion seeking dismissal of criminal charges on double jeopardy grounds. A party may seek (or a court may *sua sponte* issue) a stay of the trial court proceedings pending review of the frivolousness determination. Otherwise, the trial court may proceed while the petition for review is pending. See Rule of Appellate Procedure 1701(d). Where the petition for review of the determination of frivolousness is granted, the grant automatically initiates a separate appeal on the merits from the order denying the pretrial motion seeking dismissal of criminal charges on double jeopardy grounds. A grant of the petition for review stays further proceedings in the trial court.

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

IN GENERAL

Rule 1501. Scope of Chapter.

(a) *General rule.*—Except as otherwise prescribed by Subdivisions (b) and (c) of this rule, this chapter applies to:

* * * * *

(4) Matters designated by general rule, e.g., review of orders refusing to certify interlocutory orders for immediate appeal, release prior to sentence, appeals under Section 17(d) of Article II of the Constitution of Pennsylvania [and], review of special prosecutions or investigations and a trial court's finding of frivolousness when a defendant requests dismissal pretrial on double jeopardy grounds.

* * * * *

Official Note: This chapter applies to review of any “determination” of a “government unit” as defined in Rule 102 assuming, of course, that the subject matter of the case is within the jurisdiction of a court subject to these rules (see Subdivision (d) of this rule). A “determination” means “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. The term includes an order entered by a government unit.” The term “government unit” is all inclusive and means “the Governor and the departments, boards, commissions, officers, authorities and other agencies of the Commonwealth, including the General Assembly and its officers and agencies and any court or other officer or agency of the unified judicial system, and any political subdivision or municipal or other local authority or any officer or agency of any such political subdivision or local authority. The term includes a board of arbitrators whose determination is subject to review under 42 Pa.C.S. § 763(b) (awards of arbitrators).” The term “administrative agency” is not defined in these rules, although the term is used in these rules as a result

of its appearance in Section 9 of Article V of the Constitution of Pennsylvania.

Subdivision (a)(4) was added in 2004 to recognize the references in various appellate rules and accompanying notes to petition for review practice. For example, the Notes to Rules 341 and 1311 direct counsel to file a petition for review of a trial court or government agency order refusing to certify an interlocutory order for immediate appeal. Similarly, Rule 1762 directs the filing of a petition for review when a party seeks release on bail before judgment of sentence is rendered. See Rule 1762(b). A petition for review is also the proper method by which to seek judicial review pursuant to Rule 3321 (regarding legislative reapportionment commission) and Rule 3331 (regarding special prosecutions or investigations). The 2004 amendments clarify the use of petitions for review in these special situations. **In 2012, Rule 313 was amended to codify the procedure for filing a petition for review of a determination of frivolousness of a request for dismissal on double jeopardy grounds.**

* * * * *

Explanatory Comment

I. Background

The Committee, in conjunction with the Criminal Procedural Rules Committee,¹ is planning to propose to the Supreme Court amendments to Rules of Appellate Procedure 313 and 1501.

The Supreme Court in *Commonwealth v. Orié*, __ Pa __, 22 A.3d 1021 (2011), clarified the appropriate procedures to be followed in the appellate court when a criminal defendant seeks review of a trial court’s determination, in the context of dismissing the defendant’s pre-trial double jeopardy challenge, that the challenge is frivolous. The Court asked the Appellate Court Procedural Rules Committee and the Criminal Procedural Rules Committee to evaluate the procedural framework that the Court had set forth for possible further refinement and codification.

There are two postures in which a matter can reach an appellate court after a trial court denies a motion to dismiss on double jeopardy grounds. First, if the court denies the motion but does not deem it frivolous, a defendant has a collateral order appeal as of right, clearly governed by Rule 313 and initiated by a Notice of Appeal. Second, if the trial court denies the motion but also deems the challenge to be frivolous, the mechanism for challenging such a determination is by means of a petition for review. The Committees propose to add the procedure for the petition for review to Rule 313 so that both procedures for seeking review of a trial court order denying a motion to dismiss on double jeopardy grounds are in a single location in the Rules of Appellate Procedure.

Because the procedure to be followed to secure review is dictated by whether the trial court finds frivolousness, the Committees concluded that it would be helpful to the bench and bar if the Criminal Rules were amended to provide express procedures for a trial court to follow in resolving a defendant’s motion to dismiss on double jeopardy grounds.

Accordingly, the Recommendation proposes that the Criminal Procedural Rules:

- require that the motion state specifically and with particularity the grounds for the motion and the facts supporting the motion;

¹ The Criminal Procedural Rules Committee is proposing to amend Rule of Criminal Procedure 587 and revise the Comments to Rules of Criminal Procedure 580 and 605.

- require a hearing on the record in open court; and
- require the judge to make findings of fact and conclusions of law on the record at the conclusion of the hearing,

Under the proposed Criminal Procedural Rule amendments, the trial judge will be required to advise the defendant on the record of his or her appellate rights. When the judge makes a finding that the motion is frivolous, the judge will advise the defendant that he or she has the right to file a petition for review within 30 days of the order denying the motion. When the judge denies the motion but does not find it frivolous, the judge will advise the defendant the denial is immediately appealable as a collateral order under the Appellate Rules. The proper procedure to follow where the trial court does not make a determination that the claim is frivolous continues to be governed by existing Pa.R.A.P. 313, but the recommendation will ensure that the petition for review will be as well.

Because the term “petition for review” can refer to documents filed for various purposes, some within a court’s appellate jurisdiction and others in a court’s original jurisdiction, the Appellate Rules explain the different petitions for review and the procedures applicable to each in Chapter 15 of the Rules of Appellate Procedure. The Committees believed that, while it was appropriate to include this petition for review in the list of petitions for review in Pa.R.A.P. 1501, it would be confusing for the bar to have to look in two different Chapters for procedures governing a denial of a motion to dismiss on double jeopardy grounds. For that reason, the Note to Rule 1501 cross-references to Rule 313.

[Pa.B. Doc. No. 12-475. Filed for public inspection March 16, 2012, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Order Amending Rule 240 of the Rules of Civil Procedure; No. 557 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 2nd day of March, 2012, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for comment at 38 Pa.B. 337 (January 19, 2008) and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 939 No. 3, Vol. 940 No. 1):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 240 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 April 2, 2012.

Mr. Justice Saylor and Madame Justice Todd dissent.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 240. In Forma Pauperis.

* * * * *

(c) Except as provided by subdivision (d), the party shall file a petition and an affidavit in the form prescribed by subdivision (h). The petition may not be filed prior to the commencement of an action **or proceeding** or the taking of an appeal.

(1)(i) If the petition is filed simultaneously with the commencement of the action **or proceeding** or with the taking of the appeal, the prothonotary shall docket the **[action and petition or shall accept the appeal] matter** and petition without the payment of any filing fee.

