THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 81]

Amendment of Rules 1.0, 1.1, 1.4, 1.6, 1.17, 1.18, 4.4, 5.3, 5.5, 7.1, 7.2 and 7.3 of the Rules of Professional Conduct; No. 120 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 22nd day of October, 2013, upon the recommendation of the Disciplinary Board of The Supreme Court of Pennsylvania; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 43 Pa.B. 1997 (April 13, 2013):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1.0, 1.1, 1.4, 1.6, 1.17, 1.18, 4.4, 5.3, 5.5, 7.1, 7.2 and 7.3 of the Pennsylvania Rules of Professional Conduct are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

CLIENT-LAWYER RELATIONSHIP

Rule 1.0. Terminology.

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(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, **[Photostatting] photostating**, photography, audio or video recording**,** and **[e-mail] electronic communications**. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Comment:

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Screened

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(9) The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other **[materials] information, including information in electronic form,** relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other **[materials] information, including information in electronic form,** relating to the matter**,** and periodic reminders of the screen to the screened lawyer and all other firm personnel.

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Rule 1.1. Competence.

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Comment:

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Thoroughness and Preparation

(5) Competent handling of particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Retaining or Contracting With Other Lawyers

(6) Before a lawyer retains or contracts with other lawyers outside the lawyer's own firm to provide or assist in the provision of legal services to a client, the lawyer must reasonably believe that the other lawyers' services will contribute to the competent and ethical representation of the client. See also Rules 1.2, 1.4, 1.6, and 5.5(a). The reasonableness of the decision to retain or contract with other lawyers outside the lawyer's own firm will depend upon the circumstances, including the education, experience and reputation of the nonfirm lawyers; the nature of the services assigned to the nonfirm lawyers; and the legal protections, professional conduct rules, and ethical environments of the jurisdictions in which the services will be performed, particularly relating to confidential information.

(7) When lawyers from more than one law firm are providing legal services to the client on a particular matter, the lawyers ordinarily should consult with each other and the client about the scope of their respective representations and the allocation of responsibility among them. See Rule 1.2. When making allocations of responsibility in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Maintaining Competence

[(6)] (8) To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology,** engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.4. Communication.

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Comment:

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Communicating with Client

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(4) A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. **[Client telephone calls should be promptly returned or acknowledged.] A lawyer should promptly respond to or acknowledge client communications.**

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Rule 1.6. Confidentiality of Information.

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(c) A lawyer may reveal such information to the extent that the lawyer reasonably believes necessary:

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(6) to effectuate the sale of a law practice consistent with Rule 1.17**[.]; or**

(7) to detect and resolve conflicts of interest from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(d) **A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.**

(e) The duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.

Comment:

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[*Disclosure Adverse to Client*] *Detection of Conflicts of Interest*

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(19) **Paragraph (c)(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. See Rule 1.17, Comment (4). Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, paragraph (a) prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these Rules.**

(20) Any information disclosed pursuant to paragraph (c)(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph (c)(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to paragraph (c)(7). Paragraph (c)(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, see Comment (6), such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

(21) A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4.

[(20)] (22) Paragraph (c) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified.

Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[(21)] (23) Paragraph (c) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in paragraphs (c)(1) through **[(c)(6)] (c)(7)**. In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (c) does not violate this Rule. Disclosure may be required, however, by other Rules. Some Rules require disclosure only if such disclosure would be permitted by paragraph (c). See Rules 1.2(d), 4.1(b), 8.1 and 8.3. Rule 3.3, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this Rule. See Rule 3.3(c).

