THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 5, 6, 9 AND 10]

Order Adopting New Rules 556—556.12, Amending Rules 103, 540, 544, 547, 560, 573, 646 and 1003 and Revising the Comments to Rules 542, 578, 582, 648 and 903 of the Rules of Criminal Procedure; No. 414 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 21st day of June, 2012, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 41 Pa.B. 5538 (October 15, 2011), and in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 27), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that

(1) New Pennsylvania Rules of Criminal Procedure 556 through 556.12 are adopted;

(2) Pennsylvania Rules of Criminal Procedure 103, 540, 544, 547, 560, 573, 646, and 1003 are amended; and

(3) the comments to Pennsylvania Rules of Criminal Procedure 542, 578, 582, 648, and 903 are revised,

all in the following form.

It Is Further Ordered that a court of common pleas may proceed by indicting grand jury upon written order from the Supreme Court approving this method of proceeding in that judicial district. If a judicial district intends to utilize the indicting grand jury provided for by these rules, the President Judge or designee shall first petition this Court for approval.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 180 days.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

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

PART A. Business of the Courts

Rule 103. Definitions.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

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INDICTMENT is **[a bill of indictment which has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215] the instrument holding the defendant for court after a grand jury votes to indict and authorizing the attorney for the Commonwealth to prepare an information**.

INFORMATION is a formal written **[accusation] statement charging the commission** of an offense **[made] signed and presented to the court** by the attorney for the Commonwealth**[, upon which a defendant may be tried, which replaces the indictment in all counties since the use of the indicting grand jury has been abolished] after a defendant is held for court, is indicted by the grand jury, or waives the preliminary hearing or a grand jury proceeding**.

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Comment

The definitions of arraignment and preliminary arraignment were added in 2004 to clarify the distinction between the two proceedings. Although both are administrative proceedings at which the defendant is advised of the charges and the right to counsel, the preliminary arraignment occurs shortly after an arrest before a member of the minor judiciary, while an arraignment occurs in the court of common pleas after a case is held for court and an information is filed.

The definition of indictment was amended in 2012 consistent with the adoption of the new indicting grand jury rules in Chapter 5 Part E. Under the new rules, the indictment is the functional equivalent of an issuing authority's order holding the defendant for court and that forms the basis for the information that is prepared by the attorney for the Commonwealth. Formerly, an indictment was defined as a bill of indictment that has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215.

The definition of information was added to the rules as part of the implementation of the 1973 amendment to PA. CONST. art. I, § 10, permitting the substitution of informations for indictments. The term "information" as used here should not be confused with prior use of the term in Pennsylvania practice as an instrument which served the function now fulfilled by the complaint.

[The definition of bill of indictment was deleted in 1993 as no longer necessary because all courts of common pleas have abolished the indicting grand jury and now provide for the initiation of criminal proceedings by information. *See* PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931. Some pending cases, however, may have been instituted prior to the abolition of the indicting grand jury. For this reason, the definition of indictment has been retained in this rule.]

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***Official Note*:** Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to

July 1, 1996; renumbered Rule 103 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended April 30, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended February 4, 2005, effective immediately; amended May 6, 2009, effective immediately**; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Final Report explaining the June 21, 2012 amendments modifying the definitions of "indictment" and "information" published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

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(E) The issuing authority shall not question the defendant about the offense(s) charged but shall read the complaint to the defendant. The issuing authority shall also inform the defendant:

(1) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(2) of the right to have a preliminary hearing**, except in cases being presented to an indicting grand jury pursuant to Rule 556.2**; and

(3) if the offense is bailable, the type of release on bail, as provided in **[Chapter]** Chapter 5 Part C of these rules, and the conditions of the bail bond.

(F) Unless the preliminary hearing is waived by a defendant who is represented by counsel**, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2**, the issuing authority shall:

(1) fix a day and hour for a preliminary hearing which shall not be **[less than 3 nor more than 10 days after the preliminary arraignment,] later than 14 days after the preliminary arraignment if the defendant is in custody and no later than 21 days if not in custody** unless**:**

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Comment

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Under paragraph (A), the issuing authority has discretion to order that a defendant appear in person for the **preliminary** arraignment.

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Nothing in this rule is intended to address public access to arrest warrant affidavits. *See Commonwealth v. Fenstermaker*, **515 Pa. 501,** 530 A.2d 414 (**[Pa.]** 1987).

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The 2012 amendment to paragraph (F) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

See Rule 1003(D) for the procedures governing preliminary arraignments in the Municipal Court.

***Official Note*: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005**; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Final Report explaining the June 21, 2012 amendments concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 542. Preliminary Hearing; Continuances.

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Comment

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In cases in which summary offenses are joined with misdemeanor, felony, or murder charges, pursuant to paragraph (F), during the preliminary hearing, the issuing authority is prohibited from proceeding on the summary offenses, including the taking of evidence on the summary offenses, or adjudicating or disposing of the summary offenses**[, or adjudicating or disposing of the summary offenses]** except as provided in Rule 543(F).

For the contents of the transcript, see Rule 135.

***See* Chapter 5 Part E for the procedures governing indicting grand juries. Under these rules, a case may be presented to the grand jury instead of proceeding to a preliminary hearing. *See* Rule 556.2.**

***Official Note*: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effec-

tive January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended January 27, 2011, effective in 30 days**; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Final Report explaining the June 21, 2012 revision of the Comment concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 544. Reinstituting Charges Following Withdrawal or Dismissal.

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, **or when a grand jury declines to indict and the complaint is dismissed,** the attorney for the Commonwealth may reinstitute the charges by approving, in writing, the **[refiling] re-filing** of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges.

(B) Following the **[refiling] re-filing** of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 132 motion with the clerk of courts requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth the reasons for requesting a different issuing authority.

Comment

This rule provides the procedures for reinstituting criminal charges following their withdrawal or dismissal at, or prior to, the preliminary hearing **as provided in Rule 543, or after the complaint is dismissed when a grand jury declines to indict**.

The authority of the attorney for the Commonwealth to reinstitute charges that have been dismissed at the preliminary hearing is well established by case law. *See, e.g., McNair's Petition*, **324 Pa. 48,** 187 A. 498 (**[Pa.]** 1936); *Commonwealth v. Thorpe*, **549 Pa. 343,** 701 A.2d 488 (**[Pa.]** 1997). This authority, however, is not unlimited. First, the charges must be reinstituted prior to the expiration of the applicable statute(s) of limitations. *See Commonwealth v. Thorpe*, **549 Pa. 343,** 701 A.2d 488 (**[Pa.]** 1997). In addition, the courts have held that the reinstitution may be barred in a case in which the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. *See Commonwealth v. Thorpe*, **549 Pa. 343,** 701 A.2d 488 (**[Pa.]** 1997); *Commonwealth v. Shoop*, **420 Pa. Super. 606,** 617 A.2d 351 (**[Pa. Super.]** 1992).

The decision to reinstitute charges must be made by the attorney for the Commonwealth. Therefore, in cases in which no attorney for the Commonwealth was present at the preliminary hearing, the police officer may not **[refile] re-file** the complaint without the written authorization of the attorney for the Commonwealth. *See* Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option) for procedures for prior approval of complaints.

Pursuant to paragraph (A), in the usual case, charges will be reinstituted by filing a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges. However, there may be cases in which the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing, such as when an error of law is made by the issuing authority in finding that the Commonwealth did not sustain its burden to establish a *prima facie* case. Paragraph (B) requires that, in these cases, the attorney for the Commonwealth must file a petition with the court of common pleas requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. For the procedure for requesting assignment of a different issuing authority, see Rule 132.

***See* Chapter 5 Part E for the procedures governing indicting grand juries. If the attorney for the Commonwealth is reinstituting the charges after a complaint is dismissed when a grand jury has declined to indict, the complaint should be re-filed with the issuing authority with whom the original complaint was filed.**

See Chapter 5 Part F(1) for the procedures governing motions.

***Official Note*:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000. New Rule 143 adopted October 8, 1999, effective January 1, 2000; renumbered Rule 544 and amended March 1, 2000, effective April 1, 2001**; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Final Report explaining the June 21, 2012 amendments to paragraph (A) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 547. Return of Transcript and Original Papers.

(A) When a defendant is held for court, **or after the issuing authority receives notice that the case will be presented to the indicting grand jury and closes out the case,** the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required by these rules to be recorded on the transcript. It shall be signed by the issuing authority, and have affixed to it the issuing authority's seal of office.

(B) The issuing authority shall transmit the transcript to the clerk of the proper court within 5 days after holding the defendant for court **or after closing out the case upon receipt of the notice that the case will be presented to the indicting grand jury**.

(C) In addition to this transcript the issuing authority shall also transmit the following items:

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(5) a request for the court of common pleas to issue a bench warrant as required in Rule 543(D)(3)(b); **[and]**

(6) notice informing the court of common pleas that the defendant has failed to comply with the fingerprint order as required in Rule 543(D)(3)(b)(ii)**[.] ; and**

(7) a copy of the notice that the case will be presented to the indicting grand jury.

Comment

See Rule 135 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. *See, e.g.*, Rules 542 and 543.

When the case is held for court pursuant to Rule 543(D)(3), the issuing authority must include with the transcript transmittal a request for the court of common pleas to issue a bench warrant.

When the case is held for court pursuant to Rule 543(D)(3)(b)(ii), the issuing authority must include with the transcript transmittal a notice to the court of common pleas that the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2). ***See* Rule 543(D)(3)(b)(ii).** The court of common pleas must take whatever actions deemed appropriate to address this non-compliance.

***See* Chapter 5 Part E for the procedures governing indicting grand juries. Pursuant to Rule 556.2(A)(3), the judge is required to notify the issuing authority that the case will be presented to the indicting grand jury. Pursuant to Rule 556.11(A), upon receipt of the notice, the issuing authority is required to close out the case in his or her office, and forward it to the court of common pleas for all further proceedings. When the case is transmitted to the court of common pleas, the clerk of courts should associate the transcript and other documents transmitted by the issuing authority with the motion and order filed pursuant to Rule 556.2(A)(5).**

***Official Note*:** Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970**[;],** effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1982, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009**; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Final Report explaining the July 10, 2008 amendments to paragraph (C)(6) concerning the fingerprint order published at **[37] 38** Pa.B. 3975 (July 26, **[2007] 2008**).

Final Report explaining June 21, 2012 amendments to paragraph (A) and adding paragraph (C)(7) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

PART E. Indicting Grand Jury

(*Editor's Note*: Rules 556—556.12 are new and printed in regular type to enhance readability.)

Rule
556. Indicting Grand Jury.
556.1 Summoning Panels of Grand Jurors.
556.2. Proceeding by Indicting Grand Jury Without Preliminary Hearing.
556.3. Composition and Organization of the Indicting Grand Jury.
556.4. Challenges to Grand Jury and Grand Jurors.
556.5. Duration of Indicting Grand Jury.
556.6. Administering Oath to Grand Jury and Foreperson.
556.7. Administration of Oath to Witnesses; Court Personnel.
556.8. Recording of Testimony Before Indicting Grand Jury.
556.9. Who May Be Present During Sessions of Indicting Grand Jury.
556.10. Secrecy; Disclosure.
556.11. Proceedings When Case Presented to Grand Jury.
556.12. Waiver of Grand Jury Action.

Rule 556. Indicting Grand Jury.

Each of the several courts of common pleas may proceed with an indicting grand jury pursuant to these rules only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

Comment

This rule was adopted in 2012 to permit the use of an indicting grand jury as an alternative to the preliminary hearing but only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

The Supreme Court, by Order issued with the promulgation of the new Rules of Criminal Procedure governing the indicting grand jury, requires that each of the judicial districts must petition the Court for permission to resume using the indicting grand jury, but only as provided in these rules.

The rules in Chapter 5 Part E apply only to the indicting grand jury and do not apply to any county, regional, or statewide investigating grand jury.

***Official Note*:** New Rule 556 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.1 Summoning Panels of Grand Jurors.

(A) When the court of common pleas elects to proceed with an indicting grand jury, the president judge, or president judge's designee, shall order one or more grand juries to be summoned for the purpose of issuing indictments or shall order that the sitting investigating grand jury shall sit as the indicting grand jury.

(B) The judge shall order the officials designated by law to summon prospective jurors to summon such number of jurors who are eligible by law as the judge deems necessary to serve as a panel for grand jury service.

(C) The summons shall be made returnable on such date as is ordered by the court.

Comment

Pursuant to paragraph (A), the president judge, or president judge's designee, may order that an investigating grand jury that is sitting will also serve in the capacity of the indicting grand jury.

The number of persons who may be summoned is left to the discretion of the president judge or the president judge's designee to accommodate the needs of the judicial district.

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in 42 Pa.C.S. §§ 4501—4503, 4521—4527, and 4531—4532.

***Official Note*:** New Rule 556.1 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.2. Proceeding by Indicting Grand Jury Without Preliminary Hearing.

(A) After a person is arrested or otherwise proceeded against with a criminal complaint, the attorney for the Commonwealth may move to present the matter to an indicting grand jury instead of proceeding to a preliminary hearing.

(1) The motion shall allege facts asserting that witness intimidation has occurred, is occurring, or is likely to occur.

(2) The motion shall be presented *ex parte* to the president judge, or the president judge's designee.

(3) Upon receipt of the motion, the president judge, or the president judge's designee, shall review the motion. If the judge determines the allegations establish probable cause that witness intimidation has occurred, is occurring, or is likely to occur, the judge shall grant the motion, and shall notify the proper issuing authority.

(a) Upon receipt of the notice from the judge that the case will be presented to the indicting grand jury, the issuing authority shall cancel the preliminary hearing, close out the case before the issuing authority, and forward the case to the court of common pleas as provided in Rule 547 for all further proceedings.

(b) Once the case has been forwarded to the court of common pleas, the case shall not be remanded to the issuing authority.

(4) The order granting the motion or the order denying the motion, and the motion shall be sealed.

(5) The attorney for the Commonwealth shall file the sealed order and the sealed motion with the clerk of courts.

(B) If not already assigned, the president judge shall assign one of the judges in the judicial district to serve as the supervising judge for the indicting grand jury.

(C) If the motion is granted, the case shall be presented to the grand jury within 21 days of the date of the order, unless:

(1) the grand jury proceedings are waived by the defendant with the consent of the attorney for the Commonwealth; or

(2) the attorney for the Commonwealth elects not to present the case to a grand jury.

If the case is not presented to the grand jury as provided in this paragraph, the defendant is entitled to a preliminary hearing in the court of common pleas.

Comment

An accused in Pennsylvania ordinarily has the right to a preliminary hearing before he or she may be indicted by the grand jury. *See Commonwealth v. Hoffman*, 396 Pa. 491, 152 A.2d 726 (1959). However, the 2012 amendments to the rules permit the attorney for the Commonwealth to proceed to the indicting grand jury without first presenting the matter to an issuing authority for a preliminary hearing but only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

Concerning the requirements in paragraph (A)(1), see paragraph (A)(2)(g) of Rule 575 (Motions) that requires, *inter alia*, any motion that sets forth facts that do not already appear of record in the case to be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Pursuant to paragraph (A)(2), the president judge may designate another judge to receive motions from the attorney for the Commonwealth. It is anticipated that this designee will be the judge designated to be the supervising judge of the grand jury.

Pursuant to paragraph (A)(3)(a) and (A)(3)(b), after the issuing authority receives notice that the case will be presented to the grand jury, the case before the issuing authority is closed out and forwarded to the court of common pleas for all further proceedings. This provision is consistent with the general rule that once a case has been forwarded to the court of common pleas, the case is not permitted to be remanded to the issuing authority.

See Rule 556.11 for the procedures when a case is presented to the grand jury.

See Rule 556.12 for the procedures for the defendant to waive the grand jury proceedings.

If, after a motion to proceed to a grand jury is granted, the attorney for the Commonwealth elects not to present the case to the grand jury, the case will proceed as any other criminal case following the preliminary arraignment, except that the proceedings will be conducted in the court of common pleas. *See* Rules 541—547.

***Official Note*:** New Rule 556.2 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.3. Composition and Organization of the Indicting Grand Jury.

(A) There initially shall be impaneled to serve on an indicting grand jury 23 legally qualified jurors and a minimum of 7 and not more than 15 legally qualified alternates. During its term, the indicting grand jury shall consist, as provided hereinafter, of not less than 15 nor more than 23 legally qualified jurors, and the remaining alternates.

(B) When an indicting grand jury is to be impaneled, the supervising judge in charge of the grand jury shall examine prospective jurors to determine which prospective jurors to excuse for cause. After prospective grand jurors have been excused for cause, the reduction to the minimum of 30 or maximum of 38 shall take place by random drawing in the following manner: 30 to 38 jurors shall be selected by random drawing, of which the first 23 jurors so selected shall be designated permanent grand jurors and the next 7 to 15 jurors shall be designated

alternate jurors. Alternate jurors shall replace permanent jurors in the sequence in which the alternate jurors are selected.

(C) Alternate jurors shall attend and participate in sessions of the grand jury but they may not attend or participate in the deliberations and voting until such time as they may be appointed as permanent grand jurors as provided in paragraph (D).

(D) The court shall have the power to permanently excuse a permanent or alternate grand juror for cause at any time during the term of the indicting grand jury. For each such excused permanent grand juror, the court shall appoint a new permanent grand juror from among the available alternates.

(E) Fifteen permanent members of the grand jury shall constitute a quorum, but an affirmative vote of 12 permanent members of the grand jury shall be required to indict.

(F) Whenever the number of permanent grand jurors, including alternates who have been appointed to replace permanent grand jurors, becomes less than 15, the term of the indicting grand jury shall be considered at an end.

(G) The supervising judge shall appoint one of the grand jurors as foreperson and another juror as the deputy foreperson, who will act in the foreperson's absence. The grand jury shall select one of its members as a secretary to assist the foreperson in keeping a record of the action of the grand jury.

Comment

To accommodate the possibility that a grand jury would serve the dual function of both an investigating and indicting grand jury, see Rule 556.1(A), the procedures in this rule comport to the procedures in Rule 222 (Composition and Organization of the Investigating Grand Jury).

The term "permanent grand juror" is used to distinguish grand jurors with the power to vote from alternate grand jurors. The purpose of providing a built-in system of alternates is to ensure the smooth functioning of the grand jury throughout its term and to provide that alternates, when made permanent grand jurors, will be fully cognizant of all the proceedings before the grand jury.

It is intended that no alternate may be appointed as a temporary substitute for a permanent grand juror, and that the court will excuse permanent grand jurors only when necessary and in the interests of justice. However, whenever a permanent juror is excused for cause and an alternate is available to become a permanent grand juror, the court must substitute an alternate for the excused permanent grand juror. It is intended that such substitution be made in the order of the alternate jurors' numerical designation.

***Official Note*:** New Rule 556.3 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.4. Challenges to Grand Jury and Grand Jurors.

(A) *Challenges*

The attorney for the Commonwealth or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

(1) The challenge shall be in the form of a written motion and shall allege the ground upon which the challenge is made.

(2) If a challenge to an individual grand juror is sustained, the juror shall be discharged and replaced with an alternate juror.

(B) *Motion to Dismiss*

(1) The attorney for the Commonwealth or a defendant may move to dismiss the information filed following the grand jury's vote to indict the defendant based on the following grounds:

(a) an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under paragraph (A);

(b) the evidence did not establish a *prima facie* case that an offense has been committed and the defendant committed the offense;

(c) lack of jurisdiction of the grand jury; or

(d) expiration of the statute of limitations.

(2) The judge shall not dismiss the information on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.

(C) Any motion under paragraph (A) or paragraph (B) shall be made as part of the omnibus pretrial motion.

Comment

Concerning the right to challenge the array of the grand jury, see *Commonwealth v. Dessus*, 423 Pa. 177, 188, 224 A.2d 188, 194 (1966), in which the Court held, *inter alia*, that "the law . . . must not deprive an accused of any of his legal or Constitutional rights-in this case the right to promptly (a) challenge the array of the grand jury and (b) prove by legally competent evidence that one or more of the grand jurors should be disqualified for cause."

Nothing in this rule is intended to limit the availability of *habeas corpus* review as provided by law.

Nothing in this rule is intended to require notice to the defendant of the time and place of the impaneling of a grand jury, or to give the defendant the right to be present for the selection of the grand jury.

***Official Note*:** New Rule 556.4 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.5. Duration of Indicting Grand Jury.

(A) The length of the grand jury term shall be determined by the president judge, or the president judge's designee, but shall not exceed 18 months, unless an order for discharge is entered earlier by the supervising judge upon determination by the grand jury, by majority vote, that its business has been completed, or an extension is granted pursuant to paragraph (B).

(B) At the end of its original term or any extension thereof, if the grand jury determines by majority vote that it has not completed its business, it may request the supervising judge to extend its term for an additional

period of 6 months. No grand jury term shall exceed 24 months from the time the grand jury was originally summoned.

(1) The supervising judge shall grant a request for extension unless the judge determines that such request clearly is without basis.

(2) Failure to grant an extension of term under this rule may be appealed by the attorney for the Commonwealth to the Supreme Court in the manner prescribed by general rule.

(3) If an appeal is taken, the grand jury shall continue to exercise its powers pending the disposition of the appeal.

(C) At any time within the original term of a grand jury, or any extension thereof, if the supervising judge determines that the grand jury is not conducting proper indicting activity, the judge may order that the grand jury be discharged.

(1) An order of discharge under this rule shall not become effective less than 10 days after the date on which the order is issued and actual notice given to the attorney for the Commonwealth and the foreperson of the grand jury.

(2) The order may be appealed by the attorney for the Commonwealth to the Supreme Court in the manner prescribed by general rule.

(3) If an appeal is taken, the grand jury shall continue to exercise its powers pending the disposition of the appeal.

Comment

The procedures governing the duration of the indicting grand jury are consistent with the procedures for investigating grand juries as set forth in 42 Pa.C.S. § 4546.

***Official Note*:** New Rule 556.5 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.6. Administering Oath to Grand Jury and Foreperson.

(A) After the selection of the members of the grand jury, the supervising judge shall administer the oath separately to the foreperson and deputy foreperson and then to the other grand jurors. The supervising judge shall then charge the grand jury concerning its duties.

(B) The supervising judge shall administer the oath to the grand jury in substantially the following form:

"You, as grand jurors, do solemnly swear that you will make diligent inquiry with regard to all matters brought before you as well as such things as may come to your knowledge in the course of your duties; that you will keep secret all that transpires in the jury room except as authorized by law; that you will neither approve any indictment or present any person for hatred, envy or malice, or refuse to approve any indictment or present any person for love, fear, favor, or any reward or hope thereof; and that you will present all things truly to the court as they come to your knowledge and understanding."