(ii) If the court shall thereafter deny the petition, the petitioner shall pay the filing fee for commencing the action **or proceeding** or taking the appeal. A party required to pay such fee may not without leave of court take any further steps in the action, **proceeding** or appeal so long as such fee remains unpaid. Not sooner than ten days after notice of the denial of the petition pursuant to Rule 236, the prothonotary shall enter a judgment of non pros in the action **or proceeding** or strike the appeal if the fee remains unpaid. The action, **proceeding** or appeal shall be reinstated only by the court for good cause shown.

(2) If the action **or proceeding** is commenced or the appeal is taken without the simultaneous filing of a petition, the appropriate filing fee must be paid and shall not be refunded if a petition is thereafter filed and granted.

(3) **[The] Except as provided by subdivision (j)(2), the court shall act promptly upon the petition and shall enter its order within twenty days from the date of the filing of the petition. If the petition is denied, in whole or in part, the court shall briefly state its reasons.**

* * * * *

(f) A party permitted to proceed in forma pauperis shall not be required to

(1) pay any cost or fee imposed or authorized by Act of Assembly or general rule which is payable to any court or prothonotary or any public officer or employee, or

(2) post bond or other security for costs as a condition for commencing an action **or proceeding** or taking an appeal.

* * * * *

(j)(1) If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed in forma pauperis, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

Official Note: A frivolous action or proceeding has been defined as one that “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 [(1990)] (1989).

(2) If the petitioner commences the action by writ of summons, the court shall not act on the petition

for leave to proceed in forma pauperis until the complaint is filed. If the complaint has not been filed within ninety days of the filing of the petition, the court may dismiss the action pursuant to subdivision (j)(1).

* * * * *

Explanatory Comment

Present subdivision (j) provides for a court, prior to acting on a petition to proceed in forma pauperis, to dismiss an action, proceeding, or appeal if the allegation of poverty in the petition is untrue, or if the court is satisfied that the action, proceeding, or appeal is frivolous. However, subdivision (j) did not consider the situation where an action is commenced by the issuance of a writ of summons. The amendment to subdivision (j) requires the party commencing an action by writ of summons and seeking to proceed in forma pauperis to file the complaint within ninety days of filing the petition. The court would not make a determination on the petition until the complaint is filed. If the complaint is not filed within the ninety-day time period, the court may dismiss the action pursuant to procedures set forth in subdivision (j)(1).

By the Civil Procedural Rules Committee

DIANE W. PERER,
Chair

[Pa.B. Doc. No. 12-476. Filed for public inspection March 16, 2012, 9:00 a.m.]

**Title 234—RULES OF
CRIMINAL PROCEDURE**

[234 PA. CODE CH. 1]

**Order Amending Rules 140, 141 and 142 of the
Rules of Criminal Procedure; No. 410 Criminal
Procedural Rules Doc.**

Order

Per Curiam

And Now, this 1st day of March, 2012, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 40 Pa.B. 4143 (July 24, 2010), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 996), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Criminal Procedure 140, 141, and 142 are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 1, 2012.

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 1. SCOPE OF RULES, CONSTRUCTION
AND DEFINITIONS, LOCAL RULES**

**PART D. Procedures Implementing 42 Pa.C.S.
§§ 4137, 4138, and 4139: Criminal Contempt Powers
of District Justices, Judges of the Pittsburgh
Magistrates Court, and Judges of the Traffic Court
of Philadelphia**

Rule 140. Contempt Proceedings Before [**District Justices**] **Magisterial District Judges**, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges.

(A) CONTEMPT IN THE PRESENCE OF THE COURT

1. An issuing authority may summarily hold an individual in contempt for misbehavior in the presence of the court [**which**] **that** obstructs the administration of justice, and, after affording the individual an opportunity to be heard, may impose a punishment of a fine of **not more than \$100** or imprisonment [**as provided by law**] **for not more than 30 days or both.**

* * * * *

3. The issuing authority shall issue a written order of contempt, in which the issuing authority shall:

a. set forth the facts of the case [**which**] **that** constitute the contempt;

* * * * *

(B) CONTEMPT NOT IN THE PRESENCE OF THE COURT

1. INSTITUTION OF PROCEEDINGS

a. An issuing authority may institute contempt proceedings by either

(1) giving written notice to the alleged contemnor of the time, date, and place of the contempt hearing, or

(2) when deemed appropriate by the issuing authority, issuing an attachment by means of a warrant,

whenever a person is alleged to have (i) failed to obey a subpoena issued by the issuing authority; (ii) failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order; (iii) failed to comply with an order of [**a district justice**] **an issuing authority** directing a defendant to compensate a victim; **or** (iv) [**violated an order issued pursuant to 23 Pa.C.S. § 6110; or** (v)] failed to comply with an order of an issuing authority in any case in which the issuing authority is by statute given the power to find the person in contempt.

b. If the proceedings are instituted by notice, the notice shall:

(1) specify the acts or omissions and the essential facts constituting the contempt charged;

(2) advise what the [**statutorily provided**] punishment may be for a finding of contempt in the case;

(3) if, in the event of a finding of contempt, there is a likelihood that the punishment will be imprisonment, advise the alleged contemnor of the right to the assistance of counsel and that counsel will be assigned pursuant to Rule 122 if the alleged contemnor is without financial resources or is otherwise unable to employ counsel; and

(4) advise the alleged contemnor that failure to appear at the hearing may result in the issuance of a **bench warrant** [**of arrest**].

* * * * *

2. HEARING

* * * * *

b. At the conclusion of the hearing:

* * * * *

(3) If the issuing authority finds contempt and imposes punishment, the issuing authority shall issue a written order of contempt setting forth:

(a) the facts of the case [**which**] that constitute the contempt;

* * * * *

c. The issuing authority shall not hold a contempt hearing in the absence of the alleged contemnor. If the alleged contemnor fails to appear for the contempt hearing, the issuing authority may continue the hearing and issue a **bench warrant [of arrest]**.

3. PUNISHMENT

Punishment for contempt may not exceed the limits set forth as follows:

a. Whenever a person is found to have failed to obey a subpoena issued by the issuing authority, punishment may be a fine of not more than \$100. Failure to pay the fine within a reasonable time may result in imprisonment for not more than 10 days.

b. Whenever a person is found to have failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order, punishment may be imprisonment for not more than 90 days.

c. Whenever a person is found to have failed to comply with an order of an issuing authority directing a defendant to compensate a victim, punishment may be a fine of not more than \$100 or imprisonment for not more than 30 days, or both.