Withdrawal

[(22)] (24) If the lawyer's services will be used by the client in materially furthering a course of criminal or fraudulent conduct, the lawyer must withdraw, as stated in Rule 1.16(a)(1). After withdrawal the lawyer is required to refrain from making disclosure of the client's confidences, except as otherwise provided in Rule 1.6. Neither this Rule nor Rule 1.8(b) nor Rule 1.16(d) prevents the lawyer from giving notice of the fact of withdrawal, and the lawyer may also withdraw or disaffirm any opinion, document, affirmation, or the like. Where the client is an organization, the lawyer may be in doubt whether contemplated conduct will actually be carried out by the organization. Where necessary to guide conduct in connection with this Rule, the lawyer may make inquiry within the organization as indicated in Rule 1.13(b).

Acting Competently to Preserve Confidentiality

[(23) A lawyer must] (25) Paragraph (d) requires a lawyer to act competently to safeguard information relating to the representation of a client against **unauthorized access by third parties and against** inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3. **The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (d) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer's duties when sharing information with nonlawyers outside the lawyer's own firm, see Rule 5.3, Comments (3)—(4).**

[(24)] (26) When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. **Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.**

Former Client

[(25)] (27) The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Lobbyists

[(26)] (28) A lawyer who acts as a lobbyist on behalf of a client may disclose information relating to the representation in order to comply with any legal obligation imposed on the lawyer-lobbyist by the Legislature, the Executive Branch or an agency of the Commonwealth, or a local government unit which are consistent with the Rules of Professional Conduct. Such disclosure is explicitly authorized to carry out the representation. The Disciplinary Board of the Supreme Court shall retain jurisdiction over any violation of this Rule.

Rule 1.17. Sale of Law Practice.

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Comment:

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Client Confidences, Consent and Notice

(4) Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with

respect to which client consent is not required. **See Rule 1.6(c)(6) and (7).** Providing the purchaser access to the client-specific **detailed** information relating to the representation **[and to the] , such as the client's** file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser the client must be given actual written notice of the contemplated sale and file transfer including the identity of the purchaser and any proposed change in the terms of future representation, and must be told that the decision to consent or make other arrangements must be made within 60 days. If actual notice is given, and the client makes no response within the 60 day period, client consent to the sale will be presumed.

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Rule 1.18. Duties to Prospective Clients.

(a) A person who **[discusses] consults** with a lawyer **about** the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has **[had discussions with] learned information from** a prospective client shall not use or reveal information which may be significantly harmful to that person **[learned in the consultation]**, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer **[received] learned** information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When a lawyer has **[received disqualifying] learned** information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, or;

(2) all of the following apply:

(i) the disqualified lawyer took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client;

(ii) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(iii) written notice is promptly given to the prospective client.

Comment:

(1) Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's **[discussions] consultations** with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

(2) **[Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information, such as an unsolicited e-mail or other communication,] A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment (4). In contrast, a consultation does not occur if a person provides information to a lawyer, such as in an unsolicited e-mail or other communication, in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. Such a person communicates information unilaterally** to a lawyer**[,]** without any reasonable expectation that a client-lawyer relationship will be established**, and** is **thus** not a "prospective client" **[within the meaning of paragraph (a)]**. A person who participates in an initial consultation, or communicates information, with the intent to disqualify a lawyer from representing a client with materially adverse interests is not entitled to the protections of paragraphs (b) or (c) of this Rule. A person's intent to disqualify may be inferred from the circumstances.

(3) It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing significantly harmful information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

(4) In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial **[interview] consultation** to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

(5) A lawyer may condition **[conversations] a consultation** with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly

so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

(6) Even in the absence of an agreement, under paragraph (c) the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

(7) Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2)(ii) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

(8) Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

(9) For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.4. Respect for Rights of Third Persons.

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document**, including electronically stored information,** relating to the representation of the lawyer's client and knows or reasonably should know that the document**, including electronically stored information,** was inadvertently sent shall promptly notify the sender.