(C) The supervising judge shall administer the oath to the foreperson and deputy foreperson in substantially the following form:

"You, as foreperson, do solemnly swear that you will make diligent inquiry with regard to all matters as shall be given you in charge; that you will keep secret all that transpires in the jury room, except as authorized by law; that you will neither approve any indictment or present any person for hatred, envy or malice, or refuse to approve any indictment or present any person for love, fear, favor, or any reward or hope thereof; and that you will present all things truly to the court as they come to your knowledge and understanding."

Comment

It is intended that all grand jurors, including alternate grand jurors, will be sworn at this time.

***Official Note*:** New Rule 556.6 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.7. Administration of Oath to Witnesses; Court Personnel.

(A) Each witness to be heard by the indicting grand jury shall be sworn by the foreperson before testifying.

(B) All court personnel who are to be present during any portion of the grand jury proceedings, and all others who assist in the proceedings, shall be sworn to secrecy by the supervising judge prior to their participation.

Comment

When it is necessary to give constitutional warnings to a witness, the warnings and the oath must be administered by the supervising judge. As to warnings that the court may have to give to the witness when the witness is sworn, see, *e.g., Commonwealth v. McCloskey*, 443 Pa. 117, 277 A.2d 764 (1971).

***Official Note*:** New Rule 556.7 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.8. Recording of Testimony Before Indicting Grand Jury.

(A) Proceedings before an indicting grand jury, other than the deliberations and voting of the grand jury, shall be recorded by a court reporter or by a suitable recording device, and a transcript made.

(B) The supervising judge shall retain control of the recording device and the original and all copies of the transcript, and shall maintain their secrecy.

(C) When physical evidence is presented before the indicting grand jury, the supervising judge shall establish procedures for supervising custody.

Comment

This rule requires that the supervising judge retain control over the transcript of the indicting grand jury proceedings and all copies thereof, as the record is transcribed, until such time as the transcript is released as provided in these rules.

***Official Note*:** New Rule 556.8 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.9. Who May Be Present During Sessions of Indicting Grand Jury.

(A) The attorney for the Commonwealth, the alternate grand jurors, the witness under examination, and a stenographer may be present while the indicting grand jury is in session. Counsel for the witness under examination may be present as provided by law.

(B) The supervising judge, upon the request of the attorney for the Commonwealth or the grand jury, may order that an interpreter, security officers, and such other persons as the judge may determine are necessary to the presentation of the evidence may be present while the indicting grand jury is in session.

(C) All persons who are to be present while the indicting grand jury is in session shall be identified in the record, shall be sworn to secrecy as provided in these rules, and shall not disclose any information pertaining to the grand jury except as provided by law.

(D) No person other than the permanent grand jurors may be present during the deliberations or voting of the grand jury.

Comment

It is intended in paragraph (B) that when the supervising judge authorizes a certain individual to be present during a session of the indicting grand jury, the person may remain in the grand jury room only as long as is necessary for that person to assist the grand jurors.

See also Rule 556.10 concerning secrecy and disclosure of indicting grand jury proceedings.

Nothing in these rules precludes the supervising judge from permitting a witness to testify using two-way simultaneous audio-visual communication.

***Official Note*:** New Rule 556.9 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.10. Secrecy; Disclosure.

(A) *Secrecy*

(1) All evidence, including exhibits and all testimony presented to the grand jury, is subject to grand jury secrecy, and no person may disclose any matter occurring before the grand jury, except as provided in paragraph (B).

(2) A violation of grand jury secrecy rules may be punished as a contempt of court.

(B) *Disclosure*

No person may disclose any matter occurring before the grand jury, except as provided below.

(1) *Attorney for the Commonwealth:*

Upon receipt of the certified transcript of the proceedings before the indicting grand jury, the supervising judge shall furnish a copy of the transcript to the attorney for the Commonwealth for use in the performance of official duties.

(2) *Defendant in a Criminal Case:*

If a defendant in a criminal case has testified before the indicting grand jury concerning the subject matter of the charges against him or her, upon application of such defendant, the supervising judge shall order that the defendant be furnished with a copy of the transcript of such testimony.

(3) *Witnesses*:

(a) A grand jury witness may disclose his or her testimony unless the attorney for the Commonwealth obtains an order from the supervising judge that the interests of justice dictate otherwise.

(b) The attorney for the Commonwealth may request that the supervising judge delay the disclosure of a grand jury witness' testimony, but such delay in disclosure shall not be later than the conclusion of direct testimony of that witness at trial.

(4) *Other Disclosures:*

(a) Disclosure of grand jury material or matters, other than the grand jury's deliberations and the vote of individual jurors, may be made to any law enforcement personnel that an attorney for the Commonwealth considers necessary to assist in the enforcement of the criminal law.

(b) Upon motion, and after a hearing into relevancy, the supervising judge may order that a transcript of testimony before an indicting grand jury, or physical evidence before the indicting grand jury, may be released to an investigative agency under such conditions as the supervising judge may impose.

(5) *Pretrial Discovery*:

Pretrial discovery in cases indicted by a grand jury is subject to Rule 573. Pretrial discovery does not include testimony or other evidence that would disclose the identity of any witness or victim who has been intimidated, is being intimidated, or who is likely to be intimidated. Disclosure of such testimony or other evidence shall be only as ordered by the supervising judge.

(C) The supervising judge shall close to the public any hearing relating to grand jury proceedings to the extent necessary to prevent disclosure of a matter occurring before a grand jury. Records, orders, and subpoenas relating to grand jury proceedings shall be kept under seal to prevent the unauthorized disclosure of a matter occurring before a grand jury.

Comment

The attorney for the Commonwealth has an affirmative duty to provide the defendant with any testimony before the indicting grand jury and any physical evidence presented to the grand jury that is exculpatory to the defendant consistent with the line of cases beginning with *Brady v. Maryland*, 373 U.S. 83 (1963), and the refinements of the *Brady* standards embodied in subsequent judicial decisions.

Paragraph (B) establishes the limitations on pretrial discovery in cases in which a defendant has been indicted by a grand jury information. Although the Criminal Rules generally recognize the defendant's right to have pretrial discovery to be able to prepare his or her case, given the nature of the cases presented to the grand jury, see Rule 556, this rule places with the supervising judge the responsibility of determining when testimony and other evidence that would disclose the identity of any witness or victim who has been intimidated, is being intimidated, or who is likely to be intimidated will be discoverable.

Paragraph (B)(3)(b) permits the supervising judge to delay the time for the disclosure of a grand jury witness' testimony upon the request of the attorney for the Commonwealth. Under no circumstances may the extension be later than the completion of the witness' direct testimony at trial.

The supervising judge may grant a continuance to enable the defendant to review the grand jury testimony as the interests of justice require.

***Official Note*:** New Rule 556.10 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.11. Proceedings When Case Presented to Grand Jury.

(A) A grand jury has the authority to:

(1) inquire into violations of criminal law through subpoenaing witnesses and documents; and

(2) based upon evidence it has received, including hearsay evidence as permitted by law, or upon a presentment issued by an investigating grand jury, if the grand jury finds the evidence establishes a *prima facie* case that (1) an offense has been committed and (2) the defendant has committed it, indict defendant for an offense under the criminal laws of the Commonwealth of Pennsylvania; or

(3) decline to indict.

(B) After a grand jury has considered the evidence presented, the grand jury shall vote whether to indict the defendant. The affirmative vote of at least 12 grand jurors is required to indict.

(C) In cases in which the grand jury votes to indict, an indictment shall be prepared setting forth the offenses on which the grand jury has voted to indict. The indictment shall be signed by the grand jury foreperson, or deputy foreperson if the foreperson is unavailable, and returned to the supervising judge.

(D) Upon receipt of the indictment, the supervising judge shall:

(1) provide a copy of the indictment to the Commonwealth authorizing the attorney to prepare an information pursuant to Rule 560; and

(2) forward the indictment to the clerk of courts, or issue an arrest warrant, if the subject of the indictment has not been arrested on the charges contained in the indictment.

(E) At the request of the attorney for the Commonwealth, the supervising judge shall order the indictment to be sealed.

(F) In cases in which the grand jury does not vote to indict, the foreperson promptly and in writing shall so report to the supervising judge who immediately shall dismiss the complaint and shall notify the clerk of courts of the dismissal.

Comment

Nothing in this rule is intended to preclude the investigating grand jury, when sitting as an indicting grand jury and as part of its determination of whether to indict, from considering evidence already presented to it during an investigation.

When the grand jury votes to indict the defendant, the vote to indict is the functional equivalent of holding the defendant for court following a preliminary hearing. In these cases, the matter will proceed in the same manner as when the defendant is held for court following a preliminary hearing. *See, e.g.*, Rules 547 and 560.

The indictment required by paragraph (C) no longer serves the traditional function of an indictment, but rather serves as an instrument authorizing the attorney for the Commonwealth to file an information. *See* Rule 103.

Concerning hearsay evidence before the indicting grand jury, see *Commonwealth v. Dessus*, 423 Pa. 177, 224 A.2d 188 (1966).

In cases in which the grand jury has declined to indict and the complaint has been dismissed, the attorney for the Commonwealth may reinstitute the charges as provided in Rule 544.

***Official Note*:** New Rule 556.11 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 556.12. Waiver of Grand Jury Action.

(A) A defendant, with the consent of the attorney for the Commonwealth and the approval of the supervising judge, may waive action by the grand jury and consent to be bound over to court. If the defendant is represented by counsel,

(1) the defendant thereafter is precluded from raising the sufficiency of the Commonwealth's *prima facie* case unless the parties have agreed at the time of the waiver that the defendant later may challenge the sufficiency.

(2) If the defendant waives the action of the grand jury by way of an agreement, made in writing or on the record, and the agreement is not accomplished, the defendant may challenge the sufficiency of the Commonwealth's *prima facie* case.

(B) The waiver shall be in writing and signed by the defendant and defense attorney, if any, and shall certify that:

(1) the defendant voluntarily waives the grand jury action and consents to be bound over to court, and

(2) when represented by counsel, the defendant understands that by waiving action by grand jury, he or she is thereafter precluded from raising challenges to the sufficiency of the *prima facie* case.

Comment

Nothing in this rule is intended to preclude a waiver of action by the grand jury by way of agreement in which both parties agree to the preservation of the defendant's ability to raise the sufficiency of the Commonwealth's *prima facie* case at a subsequent proceeding. Any such agreement must be in writing or made on the record.

***Official Note*:** New Rule 556.12 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

PART **[E] F**. Procedures Following a Case Held for Court

Rule 560. Information: Filing, Contents, Function.

(A) After the defendant has been held for court **following a preliminary hearing or an indictment**, the attorney for the Commonwealth shall proceed by preparing an information and filing it with the court of common pleas.

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Comment

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See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing. When the preliminary hearing is held in the defendant's absence and the case is held for court, the attorney for the Commonwealth should proceed as provided in this rule.

***See* Chapter 5 Part E for the procedures governing indicting grand juries. As explained in the Comment to Rule 556.11, when the grand jury indicts the defendant, this is the functional equivalent to holding the defendant for court following a preliminary hearing.**

***Official Note*: Rule 225 adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised April 23, 2004, effective immediately; Comment revised August 24, 2004, effective August 1, 2005**; Comment revised March 9, 2006, effective September 1, 2006**; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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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).

Final Report explaining the June 21, 2012 amendments to paragraph (A) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

PART **[F] G**. Procedures Following Filing of Information

Rule 573. Pretrial Discovery and Inspection.

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(B) DISCLOSURE BY THE COMMONWEALTH

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(2) DISCRETIONARY WITH THE COURT:

(a) In all court cases, except as otherwise provided in **[Rule] Rules** 230 (Disclosure of Testimony Before Investigating Grand Jury) **and 556.10 (Secrecy; Disclosure)**, if the defendant files a motion for pretrial discovery, the court may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:

* * * * *

Comment

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U.S. 83 (1963), and the refinements of the *Brady* standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 103.

***See* Rule 556.10(B)(5) for discovery in cases indicted by a grand jury.**

The attorney for the Commonwealth should not charge the defendant for the costs of copying pretrial discovery materials. However, nothing in this rule is intended to preclude the attorney for the Commonwealth, on a case-by-case basis, from requesting an order for the defendant to pay the copying costs. In these cases, the trial judge has discretion to determine the amount of costs, if any, to be paid by the defendant.

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Pursuant to paragraphs (B)(2)(b) and **[(C)(2)(b)] (C)(2)** the trial judge has discretion, upon motion, to order an expert who is expected to testify at trial to prepare a report. However, these provisions are not intended to require a prepared report in every case. The judge should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

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***Official Note*: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted 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 April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004; amended January 27, 2006, effective August 1, 2006; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Final Report explaining the March 3, 2004 amendments to paragraphs (A), (C)(1)(a), and **[(C)(1)(16)] (C)(1)(b)**, and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

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Final Report explaining the June 21, 2012 amendments concerning discovery when case is indicted by grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

PART **[F(1)] G(1)**. Motion Procedures

Rule 578. Omnibus Pretrial Motion for Relief.

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Comment

Types of relief appropriate for the omnibus pretrial motions include the following requests:

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(5) to quash **or dismiss** an information;

(6) for change of venue or venire;

(7) to disqualify a judge;

(8) for appointment of investigator; **[and]**

(9) for pretrial conference**[.] ; and**

(10) challenging the array of an indicting grand jury.

The omnibus pretrial motion rule is not intended to limit other types of motions, oral or written, made pretrial or during trial, including those traditionally called motions *in limine*, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

***See* Rule 556.4 for challenges to the array of an indicting grand jury and for motions to dismiss an information filed after a grand jury indicts a defendant.**

***Official Note*:** Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 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; amended October 21, 1983, effective January 1, 1984; Comment revised October 25, 1990, effective January 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and Comment revised March 1, 2000, effective April 1, 2001**; Comment revised June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

Report explaining the October 25, 1990 Rule 306 Comment revision published at **[12] 20** Pa.B. 1696 (March 24, 1990).

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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 June 21, 2012 revision of the Comment referencing indicting grand jury rules published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 582. Joinder—Trial of Separate Indictments or Informations.

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Comment

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Paragraph (A)(1)(a) is based upon *Commonwealth v. Morris*, **493 Pa. 164,** 425 A.2d 715 (**[Pa.]** 1981). Paragraph (A)(1)(b) is based upon statutory and case law that, ordinarily, if all offenses arising from the same criminal episode or transaction are not tried together, subsequent prosecution on any such offense not already tried may be barred. *See* the Crimes Code, 18 Pa.C.S. §§ 109—110; *Commonwealth v. Campana*, **452 Pa. 233,** 304 A.2d 432 **(1973)**, vacated and remanded, 414 U.S. 808 (1973), addendum opinion on remand, **455 Pa. 622,** 314 A.2d 854 (**[Pa.]** 1974); *Commonwealth v. Tarver*, **467 Pa. 401,** 357 A.2d 539 (**[Pa.]** 1976). The court has also held that a defendant's failure to move for consolidation does not ordinarily constitute a waiver of an objection to a subsequent, separate trial of any such offense. *See, e.g., Commonwealth v. Stewart*, **493 Pa. 24,** 425 A.2d 346 (**[Pa.]** 1981).

See Rule 571 concerning arraignment procedures.

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 since the indicting grand jury was abolished in all counties (see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b)), the reference was retained in **paragraphs (A) and (B) of** this rule because there may be some cases still pending that were instituted **under the former indicting grand jury rules** prior to the abolition of the indicting grand jury **in 1993**. **These references to "indictment" do not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2012 in which an information would be filed after a grand jury indicts a defendant. *See* Rules 103 and 556.11.**

***Official Note*:** Rule 1127 adopted December 11, 1981, effective July 1, 1982; amended August 12, 1993, effective September 1, 1993; amended August 14, 1995, effective January 1, 1996; renumbered Rule 582 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002**; Comment revised June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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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).

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Final Report explaining the June 21, 2012 revision of the last paragraph of the Comment concerning the abolition of the indicting grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

PART **[G] H**. Plea Procedures

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART C(2). Conduct of Jury Trial

Rule 646. Material Permitted in Possession of the Jury.

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(C) During deliberations, the jury shall not be permitted to have:

(1) a transcript of any trial testimony;

(2) a copy of any written or otherwise recorded confession by the defendant;

(3) a copy of the information **or indictment**; and

(4) except as provided in paragraph (B), written jury instructions.

(D) The jurors shall be permitted to have their notes for use during deliberations.

Comment

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Paragraph (D) was added in 2005 to make it clear that the notes the jurors take pursuant to Rule 644 may be used during deliberations.

[Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in this rule because there may be some cases still pending that were instituted prior to the abolition of the indicting grand jury.]

***Official Note*: Rule 1114 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; Comment revised August 12, 1993, effective September 1, 1993; amended January 16, 1996, effective July 1, 1996; amended November 18, 1999, effective January 1, 2000; renumbered Rule 646 March 1, 2000, effective April 1, 2001; amended June 30, 2005, effective August 1, 2005; amended August 7, 2008, effective immediately; amended October 16, 2009, effective February 1, 2010; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Final Report explaining the October 16, 2009 amendment concerning providing jurors with the elements of the charged offenses in writing published with the Court's Order at 39 Pa.B. **[6331,]** 6333 (October 31, 2009).

Final Report explaining the June 21, 2012 amendment to paragraph (C)(3) and the revision of the Comment concerning the former abolition of the indicting grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Rule 648. Verdicts.

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Comment

Paragraph (A) of the rule replaces the practice of automatically appointing the first juror chosen as foreman of the jury. Paragraphs (C), (D), and (E) serve only to codify the procedure where conviction or acquittal of one offense operates as a bar to a later trial on a necessarily included offense. Similarly, the rule applies to situations of merger and *autrefois* convict or acquit. No attempt is made to change the substantive law **[which] that** would operate to determine when merger or any of the other situations arise. *See, e.g., Commonwealth v. Comber*, **374 Pa. 570**, 97 A.2d 343 (1953).

Paragraph (F) provides for the disposition in the court of common pleas of any summary offense that is joined with the misdemeanor, felony, or murder charges that were tried before the jury. Under no circumstances may the trial judge remand the summary offense to the issuing authority, even in cases in which the defendant is found not guilty by the jury. *See also* Rule 543 (Disposition of Case at Preliminary Hearing).

Paragraph (G) provides for the polling of the jury and requires the judge to send the jury back for deliberations in accordance with *Commonwealth v. Martin*, 379 Pa. 587, 109 A.2d 325 (1954). With respect to the procedure upon non-concurrence with a sealed verdict, see Rule 649(C).

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 because the indicting grand jury was abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in **paragraphs (D) and (E) of** this rule because there may be some cases still pending that were instituted **under the former indicting grand jury rules** prior to the abolition of the indicting grand jury **in 1993**. **These references to "indictment" do not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2012 in which an information would be filed after a grand jury indicts a defendant. *See* Rules 103 and 556.11.**

***Official Note*: Rule 1120 adopted January 24, 1968, effective August 1, 1968; amended February 13, 1974, effective immediately; paragraph (E) amended to correct printing error June 28, 1976, effective immediately; paragraph (F) amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 648 and amended March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006; Comment revised June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Final Report explaining the March **[3] 9**, 2006 amendments 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).

Final Report explaining the June 21, 2012 revision of the Comment concerning the former abolition of the indicting grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 903. Docketing and Assignment.

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Comment

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Although most references to indictments and indicting grand juries were deleted from these rules in 1993 since the indicting grand jury has been abolished in all counties, see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b), the reference was retained in **paragraph (A) of** this rule because there may be some cases still pending that were instituted **under the former indicting grand jury rules** prior to the abolition of the indicting grand jury **in 1993**. **These references to "indictment" do not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2012 in which an information would be filed after a grand jury indicts a defendant. *See* Rules 103 and 556.11.**

If a defendant in a death penalty case files a petition before the trial judge has made a determination concerning the appointment of counsel as required by Rule 904(G), after making the docket entry and placing the petition in the criminal case file, the clerk promptly must forward a copy of the petition to the trial judge for that determination.

***Official Note*: Previous Rule 1503 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by present Rule 1504. Present Rule 1503 adopted February 1, 1989, effective July 1, 1989; amended June 19, 1996, effective July 1, 1996; amended August 11, 1997, effective immediately; Comment revised January 21, 2000, effective July 1, 2000; renumbered Rule 903 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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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).

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Final Report explaining the June 21, 2012 revision of the Comment concerning the former abolition of the indicting grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

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

PART A. Philadelphia Municipal Court Procedures

Rule 1003. Procedure in Non-Summary Municipal Court Cases.

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(D) PRELIMINARY ARRAIGNMENT

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(3) At the preliminary arraignment, the issuing authority:

* * * * *

(d) **also** shall **[also]** inform the defendant:

(i) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(ii) of the day, date, hour, and place for the trial, which shall not be less than 20 days after the preliminary arraignment, unless the issuing authority fixes an earlier date for the trial or the preliminary hearing upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth;

(iii) in a case charging a felony, **unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2,** of the date, time, and place of the preliminary hearing, which shall not be less than 14 nor more than 21 days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth**;** and that failure to appear without good cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and that the case shall proceed in the defendant's absence, and a warrant of arrest shall be issued; and

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Comment

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Nothing in this rule is intended to address public access to arrest warrant affidavits. *See Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 (1987).

The 2012 amendment to paragraph (D)(3)(d)(iii) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur. *See* Rule 556.2. *See* also Rule 556.11 for the procedures when a case will be presented to the indicting grand jury.

Under paragraph (D)(4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

* * * * *

***Official Note*: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended August 15, 2005, effective February 1, 2006; amended April 5, 2010, effective April 7, 2010; amended January 27, 2011, effective in 30 days**; amended June 21, 2012, effective in 180 days**.

Committee Explanatory Reports:

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Court's Order adopting the April 5, 2010 amendments to paragraph (D)(3)(d) published at 40 Pa.B. 2012 (April 17, 2010).

Court's Order adopting the January 27, 2011 amendments to paragraph (E) concerning hearsay published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the June 21, 2012 amendments to paragraph (D)(3)(d)(iii) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

FINAL REPORT[1]

New Pa.Rs.Crim.P. 556 through 556.12, and Correlative Changes to Pa.Rs.Crim.P. 103, 540, 542, 544, 547, 560, 573, 578, 582, 646, 648, 903, and 1003

Indicting Grand Juries

On June 21, 2012, effective in 180 days, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted new Rules of Criminal Procedure 556 through 556.12, amended Rules of Criminal Procedure 103, 540, 544, 547, 560, 573, 646, and 1003, and approved the revision of the Comments to Rules of Criminal Procedure 542, 578, 582, 648, and 903. The rule changes provide, *inter alia*, for the resumption of the use of indicting grand juries, but only as a local option in the narrowly defined circumstance of cases in which witness intimidation has occurred, is occurring, or is likely to occur.