Comment

This rule sets forth the procedures to implement 42 Pa.C.S. §§ 4137, 4138, and 4139 concerning contempt powers of the minor judiciary, as well as any other statutes subsequently enacted [**which**] that would provide for findings of contempt by the minor judiciary. It is not intended to supplant the procedures set forth in 23 Pa.C.S. § [**6113**] **6110 et seq.** concerning violations of protection from abuse orders.

The scope of the contempt powers of [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges is governed by 42 Pa.C.S. §§ 4137, 4138, and 4139 respectively. Therefore, as used in this rule, “issuing authority” refers only to [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers. **However, 42 Pa.C.S. §§ 4137(c), 4138(c), and 4139(c) contain limitations upon the punishment that a minor court may impose for contempt. Such statutory limitations were held to be unconstitutional in Commonwealth v. McMullen, 599 Pa. 435, 961 A.2d 842 (2008).**

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Mu-

nicipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

All contempt proceedings under this rule are to be entered on the issuing authority’s miscellaneous docket, and a separate docket transcript for the contempt proceeding is to be prepared. If an appeal is taken, the issuing authority is required to forward the transcript and the contempt order to the clerk of courts. *See* Rule 141.

Paragraph (A) sets forth the procedures for handling contempt proceedings when the misbehavior is committed in the presence of the court and is obstructing the administration of justice. *See* 42 Pa.C.S. §§ 4137(a)(1), 4138(a)(1), and 4139(a)(1). This type of contempt is commonly referred to as “direct” or “summary” contempt. The issuing authority may immediately impose punishment without a formal hearing because prompt action is necessary to maintain or restore order in the courtroom and to protect the authority and dignity of the court. Although immediate action is permitted in these cases, the alleged contemnor is ordinarily given an opportunity to be heard before the imposition of punishment. *See Commonwealth v. Stevenson, 482 Pa. 76, 393 A.2d 386 ([Pa.] 1978).*

Customarily, individuals are not held in summary contempt for misbehavior before the court without prior oral warning by the presiding judicial officer.

Paragraph (B) provides the procedures for instituting and conducting proceedings in all other cases of alleged contemptuous conduct subject to the minor judiciary’s statutory contempt powers, which are commonly referred to as “indirect criminal contempt” proceedings.

For purposes of this rule, the phrase “failed to obey a subpoena issued by the issuing authority” in paragraph (B)(1)(a) is intended to include the failure to obey any other lawful process ordering the person to appear before an issuing authority.

Pursuant to 42 Pa.C.S. §§ 4137(a)(2), (3), and (4), [**and (5),**] 4138(a)(2) and (3), and 4139(a)(2) and (3), only [**district justices**] **issuing authorities** have the power to impose punishment for contempt of court for failure to comply with an order directing a defendant to compensate a victim [**or an order issued pursuant to 23 Pa.C.S. § 6110**]. *See* paragraph (B)1.a.

“Indirect criminal contempt” proceedings must be instituted either by serving the alleged contemnor with a notice of the contempt hearing, or by issuing an attachment in the form of a warrant. The alleged contemnor must be afforded the same due process protections that are normally provided in criminal proceedings, including notice of the charges, an opportunity to be heard and to present a defense, and counsel. *See, e.g., Codispoti v. Pennsylvania, 418 U.S. 506 (1974), and Bloom v. Illinois, 391 U.S. 194 (1968).*

When a warrant [**of arrest**] is executed under this rule, the alleged contemnor should be taken without unreasonable delay before the proper issuing authority.

Although 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3) permit an issuing authority to impose sum-

mary punishments for indirect criminal contempt when a defendant fails to comply with an order of the issuing authority directing the defendant to pay fines and costs in accordance with an installment payment order, nothing in this rule is intended to preclude an issuing authority from proceeding pursuant to Rule 456 (Default Procedures: Restitution, Fines, and Costs).

No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the contempt hearing. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). Also see Rule 454 concerning counsel in summary cases. The Supreme Court in *Commonwealth v. Abrams*, 461 Pa. 327, 336 A.2d 308 ([Pa.] 1975) held that the right to counsel applies in cases of criminal contempt. See also *Commonwealth v. Crawford*, 466 Pa. 269, 352 A.2d 52 ([Pa.] 1976).

For the assignment of counsel, follow the Rule 122 procedures for summary cases.

For waiver of counsel, follow the Rule 121 procedures for proceedings before an issuing authority.

For the procedures for taking, perfecting, and handling an appeal from an order entered pursuant to this rule, see Rule 141.

If a contemnor defaults in the payment of a fine imposed as punishment for contempt pursuant to [42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c)] this rule, the matter is to proceed as provided in Rule 142.

See Chapter 5 Part C concerning bail before a contempt hearing. See 42 Pa.C.S. § 4137(e) concerning a [district justice's] magisterial district judge's authority to set bail after an adjudication of contempt.

Paragraphs (A)2.e and (B)2.b(2)(e) require the issuing authority to set a date for the contemnor to pay any fine or to appear for execution of any punishment of imprisonment. This date should be at least 35 days from the date of the contempt proceeding to allow for the expiration of the 30-day automatic stay period and the 5-day period within which the clerk of courts is to serve a copy of the notice of appeal on the issuing authority. See Rule 141.

Paragraph (B)2.b(5) requires that the case be reviewed at the conclusion of a contempt hearing to determine whether the restitution order or the fines and costs installment order should be altered or amended, rather than scheduling another hearing. This review should be conducted whether or not the [district justice] issuing authority finds an individual in contempt for failure to comply with an order to pay restitution, or whether or not the issuing authority finds an individual in contempt for failure to comply with an installment order to pay fines and costs. For the authority to alter or amend a restitution order, see 18 Pa.C.S. § [106(c)(2)(iii)] 1106(c)(3).

Official Note: Rule 30 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 140 and amended March 1, 2000, effective April 1, 2001; Comment revised March 26, 2004, effective July 1, 2004; amended March 1, 2012, effective July 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 30 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

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 26, 2004 Comment revision concerning right to counsel published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the amendments concerning limitations on punishment for contempt published with the Court's Order at 42 Pa.B. 1367 (March 17, 2012).

Rule 141. Appeals from Contempt Adjudications by [District Justices] Magisterial District Judges, Pittsburgh Magistrates Court Judges, or Philadelphia Traffic Court Judges.

* * * * *

(E) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

- (1) the transcript of the proceedings;
- (2) either the notice of the hearing or a copy of the attachment;
- (3) the contempt order; and
- (4) any bench warrant [of arrest].

* * * * *

Comment

This rule provides the procedures for taking an appeal from a finding of contempt by a [district justice] magisterial district judge, a Pittsburgh Magistrates Court judge, or a Philadelphia Traffic Court judge.

As used in this rule, "issuing authority" refers only to [district justices] magisterial district judges, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers. See 42 Pa.C.S. §§ 4137, 4138, and 4139.