Comment:

(1) Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

(2) Paragraph (b) recognizes that lawyers sometimes receive **[documents,] a document, including electronically stored information,** that **[were] was** mistakenly sent or produced by opposing parties or their lawyers. **A document, including electronically stored information, is inadvertently sent when it is accidentally transmitted, such as when an email or letter is misaddressed or a document, including electronically stored information, is accidentally included with information that was intentionally transmitted.** If a lawyer knows or reasonably should know that **such** a document**, including electronically stored information,** was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Whether the lawyer is required to take additional steps, such as returning the **[original document] document, including electronically stored information**, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document**, including electronically stored information,** has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document**, including electronically stored information,** that the lawyer knows or reasonably should know may have been **[wrongfully] inappropriately** obtained by the sending person. For purposes of this Rule, "document**, including electronically stored information**" includes **[e-mail or other electronic modes of transmission subject to being read or put into readable form], in addition to paper documents, email and other forms of electronically stored information, including embedded data (commonly referred to as "metadata"), that is subject to being read or put into readable form. Metadata in electronic documents creates an obligation under this Rule only if the receiving lawyer knows or reasonably should know that the metadata was inadvertently sent to the receiving lawyer.**

(3) Some lawyers may choose to return a document **or delete electronically stored information** unread, for example, when the lawyer learns before receiving **[the document] it** that it was inadvertently sent **[to the wrong address]**. Where a lawyer is not required by applicable law to do so, the decision to voluntarily return such a document **or delete electronically stored information** is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

LAW FIRMS AND ASSOCIATIONS

Rule 5.3. Responsibilities Regarding Nonlawyer **[Assistants] Assistance**.

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Comment:

(1) **[Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.**

(2) Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible

with the Rules of Professional Conduct. See Comment (1) to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.]

Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters act in a way compatible with the professional obligations of the lawyer. See Comment (6) to Rule 1.1 and Comment (1) to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for the conduct of such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nonlawyers Within the Firm

(2) Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

(3) A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1, 1.2, 1.4, 1.6, 5.4(a), and 5.5(a). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

(4) Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice **[Of] of** Law.

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Comment:

(1) A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order **or** by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person. **For example, a lawyer may not assist a person in practicing law in violation of the rules governing professional conduct in that person's jurisdiction.**

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(21) Paragraphs (c) and (d) do not authorize communications advertising legal services **[to prospective clients]** in this jurisdiction by lawyers who are admitted to practice in other jurisdictions. Whether and how lawyers may communicate the availability of their services **[to prospective clients]** in this jurisdiction is governed by Rules 7.1 to 7.5.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's **[Service] Services**.

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Comment:

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(3) An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that **the** comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead **[a prospective client] the public**.

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Rule 7.2. Advertising.

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Comment:

(1) To assist the public in **learning about and** obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of

advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

(2) This Rule permits public dissemination of information concerning a lawyer's name or firm name, address**, email address, website,** and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

(3) Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television **and other forms of** advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television **[is now one of], the Internet, and other forms of electronic communication are now among** the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television**, Internet, and other forms of electronic** advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. **[Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule.]** But see Rule 7.3(a) for the prohibition against **[the solicitation of a prospective client] a solicitation** through a real-time electronic exchange **[that is not initiated by the prospective client] initiated by the lawyer**.

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Paying Others to Recommend a Lawyer

(6) Subject to the limitations set forth under **[paragraph] paragraphs (c) and** (j), a lawyer is allowed to pay for advertising permitted by this Rule, but otherwise is not permitted to pay another person for **recommending the lawyer's services or for** channeling professional work **in a manner that violates Rule 7.3**. **A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities.** Paragraph (c)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the cost of print, directory listings, on-line directory listings, newspaper ads, television and radio air time, domain-name registrations, sponsorship fees, **[banner ads] Internet-based advertisements**, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. **Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) and 5.4, and the lead generator's communications are consistent with Rule 7.1. To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral.** See **also** Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of non-lawyers **[who prepare marketing materials for them] and Rule 8.4(a)**. This restriction does not prevent an organization or person other than the lawyer from advertising or recommending the lawyer's services. Thus, a legal aid agency or prepaid legal services plan may pay to advertise legal services provided under its auspices. Likewise, a lawyer may participate in lawyer referral programs and pay the usual fees charged by such programs. Paragraph (c) does not prohibit paying regular compensation to an assistant, such as a secretary, to prepare communications permitted by this Rule.