I. Background

In December 2009, the *Philadelphia Inquirer* published a series of articles reporting on what was viewed as systemic problems within the criminal justice system of the First Judicial District. In response to these articles, the Court appointed a Commission to study the issues raised by the *Philadelphia Inquirer*.

One of the problems identified in the *Inquirer* articles concerned intimidation by threats of violence to witnesses and/or witnesses' family members. "Witness intimidation pervades the Philadelphia criminal courts, increasingly extracting a heavy toll in no-show witnesses, recanted testimony—and collapsed cases . . . Prosecutors, detectives, and even some defense lawyers say witness fear has become an unspoken factor in virtually every court case involving violent crime in Philadelphia. Reluctant or terrified witnesses routinely fail to appear in court, and when they do, they often recant their earlier testimony or statements to police."[2]

The Court's Commission suggested that one means to address the witness intimidation problem would be to re-institute the indicting grand jury in Pennsylvania. The Commission appointed a subcommittee to develop procedures for the re-instituted indicting grand jury in Pennsylvania. The Commission's subcommittee's recommendations included, as a way to address the problem of witness intimidation, a proposal that the Court adopt rules providing for the use of the indicting grand jury similar to the indicting grand jury procedures in a number of other jurisdictions and the federal courts. The Commission's subcommittee opined that providing the attorney for the Commonwealth with the option of proceeding directly from a preliminary arraignment to an indicting grand jury, rather than having to go through a preliminary hearing, would eliminate the problems related to witness intimidation in Philadelphia. The Commission's subcommittee suggested that the indicting grand jury be utilized in lieu of proceeding by preliminary hearing on an as-needed basis in cases in which witness intimidation has occurred or is a distinct possibility. The Commission further postulated that, because the Pennsylvania Supreme Court has the exclusive authority to establish rules of criminal procedure, the Court has the authority issue an order that would repudiate 42 Pa.C.S. § 8931(f) and provide district attorneys with the discretion to proceed with a preliminary hearing followed by the filing of an information or proceed directly from the preliminary arraignment to an indicting grand jury.

The Court referred the matter to the Criminal Procedural Rules Committee for a "considered evaluation" of the Commission's subcommittee's recommendation and whether the process for re-instituting the indicting grand jury could be accomplished by rule or would have to be by statute.

The Criminal Procedural Rules Committee, in considering whether the process for re-instituting the indicting grand jury was within the Court's rule-making authority, reviewed the history of the indicting grand jury and its evolution in Pennsylvania. We also examined the constitutional provisions, statutes, rules, and the case law governing indicting grand juries in Pennsylvania and in other jurisdictions. In addition, the Committee reviewed the legislative and rule history relative to the constitutional amendment that permitted judicial districts, with the permission of the Court, to elect to proceed by information instead of indictment.

Consistent with the views expressed by the Commission's subcommittee, the consensus of the Committee is that, pursuant to its constitutional and statutory authority to prescribe general rules governing practice, procedure, and conduct of all courts, the Court has the power to re-institute the indicting grand jury by rule. In reaching this conclusion, the Committee, also agreeing with the position of the Commission's subcommittee, reasoned that because the 1973 amendment of Article I § 10 of the Pennsylvania Constitution and the subsequent enabling legislation[3] permitted, but did not mandate, the courts of common pleas to proceed by information instead of by indictment, but only with the permission of the Court, the Court similarly could permit the same courts of common pleas to resume using the indicting grand jury with the permission of the Court. The Committee also noted that the Court already has exercised its rule-making authority in this area by adopting new rules in 1964 governing indicting grand juries, adopting rule changes in 1974 establishing the procedures for proceeding with an information instead of by indicting grand jury, and after the last court of common pleas received the Court's approval to proceed by information in 1991, in 1993, rescinding the indicting grand jury rules as no longer necessary. The members believe this history fully supports the Court proceeding by rule to re-institute the use of the indicting grand jury.

II. Discussion

Placement of New Rules

When initially considering the placement of the new indicting grand jury rules, it was thought that the rules merely would be re-inserted into the same chapter of the rules where the indicting grand jury rules had been prior to being rescinded—then-Chapter 200 (Grand Jury, Indictment, and Information). However, since the time when the indicting grand jury rules were rescinded, the Criminal Rules have been reorganized and renumbered, and there no longer is a chapter comparable to former Chapter 200.[4]

In the current rules, Chapter 200 deals only with investigations and includes the search warrant and investigating grand jury rules. The rules governing prelimi-

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

[2] Nancy Phillips, *et al.*, "Witnesses Fear Reprisals, and Cases Crumble—Intimidation On The Streets Is Changing the Way Trials Are Run." *Philadelphia Inquirer*, Dec. 14, 2009.

[3] Act 238 of 1974. The Act, which initially was in Title 17, sections 271—276, was repealed in 1978 as part of the Judiciary Act Repealer Act and replaced and amended by 42 Pa.C.S. § 8931.

[4] *See* 30 Pa.B. 1478 (March 18, 2000).

nary hearings are in Chapter 5, Part D (Proceedings in Court Cases Before Issuing Authorities), and the rules governing informations, formerly in Chapter 2, are now in Chapter 5 Part E (Procedures Following a Case Held for Court).

Procedurally, the indicting grand jury procedures are comparable to preliminary hearing procedures and would occur after the preliminary arraignment and before the procedures for when a case is held for court. In view of this, a new part, Part E (Indicting Grand Jury), has been added to Chapter 5 and is dedicated to the indicting grand jury procedures.[5] The new rules begin with Rule 556. Because of the dearth of available numbers in this chapter, although not a preferred method for numbering the Criminal Rules, but a less confusing option than renumbering all the rules in Chapter 5, all the new rules in Part E fall under Rule 556, and the next rules in the sequence are 556.1 *etc.*

Resumption of Indicting Grand Jury

The Committee recommended, because the Court was constitutionally required to approve the judicial districts' requests to proceed by information instead of indictment, that before a judicial district may resume using the indicting grand jury, the judicial district be required to receive the approval of the Court. Accordingly, the Court, in its Order adopting the new indicting grand jury rules, is requiring that the individual judicial districts petition the Court for permission to re-institute the indicting grand jury, similar to the petition procedure used when the judicial districts requested permission to proceed by information. To provide notice of this requirement, the Order would be referenced in the Comment to new Rule 556.

Scope of Indicting Grand Jury Authority: Proposed New Rule 556 (Indicting Grand Jury)

The Committee discussed how broad the jurisdiction of the indicting grand juries should be and whether the scope should be expanded beyond the cases in which witness intimidation is at issue.

After considering various approaches, the approach approved is, as a first step for bringing back the indicting grand jury, that the new procedures be narrowly drafted so that the indicting grand jury is to be used on an as-needed basis where witness intimidation has occurred or is a distinct possibility. In reaching this conclusion, consideration also was given to the facts that indicting grand juries have not been used in Pennsylvania for more than eighteen years and the new rules are not providing for a preliminary hearing procedure following indictment as was the case in the previous practice.

Accordingly, new Rule 556 (Indicting Grand Jury) permits the judicial districts to proceed by indicting grand jury as provided by the rules but only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

New Rule 556.1 (Summoning Panels of Grand Jurors)

New Rule 556.1 sets forth the procedures for summoning an indicting grand jury. These procedures are similar to the procedures for summoning an investigating grand jury set forth in Rule 221 except that the new rule does not set a limit on the number of individuals to summon. As explained in the Comment, the decision on the number of jurors to summon is left to the discretion of the judge to accommodate the needs of the judicial district.

When a judicial district elects to proceed with the indicting grand jury, the president judge, or the president judge's designee, must order that one or more panels be summoned. The Committee noted that some of the judicial districts that choose to use the indicting grand jury may want to have a standing grand jury for that purpose, while other judicial districts will summon the indicting grand jury on an as-needed basis. The rule is intended to permit both practices.

The Committee also discussed whether judicial districts with sitting investigating grand juries could order the investigating grand jury to sit as an indicting grand jury when an indicting grand jury is needed. The members, particularly the members from the smaller judicial districts, noted that mandating two separate grand juries in a county, an investigating one and an indicting one, could double the cost and the administrative burden. They reasoned that if there is an existing investigating grand jury, permitting this dual function would promote judicial economy and would make it easier for the smaller judicial districts to utilize the indicting grand jury under these rules. In addition, from the Committee's research into this question, we learned that several other jurisdictions provide for this dual function by rule or statute.[6]

In view of these considerations, the new rules permit this dual function in Pennsylvania. To accommodate a sitting investigating grand jury to sit as an indicting grand jury, to the extent possible, the new procedures for the indicting grand jury, including the procedures for summoning, are the same as the procedures for the investigating grand jury.[7]

The Committee also discussed whether by permitting the investigating grand jury to sit as an indicting grand jury, the rules create an inconsistency with the provision of Section 4548(c) of the Investigating Grand Jury Act, 42 Pa.C.S. § 4548(c) (Other Powers), that provides, *inter alia*, "[e]xcept for the power to indict, the investigating grand jury shall have every power available to any other grand jury in the Commonwealth." The Committee initially thought the statute could be a problem and in the published version of the proposal provided for the limited suspension of the statute.

The Committee reconsidered this proposed suspension during the post-publication discussion of the rules. Although the new rules permit a judicial district to have the members of a standing investigating grand jury to sit as an indicting grand jury, there is a bright line between the functions of the two grand juries. The investigating grand jury proceeds as provided in Rules of Criminal Procedure 220 through 231 and in 42 Pa.C.S. § 4521 *et seq*. and the indicting grand jury will proceed pursuant to the new rules. Accordingly, the Committee recommended to the Court that a suspension is unnecessary. Consistent with this decision, the Comment to new Rule 556 includes a paragraph that makes it clear that the new rules only apply to indicting grand juries and do not apply to any county, regional, or statewide investigating grand juries.

New Rule 556.2 (Proceeding by Indicting Grand Jury without Preliminary Hearing)

New Rule 556.2 sets forth the new procedures for either proceeding to an indicting grand jury or proceeding to a preliminary hearing. Although the Commission's subcommittee proposed that the judge always must summon a

[5] This will necessitate re-naming current Parts E and F.

[6] *See e.g.,* Nevada Revised Statutes § 172.175. (Matters into which grand jury shall and may inquire), New Jersey Rule 3:6-9. (Finding and Return of Presentment), and Virginia Code § 19.2-191. (Functions of a grand jury).

[7] This reasoning also applies to the inclusion of the procedures from the investigating grand jury rules in new Rules 556.3, 556.5, 556.6, 556.7, 556.8, 556.9, and 556.10.

grand jury upon the request of the attorney for the Commonwealth, the Committee believes there must be some oversight of the process by the judge, particularly since the scope of the grand jury is limited. To accomplish this, paragraph (A)(1) of new Rule 556.2 requires that to proceed to an indicting grand jury, the attorney for the Commonwealth must file a motion setting forth sufficient facts that show that witness intimidation has occurred, is occurring, or is likely to occur. This fact-based motion procedure provides the judge with an opportunity to decline to grant the motion but only if the attorney for the Commonwealth does not make out probable cause that witness intimidation has occurred, is occurring, or is likely to occur. However, if the judge finds the motion makes out probable cause, he or she must grant the motion.

The Committee received some publication responses questioning the motion procedure, but after reconsidering this procedure during its post-publication discussions, declined to make the changes suggested by the respondents and reaffirmed that there should be some judicial oversight at this stage. Concerning the issues the respondents had about the motion procedure leading to litigation, the Committee's consensus was that the rules should remain silent about litigating these motions. The members observed that there are a number of motions filed in criminal cases for which the rules do not provide procedures for challenges or for appeals.

The Committee, however, did agree that the published version of Rule 556.2 should be modified to provide further clarity concerning the Commonwealth's burden for establishing the facts that evidence there is or is likely to be witness intimidation. The Committee modified the published version of new Rule 556.2 to require that the attorney for the Commonwealth must set forth sufficient facts to make out probable cause that there is or is likely to be witness intimidation.

Because the motion is fact specific, the Committee agreed it would be helpful to the bench and the bar if the verification requirements in Rule 575 (Motions and Answers) are reiterated in the Rule 556.2 Comment, as follows: "any motion that sets forth facts that do not already appear of record in the case to be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904."

Paragraph (A)(2) requires that the motion is made *ex parte* to the president judge, or the president judge's designee. In most cases, it is anticipated that the judge designated to receive these motions also will be the judge designated to supervise the grand jury. If the judge grants the motion, the judge shall seal the motion and the order granting the motion, and the attorney for the Commonwealth shall file both with the clerk of courts. The *ex parte* and sealing requirements are incorporated into the procedures to ensure the protection of the witnesses and victims subject to the intimidation.

In addition, concurrently with granting the motion, the judge must notify the proper issuing authority that the attorney for the Commonwealth's motion has been granted. This provides the issuing authority with notice that the case is being submitted to the grand jury and that the case is to be closed in the magisterial district office.

Procedurally under the new rules, all court cases will continue to be instituted by the filing of a complaint or an arrest without a warrant, the preliminary arraignment, when required by the rules, will be conducted by the proper issuing authority, and the preliminary hearing initially will be scheduled by the issuing authority. In the published version of the rules, the Committee had proposed that the case remain open in the proper issuing authority's office when the attorney for the Commonwealth is proceeding to an indicting grand jury instead of to a preliminary hearing. The Committee, at that time, reasoned, because the case has not been held for court, and until the grand jury proceeding actually is held, the possibility that a preliminary hearing will have to be held remains. However, several respondents criticized this proposed procedure as being too complicated and confusing because there would be case files open in the issuing authority's office and the clerk of courts office on the same case at the same time, and because the status hearings proposed in the published version of the rules would create additional work at the magisterial district level, and would unnecessarily require additional appearances for the parties, with additional costs and expenses.

In view of these concerns, the Committee reconsidered the proposal and agreed with the respondents that it makes more sense to have the whole case be in the court of common pleas from the time the motion to present a case to an indicting grand jury is granted. Accordingly, once the issuing authority receives notice that the case is going to be submitted to an indicting grand jury, the case must be closed in the magisterial district court and forwarded to the clerk of courts as provided in Rule 547.

To accommodate this new procedure, the provisions that require the issuing authority to close the case after receiving the notice from the judge and to forward the case to the court of common pleas are incorporated into Rule 556.2(A)(3)(a). In addition, Rule 556.2(A)(3)(b) includes a provision comparable to the provision in Rule 543 that once the case is closed in the magisterial district court office, the case is required to remain in the court of common pleas for all further proceedings. This "no remand' requirement is emphasized in the Rule 556.2 Comment.

Paragraph (C) requires that the case be submitted to the grand jury within 21 days of the date of the order granting the attorney for the Commonwealth's motion unless the defendant waives the grand jury or the attorney for the Commonwealth elects not to proceed to the grand jury. If the case is not presented to the grand jury after the motion has been granted, the defendant would then be entitled to a preliminary hearing in the court of common pleas.

During the post-publication discussions, several members questioned whether 21 days was a sufficient amount of time within which to convene a grand jury for the purpose of hearing the case, particularly when there is no sitting grand jury. Some members questioned why there should be any time limit. Others pointed out that a time limit is necessary to ensure that the case keeps moving and because in many of these cases the defendant is incarcerated. The Committee considered adding in a "cause shown" extension of time, extending the time to 45 days, and imposing a time limit on the judge to decide the motion that would trigger the 21-day time for submitting the case. Ultimately, because each idea had faults, the Committee rejected all the alternative ideas. The members agreed that how to work within the 21-day time limit in the rule in each judicial district should be a decision made at the local level.

The rules also permit the defendant to waive the grand jury proceedings in the same manner that he or she may waive the preliminary hearing, with the additional requirement that the attorney for the Commonwealth consents with the waiver. The consent of the Commonwealth requirement was added because there may be situations in which the Commonwealth will want to memorialize a witness's testimony on the record particularly when there is witness intimidation. Paragraph (C) of this rule and new Rule 556.12 provide for the waiver.

New Rule 556.3 (Composition and Organization of the Indicting Grand Jury)

New Rule 556.3 incorporates most of the procedures for the composition and organization of the indicting grand jury that are set forth in Rule 222 for the investigating grand jury because the investigating grand jury also may be sitting as the indicting grand jury. New Rule 556.3 requires that 23 individuals be impaneled for the indicting grand jury as does Rule 222. Rule 556.3, as does Rule 222, requires a minimum of seven and a maximum of 15 individuals as alternate jurors. Both rules require 15 members to constitute a quorum

Paragraphs (C) and (D) address the procedures related to alternates. Paragraph (G) addresses the appointment of the foreperson, deputy foreperson, and the secretary.

New Rule 556.4 (Objections to Grand Jury and Grand Jurors; Motion to Dismiss)

New Rule 556.4 is taken from former Rule 203. During discussions of these procedures, questions arose about the procedures for challenging the array of the grand jury and whether such challenges have a constitutional basis. Research revealed that the right to challenge the array is a common law right and that some of the challenges, such as those based on race or gender, are constitutional challenges. *Commonwealth v. Dessus*, 423 Pa. 177, 224 A.2d 188 (1966), cited in the former indicting grand jury rules, and other early Pennsylvania cases that recognize the right to challenge the array appear to still be good law. In view of this research, new Rule 556.4 incorporates procedures for challenging the array.

Paragraph (B) of the rule sets forth the procedures for a motion to dismiss. Consistent with the proposed new procedure with regard to the function of the indictment and the fact that after the grand jury holds the defendant for court, the attorney for the Commonwealth will file an information, the motion to dismiss under this rule is a motion to dismiss the information.

During the post-publication discussions about the proposal, the Committee considered whether the published versions of Rule 556.4(B)(1)(b) and of Rule 556.11(B)(2) that established the burden of proof as "probable cause" should be modified to conform with the burden of proof at a preliminary hearing, that is, whether the indicting grand jury must find that the evidence makes out a "*prima facie*" case that an offense has been committed and that the defendant has committed it in the same way that the issuing authority must determine that the evidence at the preliminary hearing makes out a *prima facie* case. The Committee concluded this provision should be modified. Accordingly, the published versions of Rules 556.4(B)(1)(b) and 556.11(B)(2), now 556.11(A)(2), have been amended to provide that the evidence must make out a *prima facie* case.

The former indicting grand jury rules provided that the motion to dismiss an indictment should be made as part of the omnibus pretrial motion. The Committee agreed that under the new rules, the motion to dismiss also must be made as part of the omnibus pretrial motion, as must the challenge to the array. Rule 556.4(C) spells out these requirements. The Comment to Rule 578 has been revised to add challenges to the array and motions to dismiss to the list of matters that should be included in the omnibus pretrial motion.

The importance of protecting a defendant's right to *habeas corpus* proceedings when there has been an indicting grand jury proceeding without a preliminary hearing also was an area of concern. To ensure that the procedures in Rule 556.4 are not read as limiting this right, the Rule 556.4 Comment includes a cautionary provision explaining that "nothing in the rule limits the availability of *habeas corpus* proceedings as provided by law." During the post-publication review, the Committee considered whether anything more should be said concerning *habeas corpus* proceedings in view of the publication responses. The consensus was that the Comment language is sufficient and no changes to the rule are necessary.

A last point with reference to challenges to the array and motions to dismiss relates to the defendant's access to information concerning the indicting grand jury prior to the grand jury proceedings. Providing for these challenges and motions in the rules does not give the defendant a right to participate in the process prior to an indictment, see, e.g., *Commonwealth v. Dessus, supra*. In recognition of the special nature of these indicting grand juries because of witness intimidation and the fact that indicting grand juries have not been in existence in Pennsylvania for over 18 years, the Comment provides clarification by explaining "nothing in this rule is intended to require notice to defendant of the time and place of the impaneling of a grand jury, or to give the defendant the right to be present for the selection of the grand jury."

New Rule 556.5 (Duration of Indicting Grand Jury)

New Rule 556.5 is consistent with 42 Pa.C.S. § 4546 (Term of Investigating Grand Jury) except that the rule leaves the duration to the discretion of the judge. The Committee agreed, however, that the judge's discretion should not be unlimited and has incorporated into the rule the outside limit of 18 months.

Although the indicting grand jury proceedings under these new rules ordinarily will be relatively brief, and, therefore, it might not be necessary to provide for an extension mechanism, because the goal is to have the new procedures for the indicting grand jury be the same as the procedures for the investigating grand jury, Rule 556.5 includes, as much as possible, the same detailed procedures for the extension of and early termination of the grand jury that are applicable in investigating grand jury proceedings.

New Rules 556.6 (Administering Oath to Grand Jury and Foreperson) and 556.7 (Administration of Oath to Witnesses; Court Personnel)

The provisions in new Rules 556.6 and 556.7 are taken from former Rules 206 and 207 and current Rules 223, 224, 225, and 227. The supervising judge is required to administer the oath to the foreperson, the deputy foreperson, and the other grand jurors. This provision also includes the text of the oaths that is required to be administered and is the same as in the former rules. The oaths to the witnesses and court personnel are to be administered by the foreperson, or deputy foreperson.

New Rule 556.8 (Recording of Testimony Before Indicting Grand Jury)

New Rule 556.8 provides for the recording of the grand jury proceedings other than deliberations and voting and is taken from Rules 228 and 229.

The rescinded indicting grand jury rules prohibited the recording of the proceedings. The Committee discussed this prohibition and agreed the new rules should follow the recording procedures in the investigating grand jury rules, as well as, the recording procedures in a number of states. The recording of the grand jury proceedings ensures there is a record should there be a need to review the grand jury proceedings.

Although it was suggested that the attorney for the Commonwealth should retain control of the recording device and transcript, the Committee believes it makes more sense if the supervising judge maintains control of the recordings and the transcript, as well as, of any physical evidence introduced during the proceedings. The members who regularly work with investigating grand juries indicated that this is consistent with the practice for investigating grand juries and that it is not an imposition on the supervising judge.

During the post-publication discussions, the Committee reconsidered the provision in the published version of the rule that provides for the destruction of the transcript, except for good cause, if no indictment is returned. Several members pointed out that an indictment may not be returned for multiple reasons and the parties still may need access to the transcripts when no indictment is returned for purposes other than proceeding in the case, such as receiving *Brady* material that was presented to the grand jury. Furthermore, there are other procedures in place with reference to preserving the transcripts of investigating grand juries that the members believe would apply to the indicting grand jury. In view of these considerations, the published version of Rule 556.8 has been modified by deleting paragraph (D).