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

As the Pennsylvania Supreme Court stated in *Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842 (2008), legislative limitations on a court's power to sentence for contempt are unconstitutional.

Pursuant to paragraph (B), any punishment imposed for contempt will be automatically stayed for 30 days from the date of the imposition of the punishment, during which time a notice of appeal may be filed with the clerk of courts. To the extent that 42 Pa.C.S. §§ 4137(d), 4138(d), and 4139(d) are inconsistent with this rule, they are suspended by Rule 1101 (Suspension of Acts of Assembly).

If no notice of appeal is filed within the 30-day period following imposition of the punishment, Rule 140 requires the issuing authority to direct the contemnor on a date

certain to pay any fine imposed or to appear for execution of any punishment of imprisonment.

See 42 Pa.C.S. § 4137(e) concerning the imposition of bail as a condition of release by a [**district justice**] **magisterial district judge**.

The procedures set forth in Rule 462 (Trial [**de**] *De Novo*) for a trial *de novo* on a summary case should be followed when a contempt adjudication is appealed to the common pleas court.

* * * * *

Official Note: Rule 31 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 141 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; **amended March 1, 2012, effective July 1, 2012.**

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 31 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

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

Final Report explaining the February 28, 2003 amendments concerning contempt appeals published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the March 26, 2004 Comment revision concerning right to counsel published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the amendments regarding limitations on punishment for contempt published with the Court's Order at 42 Pa.B. 1367 (March 17, 2012).

Rule 142. Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt.

(A) If a contemnor defaults on the payment of a fine imposed as punishment for contempt pursuant to [**42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c)**] **Rule 140(A)(1) and (B)(3)**, the issuing authority shall notify the contemnor in person or by first class mail that within 10 days of the date on the default notice the contemnor must either:

- (1) pay the amount due as ordered, or
- (2) appear before the issuing authority to explain why the contemnor should not be imprisoned for nonpayment as provided by law, or a **bench** warrant for the contemnor's arrest shall be issued.

* * * * *

Comment

This rule provides the procedures governing defaults in the payment of fines imposed as punishment for contempt in proceedings before [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges. See [**42 Pa.C.S. §§ 4137(c), 4138(c), or 4139(c)**] **Rule 140(A)(1) and (B)(3)**.

As used in this rule, "issuing authority" refers only to [**district justices**] **magisterial district judges**, Pittsburgh Magistrates Court judges, and Philadelphia Traffic

Court judges when acting within the scope of their contempt powers. See 42 Pa.C.S. §§ 4137, 4138, and 4139.

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

For contempt procedures generally, see Rule 140.

As the Pennsylvania Supreme Court stated in *Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842 (2008), legislative limitations on a court's power to sentence for contempt are unconstitutional.

When a contemnor defaults on a payment of a fine, paragraph (A) requires the issuing authority to notify the contemnor of the default, and to provide the contemnor with an opportunity to either pay the amount due or appear within a 10-day period to explain why the contemnor should not be imprisoned for nonpayment. If the contemnor fails to pay or appear, the issuing authority must issue a **bench** warrant for the arrest of the contemnor.

If the hearing on the default cannot be held immediately, the issuing authority may set bail as provided in Chapter 5 Part C.

This rule contemplates that when there has been an appeal pursuant to paragraph (C), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

Official Note: Rule 32 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 142 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; **amended March 1, 2012, effective July 1, 2012.**

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 32 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

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

Final Report explaining the March 3, 2004 rule changes deleting "show cause" published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the rule changes regarding limitations on punishment for contempt published with the Court's Order at 42 Pa.B. 1367 (March 17, 2012).

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 140, 141, and 142

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

Limitations on Punishment for Contempt in the Minor Courts

On March 1, 2012, effective July 1, 2012, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 140 (Contempt Proceedings Before District Justices, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges), 141 (Appeals from Contempt Adjudications by District Justices, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges), and 142 (Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt) to provide for limitations on punishment for contempt before the minor judiciary.

On December 18, 2008, the Court issued the opinion in *Commonwealth v. McMullen*, 961 A.2d 842 (Pa. 2008), which held, *inter alia*, that the Legislature may not “create a form of indirect criminal contempt and restrict the court’s ability to punish individuals who commit contempt of court,” and therefore 42 Pa.C.S. § 4136(b), which provides that the punishment for the indirect criminal contempt addressed in the statute is limited to a fine not exceeding \$100 or imprisonment not exceeding 15 days and that the defendant is entitled to a jury trial, “unconstitutionally restricts the court’s ability to punish for contempt.” This case was brought to the Committee’s attention because, although the case addresses only the provisions of 42 Pa.C.S. § 4136(b) (indirect criminal contempt), 42 Pa.C.S. § 4137(c) also mandates the sentence that may be imposed for contempt before magisterial district judges. From its review of the *McMullen* opinion and these statutes, as well as the Committee’s history of Rules 140-142, the Committee concluded that the holding in *McMullen* applied to the statutory limitations on punishment imposed on the minor judiciary.

Rules 140, 141, and 142, adopted in 1997, implement 42 Pa.C.S. § 4137 providing the procedures for instituting the contempt proceedings, etc., but do not address the punishment provisions in 42 Pa.C.S. § 4137(c).² The rules also reference 42 Pa.C.S. §§ 4138 and 4139 defining similar contempt powers for the Pittsburgh Magistrates Court and Philadelphia Traffic Court, respectively. In considering the scope of the *Mullen* opinion, the Committee reasoned that parameters should be placed on the imposition of punishment by the minor courts for contempt. Furthermore, the members agreed that the statutory limitations were reasonable, but that such limitations belong more properly in the Criminal Rules. Accordingly, Rule 140 has been amended by the addition of punishment provisions that are comparable to the provisions in 42 Pa.C.S. § 4137(c).

Rule 140 is the general rule for contempt procedures in the magisterial district courts, the Pittsburgh Magistrates Court, and the Philadelphia Traffic Court. Rule 140 breaks the procedures down into two contempt categories, contempt committed in the presence of the court, and contempt occurring outside of the presence of the court. Each contempt category and associated procedures are described separately. The punishment limitations for contempt before the court are incorporated into paragraph (A)(1). The punishment limitations for contempt occurring outside of the presence of the court are enumerated in new paragraph (B)(3).