* * * * *

Rule 7.3. **[Direct Contact with Prospective] Solicitation of** Clients.

(a) A lawyer shall not solicit in-person or by intermediary professional employment from a **[prospective client] person** with whom the lawyer has no family or prior professional relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted is a lawyer or has a family, close personal, or prior professional relationship with the lawyer. The term "solicit" includes contact in-person, by telephone or by real-time electronic communication, but, subject to the requirements of Rule 7.1 and Rule 7.3(b), does not include written communications, which may include targeted, direct mail advertisements.

(b) A lawyer may contact, or send a written communication to, **[a prospective client] the target of the solicitation** for the purpose of obtaining professional employment unless:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the person has made known to the lawyer a desire not to receive communications from the lawyer; or

(3) the communication involves coercion, duress, or harassment.

Comment:

(1) **A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.**

(2) There is a potential for abuse **[inherent in direct solicitation, including] when a solicitation involves direct** in-person, **live** telephone or real-time electronic **[communication, by a lawyer of prospective clients] contact by a lawyer with someone** known to need legal services. These forms of contact subject **[the lay person] a person** to the private importuning of a trained advocate, in a direct interpersonal encounter. The **[prospective client,] person** who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[(2)] (3) This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation **[of prospective clients]** justifies its prohibition, particularly since **[lawyer advertising and written communication permitted under Rule 7.2 offer] lawyers have** alternative means of conveying necessary information to those who may be in need of legal services. **[Advertising and written communications, which may be mailed, or autodialed] In particular, communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations** make it possible for **[a prospective client] the public** to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting **[the prospective client] the public** to direct in-person, telephone or real-time electronic persuasion that may overwhelm **[the client's] a person's** judgment.

[(3)] (4) The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to **[prospective client] the public**, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1 The contents of direct in-person, live telephone or real-time electronic **[conversations between a lawyer and prospective client] contact** can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations from those that are false and misleading.

[(4)] (5) There is far less likelihood that a lawyer would engage in abusive practices against **[an individual who is]** a former client, or **a person** with whom the lawyer has a close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) is not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to **[its] their** members or beneficiaries.

[(5)] (6) But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(3), or which involves contact with **[a prospective client] someone** who has made known to the lawyer desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(2) is prohibited. Moreover, if after sending a letter or other communication **[to a client]** as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the **[prospective client] recipient of the communication** may violate the provisions of Rule 7.3(b).

[(6)] (7) This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third-parties for the purposes informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to **[a prospective client] people who are seeking legal services for themselves**. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[Pa.B. Doc. No. 13-2099. Filed for public inspection November 8, 2013, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Order Amending Rules 206.1, 206.4 and 206.5 of the Rules of Civil Procedure; No. 588 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 21st day of October, 2013, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 39 Pa.B. 7183 (December 26, 2009):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 206.1, 206.4, and 206.5 are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective November 21, 2013.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 206.1. Petition. Definition. Content. Form.

(a) As used in this chapter, "petition" means

(1) an application to **strike and/or** open a default judgment or a judgment of non pros, and

* * * * *

(b) A petition shall specify the relief sought and state the material facts which constitute the grounds therefor. **All grounds for relief, whether to strike or open a default judgment, shall be asserted in a single petition.**

* * * * *

Rule 206.4. Rule to Show Cause. Alternative Procedures. **Exception.**

(a)**(1) [A] Except as provided by subparagraph (2), a** petition shall proceed upon a rule to show cause, the issuance of which shall be discretionary with the court as provided by Rule 206.5 unless the court by local rule adopts the procedure of Rule 206.6 providing for issuance as of course.