New Rule 556.9 (Who May be Present During Sessions of Indicting Grand Jury)

New Rule 556.9 is taken from Rule 231. During consideration of the provisions of Rule 231, whether a witness may disclose his or her testimony was discussed in view of the provisions of 42 Pa.C.S. § 4549(d), which permit a witness to disclose his or her grand jury testimony. The Committee, when drafting this proposed rule, believed the witnesses should not be permitted to disclose their testimony because any case before the indicting grand jury under these new rules involves witness intimidation and permitting a witness to disclose his or her testimony could be dangerous for the witness or others.

The Committee reconsidered this decision during the post-publication review. Several members opined that the witness has a First Amendment right to reveal his or her testimony. Other members thought, because these cases involve witness intimidation, the Commonwealth's interest in protecting these witnesses outweighs the witness' First Amendment claim. Ultimately, it was agreed to delete the prohibition on the witness from revealing his or her testimony from the proposed rules, thus bringing the new indicting grand jury procedures in line with the procedures for witness testimony before the investigating grand jury. Because there may be legitimate reasons why a witness should not reveal his or her testimony after appearing before the grand jury, the new rule includes a provision for the attorney for the Commonwealth to seek an order from the judge that the interests of justice dictate that the witness not reveal his or her testimony.

In addition, the attorney for the Commonwealth may request that the judge delay disclosure of a grand jury witness's testimony but the disclosure may not be later than the conclusion of the direct testimony of the witness at trial.

Although the prohibition on witnesses revealing their testimony had been addressed in the published version of Rule 556.9, the modifications are set forth in proposed Rule 556.10(B)(3) because this rule specifically addresses disclosures.

The Committee also considered the procedures in other jurisdictions for permitting witnesses to testify using two-way simultaneous audio-visual communication. Although the Committee does not believe the rules should mandate this procedure, it agreed there would be no reason not to permit such testimony with the approval of the supervising judge. A paragraph explaining this is included in the Comment.

New Rule 556.10 (Secrecy; Disclosure)

New Rule 556.10 is taken from Rule 230 and provides the procedures for maintaining the secrecy of the grand jury proceedings, paragraph (A), and for disclosure, paragraph (B).

Paragraph (A) requires that all evidence is subject to grand jury secrecy and any violation may be subject to contempt.

The published version of paragraph (B)(2)(b) restricted the defendant's pretrial discovery in cases indicted by a grand jury until 30 days before the commencement of trial. This restricted discovery provision generated several publication responses. The respondents and some of the members expressed concern that the limitation is too broad and would be applied to all discoverable materials in the case when the limitation only should apply to the identities and testimony of the grand jury witnesses who are subject to witness intimidation. Other respondents and a few members argued that having any limitations in the grand jury rules is unnecessary because Rule 573 (Pretrial Discovery and Inspection) has adequate safeguards for the judge to utilize when it is necessary to protect a witness, including, for example, the protective order. *See* Rule 573(F). They also pointed out that any 30-day limitation will lead to continuances that will delay the proceedings.

The Committee considered several approaches to address these concerns, and concluded that it would be less cumbersome and fairer if the rule provided that most things would be discoverable under Rule 573. The only exception would be evidence that would reveal the identity of the witnesses who are the subject of witness intimidation. Accordingly, the new rule provides that pretrial discovery is subject to Rule 573 and that "pretrial discovery" does not include "testimony or other evidence that would disclose the identity of any witness or victim who has been intimidate, is being intimidated, or who is likely to be intimidated." The timing and manner of discovery of this testimony or evidence is left to the discretion of the supervising judge.

To accommodate these changes, new Rule 556.10(B) has been reorganized from the published version. The paragraph begins with the general premise that no person may disclose any matter occurring before the grand jury. The paragraph then provides for specific exceptions to this general premise.

Paragraph (B)(1) provides that the supervising judge must provide the attorney for the Commonwealth with a copy of the transcript of the grand jury proceeding for the attorney's official duties.

Paragraph (B)(2) addresses disclosure to a defendant in a criminal case. The Committee, during the initial development of the proposed new rules, discussed whether a defendant may testify before the indicting grand jury, noting that Rule 230(B)(1) suggests that the defendant may testify before the investigating grand jury, and that other jurisdictions provide for the defendant's testimony. The Committee agreed the rules should not address this issue, but reasoned that leaving the rule silent does not prevent a defendant from asking to testify. Because of concerns that omitting the language from Rule 556.10 might be construed as prohibiting the defendant's right to the transcript, and that could create due process issues, language comparable to Rule 230(B)(1) is incorporated in Rule 556.10(B)(2) thereby ensuring that any defendant who is permitted to testify before the indicting grand jury is entitled to a copy of the transcript of his or her testimony.

Paragraph (B)(3)(a) sets forth the provisions concerning a witness's disclosing his or her testimony that are discussed above in the explanation of proposed new Rule 556.9. Although the new rule permits a witness to disclose his or her testimony, there may be circumstances when the attorney for the Commonwealth would want this disclosure delayed, such as when it is necessary to protect other witnesses. The new rule requires that the supervising judge is to make the determination whether there are compelling reasons when disclosure of the witness's testimony should be delayed. Finally, recognizing that the defendant has the right to this information for his or her defense, the new rule also requires that the transcript of a witness's testimony be furnished to the defendant no later than after the direct testimony of the witness at trial. Paragraph (B)(3)(b) sets forth this limitation on the witness's disclosure.

Paragraph (B)(4) sets forth the procedures for the disclosure of grand jury material or matters, other than deliberations and votes, to law enforcement personnel. This language is comparable to the disclosure provisions for investigating grand juries in Rule 230(C) and 42 Pa.C.S. § 4549(b).

New Rule 556.11 (Proceedings When Case Presented to Grand Jury)

The published version of proposed new Rule 556.11(A) sets forth the requirements that, when a case is to be submitted to an indicting grand jury, the case would remain open in the magisterial district court until the grand jury acts to either indict the defendant (holds the case for court), or declines to indict, and that the issuing authority cancel the preliminary hearing and conduct status hearings every 30 days until the grand jury acts. As explained above in the discussion about new Rule 556.2, several of the publication respondents suggested that this proposed procedure was too complicated and confusing because there would be case files open in the issuing authority's office and the office of the clerk of courts on the same case at the same time, and placed unnecessary burdens and expenses on the issuing authority's office and the parties. In view of these concerns, the Committee agreed to delete these published provisions in Rule 556.11(A).

New paragraph (A), paragraph (B) in the published version, sets forth the scope of the indicting grand jury's authority to act. As mentioned above in the discussion of new Rule 556.4, as part of post-publication modifications, paragraph (A)(2) has been modified to require that the indicting grand jury must make a finding that the evidence establishes a *prima facie* case before it may indict the defendant. This modification was necessary because the function of the indicting grand jury under the new procedures is the same as the function of the preliminary hearing, see Rule 543, and it is imperative that the same burden applies to both.

Paragraph (B) addresses the voting requirements for the grand jury. In order to indict, there must be an affirmative vote of at least 12 jurors.

Paragraph (C) sets forth the requirements when the grand jury votes to indict. The indictment is prepared and must set forth the offenses on which the grand jury voted to indict. The indictment is to be signed by the foreperson or deputy foreperson and returned to the supervising judge.

Under the former indicting grand jury procedures, after a defendant was held for court following a preliminary hearing, the attorney for the Commonwealth would prepare a bill of indictment and submit that to the indicting grand jury. If the indicting grand jury, after considering the bill of indictment, voted to indict, the attorney for the Commonwealth would prepare the indictment and file it in the court of common pleas and the case would proceed to an arraignment. Because the new indicting grand jury procedures will be in lieu of the preliminary hearing, a change in the function of the grand jury's indictment has been incorporated into the new procedures to simplify the post-indictment procedures, to keep these procedures more in line with the post-preliminary hearing procedures, and to eliminate the need to completely reorganize the rules governing the procedures after a case is held for court that would have been necessary to accommodate the cases proceeding by indictment.

This new procedure changes the function of the grand jury's indictment from the charging document that was comparable to an information to a notice-type document that sets forth the charges held for court by the grand jury and authorizes the attorney for the Commonwealth to file an information. Thereafter, the attorney for the Commonwealth would proceed in the same manner as he or she would proceed after a case is held for court following a preliminary hearing. To accommodate this new procedure, paragraph (D)(1) requires the supervising judge, upon receipt of the indictment, to provide a copy of the indictment to the attorney for the Commonwealth authorizing him or her to prepare an information pursuant to Rule 560.

The Comment includes an explanation that the grand jury's vote to indict is the functional equivalent of holding the defendant for court following a preliminary hearing. The Comment also explains that the indictment no longer serves the traditional function of an indictment but rather serves as an instrument authorizing the attorney for the Commonwealth to file an information. This change in the function of the indictment is further clarified in the amendment to the Rule 103 definition of "indictment" discussed below.

Paragraph (D)(2) requires the supervising judge to forward a copy of the indictment to the clerk of courts, or to issue an arrest warrant if the subject of the indictment has not be arrested on the charges contained in the indictment. The arrest provision was included because, although infrequent, there are times when the indicting

grand jury hears evidence that reveals there is another individual who has not been charged but who is involved in the criminal activity that is the subject of the indicting grand jury. The Committee majority agreed the rule should provide a procedure to address this situation so the case would not "fall through the cracks."

Paragraph (E) requires the supervising judge to order the indictment sealed in cases in which the attorney for the Commonwealth so requests. Because the indicting grand jury only will be convened to hear cases in which the witness is being, has been, or is likely to be intimidated, at the time an indictment is to be filed, there still may be justification to maintain the secrecy of the information that was before the grand jury.

If the grand jury declines to indict, as provided in paragraph (F), the supervising judge must dismiss the complaint and notify the clerk of courts of the dismissal. As with a dismissal after a preliminary hearing, the attorney for the Commonwealth may re-file the case pursuant to Rule 544.

As explained in the discussion of new Rule 556.1, there should not be an overlap of functions of the two grand juries when the members of an investigating grand jury sit as an indicting grand jury. However, the Committee recognized that there may be situations after an investigating grand jury has issued a presentment when the attorney for the Commonwealth determines the crime charged in the presentment is one in which there is witness intimidation and submits the case to the indicting grand jury that, in this scenario, is the same body as the investigating grand jury. In this situation, it makes sense to permit the incorporation of the evidence initially presented to the investigating grand jury during the investigation for the grand jury's consideration when it is sitting as the indicting grand jury. The Comment explains that the rule does not prevent the investigating grand jury when sitting as an indicting grand jury from considering the evidence already presented to it.

New Rule 556.12. (Waiver of Grand Jury Action)

New Rule 556.12 sets forth the procedures for the waiver of the grand jury proceedings. The procedures are comparable to the procedures for waiving the preliminary hearing but, as explained above in the discussion of new Rule 556.2(C), require the consent of the attorney for the Commonwealth. In addition, the supervising judge has to approve the waiver.

Rule 541 (Waiver of Preliminary Hearing) recently was amended to provide, if the defendant waives the preliminary hearing and consents to be bound over to court, that the defendant thereafter is precluded from raising the sufficiency of the Commonwealth's *prima facie* case.[8] The changes to Rule 541 also provide that, if the defendant waives the preliminary hearing by way of an agreement, and if the agreement is not accomplished, the defendant may challenge the sufficiency of the Commonwealth's *prima facie* case. The same provisions have been added to Rule 556.12.

Conforming Changes to Rules 103, 540, 542, 544, 547, 560, 573, 578, 582, 646, 648, 903, and 1003

A number of conforming changes to Rules 103, 540, 542, 544, 547, 560, 573, 578, 582, 646, 648, and 1003 have been made. Except for the changes described below, the conforming changes merely add references to the new indicting grand jury procedures to the Comments of the rules.

[8] *See* 42 Pa.B. 2465 (May 12, 2012).

Rule 103 has been amended to change the definition of "indictment" from "a bill of indictment which has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215" to "the instrument holding the defendant for court after a grand jury votes to indict and authorizing the attorney for the Commonwealth to prepare an information." This change in the definition conforms the definition with the provision in the new rules that when an indicting grand jury votes to indict the defendant, the attorney for the Commonwealth proceeds by filing an information as set forth in the rules. The definition of "information" also has been amended to make it clear that an information is presented to the court by the attorney for the Commonwealth when the defendant is held for court or waives the preliminary hearing or a grand jury proceeding. The Rule 103 Comment further clarifies the new function of the "indictment" under the indicting grand jury rules.

Rule 540(F) includes, as an exception to when an issuing authority would set the date for the preliminary hearing, the situation when the attorney for the Commonwealth is presenting the case to an indicting grand jury. Paragraph (F)(3) has been amended to extend the time for conducting the preliminary hearing from 3 to 10 days after the preliminary arraignment to 14 to 21 days after the preliminary arraignment to accommodate the timing for proceeding to an indicting grand jury depending on whether or not the defendant is in custody.

Rule 544(A) has been amended by the addition to the types of cases that the attorney for the Commonwealth may re-file under Rule 544 those case in which the indicting grand jury declines to indict a defendant. The new language makes it clear that the reason the Commonwealth may re-file the charges in these cases is that, when a grand jury declines to indict, the complaint is dismissed.

The published version of Rule 547(A) proposed changes that were consistent with the proposed changes that would have required the case to remain open in the magisterial district court. To conform this rule with the post-publication changes to Rules 556.2 and 556.11 that require the issuing authority to close the case when he or she receives notice that the case will be submitted to the grand jury, paragraph (A) has been amended to require the issuing authority to prepare a transcript after closing the case that is being submitted to the grand jury. Similarly, paragraph (B) has been amended to require the issuing authority to transmit the transcript in the same circumstances. Finally, paragraph (C) has been amended by the addition of a new paragraph (7) that requires a copy of the notice that the case will be presented to the indicting grand jury to be forwarded with the transcript.

Rule 560(A) has been amended by adding the issuance of an indictment to when an information is to be prepared by the attorney for the Commonwealth.

The Rule 578 Comment has been amended to add "or dismiss" in paragraph (5) to make it clear that a motion to dismiss an information is to be included in the omnibus pretrial motion and to add a new paragraph (10) providing that a challenge to the array of an indicting grand jury ordinarily would be made as part of the omnibus pretrial motion.

The current Comments to Rules 582, 646, 648, and 903 include an explanation about the retention of the reference to "indictment" in the rules after the 1993 rescission of the indicting grand juries. With the addition of the new

indicting grand jury rules, the Comments to Rules 582, 648, and 903 have been revised to make it clear that these references to "indictment" do not apply in the context of an indictment issued by an indicting grand jury convened pursuant to the new rules. This Comment in current Rule 646 has been deleted as no longer necessary.

The amendment to Rule 646(C)(3) adding "indictment" is a corrective amendment referring to indictments under the former indicting grand jury rules.

Rule 1003(D)(3)(d)(iii) has been amended by adding an "unless" clause comparable to the "unless" clause in Rule 540(F), and explains that the Municipal Court judge must inform the defendant of the preliminary hearing unless the preliminary hearing is waived or the case is being presented to an indicting grand jury.

[Pa.B. Doc. No. 12-1255. Filed for public inspection July 6, 2012, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Notice to the Mass Tort Bar Amended Protocols and 5-Month Interim Report; General Court Regulation No. 2012-03

This Court adopted transitional working rules ("protocols") on February 15, 2012 (see General Court Regulation No. 2012-01) to address concerns that the mass tort inventory was experiencing explosive growth, i.e.:

1. In the last five (5) years, the inventory rose from 2,542 cases to 6,174 (12/31/11) cases or a 143% increase (3,632 new filings).

2. While meeting ABA standards for time to disposition in 90% of all major jury cases, only 36% of the mass tort cases were disposed in accordance with these standards. These standards are unrealistically short for mass torts.

3. The 2011 year end inventory of 6,174 cases burdens FJD resources and requires prudent management and court oversight to assure meeting scheduled events and trial dates.

Based on the results from January through May, 2012 terms, the Court reports the following:

1. There were 444 filings during January-May terms. The total projected filings in mass tort should total 1,068 cases for the 2012 year. This is a 60% reduction from the 2,690 cases filed in 2011 and a return to pre-2009 filing levels.

2. There has been a substantial reduction in the total out of state filings. In percentage terms, pharmaceutical cases have been reduced from 88% to 85%, and in asbestos cases from 47% to 46%.

3. Although the protocols suggest deferral of punitive damage claims, the rule has not been applied to a single case as no case involving a punitive damage claim has proceeded to trial.

4. There has been heightened settlement activity. Mediation activity in both asbestos and pharmaceutical cases has increased notably.

5. Discovery disputes have greatly diminished as a result of adopting separate discovery rules written by the Asbestos Bar and the Pharmaceutical Bar.

6. An additional judge will be assigned to the Mass Tort Program this fall (an increase of two judges since January 1, 2012).

Accordingly, the Court now revises the protocols: (a) to allow punitive damage claims to proceed, subject to decisions of the Coordinating Judges; (b) to incorporate the discovery rules written by the Asbestos and Pharmaceutical Bars; (c) to relax the rules on pro hoc vice counsel by doubling the number of permissible trials; (d) to resume expedited listings for plaintiffs who have a medically verifiable prognosis of imminent death; and (e) to encourage the Pharmaceutical Bar to utilize voluntary mediation which has proven successful in the Asbestos Program.

Order

And Now, this 18th day of June, 2012, the comment period having expired, it is hereby *Ordered, Adjudged and Decreed* that:

[Bracketed and bold words deleted]

1. There shall be no reverse bifurcation of any mass tort case, including asbestos, unless agreed upon by all counsel involved.

2. Consolidation of mass tort cases shall not occur absent an agreement of all parties, except in the asbestos program in accordance with the protocols set forth herein below.

3. AMENDED. **[All punitive damage claims in mass tort claims shall be deferred.]** The Court continues to review recommendations concerning punitive damages and will likely further amend this rule. Until a final version is established, the following procedure is adopted: Punitive damage claims may be litigated in pharmaceutical mass tort cases provided that the Coordinating Judges, following appropriate motion practice by defense counsel at least 60 days in advance of trial, rule that there are sufficient requisite proofs to support the claim going to trial.

4. AMENDED. Pro hoc vice counsel shall be limited to no more than four (4) **[two (2)]** trials per year, but otherwise will not be limited on pre-trial appearances. The Court encourages non-Pennsylvania counsel to pass its Bar Examination and thereby become familiar with Pennsylvania law, rules and procedures.

5. AMENDED. **[Unless otherwise agreed by defense counsel or upon showing of exigent circumstances, all discovery shall take place in Philadelphia.]**

Asbestos Bar Discovery Rule

"Unless otherwise agreed by opposing counsel or upon showing of exigent circumstances, all discovery shall take place in Philadelphia; however, a party may notice a deposition to take place at a location outside of Philadelphia so long as that party provides video conferencing, or telephone conferencing if video conferencing is impracticable, at no expense to opposing parties.

A notice of deposition shall be served on all parties at least 7 days prior to the scheduled deposition date, unless court approval is obtained for a shorter period of time."

Pharmaceutical Bar Discovery Rule

"All plaintiffs shall be made available for deposition in Philadelphia unless otherwise agreed by all parties or upon motion and for good cause shown."

6. Except for those cases already scheduled for trial through February 29, 2012, asbestos cases thereafter shall be grouped in groups of a minimum of 8 and a maximum of 10 and counsel shall be required to propose cases for consolidation considering the following criteria:

a. Same law. Cases that involve application of the law of different states will not be tried together;

b. Same disease. The disease category for each case in a group must be identical. The disease categories of cases to be grouped for trial are mesotheliomas, lung cancers, other cancers and non-malignancy cases;

c. Same plaintiff's law firm. Primary trial counsel for all cases in each group will be from a single plaintiff firm. Cases where Philadelphia plaintiff firms serve as local counsel for out-of-state counsel will not be grouped with cases from the local firm;

d. Fair Share Act cases will not be consolidated with non-Fair Share Act cases;

e. Pleural mesothelioma is a disease that is distinct from mesotheliomas originating in other parts of the body, and will not be tried on a consolidated basis with non-pleural mesothelioma cases and not necessarily tried on a consolidated basis. Non-pleural mesothelioma cases will be further classified for trial, so that non-pleural mesothelioma cases allegedly caused by occupational exposure will not be tried on a consolidated basis with non-pleural mesothelioma cases allegedly caused by para-occupational (bystander) exposure;

f. And such other factors as determined appropriate in weighing whether all parties to the litigation can receive a prompt and just trial. The Court's present backlog of asbestos cases shall not be an overriding factor in the consolidation determination.

7. Any grouping of cases less than 8-10 in number shall not receive a trial date until a group is formed of 8-10 cases. A maximum of 3 of these 8-10 cases may be tried, with the other 5-7 cases either resolving through settlement or returned to the Coordinating Judges for regrouping and relisting for trial.

8. Mediation: Once grouped, assigned a trial date and after Motions for Summary Judgment have been decided by the Court, counsel are urged to seek mediation from a special panel of former judges named herein below. Either side may request mediation. The mediator selected by the parties shall advise the Court whether the plaintiff firm's participation was in good faith or not. In the discretion of the Coordinating Judges, any plaintiff firm's failure to proceed in good faith in mediation may constitute just cause to remove that group of cases from the trial list and any defendant's failure to proceed in good faith may result in an increase of the maximum 3 cases consolidated for trial. Since no more than 3 cases may be consolidated and proceed to trial in any group of 8-10, the remaining 5-7 cases should be resolved and settled. Otherwise, those unresolved cases shall be relisted for trial. All parties will share the expense of mediation.

9. The panel of former judges invited to participate in the special mediation of mass tort cases are the following:

1. Jane Cutler Greenspan, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494

2. G. Craig Lord, Judge
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
(215) 569-5496

3. James R. Melinson, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494

4. Russell Nigro, Judge
210 W. Washington Square
Philadelphia, PA 19106
(215) 287-5866

5. Diane M. Welsh, Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494

10. The plaintiff firm shall designate which of the cases will proceed to trial. The defendants have the right to object to the cases selected to be tried together.

11. Immediately prior to trial of up to 3 consolidated asbestos cases, the assigned trial judge shall independently determine whether the cases will be tried in a consolidated manner based on the criteria herein above set forth and any other factors deemed relevant to the issue of consolidation and a fair trial.

12. AMENDED. **[Expediting of Cases. There shall be no expediting of cases based on exigent medical or financial reasons until the backlog of pending cases has been resolved, unless otherwise agreed by a majority of the defendants. When this Program achieves 80% of all asbestos cases resolved in 24-25 months, advanced listings based on exigent medical circumstances will be considered for plaintiffs with Pennsylvania exposure only.]** The Coordinating Judges will now accept and rule upon Petitions for advanced listings premised upon a medically verifiable prognosis of imminent death.