One of the punishment limitations listed in 42 Pa.C.S. § 4137 applies to a violation of an order issued pursuant

to 23 Pa.C.S. § 6110, the portion of the Protection from Abuse Act authorizing emergency protection from abuse orders to be issued by the minor judiciary. The Committee concluded that protection from abuse proceedings are unique and that any punishment limitations in the rare circumstance under which the minor judiciary would adjudicate contempt under this statute are not appropriately addressed in a general Rule of Criminal Procedure. In view of this, the reference to 23 Pa.C.S. § 6110 was deleted from Rule 140(B)(2). Correlatively, the existing language in the first paragraph of the Comment that explains that the rule “is not intended to supplant the procedures set forth in 23 Pa.C.S. § 6113 concerning violations of protection from abuse orders” would be expanded to include the entire Protection from Abuse Act, 23 Pa.C.S. § 6110 *et seq.*

Rule 140 contains one category of contempt for which the statutes do not provide any limitation on punishment. That category is described as a failure to “comply with an order of an issuing authority in any case in which the issuing authority is by statute given the power to find the person in contempt.” The Committee noted that the only example of such a statute not covered by the existing punishment provisions is found in 42 Pa.C.S. § 1523 that permits the magisterial district judge to issue an order directing the parent or guardian of the juvenile to appear at the hearing in summary cases before a magisterial district judge in which the defendant is a juvenile. Since failing to obey the order to appear is qualitatively the same as failing to obey a subpoena, language has been added to the Rule 140 Comment clarifying that the rule’s use of the phrase “failed to obey a subpoena issued by the issuing authority” includes any other lawful process ordering the person to appear before an issuing authority.

Another revision to the Rule 140 Comment is an explanation regarding the status of the Pittsburgh Magistrates Court. Currently, the Pittsburgh Magistrates Court is no longer staffed and its function has been taken over by the Pittsburgh Municipal Court that is staffed by magisterial district judges. However, since the Magistrates Court has never been disestablished and theoretically could be re-staffed, the terminology is retained in the rules with an explanation in the Comments to Rules 140, 141, and 142 about the establishment of the Pittsburgh Municipal Court and the status of the Magistrates Court.

Rule 141 provides procedures for appeal from contempt findings in the minor courts, and does not address any matters related to punishment limitations. Therefore, only a general cross-reference to holding in the *McMullen* case has been added to the Comment.

Rule 142 provides procedures for the handling of defaults in payment of fines imposed for contempt. The Rule 142 Comment contained cross-references to the punishment provisions of the statutes. Conforming to the other changes, that cross-reference has been changed to refer to the punishment provisions that have been added to Rule 140.

[Pa.B. Doc. No. 12-477. Filed for public inspection March 16, 2012, 9:00 a.m.]

² At the time, the Committee believed that the scope of the punishment was substantive and therefore not subject for the Court’s rule-making authority, and did not question the constitutionality of the punishment provisions of the statutes.

[234 PA. CODE CHS. 5 AND 6]

Proposed Amendments to Pa.R.Crim.P. 587 and Proposed Revisions to the Comments to Pa.Rs.Crim.P. 580 and 605

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule of Criminal Procedure 587 and revise the Comments to Rules of Criminal Procedure 580 and 605. The proposed rule changes clarify the procedures when a defendant files a motion to dismiss based on double jeopardy grounds. At the same time, the Appellate Court Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania also amend Rules of Appellate Procedure 313 and 1501 to codify the procedure for seeking appellate review of the trial court's pretrial determination that the motion to dismiss based on double jeopardy grounds is frivolous. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report 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 text of the proposed changes to the rules precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
Pennsylvania Judicial Center

601 Commonwealth Ave., Suite 6200, P. O. Box 62635
Harrisburg, PA 17106-2635
fax: (717) 231-9521 or e-mail: criminal.rules@pacourts.us
no later than Monday, May 1, 2012.

By the Criminal Procedural Rules Committee:

PHILIP D. LAUER,
Chair

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 5. PRETRIAL PROCEDURES IN COURT
CASES**

PART F(1). Motion Procedures**Rule 580. Disposition of Pretrial Motions.**

Unless otherwise provided in these rules, all pretrial motions shall be determined before trial. Trial shall be postponed by the court for the determination of pretrial motions, if necessary.

Comment

See Rule 587(B) for the procedures for motions to dismiss on double jeopardy grounds.

Official Note: Rule 309 adopted June 30, 1964, effective January 1, 1965; renumbered Rule 310 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1,

1978; renumbered Rule 580 March 1, 2000, effective April 1, 2001; **Comment revised** , 2012, effective , 2012.

Committee Explanatory Reports:

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

Report explaining the proposed revision of the Comment adding a citation to Rule 587 concerning motions to dismiss on double jeopardy grounds published for comment at 42 Pa.B. 1370 (March 17, 2012).

Rule 587. Motion for Dismissal.**(A) UNTIMELY FILING OF INFORMATION.**

(1) Upon motion and a showing that an information has not been filed within a reasonable time, the court may order dismissal of the prosecution, or in lieu thereof, make such other order as shall be appropriate in the interests of justice.

[(B)] (2) The attorney for the Commonwealth shall be afforded an opportunity to respond.

(B) DOUBLE JEOPARDY.

(1) **A motion to dismiss on double jeopardy grounds shall state specifically and with particularity the basis for the claim of double jeopardy and the facts that support the claim.**

(2) **A hearing on the motion shall be scheduled in accordance with Rule 577 (Procedures Following Filing of Motion). The hearing shall be conducted on the record in open court.**

(3) **At the conclusion of the hearing, the judge shall enter on the record a statement of findings of fact and conclusions of law and shall issue an order granting or denying the motion.**

(4) **In a case in which the judge denies the motion, the findings of fact shall include a specific finding as to frivolousness.**

(5) **If the judge makes a finding that the motion is frivolous, the judge shall advise the defendant on the record that a defendant has a right to file a petition for review of that determination pursuant to Rule of Appellate Procedure 313(c) within 30 days of the order denying the motion.**

(6) **If the judge denies the motion but does not find it frivolous, the judge shall advise the defendant on the record that the denial is immediately appealable as a collateral order.**

Comment

Cf. Pa.R.J.A. 1901 concerning termination of inactive cases.

[See Rule 575 for the procedures governing motions and answers.]

A motion filed pursuant to this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, a dismissal of the prosecution pursuant to paragraph (A)(1) would include the dismissal of the summary offense. *See* the Comment to Rule 502 (Instituting Proceedings in Court Cases).

“Hearing,” as used in paragraph (B)(2) includes the taking of testimony, or the hearing of argument, or both. See Rule 115 for the procedures for the recording and transcribing of the hearing.

Paragraph (B)(4) requires the judge to make a specific finding whether the motion is being dismissed as frivolous. The judge should expressly cite on-point controlling case law that would make the claim frivolous. See, e.g., *Commonwealth v. Gains*, 383 Pa.Super. 208, 217, 556 A.2d 870, 874 (1989). (“A frivolous claim is a claim clearly and palpably without merit; it is a claim which presents no debatable question.”). A mere adverse decision of the case does not mean the matter is frivolous.