***Official Note*:** See Rule 440 requiring service of the petition upon every other party to the action.

(2) A judgment shall be stricken without the issuance of a rule to show cause when there is a defect on the face of the record that constitutes a ground for striking a default judgment.

(b) The procedure following issuance of the rule to show cause shall be in accordance with Rule 206.7.

***Official Note*:** Subdivisions (b) through (e) of Rule 239.2 require every court to promulgate Local Rule 206.4(c) describing the court's procedures for the issuance of a rule to show cause. Local Rule 206.4(c) shall be published on the Pennsylvania Judiciary's Web Application Portal (http://ujsportal.pacourts.us).

Rule 206.5. Rule to Show Cause. Discretionary Issuance. Stay. Form of Order. **Rule Inapplicable to Petition to Strike Default Judgment.**

* * * * *

(d) The form of order required by subdivision (b) shall be substantially in the following form:

* * * * *

(e) A judgment shall be stricken without the issuance of a rule to show cause when there is a defect on the face of the record that constitutes a ground for striking a default judgment.

Explanatory Comment

The amendment of Rule 206.1 governing petitions, and Rules 206.4 and 206.5 governing rules to show cause requires that all grounds for relief from a default judgment, whether to strike off or to open, be raised in a single petition. Under current case law, a judgment debtor is not required to raise all grounds for relief from a default judgment in a single petition. The amendment is intended to bring the practice involving default judgments in line with other areas of the rules of civil procedure in which all grounds must be raised at the same time, such as striking off or opening confessed judgments pursuant to Rule 2959(a) or raising all preliminary objections at the same time pursuant to Rule 1028(b).

By the Civil Procedural Rules Committee

DIANE W. PERER,
Chair

[Pa.B. Doc. No. 13-2100. Filed for public inspection November 8, 2013, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 2]

Order Amending Rules 203, 209 and 212 and Revision of the Comments to Rules 113, 205 and 210 of the Rules of Criminal Procedure; No. 438 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 22nd day of October, 2013, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 40 Pa.B. 2394 (May 8, 2010), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 967), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to Pennsylvania Rules of Criminal Procedure 203, 209, and 212 are adopted and the revisions to the Comments to Pennsylvania Rules of Criminal Procedure 113, 205, and 210 are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2014.

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 113. Criminal Case File and Docket Entries.

(A) The clerk of courts shall maintain the criminal case file for the court of common pleas. The criminal case file shall contain all original records, papers, and orders filed in the case, and copies of all court notices. These records, papers, orders, and copies shall not be taken from the custody of the clerk **[or] of** court without order of the court. Upon request, the clerk shall provide copies at reasonable cost.

* * * * *

Comment

* * * * *

Paragraph (C)(4) recognizes that occasionally disposition of oral motions presented in open court should be

reflected in the docket, such as motions and orders related to omnibus pretrial motions (Rule 578), motions for a mistrial (Rule 605), motions for changes in bail (Rule 529), and oral motions for extraordinary relief (Rule 704(B)).

Unexecuted search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

***Official Note*: Former Rule 9024 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 June 2, 1994, effective September 1, 1994. New Rule 9024 adopted June 2, 1994, effective September 1, 1994; renumbered Rule 113 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004 and replaced by Rule 114(C), effective July 1, 2004. New Rule 113 adopted March 3, 2004, effective July 1, 2004; amended July 31, 2012, effective November 1, 2012; Comment revised October 22, 2013; effective January 1, 2014**.

Committee Explanatory Reports:

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Final Report explaining the October 22, 2013 revisions to the Comment regarding the unexecuted search warrants published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 203. Requirements for Issuance.

* * * * *

(F) A search warrant may be issued in anticipation of a prospective event as long as the warrant is based upon an affidavit showing probable cause that at some future time, but not currently, certain evidence of a crime will be located at a specified place.

(G) When a search warrant is issued, the issuing authority shall provide the original search warrant to the affiant and the issuing authority shall retain a contemporaneously prepared copy.