13. Effective May 1, 2012, the Honorable Arnold New, presently assigned to the Commerce Program, will be reassigned as a Co-Coordinating Judge of the Complex Litigation Center and will join the Honorable Sandra Mazer Moss in administrating all programs in the Complex Litigation Center. Judge Moss will assume senior status as of December 31, 2012 at which time Judge New will thereupon serve as the sole Coordinating Judge of the Complex Litigation Center and its Mass Tort Program.

14. Effective May 1, 2012, the Honorable Gary Glazer will be reassigned to the Commerce Program and will assume Judge New's commerce inventory. Judge Glazer's assignment to the Commerce Program shall not interfere or impair in any fashion his continued services to the Supreme Court as Administrative Judge of Traffic Court.

15. Throughout this year, the Court will entertain suggestions to improve these protocols. During the month of November, 2012, the Court will once again invite and consider comments from interested members of the Bar addressing these protocols and the necessity for any changes and/or modifications.

This General Court Regulation is promulgated in accordance with Pa.R.C.P. No. 239 and the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration. The original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the Administrative Judge of the Trial Division, Court of Common Pleas of Philadelphia County, and shall be submitted to the *Pennsylvania Bulletin* for publication. Copies of the General Court Regulation shall be submitted to the Administrative Office of Pennsylvania Courts, the Civil Procedural Rules Committee, American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the website of the First Judicial District of Pennsylvania: http://courts.phila.gov/regs.

By the Court

HONORABLE JOHN W. HERRON,
Administrative Judge, Trial Division

[Pa.B. Doc. No. 12-1256. Filed for public inspection July 6, 2012, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CHESTER COUNTY

Amendments to Rules of Civil Procedure

Order

And Now, this 19th day of June, 2012, the following amendments to the Chester County Rules of Civil Procedure are hereby adopted effective thirty (30) days after publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.C.P. No. 239(d). Previous local rules of civil procedure nos. 1301.1, 1302.1, 1302.2, 5003, 5003(a), 5003(b), 5003(c), 5003(d) and 5003(e) are hereby repealed as of the effective date of the following rules.

HONORABLE JAMES P. MacELREE, II,
President Judge

Rule 5003. Appeals from Real Estate Assessments.

The following rules shall apply to all appeals from a real estate assessment determined by the Board of Assessment Appeals of Chester County ("Board"). These rules apply to all appeals taken following their effective date and may be applied as appropriate to current appeals ninety (90) days after their effective date.

Definitions:

Board—The Chester County Board of Assessment Appeals.

Taxing Authority—School Districts, the County of Chester and municipalities (cities, boroughs, townships).

Party—Appellant, the Board, and any other person or entity entitled to notice of the appeal who or which enters an appearance.

Property Owner—as used herein, the term "owner" or "property owner" includes all owners of the property if there is more than one owner.

Date of Notification—date which appears as such on the decision of the Board.

Commercial Property—any property whose purpose is to generate income for its owner.

Rule 5003(a). Filing Instructions.

1. An appeal from the decision of the Board shall be filed within thirty (30) days from the date of notification.

2. Within ten (10) days after filing the appeal, the appellant shall serve a copy of the appeal on the Board, on all affected taxing authorities at their business addresses and, if the property owner is not the appellant, on the property owner at his, her, its or their registered address or addresses as shown on the tax records of Chester County.

3. Within twenty (20) days of service of the appeal, the appellant shall file an affidavit of service.

4. The Board shall automatically be a party to an appeal unless it specifically declines that status in writing. Any taxing authority or property owner entitled to be notified of an appeal may become a party to the proceedings by filing an entry of appearance within thirty (30) days of service of such notice. The entry of appearance shall be deemed to deny the allegations in the appellant's petition, except for the names of the parties and the location of the taxable property. However, any party may plead additional material by way of Answer or New Matter, as appropriate, within thirty (30) days of entering an appearance.

Rule 5003(b). Contents of Appeal.

1. Names and addresses of the taxpayer and the taxing authorities.

2. Identification of the property, including street address and tax parcel number.

3. Reason(s) for the appeal. For purposes of this section, where a challenge is based on fair market value, it shall be sufficient to state that the assessment is excessive or inadequate. Where the challenge is based on uniformity, it shall be sufficient to state lack of uniformity as the basis for the appeal.

4. Copy of any applicable decision of the Board.

Rule 5003(c). Discovery Procedures.

1. The appellant shall provide the Board and the other parties to the appeal with a copy of his, her, its or their appraisal within sixty (60) days of filing the appeal. The other parties shall then have ninety (90) days from the receipt of the appellant's appraisal to provide the appellant with a counter-appraisal. Any party may designate an appraisal submitted to the Board as its appraisal for the purposes of the appeal. Appraisals must certify that the appraiser's fee is not contingent upon the results of the appeal.

2. If a party fails to provide an appraisal within the time provided by this rule, by leave of court, or within such time as may be agreed to by the parties and approved by the Court, then, upon motion, the Court may preclude that party from presenting evidence of valuation at trial.

3. In cases involving commercial properties, the taxpayer shall provide, where applicable, the following to all other parties within thirty (30) days of filing the appeal:

(A) Income and expense statements for three (3) years prior to the appeal year;

(B) A current rent roll, including a list of tenants, rental amounts, and lease periods, and a sample lease with any special terms or renewal options;

(C) The right to inspect the property at a reasonable time with notice.

4. The names of all witnesses to be called at trial by any party, other than rebuttal witnesses later determined, shall be provided to all other parties within one hundred fifty (150) days of the date of filing of the appeal.

5. In any appeal involving a claim of exemption from real estate taxation, discovery shall be permitted as set forth in the Pennsylvania Rules of Civil Procedure and shall be governed by Pa.R.C.P. No. 4001 et seq. Discovery requests shall be served within one hundred twenty (120) days of the date of the filing of the appeal.

6. Additional discovery shall be by leave of court only.

7. The matter shall be scheduled for trial one hundred eighty (180) days from the date of the filing of the appeal.

8. Time periods may be extended for cause shown. Any party may at any time, and to obtain relief (advancement or deferral) from the automatic trial listing as set forth in paragraph 7 above must, request an administrative conference in accordance with C.C.R.C.P. No. 249.1 et seq.

Rule 5003(d). Class Action Appeal.

In all cases involving an appeal from class action certification, a full record shall be made before the Board of Assessment Appeals.

Rule 5003(e). Discontinuance.

The appeal may be discontinued only with the agreement of all parties or by leave of court.

COMPULSORY ARBITRATION

Rule 1301.1. Cases for Submission to Arbitration

(a) All civil cases at law which are now or hereafter at issue wherein the amount in controversy in each cause of action, i.e., the amount claimed in each count, stated therein, exclusive of interest and costs, does not exceed fifty thousand ($50,000.00) dollars, and which do not involve title to real property, shall be submitted to, heard, and decided by a board of arbitrators consisting of three (3) attorneys admitted to practice before the Supreme Court of Pennsylvania, actively engaged in the practice of law primarily in Chester County and who maintain an office in Chester County.

(b) The Court Administrator may in his or her discretion consolidate cases for hearing when all the cases are subject to the provisions of the arbitration rules and when they involve common questions of fact. The Court Administrator shall by letter notify all counsel and unrepresented parties of any consolidation.

(c) If the judge who has been assigned a Category A matter shall determine that the case is properly one which should be handled as an arbitration under Category C, the assigned Judge shall order the case to be placed in Category C, and the case shall thenceforth be treated as though it had been so classified as an arbitration case in the first instance. The Court Administrator shall schedule such remanded arbitration cases for hearing as soon as practicable unless otherwise ordered by the assigned Judge.

Rule 1302.1 Administration.

(a) Proceedings under the arbitration rules of this court shall be administered by the office of the Court Administrator of this court.

(b) The Court Administrator shall have the power to prescribe forms and to interpret these rules, subject to review by the court at the request of a party.

(c) In order to be considered for appointment to a board of arbitrators, an attorney admitted to practice before the Supreme Court of Pennsylvania who is actively engaged in the practice of law primarily in Chester County and who maintains an office in Chester County shall file with the office of the Court Administrator a certified arbitration registration form indicating whether or not he or she has substantial experience in civil litigation; listing the number of years of such experience and those areas of practice in which he or she has substantial litigation experience and stating if he or she is practicing alone, is a member of a firm, or is associated in some way with one or more other lawyers (either in private practice or as an employee of some public office such as the district attorney's office, public defender's office, legal aid, etc.). Any change in his or her status in this regard shall immediately be reported to the office of the Court Administrator. Upon receipt of a fully completed certified arbitration registration form, the Court Administrator shall add the name of the person submitting the form to the list of those eligible to serve as a member of an arbitration board. Boards of arbitration shall be appointed from the list of members of the bar who have filed such information. The Court Administrator shall have sole authority to determine whether an arbitrator is qualified under these rules.

(d) The chair of the board of arbitrators shall be appointed by the Court Administrator and shall be responsible for the preparation and filing of the board's report and award. All other members of the board of arbitrators shall also be appointed by the Court Administrator.

(e) The Court Administrator shall have the authority to obtain and deliver to the board of arbitrators all papers of record and shall be responsible for the return thereof to the Prothonotary when not in necessary custody of the board. The Court Administrator shall maintain such records as are necessary for the proper administration of the arbitration system, and shall give the arbitrators such assistance as may be necessary to expedite the arbitration process.

(f) The date, time and place of the arbitration hearing shall be assigned by the Prothonotary at the time a Category C action is commenced. The Court Administrator shall provide the Prothonotary with the next reasonably available date for an arbitration hearing, and the Prothonotary shall then mark that date upon the cover sheet when a Category C action is commenced. The notice of the date, time and place of arbitration hearing on the cover sheet shall include the following statement:

> "This matter will be heard by a board of arbitrators at the time, date and place specified but, if one or more of the parties is not present at the hearing, the matter may be heard at the same time and date before a judge of the court without the absent party or parties. There is no right to a trial de novo on appeal from a decision entered by a Judge."

Comment: It is anticipated that a hearing will be scheduled no less than six (6) months following the initiation of suit. The Court Administrator will be re-

quired to adjust the interval, between filing and hearing date, depending upon the availability of hearing rooms, the volume of cases to be tried and the number of panels to be assigned.

(g) Any party may for good cause object to the matter being submitted to arbitration by notifying the Court Administrator in writing with notice to all other parties. The Court Administrator shall initially make a determination as to the validity of any such objection. Any party dissatisfied with the determination of the Court Administrator shall have the right to have the matter determined by the assigned judge.

(h) All hearings shall be held in the Justice Center at West Chester, unless the arbitrators and all parties agree otherwise.

(i) It is the professional obligation of all members of the bar who qualify as outlined in these Rules to serve on boards of arbitration, unless absent or excused for good cause and compelling reason. If an arbitrator fails to appear, or appears late at the scheduled arbitration hearing without compelling reasons, his or her name shall be stricken from the arbitration list, and he or she will be so notified by the Court Administrator. He or she may be reinstated by application to the court, upon cause shown.

(j) The president judge may strike from the list of eligible arbitrators the name of any attorney who has consistently demonstrated an inability to serve in a proper manner.

Rule 1302.2 Composition of Arbitration Boards.

Each board of arbitrators shall consist of a chair, a non-chair category A and a non-chair category B attorney.

(a)(1) *Chair Requirements*

Unless otherwise agreed by the parties, the arbitration board shall be chaired by a member of the bar who has been admitted to the practice of law for at least ten (10) years and who has substantial experience in civil litigation.

(a)(2) *Non-Chair Category A Attorney Requirements*

The attorney should have five (5) years of substantial experience in civil litigation. If no attorney with five (5) years of substantial experience in civil litigation is available to serve, the Court Administrator may authorize an attorney with three (3) years of substantial experience in civil litigation to sit.

(a)(3) *Non-Chair Category B Attorney Requirements*

Any attorney qualified under these rules to serve as a member of a board of arbitrators.

(b) A list of available arbitrators who are qualified to serve as chair of arbitration boards shall be maintained by the Court Administrator.

[Pa.B. Doc. No. 12-1257. Filed for public inspection July 6, 2012, 9:00 a.m.]

WARREN AND FOREST COUNTIES

Local Orphan's Court Rules; Misc. No. 70 of 2012

Order

And Now, this 20th day of June, 2012, the Court hereby adopts the Local Orphan's Court Rules as hereinafter set forth for the 37th Judicial District comprised of Forest and Warren Counties. Said Rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further ordered that the Local Orphan's Court Rules as they existed prior to the adoption of the Rules herein set forth are hereby repealed on the effective date of the new Rules.

The Court Administrator of the 37th Judicial District is directed to:

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

2. File two (2) certified copies and one disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Orphan's Court Procedural Rules Committee.

4. File one (1) copy with the Prothonotaries of the Court of the 37th Judicial District.

By the Court

MAUREEN A. SKERDA,
President Judge

LOCAL RULES
ORPHANS' COURT DIVISION

RULE O.C.L1.
JUDGES—LOCAL RULES

Rule O.C.L1.2.1. Local Rules. Title.

These rules shall be known as the Local Orphans' Court Rules of the 37th Judicial District except where otherwise provided by a rule adopted by the Supreme Court or an act of Assembly or by general rule by special order of the Orphans' Court Division, the Rules of Court of Common Pleas of the 37th Judicial District, which by their terms purport to apply or are intended to apply to the Orphans' Court Division of said Court, are hereby incorporated by reference. All prior publications are repealed. These rules shall be cited as "37.R.O.C.L____." The elected officer of Warren County and Forest County shall constitute the Clerk of that Court.

Rule O.C.L1.2.2. Local Rules. Argument.

Matters requiring argument shall be scheduled and heard in the manner set forth by the Court Administrator.

All motions shall be supported by a statement of authority citing a statute, rule of court, or case law in support of the requested relief. The statement may be in the form of a brief filed contemporaneously with the motion or, in routine motions that do not raise complex legal or factual issues, in the body of the motion itself.

Rule O.C.L1.2.3. Local Rules. Attorneys.

(a) *Attorneys as Surety.* An attorney shall act as surety only by special order.

(b) *Notice to Counsel.* Notice by or to attorneys shall be in writing, given to the attorney of record or to an employee of the attorney's office, and shall be considered notice to the party represented unless personal notice to the party is required.

(c) *Removal of Records.* No records shall be removed from the office of the Clerk without a written order from Court. The Clerk shall report to the court any failure to comply with this order.

(d) *Appearance.* Any attorney representing a party in any proceeding in the Orphans' Court Division shall file a

written appearance with the Clerk of the Orphans Court which shall state the attorney's Pennsylvania Supreme Court Identification Number, fax number, telephone number and an address within the Commonwealth at which papers may be served. Written notice of entry of appearance shall be given forthwith to all parties.

(e) *Withdrawal of Appearance.*

(1) An attorney may withdraw an appearance for any party in proceeding in the Orphans' Court Division only in accordance with Pa.R.C.P. 1012(b) and Local Rule of Court of the 37th Judicial District L1012 and L208.3(a).

(2) An attorney may withdraw an appearance for personal representative(s) of a decedent's estate in proceedings before the Register of Wills in the following manner:

(i) By filing a written Notice of Withdrawal with the Register of Wills with the signed consent of all personal representative(s) attached or where another attorney has entered, or simultaneously enters, an appearance for the personal representative(s) before the Register of Wills; or

(ii) *With Leave of Court.* After having given twenty (20) days written notice to the personal representative(s) of the attorney's intent to withdraw and filing a certification that said notice has been given.

Rule O.C.L1.2.4. Local Rules. Sureties. Individual—Corporate.

(a) *Individual Sureties.* Individuals proposed as sureties on bonds of fiduciaries shall file affidavits on the printed forms supplied by the Clerk. The affidavits and bond shall be filed for approval by the Clerk.

(b) *Bond without Surety.* The Court may permit a party in interest to execute an individual bond, without surety upon such conditions as the Court requires.

(c) *Corporate Sureties.* Every surety company duly authorized to do business in Pennsylvania may become surety on any bond or obligation required to be filed by the Orphans' Court; provided, that a currently effective certificate issued to it by the Insurance Department of the Commonwealth of Pennsylvania, evidencing the surety's right, is filed of record.

(d) *Duty of Fiduciary.* It is the duty of the fiduciary to determine that its surety remains responsible and that any bond remains continuously in effect.

Rule O.C.L1.2.5. Local Rules. Legal Periodical.

The *Warren Times Observer* is the legal periodical for the publication of legal notices in Warren County. *The Forest Press* is the legal periodical for the publication of legal notices in Forest County.

Rule O.C.L1.2.6. Local Rules. Return Days.

Return days shall be on such day as may be fixed by Order of Court unless otherwise provided by statute or Rule of the Supreme Court.

Rule O.C.L1.3.1. Forms.

The 37th Judicial District accepts the Orphans' Court Rules found at http://www.pacourts.us/Forms/Orphans CourtForms.htm.

In addition, the forms in the Appendix shall be used as referenced by the special local rule.

RULE O.C.L2.
CONSTRUCTION AND APPLICATION OF RULES

Rule O.C.L2.1.1. Construction of Rules.

The principles of interpretation and rules of construction embodied in Pa.O.C. Rule 2.1 and Pa.R.C.P. 102 to 153, inclusive, shall apply to these rules, with the substitution in each case of the words "Warren/Forest County Orphans' Court" for the words "Supreme Court" where appropriate.

Rule O.C.L2.3.1. Definitions.

The following words, when used in these Rules, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) "Business days" shall be deemed to include Mondays through Fridays excepting weekdays when the Courthouse is closed.

(b) "Clerk" means the Clerk of Orphans' Court of Warren County or Forest County.

(c) "Common Pleas" means the Court of Common Pleas of Warren/Forest County.

(d) "Exceptions" shall mean a formal, written objection to an appraisal, report of an auditor or master appointed by the Court, or an adjudication or decree of the Court.

(e) "Objections" shall mean written objections to actions of a fiduciary.

(f) "O.C.L. Rule" shall mean the Local Orphans' Court Rules of the 37th Judicial District.

(g) "Pa.O.C. Rule" shall mean the Pennsylvania Supreme Court Orphans' Court Rules.

(h) "PEF Code" shall mean the Pennsylvania Probate, Estates and Fiduciaries Code as found in 20 Pa.C.S.A. § 101, et seq., as shall be amended from time to time.

(i) "Register" means the Register of Wills of Warren County or Forest County.

RULE O.C.L3.
PLEADING AND PRACTICE

Rule O.C.L3.1.1. Conformity to Equity Practice in General.

The pleading and practice procedures shall conform to Pa.O.C. Rule 3.1 and, where local rules do not conflict with state rules, shall conform to pleading and practice of the O.C.L. Rules, unless otherwise provided herein.

Rule O.C.L3.2.1. Petition, Answer and Reply. Pleadings.

The pleadings in matters before the Orphans' Court are limited to a petition, (including a petition for a citation or for declaratory relief), an answer (which may include new matter), a reply, preliminary objections and an answer to preliminary objections.

(a) *New Matter.* Any defense which is not a denial of the averments of fact in the petition shall be set forth under the heading "New Matter."

(b) *Preliminary Objections.*

(1) Preliminary objections are available to any party, but shall be limited to questions of:

(i) law;

(ii) form; or

(iii) jurisdiction.

(2) An answer to preliminary objections is limited to the averments of fact set forth in the preliminary objections.

Rule O.C.L3.2.2. Petition, Answer and Reply. Disposition of Pleadings.

(a) *Failure to Answer.* If the respondent is required to file an answer but fails to do so, all averments of fact in the petition may be deemed by the court to be admitted.

(b) *Failure to Reply.* If the petitioner is required to file a reply to an answer which contains new matter and fails to do so, the averments of fact set forth in the new matter may be deemed admitted and the case will be at issue.

(c) *Failure to File an Answer to Preliminary Objections.* If a party is required to file an answer to preliminary objections and fails to do so, the averments of fact set forth in the preliminary objections may be deemed admitted by the court and the case will be at issue on the preliminary objections.

Rule O.C.L3.4.1. Form of Petition. Exhibits. Consents. Additional Requirements.

(a) *Typing, Endorsements.* Every pleading shall be endorsed with the name, address, Pennsylvania Supreme Court Identification Number and telephone number and fax number (if any) of counsel and, where practicable, typewritten and double-spaced or printed. If a party is not represented by counsel every pleading shall be endorsed with the name, address and telephone number of that party.

(b) *Notice to Plead.* A notice to plead shall neither be required nor used where a return day has been fixed in a citation or order as well as in cases where Pa.O.C. Rule 3.2 applies. See also 20 Pa.C.S.A. § 764. As to any other pleading to which a response is required said pleading shall have endorsed thereon, or included therein as the first page thereof, in a conspicuous place, a notice to defend and notice to plead addressed specifically to each party from whom a response is required. The form as required by Pa.R.C.P. 1018.1 and Pa.R.C.P. 1361 (as said Rules may be in force or hereafter amended) shall be used. See Pa.R.C.P. 1026.

(c) *Signature and Verification.* All pleadings shall be signed by the attorney (if any) and verified by at least one of the parties involved. If this is impracticable, they may be signed and verified by someone familiar with the facts, in which case the reason for the failure of the parties to verify shall be set forth.

(d) *Decree.* Every proposed decree shall bear the caption of the case and shall be attached to the petition.

(e) *Consents.* The petition shall recite that all necessary consents are attached or shall set forth the names and addresses of the persons who do not consent. The Court may direct that notice be given or that a citation be directed to persons who do not consent to show cause why the prayer of the petition shall not be granted.

(f) *Paper Size.* No paper or other document may be filed in the Register of Wills or Clerk other than paper 8 1/2″ x 11″ in size. The only exception to this rule is the filing of a Will or Trust.

(g) *Cover Sheet.* All motions presented at motion court shall include a completed motion court cover sheet in the form required by the Court. See Appendix Form 3.4.

(h) *Notice Requirements Prior to Presentation at Court.* Prior to the presentation to the Court of any motion or petition requesting an immediate Order of Court, other than a Rule to Show Cause which grants no relief, opposing counsel and unrepresented parties must be given notice, subject to the following:

(1) *Contents of Notice.* The notice must give the date and time when the motion or petition will be presented to the Court and must be accompanied by a copy of the proposed motion or petition and Order.

(2) *Certification of Notice.* The motion or petition must contain a certificate signed by counsel or a party that has no counsel, verifying that proper notice was given under this rule. The certificate shall be in the same or substantially same form as the form contained in the appendix to these rules.

(3) *Length of Notice Required.* Except where otherwise required under the O.C.L. Rules and except in cases of an emergency as determined by the Court, the following notice shall be required:

(i) Two (2) full business days' notice must be given by personal delivery or facsimile transmission to each party or their counsel's office[1], or

(ii) Five (5) full business days' notice must be given if notice is by mail[2].