Although the judge is required to advise the defendant of his or her appellate rights in paragraphs (B)(5) and (B)(6) upon dismissing the motion, nothing in this rule is intended to preclude the defendant from proceeding to trial without first appealing the double jeopardy question. See, e.g., *Commonwealth v. Lee*, 490 Pa. 346, 350, 416 A.2d 503, 504 (1980). (“Unquestionably, appellant could have sought immediate appellate review of the question involved. For whatever reason, however, appellant proceeded to trial without first appealing the double jeopardy question. We believe that a defendant may choose to proceed to trial and if convicted, still challenge the propriety of the pretrial motion to dismiss on double jeopardy grounds on appeal.” citations omitted)

For the procedures for challenging the denial of the motion to dismiss on double jeopardy grounds when the judge makes a finding that the motion is frivolous, see Rule of Appellate Procedure 313(c).

Pursuant to Rule of Appellate Procedure 1701(d), the filing of a petition for review does not affect the judge’s power to proceed further in the case while the petition for review is pending.

Official Note: Rule 316 adopted June 30, 1964, effective January 1, 1965; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; renumbered Rule 315 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; renumbered Rule 587 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised March 9, 2006, effective September 1, 2006; amended , 2012, effective , 2012.

Committee Explanatory Reports:

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

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

Final Report explaining the March 3, 2004 amendment of paragraph (B) published with the Court’s Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the March [3] 9, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court’s Order at 36 Pa.B. 1392 (March 25, 2006).

Report explaining the proposed provisions of the new paragraph (B) concerning motions to dismiss on double jeopardy grounds published for comment at 42 Pa.B. 1370 (March 17, 2012).

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART A. General Provisions

Rule 605. Mistrial.

* * * * *

Comment

This rule replaces the practice of moving for the withdrawal of a juror.

Examples of “manifest necessity” can be found in *Commonwealth v. Stewart*, 456 Pa. 447, 317 A.2d 616 ([Pa.] 1974); *Commonwealth v. Brown*, 451 Pa. 395, 301 A.2d 876 ([Pa.] 1973); *United States ex rel. Russo v. Superior Court of New Jersey*, Law Division, Passaic County, 483 F.2d 7 (3rd Cir. 1973), cert. denied, 414 U.S. 1023 (1973); *United States v. Tinney*, 473 F.2d 1085 (3rd Cir. 1973), cert. denied, 412 U.S. 928 (1973); *United States v. Jorn*, 440 U.S. 470 (1971); and *United States v. Perez*, 9 Wheat. 579 (1824); see also *Illinois v. Somerville*, 410 U.S. 458 (1973).

See Rule 587(B) for the procedures when a motion to dismiss on double jeopardy grounds is filed.

Official Note: Rule 1118 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; renumbered Rule 605 and amended March 1, 2000, effective April 1, 2001; Comment revised , 2012, effective , 2012.

Committee Explanatory Reports:

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

Report explaining the proposed revision of the Comment adding a citation to Rule 587 concerning motions to dismiss on double jeopardy grounds published for comment at 42 Pa.B. 1370 (March 17, 2012).

REPORT

Proposed Amendments to Pa.R.Crim.P. 587, and Proposed Revisions to the Comments To Pa.Rs.Crim.P. 580 and 605

Motion to Dismiss Based on Double Jeopardy Grounds

I. Background

The Committee, in conjunction with the Appellate Court Procedural Rules Committee,¹ is planning to propose to the Supreme Court amendments to Rule of Criminal Procedure 587 that would clarify the procedures when a defendant files a motion to dismiss based on double jeopardy grounds. The Committee also is proposing correlative revisions to the Comments to Rules of Criminal Procedure 580 and 605.

The Supreme Court in *Commonwealth v. Orié*, __ Pa __, 22 A.3d 1021 (2011), clarified the appropriate procedure for an appellate court to follow when a trial court dismisses a defendant’s pre-trial double jeopardy challenge as frivolous. The Court asked the Appellate Court Procedural Rules Committee and the Criminal Procedural

¹ The Appellate Court Procedural Rules Committee proposal is for amendments to Pa.Rs.A.P. 313 (Collateral Orders) and 1501 (Scope of Chapter).

Rules Committee to evaluate the Court's proposed procedural framework for possible further refinement.

During the Committees' discussions of the *Orie* case and the Court's directive, in addition to considering the appellate procedures that should apply when a judge determines that a pretrial motion to dismiss on double jeopardy grounds is frivolous,² the members also noted that there is no uniformity in how motions to dismiss on double jeopardy grounds currently are handled at the trial level. They reasoned this lack of uniformity contributes to the confusion with regard to challenging the dismissal of these motions in the appellate courts. The Committees therefore agreed that it would be helpful to the bench and bar if the Criminal Rules would be amended to provide the procedures in the court of common pleas when the defendant files a motion to dismiss based on double jeopardy grounds.

Discussion of Proposed Rule Changes

The Committees determined the procedures governing motions to dismiss on double jeopardy grounds, in terms of the importance of protecting a defendant's rights, of creating a record at the trial level for purposes of appeal and preserving all parties' positions, and of ensuring the defendant understands his or her appeal rights, most closely compare to the procedures for a motion to suppress in Rule 581. Specifically, the procedures that, *inter alia*:

- require that the motion state specifically and with particularity the grounds for the motion and the facts supporting the motion;
- require a hearing on the record in open court; and
- require the judge to make findings of fact and conclusions of law on the record at the conclusion of the hearing,

also should govern the procedures when a motion to dismiss on double jeopardy grounds is filed.

The proposed new procedures would be added to Rule 587 (Motion for Dismissal) as new paragraph (B). Paragraph (B)(1) requires that the motion state specifically and with particularity the basis for the claim of double jeopardy and the facts supporting the claim. This requirement also is comparable to Rule 575(A)(2)(c).

Paragraph (B)(2) requires that there be a hearing conducted in open court. The Committees reasoned that a hearing on the record is vital to preserve the parties' positions. As elaborated in the Comment, the "hearing" in this context may include taking testimony, taking testimony and presenting arguments, or merely presenting arguments as the judge determines necessary in a given case.

Paragraph (D)(3) requires that the judge enter on the record findings of fact and conclusions of law at the conclusion of the hearing and issue an order granting or denying the motion. Paragraph (D)(4) adds the requirement that if the judge denies the motion, the judge also must make specific findings as to frivolousness. The members noted, anecdotally, that frequently judges will deny the motion to dismiss on double jeopardy grounds and not make a finding with regard to frivolousness until a defendant challenges the denial of the motion, and that

some judges do not explain the basis for finding the motion frivolous. Recognizing that these practices are another source of the confusion and of the problems with challenging the denial of these motions, and because the correct avenue of appeal in cases involving motions to dismiss based on double jeopardy grounds depends on whether there has been a finding of frivolousness, the proposal requires the trial judge to make a specific finding as to frivolousness at the time the judge decides the double jeopardy motion, and that there must be a record made of the judge's reasons for his or her findings. Furthermore, the Rule 587 Comment would be revised to include a cross-reference to *Commonwealth v. Gains*, 383 Pa.Super. 208, 217, 556 A.2d 870, 874 (1989), to provide guidance about what constitutes a frivolous claim. The Comment explains that "a 'frivolous claim is a claim clearly and palpably without merit; it is a claim which presents no debatable question'" and a "mere adverse decision of the case does not mean the matter is frivolous."