Comment

* * * * *

Paragraph (B) does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for a search warrant must be sworn to before the issuing authority prior to the issuance of the warrant. "Sworn" includes **[affirmed.] "affirmed."** *See* Rule 103. The language "sworn to before the issuing authority" contemplates, when advanced communication technology is used, that the affiant would not be in the physical presence of the issuing authority. *See* paragraph (C).

* * * * *

Paragraph (F) was added to the rule in 2005 to provide for anticipatory search warrants. The rule incorporates the definition of anticipatory search warrants set forth in *Commonwealth v. Glass*, 562 Pa. 187, 754 A.2d 655 (2000).

Paragraph (G) was added to clarify who must retain possession of the original of the search warrant. When the search warrant is issued using advanced communication technology, the version delivered to the police officer is considered the original for purposes of this rule.

***Official Note*: Rule 2003 adopted March 28, 1973, effective for warrants issued 60 days hence; renumbered Rule 203 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006; amended October 22, 2013, effective January 1, 2014**.

Committee Explanatory Reports:

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Final Report explaining the October 22, 2013 amendments regarding the original search warrants published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Rule 205. Contents of Search Warrant.

Each search warrant shall be signed by the issuing authority and shall:

* * * * *

(5) direct that the warrant be served in the daytime unless otherwise authorized on the warrant, *provided that*, for purposes of the rules of Chapter 200**[.] ,** Part A, the term "daytime" shall be used to mean the hours of 6 a.m. to 10 p.m.;

* * * * *

Comment

Paragraph (5) supplements the requirement of Rule 203(C) that special reasonable cause must be shown to justify a nighttime search. A warrant allowing a nighttime search may also be served in the daytime.

[Paragraph (6) is intended to prevent delays that might otherwise occur if the particular issuing authority who issued the warrant is not on duty at the time a return thereon is ready. Thus, the warrant may be returned to the issuing authority who succeeded the first on duty.]

Paragraph (6) anticipates that the warrant will list the correct judicial officer to whom the warrant should be returned. There may be some instances in which the judicial officer who issues the warrant may not be the one to whom the warrant will be returned. For example, it is a common practice in many judicial districts to have an "on-call" magisterial district judge. This "on-call" judge would have the authority to issue search warrants anywhere in the judicial district but may not be assigned to the area in which the search warrant would be executed. There may be cases when the warrant is incorrectly returned to the judge who originally issued the warrant. In such cases, the issuing judge should forward the returned search warrant to the correct judicial officer. Thereafter, that judicial officer should administer the search warrant and supporting documents as provided for in these rules, including the Rule 210 requirement to file the search warrant and supporting documents with the clerk of courts.

Paragraph (8) implements the notice requirement in Rule 211(C). When the affidavit(s) is sealed pursuant to Rule 211, the justice or judge issuing the warrant must certify on the face of the warrant that there is good cause

shown for sealing the affidavit(s) and must also state how long the affidavit will be sealed.

***Official Note*: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; Comment revised October 22, 2013, effective January 1, 2014**.

Committee Explanatory Reports:

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Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. 6652 (November 9, 2013).

Rule 209. Return With Inventory.

(A) **The law enforcement officer executing the search warrant shall return the search warrant promptly after the search is completed, along with any inventory required under paragraph (C), to the issuing authority.**

(B) Unexecuted warrants shall be returned promptly to the issuing authority once the period of time authorized for execution of the warrant has expired. The affiant shall retain a copy of the returned unexecuted search.

(C) An inventory of items seized shall be made by the law enforcement officer serving a search warrant. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, when feasible, or otherwise in the presence of at least one witness. The officer shall sign a statement on the inventory that it is a true and correct listing of all items seized, and that the signer is subject to the penalties and provisions of 18 Pa.C.S. § 4904(b)—Unsworn Falsification To Authorities. The inventory shall be returned to and filed with the issuing authority.

[(B)] (D) The judicial officer to whom the return was made shall, upon request, cause a copy of the inventory to be delivered to the applicant for the warrant and to the person from whom, or from whose premises, the property was taken.