(4) *Failure to Give Notice.* The Court will not enter an Order on a petition or motion without the Certificate of Notice being attached unless a special cause is shown to the Court.

(i) In addition to the requirements of Pa.O.C. Rule 3.4(b), the petitioner shall also attach to the petition correct copies of all wills and contracts and shall cite the place of recording of all deeds, mortgages, or other instruments recorded or filed in Warren/Forest County, or other county, which pertain to the petition.

[1] Notice is deemed given when it is received.

[2] Mail notice is deemed given when delivered to the postal authorities.

RULE O.C.L6
ACCOUNTS AND DISTRIBUTION

Rule O.C.L6.1.1. Form of Account. Additional Requirements.

In addition to complying with the requirements of the Pa.O.C. Rules, each account shall conform to the following:

(a) Each account shall be on paper eight and one-half (8 1/2) inches wide by eleven (11) inches long with pages numbered consecutively at the bottom and fastened together at the top. A margin of at least one and one-half (1.5) inches shall be provided at the top of the first page and a margin of at least one (1) inch shall be provided at the top of all other pages.

(b) Accounts shall:

(1) Begin with a cover page;

(2) Include a Summary which shall reflect:

(i) total receipts of principal and income,

(ii) gains or losses on conversions to cash,

(iii) disbursements from principal and income, and

(iv) balance for distribution;

(3) Include an itemized statement of the assets comprising the balance for distribution, and when necessary to effect proper distribution, or when otherwise appropriate, show assets at current values as well as acquisition values;

(4) Segregate principal receipts from income receipts (the Inventory filed may be incorporated by reference as a part of the statement of principal receipts;

(5) Whenever applicable, include a statement of principal conversions to cash;

(6) Segregate disbursements of principal from disbursements of income insofar as practicable;

(7) Whenever applicable, be accompanied by a statement of proposed distribution, or a request that distribution be determined by the Court or an auditor;

(8) Have attached at the end thereof the affidavit or verification of one or more of the fiduciaries joining in the account that shall include a statement that the account is true and correct and any required advertisement of the grant of letters has been duly made; and

(9) Have attached a certificate of the attorney for the accountant or the accountant that the notice required by O.C.L. Rule 6.3.1 has been given to all parties in interest. See specimen form 6.1.1(b)(9) in Appendix.

Rule O.C.L6.3.1. Notice to Parties in Interest.

In addition to the requirements of the Pa.O.C. Rules, the notice to parties in interest shall:

(a) Conform substantially to the specimen form contained in the Appendix to these rules;

(b) State the date on which the account will be presented to the Court for confirmation nisi and absolute;

(c) Be mailed by postage prepaid, to the last known address of the persons to be notified or be served by handing a copy to the persons to be notified or to an adult member of their household;

(d) Be accompanied by a copy of the account, a copy of the statement of proposed distribution, if any, a copy of the request for the appointment of an auditor, if any; and

(e) If the notice is to a claimant, state whether or not the claim is disputed.

Written notice of the filing of an account and of the filing of a statement of proposed distribution shall be given by the accountant at least twenty (20) days prior to the date said account and/or statement of proposed distribution will be presented to the Court for confirmation nisi. Such notice shall be given to all parties entitled thereto by Pa.O.C. Rule 6.3. A copy of the statement of proposed distribution shall be attached to the notice.

Prior to the date the account and statement of distribution are to be presented to the Court for confirmation and approval, the accountant or his attorney shall file a certificate in the Court where the account and statement of distribution are filed that notice was given as required in Paragraph 1 above. A copy of the notice given shall be attached to such certificate.

Proof of publication of notice of grant of letters shall be made in a newspaper of general circulation in the County of Warren/Forest as required by Section 3162 of the PEF Code, as amended.

The notice of grant of letter shall be substantially in the following form:

(Name of Estate)

ADMINISTRATION NOTICE

Letters Testamentary on the Estate of _____, late of the _____, _____ County, Pennsylvania, having been granted to the undersigned, all persons indebted to the decedent are requested to make payment, and those having claims against said estate to present the same without delay to:

_____

(Name and address of fiduciary)

or to the attorney for executor: _____

Rule O.C.L6.3.2. Notice to Parties in Interest. When Notice Required.

For the purpose of this rule, neither a beneficiary whose only interest in the estate is that of a specific monetary legatee who has accepted payment of the full amount bequeathed to said beneficiary under the Will prior to the filing of the account, nor a beneficiary whose only interest in the estate is that of legatee of specific personal property who has accepted delivery of all personal property specifically bequeathed to the beneficiary under a Will prior to the filing of the final account, shall be deemed a beneficiary entitled to notice.

Rule O.C.L6.3.3. Notice to Parties in Interest. Notice Prior to Filing Excused.

The court, on petition of an accountant or counsel, setting forth the reasons therefore, may excuse the giving of the notice to any party in interest pursuant to this rule prior to the filing of an account; provided that no such account shall be confirmed finally until notice has been given to such interested party as provided by this rule, and proof thereof duly filed or a determination is made that the giving of such notice is impossible, or unnecessary and proper disposition of the matter is made either after hearing, audit or otherwise.

Rule O.C.L6.3.4. Notice to Parties in Interest. Advertisement of Accounts.

All accounts shall be advertised by the Clerk in the manner prescribed by law. The advertisement shall include the date that the account will be presented for confirmation nisi and shall also state that unless objections are filed within twenty (20) days after confirmation nisi, the account will be confirmed absolutely and that thereafter distribution may be made in accordance with any statement of proposed distribution filed with the account.

Rule O.C.L6.4.1. Time for Filing.

(a) All accounts and statements of proposed distribution must be filed not later than thirty (30) days prior to the regular scheduled confirmation date as published in the annual Court Calendar for confirmation nisi and absolute upon which the accountant desires to have the account and/or statement of proposed distribution submitted to the Court for approval.

(b) The Clerk shall give notice by advertisement of the time when accounts were filed and when they will be presented to the Court for confirmation nisi and absolute, stating in the advertisement that the names and capacity of the respective accountants and in conformity with Section 745 of the PEF Code and as amended.

Rule O.C.L6.6.1. Filing with the Clerk of the Orphans' Court. Accounts of Personal Representatives to be Filed in Duplicate.

Accounts of personal representatives shall be filed with the Clerk in duplicate. Following final confirmation, one copy of the accounts of personal representatives, with the dates of confirmation nisi and final confirmation noted thereon, shall be forwarded to the Register for indexing and filing with records of the proceeding in the Register's Office for that decedent.

Rule O.C.L6.9.1. Statement of Proposed Distribution. Additional Requirements.

(a) A fiduciary who is for any reason unable to file an account with a statement of proposed distribution in accordance with the requirements of the Pa.O.C. Rules, shall, in lieu thereof, file with the account a statement of

the reasons why distribution cannot be proposed which shall conclude with a request that an auditor be appointed to make distribution or the Court make such order as the circumstances require.

(b) A statement of proposed distribution may be filed with the account but shall begin on a page separate from the account which it accompanies. It shall contain the name of the persons to whom it is proposed to award the balance for distribution, the amount or share awarded to each, and a brief statement of the nature and reasons for the proposed awards.

(1) If the proposed distribution is the subject of a dispute, or if it involves any fairly disputable question known to or reasonably ascertainable by the accountant, the accountant shall include in the statement of proposed distribution a statement of the dispute or fairly disputable questions, together with a statement by the accountant of the facts on which the accountant relies, in separate paragraph form, and on a separate page the law upon which the accountant relies which appears to justify the proposed distribution.

Rule O.C.L6.10.1. Objections to Accounts and Statements of Proposed Distribution.

(a) All objections to a fiduciary's account shall be filed in writing with the Clerk five (5) days before the confirmation date of the account and a verified copy of the objections shall be served by the exceptant on the accountant and the accountant's counsel of record. Such copy shall be served as provided by Pa.O.C. Rule 5.1 within five (5) days of the date of filing of the objections.

(b) The accountant or any other party in interest may file a motion to the Court requesting the appointment of an auditor to resolve the issues raised in the objections. If such motion is filed, the Court shall appoint an auditor to hear and determine the objections, as provided in Pa.O.C. Rule 8.

Rule O.C.L6.11.1. Confirmation of Accounts. Awards.

(a) No account and/or statement of proposed distribution shall be confirmed unless:

(1) The accountant has mailed or given to each distributee or his attorney of record a complete account and written notice of the filing thereof.

(2) The accountant has given notice to each unpaid creditor, whether or not payment is contested.

(3) Said notice shall be by ordinary mail and notice given ten (10) days before the proposed confirmation date. Said notice shall inform the recipient that if they disagree with the account and/or the proposed distribution they may file exceptions in writing with the Clerk five (5) days before the account is to be confirmed absolute.

(b) All accounts presented to the Court by Executors, Administrators, Guardians or Trustees shall be filed with the Clerk on or before the Friday preceding the first Monday of the months of January, April, July and October of each year.

Upon the first Wednesday of February, May, August and November of each year accounts of Executors, Administrators, Guardians and Trustees shall be presented to the Court at 9:00 a.m. for confirmation nisi and shall become absolute as of course unless exceptions are filed thereto within thirty (30) days thereafter.

All fiduciaries shall give not less than ten (10) days written notice to parties in interest in accordance with the Pa.O.C. Rule 5.3 and any amendment thereof.

Rule O.C.L6.11.2. Confirmation of Accounts. Awards. Certification. Real Estate Distributed in Kind.

When distribution of real estate in kind is awarded pursuant to a statement of proposed distribution, the Clerk, following confirmation absolute and at the request of any party in interest, shall excerpt those portions of the decree affecting title to real estate and certify the same for recording in the office of the Record of Deeds of the county in which such real estate is situated.

Rule O.C.L6.12.1. Status Report by Personal Representative.

The Status Report by Personal Representative shall be filed in the form contained in the Appendix. (Form RW-10 of the Pa.O.C. Rules.)

RULE O.C.L7. EXCEPTIONS

Rule O.C.L7.1.1. Exceptions. Place of Filing.

(a) Exceptions, whether to an order or decree, account, auditor's report, master's report, or appraisement, shall be in writing filed with the Clerk.

(b) Exceptions shall be set forth in consecutively numbered paragraphs, each paragraph raising but one issue, and stating the ground or grounds thereof. Exceptions shall be signed by the exceptant or the exceptant's attorney.

RULE O.C.L8. AUDITORS AND MASTERS

Rule O.C.L8.1.1. Notice of Hearings.

(a) The auditor or master shall fix a date, time and place for hearing and shall give written notice to the accountant or petitioner and all parties in interest or their counsel of record of the hearing by first class mail at least twenty (20) days prior thereto. In the event notice cannot be given in such manner, notice shall be given by advertisement one time in the *Warren Times Observer* for Warren County and *The Forest Press* for Forest County and one time in a newspaper of general circulation in the county where the decedent resided. The date of publication shall be at least twenty (20) days prior to the hearing.

(b) The notice shall include the following:

(1) The caption and number of the case;

(2) The fact and date of appointment;

(3) The name of the fiduciary of the estate;

(4) The time and place of hearing;

(5) A general statement of the matters to be determined; and

(6) The signature and the typewritten name, address and telephone number of the auditor or master.

Rule O.C.L8.1.2. Notice of Hearings. Appointment.

(a) *Auditors, Masters.* A master may be appointed by the Court, on its own motion, or upon the petition of the accountant, or of any party in interest.

(b) Auditors and masters shall be members of the Bar of this Court.

(c) The appointed official shall regulate all of the proceedings before him/her in accordance with the rules of law and evidence in the Commonwealth and shall have the authority to administer an oath before testimony.

(d) The hearings may be continued or adjourned from time to time for cause shown or upon agreement of all

parties present, but each continuance or adjournment shall be to a day certain not more than thirty (30) days distant.

(e) The official shall have the authority to issue subpoenas and subpoenas duces tecum for all witnesses to appear and testify.

(f) The official shall have the authority to retain experts in any given field to assist the official in the performance of the appointed duties. The cost of same shall be imposed either on the estate or as the official shall determine is just and proper.

(g) The official shall cause a stenographic record to be made of all hearings prepared by an official court reporter. Examination of witnesses shall be conducted by counsel, if any, or by the respective parties or by the official as the official may determine in the absence of counsel. If a witness or a question is objected to, or if any documentary or other evidence is objected to, the offer and purpose of such testimony shall be made a matter of record as well as the objection and the ground for said objection and the official's ruling thereon. If the official sustains the objection the official shall, nonetheless permit the question and answer to be made of record so that same may be preserved for subsequent ruling by the Court in the event exceptions are taken to the report.

(h) At the conclusion of the hearing any party who has entered a formal appearance may submit proposed findings of fact and conclusions of law and/or briefs for the purposes of aiding or guiding the official; provided, however, that copies of such submissions shall be delivered or mailed to each person who has appeared in the proceedings in person or by counsel.

Rule O.C.L8.6.1. Notice of Filing Report. Exceptions.

(a) The auditor or master shall notify all parties of the filing of the report and furnish all parties with a copy thereof. Return of notice shall be filed in accordance with Pa.O.C. Rule 5.4.

(b) Any party in interest shall have the right to file exceptions to an auditor's report or to a master's report within twenty (20) days after the date of service upon that party.

(c) The official shall file the report within ninety (90) days of the appointment; provided, however, that an extension will be permitted by the Court upon application of the official for good cause shown in complicated involved cases. Should the official fail to file the report within the time limits or extensions herein, the appointment may be vacated and compensation and reimbursement for services rendered or expenses incurred may be denied.

(d) Upon completion of the report the official shall file it in the office of the Clerk and shall forthwith give notice in writing to counsel for all parties who appear formally during the proceedings and to such parties as appear without counsel, that the report has been filed. Said notice shall inform all parties that unless exceptions are filed within twenty (20) days from the date of filing of the report, it will be presented to the Court for confirmation absolute as of course.

(e) Exceptions filed must point specifically to the error of fact or law complained of and state clearly the grounds for the objections thereto in separate paragraph form with one issue raised in each paragraph. General and vague exceptions will not be considered, nor may they be argumentative. Where the exception is in the nature that the official failed to find a fact, the exception shall state the nature of the fact the official should have found and shall give reason to support it from the record and shall specifically identify the fact not found in the record.

(f) Any party filing exceptions to the report shall, by ordinary mail, serve a copy thereof upon the official and all counsel or parties without counsel who have appeared formally in the proceedings.

(g) In the event exceptions are filed, the Clerk shall forthwith transmit the proceedings to the Court Administrator for further scheduling for a hearing thereon or argument as the Court may determine. No exceptions will be heard which are not timely filed. The Court may, in its discretion, remand the report to the auditor for further proceedings if appropriate.

(h) The official shall verify in the report that written notice has been given to counsel of record who have filed formal appearance in the proceedings and to such other parties as shall have appeared without counsel.

Rule O.C.L8.7.1. Confirmation of Report.

(a) If no exceptions are filed to the official's report within twenty (20) days of the date of filing, the Clerk shall transmit the report to the Court for confirmation as of course. When confirmed, the statement of proposed distribution found in the auditor's report shall become the decree of distribution.

(b) If exceptions are filed to the official's report, the Court shall hear the exceptions de novo or upon argument as may be appropriate, depending on the nature of the exception and either (a) confirm the official's report, whereupon the statement of proposed distribution found in the auditor's report shall become the decree of distribution, or (b) if the official has made an error of law or an abuse of discretion, modify the report and enter an appropriate decree of distribution.

(c) The Court's decree in disposition of exceptions to the official's report shall be initially in the form of a decree nisi and, if no exceptions are filed thereto, shall be made absolute of course.

Rule O.C.L8.8.1. Security for Expenses and Fees. Absolute Confirmation. Auditor's and Master's Expenses and Fees.

No nisi confirmation or decree nisi shall be confirmed absolutely by the Clerk until all expenses and auditor's or master's fees have been paid to the Clerk. Upon absolute confirmation, the Clerk shall pay all expenses and the balance of the auditor's or master's fee to the auditor or master. See 20 Pa.C.S.A. § 752.

Rule O.C.L8.8.2. Security for Expenses and Fees. Compensation of Auditor or Master.

Any auditor or master appointed by the Court under these rules shall be compensated by reasonable fees as fixed by the Court and paid from such sources as the auditor or master shall recommend and the Court shall direct. The Court may require payment of the auditor's or master's fees in advance as addressed in Pa.O.C. Rule 8.8.

RULE O.C.L9. OFFICIAL EXAMINERS

Rule O.C.L9.1.1. Appointment of Official Examiners. Appointment and Ordinary Duties.

The Court may appoint by special Order an official examiner or examiners who shall examine the assets held by any fiduciary and make full written report thereon to the Court showing what assets belong to the estate, how

they are registered or otherwise earmarked as the property of the estate to which they belong, and where and how the cash belonging to the estate is kept or deposited.

Rule O.C.L9.1.2. Appointment of Official Examiners. Special Duties.

The Court may, in any Order appointing an examiner or examiners, also request the examiner or examiners to accomplish one or more of the following:

(a) Determine, in the case of a trust, if its purposes are being carried out;

(b) Determine, if the funds and assets in the hands of the fiduciary are being used or applied in accord with any trust instrument, will, applicable statute, regulation or court order;

(c) Make a written report including findings of fact, conclusions of law, and, when appropriate, recommendations for the consideration of the Court; and

(d) Such other matters as the Court may designate.

Rule O.C.L9.1.3. Appointment of Official Examiners. Compensation.

Examiners shall be allowed such fees from principal or income, or apportioned between principal and income, as may be directed by the Court.

RULE O.C.L10. REGISTER OF WILLS

Rule O.C.L10.2.1. Appeals from the Register of Wills. Petition.

Appeals taken from a judicial act or proceedings before the Register of Wills shall be addressed to the Orphans' Court with the appropriate caption. The appeal shall be in petition form. The petition shall set forth:

(a) The caption;

(b) A heading indicating briefly the purpose of the petition;

(c) The nature of the proceedings before the Register;

(d) A copy of any will or instrument in controversy;

(e) A statement of the facts and circumstances upon which appellant relies;

(f) A precise statement of the questions of law or of fact involved;

(g) The names and addresses of all parties in interest; and

(h) A prayer for the relief desired.

When an appeal petition has been filed with the Court, the Register shall cause the record to be certified to the Court and properly docketed with the Orphans' Court. When an appeal has been perfected from a judicial act or proceeding before the Register and the record has been certified as provided, a citation shall issue as of course, without petition executed by the Court, directed to all persons named in the appeal to show cause why the appeal should not be sustained and the decision complained of set aside. Said citation shall contain a date and time certain for hearing on the appeal.

Rule O.C.L10.2.2. Appeals from the Register of Wills. Bond.

If the Court requires that a bond be furnished, the appellant shall file a bond and secure its approval by the Register of Wills. If the bond is not presented within the time indicated by the Court, the Clerk, upon praecipe of the appellee(s), shall order a judgment of non pros.

Rule O.C.L10.2.3. Appeals from the Register of Wills. Jury Trial.

A party or person entitled to and desiring a trial by jury shall make timely demand therefore in accordance with PEF Code.

Rule O.C.L10.2.4. Appeals from the Register of Wills. Subpoenas.

Subpoenas, with or without a clause of duces tecum, shall be issued by the Clerk.

RULE O.C.L12. SPECIAL PETITIONS

Rule O.C.L12.0.1. Settlement of Small Estates.

(a) *Form of Petitions. Contents.* Petitions under PEF Code § 3102, as amended, for the settlement of small estates shall set forth:

(1) The name and address of the petitioner and the relationship of the petitioner to the decedent.

(2) The name, date of death and domicile of decedent, whether the decedent died testate or intestate, the date of the probate of the Will and of the grant of letters, if any, and whether the personal representative has been required to give bond and, if so, the amount.

(3) The names and relationship of all beneficiaries entitled to any part of the estate under the Will or intestate laws, a brief description of their respective interests, whether any of them has received or retained any property of the decedent by payment of wages under PEF Code § 3101 and whether any of them are minors, incapacitated or deceased with the names of their fiduciaries.

(4) The person or persons, if any, entitled to the family exemption; whether or not the individual was a member of the same household as the decedent at the time of decedent's death; and, if a claim thereof is made in this petition, any additional facts necessary to establish the prima facie right thereto.

(5) An inventory of the real and personal estate of the decedent, with values ascribed to each item, either incorporated in the petition or attached as an exhibit.

(6) An itemization of all administrative costs, funeral expenses and debts of the decedent and whether or not any of these have been paid.

(7) A list showing the nature, amount and preference of all unpaid claims against the estate and indicating which are admitted.

(8) A calculation of the inheritance tax due, if any.

(9) That ten (10) business days' written notice of intention to present the petition has been given to every unpaid beneficiary, heir or claimant who has not joined in the petition, or to the Attorney General, if the decedent's heirs are unknown, and to every unpaid claimant or creditor.

(10) A prayer for distribution of the property, setting forth the persons entitled and their distributive shares.

(b) *Required Exhibits.* The following exhibits shall be attached to the petition:

(1) The original of the decedent's Will, if it has not been probated, or a copy if the original has been probated;

(2) Joinders of unpaid beneficiaries, heirs, claimants and creditors insofar as they are obtainable;

(3) A statement from the inheritance tax department showing the status of the inheritance tax, if any tax is due;

(4) A certification that a copy of the proposed petition and decree has been given to all beneficiaries and unpaid creditors at least ten (10) business days prior to presentation of the petition; and

(5) Written confirmation by the Pennsylvania Department of Public Welfare of the amount of any claim for assistance provided to the decedent.

Rule O.C.L12.1.1. Family Exemption. Additional Requirements.

(a) *Additional Contents of Petition.* In addition to the matters required by Pa.O.C. Rule 12.1, a petition for the family exemption shall also set forth:

(1) The name, residence and date of death of the decedent;

(2) The petitioner's name, address and relationship to the decedent, and whether the petitioner was a member of the same household as the decedent on the date of decedent's death;

(3) If the petitioner is the surviving spouse, the date and place of the marriage, and if a common law marriage is asserted, all averments necessary to establish the validity of the marriage;

(4) Whether the decedent died testate or intestate;

(5) Whether, when and to whom letters were granted, and what letters were granted;

(6) The names, relationship to the decedent, and addresses of those interested in the estate; and

(7) The location and value of the property claimed.

(b) *When Appraisal Unnecessary.* Unless otherwise directed by the Court, no appraisal shall be required if the exemption is claimed from:

(1) Cash or from stocks, bonds, securities or other **choices** in action which have an immediate determinable market value.

(2) Real estate or personal property, the value of which is agreed to by all parties in interest that are sui juris, or if not sui juris, the fiduciaries for such incompetents.

In all other cases, an appraisal shall be necessary, unless specifically excused by the Court.