Paragraphs (D)(5) and (D)(6) require that the judge advise the defendant on the record of his or her appellate rights. When the judge makes a finding that the motion is frivolous, paragraph (D)(5) requires the judge to advise the defendant that he or she has the right to file a petition for review within 30 days of the order denying the motion. When the judge denies the motion but does not find it frivolous, paragraph (D)(6) requires the judge to advise the defendant the denial is immediately appealable as a collateral order under the Appellate Rules.

One issue related to the defendant's appellate rights concerned the consequences of a defendant failing to challenge a denial of a motion to dismiss on double jeopardy grounds. Although in the ordinary situation a failure to timely appeal may result in a waiver, because of the constitutional ramifications of a double jeopardy claim, case law has held that a defendant may defer a challenge to a denial of such a motion until the conclusion of the trial. As an aid to the bench and bar, the Committees agreed to include a cross-reference to *Commonwealth v. Lee*, 490 Pa. 346, 350, 416 A.2d 503, 504 (1980), that explains that a defendant may, but does not have to, challenge a denial of the double jeopardy motion immediately after the denial and may wait until the conclusion of the trial to appeal.

The Comment also would include a cross-reference to the new Appellate Rule provisions concerning petitions for review set forth in Rule of Appellate Procedure 313(c). As a further aid to the bench and bar, the Comment includes a cross-reference to Rule of Appellate Procedure 1701(d) to make it clear that the filing of a petition for review does not affect the judge's power to proceed further in the case while the petition for review is pending.

Finally, cross-references to the new Criminal Rule provisions in Rule 587 would be added to the Comments to Rules 580 (Disposition of Pretrial Motions) and 605 (Mistrial).

[Pa.B. Doc. No. 12-478. Filed for public inspection March 16, 2012, 9:00 a.m.]

² As explained more fully in the Appellate Court Procedural Rules Committee's published proposal, when a defendant moves for a dismissal on double jeopardy grounds and the judge determines the motion is frivolous, the mechanism for challenging such a determination would be a petition for review. If the pretrial motion seeking dismissal on double jeopardy grounds is dismissed but not because of a finding of frivolousness, then the claim is immediately appealable as of right as a collateral order and the appropriate avenue for a challenge is to file a notice of appeal.

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Capital Case Counsel Qualification; General Court Regulation No. 2012-02

And Now, this 27th day of February, 2012, it is hereby *Ordered, Adjudged and Decreed* that the operation of this Court's Homicide Appointment System Committee (HAS Committee) is temporarily suspended. This action is taken in order to immediately increase the number of qualified criminal defense lawyers willing to accept court appointment to represent indigent defendants in capital cases in the First Judicial District. The HAS Committee's approved panel for this representation consists of a total of twelve lawyers, a number which is insufficient to meet the immediate needs of the Court. Reliance solely on the approved panel would exhaust the list after the first six new capital cases requiring court appointed private counsel. Inevitably, this would lead to multiple capital case appointments for attorneys on the panel, which is a major part of the problem this Court is working to correct.

Presently, the Supreme Court of Pennsylvania is considering a Report and Recommendations intended to substantially reduce the unacceptable delay in the trial of homicide cases, particularly capital cases, in the First Judicial District. As an interim step in support of this effort, the Administrative Governing Board has increased the fees for indigent capital case representation by the private bar pursuant to a Notice issued on February 22, 2012. However, the HAS Committee's present application and review process and 25 page application will not allow for an increase in the number of attorneys available for appointment in these cases within the time frame necessary to deal promptly and effectively with this issue which is of such great concern to the Supreme Court and, indeed, to everyone interested in the effective functioning of the Criminal Justice System in these most important cases.

Accordingly, until further Order by the Administrative Judge, applications from any attorney who wishes to be considered for a court appointment in a First Judicial District capital case will be available in Courtroom 1105, C.J.C. The homicide calendar judge, with such assistance as he may request, will consider these applications and determine which lawyers are qualified for addition to the currently existing HAS approved capital trial panel. Attorneys added to the capital trial panel through this process will be expected to be available for appointment through December 31, 2012. It is anticipated that no attorneys added to the panel through this process will be asked to accept appointment in more than two capital cases during this calendar year, and attorneys may limit their acceptance of appointments to one capital case per year.

During this period the HAS Committee will review its procedures and notify the Bar when it is prepared to accept new applications for court appointments to be made beginning on January 1, 2013.

This General Court Regulation is promulgated in accordance with Pa.R.Crim.P. No. 105 and the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration. This General Court Regulation shall be filed with the Prothonotary and the Clerk of Courts in a docket maintained for General

Court Regulations issued by the Administrative Judge of the Trial Division, Court of Common Pleas, Philadelphia County, and, as required by Pa.R.Crim.P. No. 105(E), two certified copies of this General Court Regulation and a copy on a computer diskette, shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. As required by Pa.R.Crim.P. No. 105(F) one certified copy of this General Court Regulation shall be filed with the Administrative Office of Pennsylvania Courts and 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 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 JOHN W. HERRON
Administrative Judge, Trial Division

[Pa.B. Doc. No. 12-479. Filed for public inspection March 16, 2012, 9:00 a.m.]

PHILADELPHIA COUNTY

Motions to Vacate or Reduce Bail Forfeitures; Administrative Order No. 01 of 2012

Order

And now, this 29th day of February, 2012, in order to streamline the filing and review of motions to vacate or reduce bail forfeitures, it is hereby *Ordered, Adjudged and Decreed* that:

1) all motions to vacate or reduce bail forfeitures will be filed with the Clerk of Courts (the Office of the Clerk of Quarter Sessions having been abolished) in Room 310, Criminal Justice Center, 1301 Filbert Street, Philadelphia, PA 19107;

2) until further notice, no filing fee will be assessed or collected for the filing of motions to vacate or reduce bail forfeitures;

3) the court-approved *Motion to Vacate or Reduce Bail Forfeitures* shall be substantially as follows in Exhibit "A" and may be modified by the court from time to time;

4) as provided in Pa.R.Crim.P. 122(B)(2), after final judgment in the criminal case and any direct appeal thereof, representation of the defendant by court-appointed counsel shall cease and court appointed counsel shall not provide representation in connection with motions to vacate or reduce bail forfeitures unless privately retained by the defendant or surety;

5) upon filing, the *Motion to Vacate or Reduce Bail Forfeitures* shall be assigned to a review officer who will consider the documentation and allegations set forth in the motion together with all applicable court data and will issue, without a hearing, an order on behalf of the court in compliance with Philadelphia Criminal Rule 510(D). The order issued by the review officer will become final unless within thirty (30) days of the date the order was issued or mailed the Petitioner files with the Clerk of Courts a request for a record hearing;

6) upon request by the Petitioner as provided above, a record hearing shall be held by a bail authority designated pursuant to Philadelphia Criminal Rule 510(D).