[(C)] (E) When the search warrant affidavit(s) is sealed pursuant to Rule 211, the return shall be made to the justice or judge who issued the warrant.

[Comments] Comment

The inventory is required to ensure that all items seized are accounted for in the return to the issuing authority. It thus differs from the receipt required by Rule 208, which is for the personal records of those from whose possession or from whose premises property was taken. In some cases, however, the list in the receipt may be sufficiently detailed so as to also be sufficient for use in the inventory. The inventory need not be sworn to before the issuing authority; however, the officer is subject to statutory penalties for unsworn falsification.

The rule was amended in 2013 specifically to require that the executed warrant be returned to the issuing authority. This amendment reflects a procedure with a long-standing practice but one that had not been codified in the rules.

***See* Rule 205(6) regarding the circumstances under which the issuing authority to whom the warrant is returned may differ from the one that issued the warrant.**

As provided in Rule 205(4), search warrants generally authorize execution within a period not to exceed two days. Paragraph (B) requires that an unexecuted warrant be returned to the issuing authority upon expiration of this period.

Unexecuted search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

For the obligation of the Commonwealth to disclose exculpatory evidence, see Rule 573 and its Comment.

***Official Note*: Rule 2009 adopted October 17, 1973, effective 60 days hence; amended April 26, 1979, effective July 1, 1979; amended September 3, 1993, effective January 1, 1994; renumbered Rule 209 and amended March 1, 2000, effective April 1, 2001; amended October 22, 2013, effective January 1, 2014**.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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 October 22, 2013 amendments related to the return of the search warrant published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Rule 210. Return of Papers to Clerk.

The judicial officer to whom the warrant was returned shall file the search warrant, all supporting affidavits, and the inventory with the clerk of the court of common pleas of the judicial district in which the property was seized.

Comment

See Rule 211 for the procedures when the search warrant affidavit(s) has been sealed.

Unexecuted search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

***Official Note*: Rule 2010 adopted October 17, 1973, effective 60 days hence; amended September 3, 1993, effective January 1, 1994; renumbered Rule 210 and Comment revised March 1, 2000, effective April 1, 2001; amended October 22, 2013, effective January 1, 2014**.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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 October 22, 2013 revisions to the Comment regarding unexecuted search warrants published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Rule 212. Dissemination of Search Warrant Information.

(A) The issuing authority shall not make any search warrants and any affidavit(s) of probable cause available for public inspection or dissemination until the warrant

has been executed**[, but in no case shall the delay be longer than 48 hours after the warrant has been issued]**.

(B) Unexecuted warrants and the associated affidavits of probable cause are not public records and upon return to the issuing authority the unexecuted warrants and affidavit(s) shall be destroyed by the issuing authority.

Comment

Execution of search warrants carries the potential risk of hazard and premature dissemination of the intention to execute a warrant may greatly increase that risk. For this reason, this rule was adopted in 2008 to delay the dissemination of search warrant information to the general public until after execution **[or no longer than 48 hours after issuance, whichever is sooner]**. This rule does not deny disclosure of **any** search warrant information **[to the public] to which the public is entitled**, but rather, temporarily delays the dissemination of that information in order to protect public safety.

Once the warrant is executed, the information may be disseminated unless sealed pursuant to Rule 211.

The rule was amended in 2013 to clarify that unexecuted search warrants are not public records. This change recognizes that often search warrants may be issued that are never executed. This nonexecution may arise from many factors, including a discovery that the information that formed the basis of the original issuance of the search warrant was inaccurate. Given the potential harm to the subject of a search warrant as well as potential disruption to public safety and investigations, information related to such expired warrants must remain confidential. *See PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 614 A.2d 1106 (1992) ("The *ex parte* application for the issuance of a search warrant and the issuing authority's consideration of the application are not subject to public scrutiny. The need for secrecy will ordinarily expire once the search warrant has been executed.").