(c) *Procedure for Appraisal.*

(1) If an appraisal is necessary, the Court shall appoint two appraisers in accordance with Section 3123 of the PEF Code. After appointment, the appraisers shall submit to the Court their appraisal within thirty (30) days of appointment. A copy of the appraisal shall be served by the appraisers on the personal representatives, or if there is no personal representative, then as the Court shall direct. Such person shall immediately give notice to all parties in interest who would be adversely affected by the allowance of the exemption. Interested parties shall have ten (10) days from the date of notice to file objections with the Court. If objections are filed, the matter shall be referred to the Court for further disposition.

(2) Upon the filing of the appraisal, notice thereof shall be given to the personal representative, and to the next of kin, and if there be neither personal representative nor the next of kin, to the Attorney General. The notice shall contain a copy of the petition and the appraisal, and a statement that nisi confirmation of the appraisal and the setting apart of the real estate to the surviving spouse will be requested and may be allowed by the Court at a stated time, and unless exceptions are filed thereto, confirmed absolutely ten (10) days thereafter. Said notice shall be given not less than ten (10) days prior to the date set for nisi confirmation. If the address or whereabouts of any of the next of kin is unknown, notice shall be given in such manner as the Court shall direct.

(3) *Confirmation and Setting Apart of Allowance.* Unless exceptions are filed to the nisi confirmation, the appraisal and award of real estate shall be confirmed absolutely by the Clerk without further order of Court.

(4) *Exceptions.* Exceptions to an appraisement shall be filed with the Clerk within ten (10) days after nisi confirmation. Copies of the exceptions shall be served on the fiduciary, if any, and on the spouse or the attorney for the spouse, within five (5) days after filing. If exceptions are filed, the matter may be placed on the Argument list in accordance with the Local Rules of Civil Procedure of the 37th Judicial District.

Rule O.C.L12.1.2. Family Exemption. Voluntary Distribution.

When the personal representative, at his/her own risk delivers assets of the estate in satisfaction of the exemption, he/she shall set forth the same as a credit in the account. The same may be the subject of objection by any claimant or party in interest.

Rule O.C.L12.2.1. Allowance to Surviving Spouse of Intestate. Additional Requirements.

(a) *Contents of Petition.* In addition to complying with the Pa.O.C. Rules, a petition for the allowance to the surviving spouse of an intestate shall also set forth in separate paragraphs:

(1) The information required in a petition for family exemption under O.C.L. Rule 12.1.1, as far as appropriate; and

(2) That ten (10) days prior notice of the intended presentation of the petition has been given to the personal representative; or, if no personal representative has been appointed, to those interested as next of kin; and, if there be no next of kin, to the Attorney General.

(b) *Exhibits.* The following exhibits shall be attached to the petition;

(1) A copy of the inventory and appraisement; and

(2) An affidavit or verification of service/return of notice.

Rule O.C.L12.2.2. Allowance to Surviving Spouse of Intestate. Conclusiveness of Averments.

If the averments of the petition are contested by any party in interest as to the right of the spouse to the allowance being claimed, the matter may be referred to an auditor, or to a Hearing Judge.

Rule O.C.L12.2.3. Allowance to Surviving Spouse of Intestate. Appraisal. Notice. Practice and Procedure.

The appraisers shall, within thirty (30) days after their appointment, file with the Clerk an appraisal of the property claimed.

Rule O.C.L12.2.4. Allowance to Surviving Spouse of Intestate. Revocation, Vacating and Extension of Time for Filing of Surviving Spouse's Election.

(a) A petition for extension of time in which the surviving spouse may file an election to take against the

will or other conveyances shall be in paragraph form alleging facts relied upon to justify the extension.

(b) The Petition shall be filed with the Clerk and petitioner shall give at least ten (10) days written notice of intention to request the extension to all persons adversely affected thereby who do not join in the prayer of the petition.

Rule O.C.L12.5.1. Appointment of a Guardian for the Estate or Person of a Minor. Guardian of Minors. Appearance Before the Court.

If the minor is over fourteen (14) years of age, the minor shall appear in person at the presentation of the petition and verify his/her nomination of a guardian as set forth in the petition. The Court may excuse the minor's appearance upon good cause shown.

Rule O.C.L12.5.2. Appointment of a Guardian for the Estate or Person of a Minor. Information Required from Counsel.

In addition to the information required by the Pa.O.C. Rules, the petition for the appointment of a guardian shall contain the following information:

(a) The total amount of the assets; and

(b) Whether or not the minor resides in the same household with the proposed guardian.

Rule O.C.L12.5.3. Appointment of a Guardian for the Estate or Person of a Minor. Minor's Estate. Allowance.

When a petition is necessary for an allowance from a minor's estate, the petition shall set forth:

(a) The manner of the guardians' appointment and qualification, and the dates thereof;

(b) The age and residence of the minor, whether the minor's parents are living, the name of the person with whom the minor resides, and the name and age of the minor's spouse and children if any;

(c) The value of the minor's estate, real and personal, where located and the net annual income;

(d) The circumstances of the minor, whether employed or attending school, and, if the minor's parents are living, the reason why the parents are not discharging their duty of support or able to pay the requested allowance for the minor;

(e) The date and amount of any previous allowance by the Court;

(f) The financial requirements of the minor and the minor's family unit, in detail, and the circumstances making such allowance necessary, including whether there is adequate provision for the support and education of the minor, spouse and children; and

(g) If the petition is presented by someone other than the guardian, that demand was made upon the guardian to act, and the reason, if known, for the guardian's failure to do so, together with proof of notice to the guardian of the filing of the petition.

Rule O.C.L12.6.1. Appointment of a Trustee. Exhibits.

The following exhibits shall be attached to the petition:

(a) A copy of the trust instrument; and

(b) The written consent of the trustee or trustees.

Rule O.C.L12.7.1. Discharge of a Fiduciary and Surety. Additional Provisions.

(a) *Affidavit or Verification.* The affidavit or verified statement to the petition shall include an averment that the parties who have signed the consents to discharge are all the parties interested in the estate, or the reason for the failure of any party to consent. If any party shall fail to consent, the Court may, if the circumstances require, direct the issuance of notice by citation or otherwise.

(b) *Exhibits. Consents.* Written consent of all parties in interest, and of the surviving or successor fiduciary, shall be attached to the petition. Such consent may be included in a satisfaction of award attached to the petition.

(c) *Discharge of a Personal Representative.* When the value of the gross real and personal estate of a decedent does not exceed the value of the statutory limitation, the personal representative, after the expiration of one (1) year from the first complete advertisements of the grant of letters, may present a petition to the Court with an account attached under the provisions of Section 3531 of the PEF Code (20 Pa.C.S.A. § 3531). The petition shall conform as far as practicable to the requirements of a petition under Pa.O.C. Rule 12.7.

Rule O.C.L12.9.1. Public Sale of Real Property. Contents of Petition. Additional Requirements.

(a) *Personal Representative.* A petition by a personal representative to sell real property at public sale, under Section 3353 of the PEF Code shall set forth in separate paragraphs:

(1) The name, residence and date of death of the decedent, whether the decedent died testate or intestate and the date of the grant of letters;

(2) That the personal representative is not otherwise authorized to sell by the PEF Code, or is not authorized or is denied the power to do so by the Will, or that it is desirable that the sale have the effect of a judicial sale, stating the reasons;

(3) Whether an inventory and appraisement have been filed, the total value of the property shown therein, and the value at which the real property to be sold was included therein;

(4) If the personal representative entered bond with the Register, the name of the surety and the amount of such bond;

(5) The names and relationships of all parties in interest, a brief description of their respective interests, whether any of them are minors, adjudicated incapacitated or deceased, or, if so, the names and the record of the appointment of their fiduciaries, if any;

(6) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value if applicable and current common level ratio value; and

(7) Sufficient facts to enable the Court to determine that the sale is desirable for the proper administration and distribution of the estate.

(b) *Trustee.* A petition by a trustee to sell real property at public sale, under PEF Code § 3353, shall also set forth in separate paragraphs:

(1) How title was acquired, stating the date and place of probate of the Will or recording of the deed;

(2) A recital of the relevant provisions of the Will or deed pertaining to the real property to be sold, and the history of the trust;

(3) The names and relationships of all parties in interest; a brief description of their respective interest; whether any of them are minors, adjudicated incapacitated or deceased, and if so, the names and record of appointment of their fiduciaries if any;

(4) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value if applicable and current common level ratio value;

(5) That the trustee is not otherwise authorized to sell by the PEF Code or is denied the power by the trust instrument or that it is advisable that the sale have the effect of a judicial sale, stating the reason; and

(6) Sufficient facts to enable the Court to determine that the proposed sale is for the best interests of the trust.

(c) *Guardian of Minor.* A petition by a guardian to sell real property at public sale, under PEF Code § 3353, shall set forth in separate paragraphs:

(1) The age of the minor;

(2) The names of the minor's next of kin and the notice given them of the presentation of the petition;

(3) How title was acquired, stating the date and place of probate of Will or recording of the deed;

(4) A recital of the provisions of the Will or deed relating to the real property to be sold;

(5) The nature and extent of the interest of the minor, of the guardian and of third persons in the real property;

(6) A full description of the real property to be sold, the improvements thereon, by whom it is occupied, its rental value and current common level ratio value; and

(7) Sufficient facts to enable the court to determine that the proposed sale will be in the best interest of the minor.

(d) *Guardian of Incapacitated Person.* A petition by a guardian to sell real property at public sale, under PEF Code § 3353, shall set forth in separate paragraphs the same information as required for the sale by a guardian of a minor with sufficient additional facts to enable the Court to determine that the proposed sale will be in the best interest of the incapacitated person.

Rule O.C.L12.9.2. Public Sale of Real Property. Exhibits.

The following exhibits shall be attached to the petition by a personal representative, trustee or guardian to sell real property at public sale:

(a) Certification that ten (10) business days' notice has been given to those parties who do not consent or join; and

(b) Consent by any mortgagee whose lien would otherwise not be discharged by the sale.

Rule O.C.L12.9.3. Public Sale of Real Property. Notice.

After allowance of a petition for public sale of real estate, the petitioner shall, in addition to such notice as may be required to be given by law, give notice of the sale to each interested party, including every unpaid creditor by first class mail, if known. Such notice shall be given at least twenty (20) days prior to the date of the proposed sale. In addition, notice of the sale shall be advertised one (1) time in a newspaper of general circulation in the appropriate county and such notice shall contain:

(a) The size of the property, either by acreage or square feet if known, the street or road location and reference to any landmarks that may identify the property;

(b) A list of all improvements on the property and the nature thereof;

(c) A deed description or surveyor's description of the property, if any;

(d) The name of the grantee of the last recorded deed of the subject premises, together with the Deed Book and page of the record; and

(e) The recorded liens thereon and the identity of the secured party.

Rule O.C.L12.9.4. Public Sale of Real Property. Notice. Confirmation.

(a) *Notice.* After the allowance of a petition for public sale, notice in approved form of the proposed sale shall be given in the manner provided by Pa.O.C. Rule 5.1.

(b) *Confirmation.* If no objection is filed, the Court may enter a decree confirming the sale upon submission of a return of sale.

Rule O.C.L12.9.5. Public Sale of Real Property. Security.

On the return day of the sale, the Court, in the decree approving or confirming the sale, may fix the amount of security or additional security which the personal representative, trustee or guardian may be required to enter or will excuse the fiduciary from entering additional security.

Rule O.C.L12.10.1. Private Sale of Real Property or Options Therefor. Contents of Petition. Additional Requirements.

Where the power to sell real property is not granted by will, trust instrument or statute, a petition by a personal representative, trustee or guardian to sell real property at private sale shall also conform as closely as practicable to all requirements of these rules with regard to a petition to sell real property at public sale by the fiduciary.

Rule O.C.L12.10.2. Private Sale of Real Property or Options Therefor. Exhibits.

The following exhibits shall be attached to the petition by a personal representative, trustee or guardian to sell real property at private sale:

(a) Certification that twenty (20) business days notice has been given to those parties who do not consent or join;

(b) A copy of the agreement of sale; and

(c) Affidavits in the form required by Pa.O.C. Rule 12.10(b) unless otherwise ordered by the Court.

Rule O.C.L12.10.3. Private Sale of Real Property or Options Therefor. Security.

The Court, in the decree approving or confirming the sale, may fix the amount of security or additional security which the personal representative, trustee or guardian may be required to enter or may excuse the fiduciary from entering additional security.

Rule O.C.L12.10.4. Private Sale of Real Property or Options Therefor. Petition to Fix or Waive Additional Security. Personal Representatives.

(a) *Form of Petition.* In a sale, whether public or private, of real estate by a personal representative acting without benefit of an Order of Court, directing or authorizing such sale, but who was required to give bond, the

personal representative shall present a petition to the Court before the proceeds of the sale are paid by the purchaser setting forth:

(1) The date of death of the decedent;

(2) The date of the grant of letters to the petitioner;

(3) The amount of the bond or bonds filed by the petitioner, the date of such filing and the name or names of the surety;

(4) The total valuation of the personal estate as shown on the inventory and appraisement, if any, and the total proceeds of any real estate sold previously;

(5) A short description of the real property sold, the name(s) of the purchaser(s), the amount of the consideration to be paid and the terms of the sale;

(6) A list of all liens of record known to petitioner, including mortgages, delinquent taxes, judgments, etc. and the names and relationships of all parties in interest with a brief description of their respective interests; and

(7) A prayer for an Order fixing the amount of additional security or for an Order excusing the filing of additional security.

(b) *Surety on Additional Bond.* The surety on any additional bond, except for cause shown, shall be the same as on the original bond.

Rule O.C.L12.12.1. Inalienable Property.

In addition to the requirements of PEF Code Chapter 83 and Pa.O.C. Rule 12.12, in the case of:

(a) *Public Sale.* The content of the petition, required exhibits, notices, confirmation and security shall conform to the requirements of O.C.L. Rules 12.9.1 through 12.9.4.

(b) *Private Sale.* The content of the petition, required exhibits, provisions as to higher offers, security and petitions to fix or waive additional security shall conform to the requirements of O.C.L. Rules 12.10.1 through 12.10.4.

RULE O.C.L13. DISTRIBUTION—SPECIAL SITUATIONS

Rule O.C.L13.3.1. Report by Fiduciary.

The report contemplated by Pa.O.C. Rule 13.3 shall be submitted in compliance with the following requirements. Whenever the identity or whereabouts of a distributee is unknown, or that if distribution is made, the beneficiary would not have the actual benefit, use, enjoyment or control of the money or other property awarded, and the court is requested to withhold distribution or to make a provisional award thereof to the accountant, to the Clerk, or the State Treasurer through the Department of Revenue, or in a manner other than to the distributee or the nominee of said distributee, the fiduciary or counsel shall submit to the court or auditor, as the case may be, a written report outlining the investigation made and the facts upon which the request is based.

(a) *Unknown Distributee.* If it appears that the existence, identity or whereabouts of a distributee is unknown, or if there are no known heirs:

(1) The report shall be filed together with a petition for rule to show cause, seeking permission of the Court to publish service by publication addressed to any known distributee(s), or if none are known, then to the heirs, beneficiaries, successors and assigns of the decedent, trust or fund. Publication, if authorized by the Court, shall be carried out in accordance with Pa.O.C. Rule 5.1(c). The return date and time of the rule to show cause shall be included in the publication of notice. If persons shall appear in response to said notice, the Court may conduct an evidentiary hearing to determine the identity of the proper distributee(s).

(2) The contents of said report shall include:

(i) The nature of the investigation made to locate the distributee(s) in full detail;

(ii) If applicable to the determination of distributee(s) identity, a complete family tree in as much detail as possible, supported by as much documentary evidence as the petitioner has been able to obtain;

(iii) A statement that investigation was made by as many of the following means as are available and feasible: questioning of members of the household of the decedent or settlor, and/or friends, neighbors and/or known relatives thereof; officers and members of groups, unions, social or fraternal organizations to which decedent or settlor belonged; contacting employers and/or co-workers; examining church, insurance, school and voters registration records; Veteran's Administration and Social Security records; naturalization records if not a native born citizen; telephone and electronic media such as internet listings; and such other sources as the circumstances suggest; and

(iv) The petition and report shall be verified by the fiduciary and/or by counsel where counsel conducted the investigation.

(3) If, after notice by publication, such evidentiary hearing as the Court may choose to conduct, the distributee cannot be ascertained, the Court shall cause distribution to be made to the Clerk, with notice to the Attorney General of the Commonwealth and the fund shall be considered subject to escheat under 27 P. S. § 332 or such similar act as may then be in effect; or the Court may make such other distribution that is proper under the law and rules.

(b) *Non-resident or Foreign Distributee.* If the fiduciary determines that a non-resident distributee shall not be able to receive or to enjoy the actual benefit of the interest due thereto, the fiduciary shall submit a petition and report setting forth:

(1) Identity, relationship and address for the distributee;

(2) Such supporting information as the circumstances require, such as a family tree in as much detail as possible, supported by as much documentary evidence as the petitioner has been able to obtain;

(3) Reason(s) for the request that distribution be withheld or postponed, together with a proposed plan for the securing of the fund, identity of a continuing fiduciary and when possible, the time or event the occurrence of which will make distribution possible;

(4) To the extent possible, notice shall be given to the distributee or where applicable, to the guardian, parent, next friend or party having custody of the distributee, and any other party required by rule or statute; and

(5) Continuing custody or distribution shall be decided in keeping with 20 Pa.C.S.A. § 4111 and 4112 and/or such other act as may then be in effect.

Upon filing of such petition the Court shall cause the distribution to be made to the Clerk in the name of the proposed distributee with notice to the Attorney General of the Commonwealth and the funds shall be considered for distribution under the escheat laws of the Commonwealth if they cannot otherwise be delivered to the

distributee or, as the law may provide, on the distributee's death to the distributee's heirs.

RULE O.C.L14. GUARDIANSHIP OF INCAPACITATED PERSONS

Rule O.C.L14.2.1. Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person. Petition.

A petition to adjudicate a person incapacitated and to appoint a guardian shall set forth:

(a) All matters required by Pa.O.C. Rule 14.2;

(b) Whether the petition seeks limited or plenary guardianship, and what powers are sought for a limited guardian;

(c) Whether the proposed guardian wishes approval of any initial expenditures of funds at the hearing;

(d) Whether the alleged incapacitated person executed a durable Power of Attorney and the name and current address of the attorney in fact;

(e) Whether the alleged incapacitated person executed a Will or other testamentary document and the location of the original document;

(f) Whether the alleged incapacitated person executed a Living Will, advance health care directive or similar document and the location of the original document;

(g) The name of the attorney who has represented the person in the recent past; and

(h) Where appropriate state therein the name of the proposed guardian and if an individual, the relationship, if any, to the alleged incompetent; any fee arrangements and costs to be paid the proposed fiduciary and any interest the proposed fiduciary may have to the incompetent's estate, if any.

Rule O.C.L14.2.2. Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person. Hearing.

The Court shall fix a date for hearing which shall not be less than ten (10) days after the service of the petition and citation.

The petition shall comply with all of the mandates of Pa.O.C. Rule 14.2; however, if it is alleged that the incompetent is unable to attend court for any reasons, the petitioner, at time of hearing, must make a part of the record a physician's report dated within ten (10) days of the hearing that the physician has examined the alleged incompetent and in the medical opinion of the physician the incompetent is not physically able to attend the hearing or if did attend would not be communicative or recognize the nature of the proceedings.

At the hearing the Court shall determine the amount, if any, of a bond to be placed by the fiduciary with the Court and the nature thereof.

Rule O.C.L14.2.3. Adjudication of Incapacity and Appointment of a Guardian of the Person and/or Estate of an Incapacitated Person. Qualifications of the Guardian.

(a) The class of persons from which a guardian may be appointed shall be as set forth at 20 Pa.C.S.A. § 5511(f).

(b) Non-residents: The Court, except in special circumstances, will not appoint non-residents as guardians of the estate of incapacitated persons residing within the county.

Rule O.C.L14.3.1. Review Hearing. Petition.

A petition to adjudicate whether there has been any significant change in the capacity of a person who was formerly adjudicated to be incapacitated shall set forth:

(a) All matters required by Pa.O.C. Rule 14.3;

(b) The name and location of the court which adjudicated incapacity; and

(c) Whether the former incapacitated person is capable of conducting his/her own affairs and whether he/she would be beyond reach of designing persons.

The petitioner may be the incapacitated person, the guardian, the spouse of the incapacitated person, a relative, a creditor, a debtor, or any person interested in the welfare of the incapacitated person.

Rule O.C.L14.3.2. Review Hearing. Hearing.

A hearing shall be set by the court not less than twenty (20) days after service of the petition and notice of hearing.

RULE O.C.L15. ADOPTIONS

Rule O.C.L15.1.1. Local Rules. Practice and Procedure.

(a) All papers in adoption matters including petitions for voluntary and involuntary relinquishment shall be filed with the Clerk who shall thereafter submit the appropriate order to the Court Administrator to fix a hearing date on the proceedings.

(b) All adoption petitions shall be filed with the Clerk forty-five (45) days prior to the scheduled hearing date.

(c) No petition for adoption shall be presented by the Clerk for hearing thereon if it is not in conformity with and have attached thereto all mandatory information of abuse of children record or other information required.

Note: See 23 Pa.C.S.A. § 2530 as to requirements for Home Study and Preplacement Report; see also 23 Pa.C.S.A. § 2531 as to requirements for Report of Intention to Adopt; see also 23 Pa.C.S.A. § 2711 as to requirements for Consents Necessary to Adoption. Notice does not need to be provided to any parent whose parental rights have been terminated by petition to confirm adoption. See 23 Pa.C.S.A. § 2535, § 2724 and § 2533.

(d) At time of hearing counsel shall attach a copy of all costs and counsel fees, as well as any other expenses incurred, to be paid by the adoptors.

(e) The adoptee (adoptees) shall be available for court review at the time of adoption.

Rule O.C.L15.5.1. Adoption.

A petition for adoption shall have attached thereto a proposed preliminary order scheduling the adoption hearing. At the time of the hearing, the attorney for petitioner shall submit to the Court a proposed decree of adoption.

Rule O.C.L15.6.1. Notice: Method and Time.

(a) In proceedings under Pa.O.C. Rule 15.4 the attorney for petitioners shall make a good faith effort to determine the address and identity of each parent and to provide notice of the proceedings. In adoption proceedings under Pa.O.C. Rule 15.5 notice of the proceedings shall also be given to any persons who have custody pursuant to a valid Court Order.

(b) Notice of the involuntary termination petition and hearing shall be served on the natural or putative father

whose identity and/or whereabouts cannot be ascertained or on a mother whose identity and/or whereabouts cannot be ascertained by publication in the form and manner approved by the Court following presentation of a separate Motion for Service by Publication and Affidavit of Diligent Search as required by Pa.R.C.P. 430.