The hearing shall be held in accordance with Pa.R.Crim.P. No. 536 and Philadelphia Criminal Rule 510 and the designated bail authority may issue an order on behalf of the court denying the petition or directing that the bail forfeiture and judgment be vacated or reduced if justice does not require the full enforcement of the bail forfeiture and judgment. This order will become final unless within thirty (30) days of the date the order was issued or mailed, the Petitioner files with the Clerk of Courts a request for review by the President Judge or the President Judge's judicial designee;

7) Philadelphia Criminal Rule 510(C) is rescinded; and

8) all other terms of Philadelphia Criminal Rule 510, to the extent not amended by this Order, shall remain in full force and effect.

As required by Pa.R.Crim.P. No. 105(D), this Order 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 terms set forth in this order are not inconsistent with any general rule of the Supreme Court. This Order shall be

filed with the Prothonotary and the Clerk of Courts in a docket maintained for Orders issued by the First Judicial District of Pennsylvania, and, as required by Pa.R.Crim.P. No. 105(E), two certified copies of this Order and a copy on a computer diskette, shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. This Order will become effective thirty days after publication in the *Pennsylvania Bulletin*. As required by Pa.R.Crim.P. No. 105(F) one certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts and 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 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

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
COURT OF COMMON PLEAS
Trial Division – Criminal
Motion to Vacate or Reduce Bail Judgment
(Attach additional pages as may be necessary)**

For Official Use Only - Bar Code

Motion Must Be Filed with the Clerk of Courts Room 310, Criminal Justice Center, 1301 Filbert Street Philadelphia, PA 19107		CRIMINAL DOCKET NUMBER __-51-CR-_____-	
NAME OF PETITIONER (Person filing the Motion)		SID – if available	PID/PP # - if available
CRIMINAL CASE CAPTION			
PETITIONER'S CURRENT ADDRESS (To be entered by the Petitioner)			
INFORMATION REGARDING FORFEITED BAIL			
BAIL JUDGMENT NUMBER	DATE JUDGMENT ENTERED	JUDGMENT AMOUNT	TYPE OF BAIL
BENCH WARRANT HEARING DATES			
BASIS FOR REQUESTING VACATION OR REDUCTION OF JUDGMENT			
MUST BE COMPLETED BY THE PETITIONER			
<input type="checkbox"/> The Petitioner requests that the Judgment be vacated because the defendant was incarcerated at _____ on the date the Defendant failed to appear for a Court Hearing. Petitioner must attach Prison records.			
<input type="checkbox"/> The Petitioner requests that the Judgment be vacated because the defendant was hospitalized at _____ on the date defendant failed to appear for a Court Hearing. Petitioner must attach Hospital records.			
<input type="checkbox"/> The Petitioner requests a percentage reduction of the judgment, calculated pursuant to Philadelphia Criminal Rule 510(D)(3), considering the amount of time between the date the defendant failed to appear for a hearing and the date the defendant returned to court, as follows: 0 to 60 days: 90% ; 61 to 90 days: 70% ; 91 to 120 days: 50% ; 121 to 180 days: 30% ; and over 180 days: 0% .			
<input type="checkbox"/> The Petitioner requests the Court to consider the following explanation to justify the defendant's failure to appear, and to consider the mitigating factors noted below in deciding whether justice requires the full enforcement of the forfeiture order: (Attach any documentation you wish the Court to consider and be as specific as possible)			
VERIFICATION			
I, being duly sworn according to law, depose and say that I am the Petitioner/Surety in the within action and that the facts set forth in the foregoing <i>Motion to Vacate or Reduce Bail Judgment</i> are true and correct to the best of my knowledge, information and belief.			
I verify that the statements made herein are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.			
Date 2/29/12	Name of Petitioner	Signature of Petitioner	

Title 255—LOCAL COURT RULES

UNION COUNTY

Increase in Accelerated Rehabilitation Disposition Fees; No. CP-60-AD-2-2012

Order

And Now, this 13th day of January, 2012, the court hereby *Approves, Adopts and Promulgates* Union County Administrative Order CP-60-AD-2-2012, effective thirty (30) days after the date of publication of this Rule in the *Pennsylvania Bulletin*, pursuant to Rule 105 of the Pennsylvania Rules of Criminal Procedure.

The Court Administrator of the 17th Judicial District is ordered and directed to do the following:

1. File seven (7) certified copies of this Order and Administrative Order CP-60-AD-2-2012 with the Administrative Office of Pennsylvania Courts.

2. Furnish two (2) certified copies of this Order and Administrative Order CP-60-AD-2-2012 and a computer diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* for publication.

3. File one (1) certified copy of this Order and Administrative Order CP-60-AD-2-2012 with the Criminal Rules Committee.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 12-481. Filed for public inspection March 16, 2012, 9:00 a.m.]

UNION COUNTY

Increase in Accelerated Rehabilitation Disposition Fees; No. CP-60-AD-2-2012

Order

And Now, this 13th day of January, 2012, it is hereby *Ordered and Directed* that the Court of Common Pleas of Union County, Pennsylvania, adopts an increase in the Accelerated Rehabilitative Disposition (ARD) fee for program time from a year and over from \$500.00 to \$750.00 and adopts an increase in the Accelerated Rehabilitation Disposition fee for program time less than a year from \$250.00 to \$400.00. This fee is authorized by 75 Pa.C.S.A. § 3815(f)(1)(iii).

1. This fee is effective thirty (30) days after the date of publication of this Rule in the *Pennsylvania Bulletin*, pursuant to Rule 105 of the Pennsylvania Rules of Criminal Procedure.

2. The Accelerated Rehabilitative Disposition fee of seven hundred fifty dollars (\$750.00) and four hundred dollars (\$400.00) shall be collected by the Union County Probation Department after a defendant is accepted into the Accelerated Rehabilitative Disposition Program. Said fees shall be assessed as court costs. This fee is in addition to all other authorized fines, costs and supervision fees legally assessed.

By the Court

MICHAEL H. SHOLLEY,
President Judge

[Pa.B. Doc. No. 12-482. Filed for public inspection March 16, 2012, 9:00 a.m.]