(c) A motion for service by publication upon a natural or putative father must aver that the natural mother does not know the identity and/or whereabouts of the natural or putative father; must include his last known address, if known; and must also specify all attempts made by the petitioner to determine the correct identity and/or address of the natural or putative father. See also 23 Pa.C.S.A. § 2512(c).

(d) Publication shall include, as a minimum, the contents of the notice required by 23 Pa.C.S.A. § 2513(b). Proof of publication shall be submitted to the Court prior to the hearing.

APPENDIX TO RULE O.C.L3.4.1(h)(2)

NOTICE

You are hereby notified that the attached motion will be presented by me on _____ 20 _____ .

( ) to the Court Administrator as an uncontested matter;

( ) has been listed for Argumenton _____ 20 ____ .

CERTIFICATION OF NOTICE AND SERVICE

The undersigned represents that a copy of this motion and proposed order have been served by ( ) first class mail posted five days prior to the presentation and by ( ) fax or ( ) hand delivery at least two (2) days prior to the date of presentation. Notice was given on the _____ day of _____ 20 _____ upon all parties or their counsel of record.

INFORMATION FOR COURT ADMINISTRATOR

A. Is this an original filing in this case?
_____ Yes _____ No

B. Has any judge heard this matter previously?
_____ Yes _____ No

C. If yes, name of judge who presided over previous matter:

___ Skerda ___ Hammond ___ Other/Name _____

D. Estimated court time required if this matter is granted:

_____Minutes _____Hours _____Days

E. Is this motion opposed by another party?

_____Yes _____No _____Unknown

UNCONTESTED MOTION CERTIFICATION

The undersigned represents that:

_____ 1. All parties or counsel have consented.

_____ 2. Consents of all parties or counsel are attached.

_____ 3. The Order seeks only a return hearing or argument date and no other relief.

_____ 4. The Order seeks only the appointment of a master, auditor or the like and no other relief.

Opposing Counsel: _____
(if opposing party is unrepresented, list his/her current address and telephone):

_____

_____ (Phone)_____

I HEREBY CERTIFY ALL OF THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

By: _____

Attorney for: _____

APPENDIX TO RULE O.C.L6.1.1(b)(9)

CERTIFICATE

COMMONWEALTH OF :
PENNSYLVANIA :
: SS
COUNTY OF WARREN :

Personally came _____ , the Accountant(s) herein named, who being duly sworn say(s):

(1) That letters were granted and advertised more than four (4) months before filing of the account;

(2) That all of the disbursements claimed have been made or shall be made to the parties entitled thereto;

(3) That the within account as stated is true and correct; and

(4) That a copy of the account and notice of filing have been given to everyone required mandated by the Pennsylvania Supreme Court Orphans' Court Rules and Local Orphans' Court Rules of the 37th Judicial District.

_____
ACCOUNTANT

Sworn to or affirmed and subscribed
before me this _____ day
of _____ , 20_____ .

_____
Notary Public

CERTIFICATE

The ___ day of _____ , 2011, (attorney's name) , the undersigned, hereby certifies that he/she has examined the foregoing account and that it is in accordance with the Local Orphans' Court Rules of the 37th Judicial District as to form and arrangement and that the account is true and correct according to the best of his/her judgment and belief.

_____
ATTORNEY

ESTATE OF _____

No. _____ in the office of the Register of Wills of _____ County, Pennsylvania.

No. _____ Term 20_____ in the Court of Common Pleas of the 37th Judicial District of Pennsylvania, _____ County Branch, Orphans' Court Division

_____ Account of _____
(First, Partial, Final)

_____ , 20_____ filed, examined, allowed and passed.

_____ , 20_____ account advertised

_____ , 20_____ account certified to Orphans' Court.

_____
Register

_____ , 20_____ account confirmed nisi by the Court.

_____
Clerk of the Orphans' Court

_____ , 200_____ account with statement of proposed distribution confirmed absolute by the Court.

Clerk of the Orphans' Court

_____ D PG_____

APPENDIX TO RULE O.C.L6.3.1(a)
NOTICE OF FILING ACCOUNT

You are hereby notified in accordance with the provisions of Section 3503 of the Probate, Estate and Fiduciaries Code and Rule 6.3 of the Pennsylvania Supreme Court Orphans' Court Rules that the First and Final Account of _____, executor of the Estate of _____, deceased, has been filed in the Office of the Register of Wills of _____ County, Pennsylvania, as of _____, 20_____, will be confirmed nisi on _____, 20_____, and will be confirmed absolute on _____, 20_____, unless exceptions are filed in writing with the Clerk of the Orphans' Court five (5) days before said absolute confirmation.

Enclosed herewith is a copy of said First and Final Account which account includes a Statement of Proposed Distributions.

Attorney for Accountant

[Pa.B. Doc. No. 12-1258. Filed for public inspection July 6, 2012, 9:00 a.m.]

WASHINGTON COUNTY
Local Rules; No. 2012-1

Order

And Now, this 11th day of June, 2012; *It Is Hereby Ordered* that the previously stated Washington County Local Civil Rules be adopted/amended as follows.

These rules will become effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

DEBBIE O'DELL SENECA,
President Judge

L-708. Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition.

(A) When it is alleged that an offender is in violation of the conditions of his/her probation/parole or Intermediate Punishment sentence, a Gagnon I Hearing shall be held before a member of the Washington County Probation/Parole Office designated as a hearing officer; typically, the Washington County Chief of Probation/Parole. The hearing shall be held within three (3) Court business days if the offender is incarcerated as a result of the violation(s). The designated hearing officer shall be responsible for advising the offender of all information required at a Gagnon I Hearing. Should the hearing officer, at the Gagnon I Hearing, find that a prima facie case exists, the procedure in paragraph B shall be followed.

(B) The supervising probation/parole officer shall petition the court within (3) business days to schedule a Gagnon II Hearing after the Gagnon I Hearing if the bases of the hearing are allegations that the offender engaged in technical violation(s) of the conditions or special conditions of his/her probation/parole or Intermediate Punishment sentence; and within three (3) business days after a preliminary hearing if the basis of the hearing are allegations that the offender engaged in substantive violation(s) of the conditions or special conditions of his/her probation/parole or Intermediate Punishment sentence. The Petition shall indicate whether the allegations are contested or whether a Gagnon II Hearing shall be for disposition purposes only. The offender shall have the right to representation by an attorney at his/her own expense, or if indigent and upon his/her application, the appointment of the Public Defender for the Gagnon II Hearing.

(C) At the Gagnon I Hearing should a determination be made by the hearing officer that the offender should be returned to continued supervision at liberty, the offender, if incarcerated, shall be released from custody, and continue under his/her probation/parole or Intermediate Punishment sentence.

L-709 Adult Probation Office Fees.

(A) All offenders subject to supervision by the Washington County Adult Probation Office shall be assessed a supervision fee of $50.00 per month for the length of their probation or parole term.

(B) In addition to the supervision fee found in paragraph (A) above, offenders are subject to the following monitoring fees:

(1) A daily monitoring fee of $10.00 flat rate per day for any monitoring service which shall include, but not be limited to: Electronic Home Monitoring, Electronic Home Monitoring with cellular service, and Global Positioning Monitoring.

(2) A one-time administrative installation fee of $50.00 shall be assessed for any monitoring service at the inception of monitoring supervision.

(3) Offenders placed on a monitoring service that claim indigence shall be required to complete community service work at the prevailing Commonwealth minimum wage rate for all fines, fees, and costs associated with their respective cases, including monitoring fees owed. Offenders shall begin community service work within five (5) business days of being placed on a monitoring service.

(a) Offenders who have a verified and reasonable physical or mental handicap shall be exempt from the payment of the monitoring fee. However, if the offender is receiving disability benefits, the offender shall be responsible for the minimum cost of the monitoring service.

(C) In addition, offenders subject to monitoring via the Secure Continuous Remote Alcohol Monitoring (SCRAM) or similar device are responsible for the costs of such monitoring. These costs are payable directly to the vendor.

(D) The Washington County Clerk of Courts Office and the Court of Common Pleas Community Service Program shall apply the prevailing Commonwealth minimum wage rate to calculate the amount of fines, costs and fees an offender worked off.

L-710. Arrest and Processing of Probation/Parole Violators.

(A) When a duly appointed probation/parole officer has conducted an investigation which reveals that a violation(s) of conditions of probation/parole has been committed by the offender, that offender may be arrested by a probation /parole officer or by any Peace Officer in the Commonwealth authorized to make arrests, or in the case of an offender who has absconded the Commonwealth, an arrest warrant shall be submitted to the proper police agency for processing as per normal procedures. Following arrest, the filing probation/parole officer shall request

a Gagnon I Hearing before the hearing officer, which shall be held within three (3) Court business days if the offender is committed to the Washington County Correctional Facility. The procedure set forth in Local Rule 708 shall then be followed.

(B) Should the filing probation/parole officer determine that there was a violation of the offender's probation/ parole but an arrest is not warranted, a Gagnon I Hearing shall be scheduled as soon as possible following discovery of the violation(s), and the procedure set forth in Local Rule 708 shall then be followed. Notice of the Gagnon I Hearing, and the hearing date, shall be served upon the offender by the filing probation/parole officer within 10 business days.

L-711. Probation/Parole General Rules and Regulations.

The Court, whenever sentencing a defendant to probation or granting parole, shall state in its order that, in addition to the statutory requirements, the general rules, regulations, and conditions governing probation and parole in Washington County apply to the sentenced offender. The Court shall also inform the offender that all special and/or additional conditions of probation and parole as set forth in these rules, and which are within the authority of the probation/parole officers to enforce, shall be applicable and all of the following shall apply unless specifically deleted by the Court in its order or in a subsequent order:

(A) The offender shall be in the legal custody of the Court until the expiration of his/her probation/parole or the further order of Court, and the probation/ parole officer has the authority any time during this period, in case of violation by the offender of any of the conditions of his/her probation/parole, to detain the offender in a county prison and make a recommendation to the Court, which may result in the revocation of probation/parole and commitment to a penal or correctional institution for service of the sentence.

(B) The offender shall report at times as ordered/ directed to the Washington County Probation/Parole Office, or at a satellite location, or in the offender's home or place of employment, or report in writing. The offender must reply to any communication from the Court or the Washington County Probation/Parole Office.

(C) The offender shall reside at an address provided by him/her and approved by the Washington County Probation/Parole Office and may not change the residence without prior permission from the Washington County Probation/Parole Office.

(D) The offender shall not travel outside of Washington County or the Commonwealth of Pennsylvania without prior permission from the Court or his/her probation/ parole officer. An offender who has been convicted of a crime which would preclude the offender from being considered an "eligible offender" pursuant to 42 Pa.C.S.A.§ 9801 et seq. (County Intermediate Punishment Act), may only travel outside the Commonwealth of Pennsylvania pursuant to Court Order.

(E) The offender shall not violate any township, municipal, county, state or federal criminal laws, and shall abide by any written instructions of his/her probation/ parole officer. Pursuant to this rule any such instruction shall be considered a special condition of supervision imposed by the Court. Such instructions shall be designed to assist the offender in his/her rehabilitation and reassimilation into the community and to protect the public. The offender shall immediately notify his/her Probation/ Parole Officer of any arrest or investigation by law enforcement agencies. The offender shall be of good behavior generally.

(F) If the offender is unemployed, he/she shall make every effort to obtain and maintain employment and support his/her dependents, if any. If the offender loses his/her job, he/she shall immediately notify his/her probation/parole officer and cooperate in any effort he/she may make to obtain employment for the offender.

(G) The offender shall abstain from the use or possession of illegal substances, and from abusing prescribed medications. Offenders prescribed medications obtained from a legitimate medical source for a legitimate medical need shall provide a written release to his/her probation/ parole officer in order to verify compliance with the medical provider's directions. The offender shall also abstain from abusing over-the-counter (OTC) nonprescription medications.

(H) Offenders placed under the supervision of the Washington County Probation/ Parole Office shall not be allowed to possess any firearms or dangerous/offensive weapons. Any matters involving the carrying of a sidearm for personal protection necessary for employment shall require an order of Court and a valid license to carry a firearm issued by the County Sheriff.

(I) The offender may not use or possess alcoholic beverages, and may not enter a "drinking establishment" as that term is defined in 35 Pa.C.S.A. § 637.2, unless this condition is totally or partially granted by the sentencing Judge.

(J) All fines, costs, fees, and restitution imposed upon the offender by the Court must be paid immediately or in accordance with any schedule set forth by the Court or by the Clerk of Courts. An offender may perform community service in lieu of cash payments of costs, fines, and fees; or in conjunction with cash payments of fines, costs, and fees. Community Service may not be performed in lieu of restitution payments. Community service may also be court-ordered as part of a sentence. The Washington County Clerk of Courts Office and the Court of Common Pleas Community Service Program shall apply the prevailing Commonwealth minimum wage rate to calculate the amount of fines, costs and fees an offender worked off.

(K) The offender shall attend any therapeutic program or obtain assessments offered by a recognized agency when directed to do so by his/her probation/parole officer. The offender shall pay all costs and fees associated with the therapeutic program or assessment. The offender shall also obey any and all rules of said facility/program while attending treatment, classes, or assessments. The offender shall sign a confidential release for all treatment providers to permit the Court and/or the probation/parole officer to monitor his/her attendance and progress.

(L) The offender shall participate in the electronic monitoring/house arrest program if ordered to do so by the sentencing Judge. If the offender agrees in writing to participate in the electronic monitoring/house arrest program during the course of a Gagnon I hearing rather than proceed to a Gagnon II hearing, electronic monitoring/house arrest shall automatically become a special condition of the offender's probation/parole. An offender on supervision for, or alleged to have committed an offense which would preclude him/her from being considered an "eligible offender" pursuant to 42 Pa.C.S.A.§ 9801 et seq. (County Intermediate Punishment Act), shall not be permitted to enter such an agreement. The offender shall be responsible to pay the

costs of the program pursuant to Local Rule 709. The offender shall abide by all conditions, instructions, rules and directives of the electronic monitoring/house arrest program and maintain an appropriate telephone line and electricity. A probation/parole officer may give approval to an offender to leave the residence for verified employment, counseling, treatment, medical appointments, and funerals. The offender shall be financially responsible for all lost, discarded, or damaged equipment other than damage resulting from normal wear.

(M) The offender shall participate in a Continuous Alcohol Monitoring (CAM) program or an on-demand alcohol monitoring program if specifically ordered by the Court or required by his/her probation/parole officer in an effort to ensure the offender does not ingest alcohol as a reasonable response related to the offender's rehabilitation and the protection of the community. This decision shall be based on the offender's alcohol abuse history, including any alcohol use in violation of the conditions of the offender's probation/parole, the nature of the offense(s) for which the offender is on probation/parole, and the need to protect the public. The offender shall be responsible to pay the costs of the program pursuant to Local Rule 709.

(N) The offender shall submit to random and periodic testing to determine the use and presence of any illegal substances and/or alcoholic beverages. Any offender refusing to submit to testing or who provides an invalid or adulterated sample shall be in violation of the conditions of his/her probation/parole and which may lead to the revocation of his/her probation/parole. In addition, if an offender provides an adulterated sample, he/she could face criminal charges.

(O) The offender shall report to the Washington County Probation/Parole Office within 24 hours or the next business day after being released from any institution. For purposes of this rule, the term "institution" includes penal and correctional institutions, and inpatient treatment/rehabilitation centers.

(P) The offender shall comply with any curfew imposed by his/her probation/parole officer.

(Q) The offender shall always be truthful and accurate in any written or oral statements he/she makes to all staff members of the Washington County Probation/Parole Office and all law enforcement agencies. Specifically, any statements concerning the offender's eligibility for and/or conditions of probation/parole, probation/parole status, and statements made in response to questions concerning the offender's identity must be truthful and accurate.

(R) The offender shall not at any time display assaultive or threatening behavior. The offender shall be prohibited from annoying, harassing, intimidating, any witness or victim of his/her crime. The offender must abide any and all conditions imposed regarding protection from abuse orders.

(S) The offender shall receive a copy of these general terms and conditions of probation/parole at or about the time supervision commences.

(T) Pursuant to 42 Pa.C.S.A.§ 9912(d)(1), the offender shall be subject to warrantless searches of his/her person, property, vehicle, or residence and the seizure and appropriate disposal of any contraband found, if it is reasonably suspected that offender is in possession of contraband or other evidence of violations of the conditions of his/her probation/parole.

The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with such case law, the following factors, where applicable, may be taken into account:

(i) The observations of officers.

(ii) Information provided by others.

(iii) The activities of the offender.

(iv) Information provided by the offender.

(v) The experience of officers with the offender.

(vi) The experience of officers in similar circumstances.

(vii) The prior criminal and supervisory history of the offender.

(viii) The need to verify compliance with the conditions of supervision.

(U) Unless otherwise established by Court order, the frequency with which the offender reports to his/her probation/parole officer shall be determined by the assigned probation/parole officer, who shall utilize an evidence based risk assessment tool, and the officer's professional judgment and experience. The probation/parole officer shall base such determinations on the need to assist the offender in his/her rehabilitation and reassimilation into the community, and to protect the public.

(V) If the offender believes that his/her rights have been violated as a result of probation/parole supervision, and the offender has evidence to support the alleged violation, the offender may submit a timely complaint in writing, first to the Chief Probation/Parole Officer. If the complainant is not satisfied with the result they may then submit a complaint to the President Judge of Washington County at the Washington County Courthouse.

L-712. Intermediate Punishment General Rules and Regulations.

(A) All of the general Rules and Regulations for Probation/Parole authorized pursuant to Local Rule 711 apply to Intermediate Punishment (Intensive Supervision). The following additional Rules and Regulations shall also apply to Intermediate Punishment supervision including those associated with Intermediate Punishment options associated with Driving under the Influence (DUI) and the Restrictive Intermediate Punishment Program Offender Day Partial Program (ODPP).

(B) Intermediate Punishment sentences may include electronic monitoring/house arrest, continuous alcohol monitoring (CAM), on-demand alcohol monitoring, intensive supervision, curfews, assessments, treatment, or any combination of the above.

(1) The offender shall abide by all of the rules, regulations and conditions of Washington County Correctional facility while serving the Jail/Work Release portion of the Intermediate Punishment sentence.

(2) Offenders while on Intermediate Punishment shall abide by all the standard rules, regulations and conditions of the Washington County Probation/Parole Office as set forth in Local Rule 711. Intermediate Punishment (Intensive Supervision) shall require a higher volume of contacts than general supervision cases. Step-down from intensive supervision status shall be decided through a supervisor via administrative reviews which occur monthly.

(3) Offenders placed into the Washington County Offender Day Partial Program (ODDP) shall be required to

adhere to the standard rules, regulations and conditions of the Washington County Probation/Parole Office along with any additional conditions imposed by the sentencing Judge or required by the participants in the program which may include in-patient treatment, out-patient treatment, electronic monitoring/house arrest, community service, and administrative reviews.

L-713. Specialty/Problem Solving Courts General Rules and Regulations.

All of the established general Rules and Regulations of Washington County Probation/Parole in Local Rule 711 apply to all Washington County Specialty/Problem Solving Court participants. The term "Specialty/Problem Solving Courts" includes, but is not limited to: Treatment Court, Mental Health Court, and Veterans Court. Specialty Courts/Problem Solving Courts may utilize a combination of assessments, treatments, evaluations, curfews, electronic monitoring/house arrest, community service, and continuous alcohol monitoring (CAM) to meet the needs of the offender; and shall impose such requirements as special conditions of the offender's probation/parole.

L-714. Sex Offender Conditions and Supervision.

(A) Any sex offender sentenced to probation/parole under the supervision of the Washington County Probation/Parole Office shall be required to follow the standard rules and regulations of probation/parole supervision as set forth in Local Rule 711 and may be required to adhere to curfews and conditions prohibiting the participation of the offender in certain activities that allow for access to children.

(B) All living arrangements of sex offenders shall be approved by the Washington County Probation/Parole Office. Arrangements not meeting the standard of community safety as decided by the Washington County Probation/Parole Office shall be deemed not acceptable. A sex offender supervised through the Washington County Probation/Parole Office shall be in violation of the condition(s) of supervision if he/she fails to adhere to any rules and/or regulations regarding Megan's Law/Adam Walsh Law, address registration, evaluations, and treatment. Other special conditions that may be imposed are as follows, possible restrictions on non-approved Internet sites, possible restrictions on participation in activities and or organizations which lend access to children, possible restrictions on participation in holiday events that lend access to children, possible restrictions on employment if it may lend access to children, possible restrictions regarding patronage at certain establishments, such as a strip club, if in the best interest of community safety, and restrictions on any form of communication, publication, or pornographic material if needed. The Washington County Probation/Parole Office shall petition the Court to request the imposition of any such special conditions, unless the defendant/offender agrees to the special conditions.

L-715. Early Release/Parole/Re-Entry.

All of the general Rules and Regulations for Probation/Parole set forth in Local Rule 711 apply to participants in the Early Release/Parole/Re-entry Program. The following additional rules of law and regulations shall also apply to Early Release/Re-entry/Parole participants. The Court shall state at time of sentencing whether or not an offender is eligible to participate in a (county) Re-entry Program. No offender shall be eligible for the Early Release Program without a re-entry plan. The parole/re-entry plan shall be completed by a probation/parole officer prior to the offender being considered for parole/early release/reentry from the Washington County Correctional Facility. Any condition(s) recommended in the parole/re-entry plan by the probation/parole officer who has performed the parole/re-entry/early release plan shall become a special condition(s) of his/her parole unless otherwise excluded by the sentencing Judge.

L-716. Interstate Compact.

(A) The Commonwealth of Pennsylvania/Washington County is a member of the federal compact involving the interstate transfer of offenders known as the Interstate Compact. Interstate Compact rules mandate that any offender seeking to relocate to another state who has been convicted of a felony offense and what is known as transferable misdemeanor offenses must be processed through the Interstate Compact. Offenders released from incarceration or sentenced to probation/parole that are mandated transferable may be eligible for reporting instructions. However, if the offender does not complete the reporting instructions via the Washington County Probation/Parole Office within seventy-two hours (72) of release or sentence, they shall become ineligible for reporting instructions. It should be noted that not all offenders will be eligible for reporting instructions. For example, the offender must have had a residence or family residing within the accepting state at the time the offense occurred to be eligible for reporting instructions.

(B) Full transfers of cases may take up to ninety days. The offender may be required to remain in the sentencing state pending application and possible acceptance for transfer.

[Pa.B. Doc. No. 12-1259. Filed for public inspection July 6, 2012, 9:00 a.m.]