***Official Note*:** Rule 212 adopted June 23, 2008, effective August 1, 2008**; amended October 22, 2013, effective January 1, 2014**.

Committee Explanatory Reports:

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Final Report explaining the October 22, 2013 amendment providing that expired unexecuted warrants are not public records published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

FINAL REPORT[1]

Amendments to Pa.Rs.Crim.P. 203, 209, and 212, and Comment Revisions to Pa.Rs.Crim.P. 113, 205, and 210

Return of Search Warrants

On October 22, 2013, effective January 1, 2014, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted amendments to Rules 203, 209, and 212 and revisions to the Comments to Rules 113, 205, and 210 to: (1) clarify the requirement to return search warrants to the issuing authority promptly; (2) provide that unexecuted warrants do not constitute public records; and (3) clarify who retains the original search warrant.

Return of Executed Warrants

The Committee began examining the need to specify procedures for the return of executed search warrants because of a reported problem with a municipal police force that was refusing to return search warrants to the magisterial district judge (MDJ) after the warrants had been executed, resulting in the MDJ being unable to forward the case to the clerk of courts because the MDJ did not have all of the case documents required by Rule 210.

Although Rules 205(6) and 209 mention the concept of a return of the warrant, there are no rules that specifically direct the police officer to return the search warrant to the designated judicial officer after it is executed[2]. The Committee concluded that an explicit mention in the rules of the requirement to return the warrants after execution would emphasize the need for the return.

The Committee examined procedures from other jurisdictions that provide provisions for the return of search warrants. Some, such as Alabama, contain general provisions while others, like Maryland, are more specific including time limits for the return. The Committee favored the more general model. The Committee rejected setting a time limit for the return, concluding that any time period selected would be arbitrary and there would be no practical sanctions that could be imposed on the police for failing to abide by the limit. Therefore, a new paragraph (A) has been added to Rule 209 that requires the search warrant and inventory to be returned promptly after execution to the issuing authority. Additionally, a cross-reference to Rule 205(6) and its Comment has been added to the Rule 209 Comment to indicate that there may be circumstances under which the issuing authority that issued the warrant may differ from the issuing authority to whom the warrant is returned, *e.g.*, when the warrant was issued by a "duty" issuing authority.

Return of Unexecuted Warrants

The Committee also examined the more complex issue of whether to include a provision for the return of unexecuted warrants. There was a good deal of debate over the need for such a provision given that an unexecuted warrant will ultimately expire. The Committee concluded that, since the warrant is a court document, the court has an interest in its ultimate resolution. The members reasoned having unexecuted warrants returned upon expiration provides notice to the issuing authority that the search warrant was not executed and no longer is effective. Accordingly, unexecuted warrants have been included in the requirement that the warrants be returned. The requirement to return the unexecuted search warrant upon expiration has been added as a new paragraph (B) to Rule 209 along with explanatory revisions to the Comment.

The requirement to return unexecuted warrants raised a concern that once these documents have been returned to the issuing authority, they would be considered public records. The Committee recognized that public disclosure of these unexecuted documents could cause problems such as the destruction of evidence or the endangerment of officers serving subsequent warrants. More importantly,

[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] Rule 209 requires the officer who executed the warrant to return the inventory of items seized.

there are occasions when the information supporting a search warrant is discovered to be inaccurate or even fraudulent prior to the execution of the warrant so the search warrant will remain unexecuted. However, public disclosure of the information contained in the affidavits supporting these warrants could prove embarrassing or dangerous to the subject of the warrant and therefore constitute a severe harm to that individual's privacy interests.

To resolve this problem, the Committee at first considered a provision that a returned unexecuted warrant should be considered sealed. However, it was clear that such a statement raised a great many more questions, such as the duration of such a sealing order, than could be addressed with a simple statement.

This led to a discussion regarding whether unexecuted warrants are in fact public documents. Pennsylvania strongly favors public access to search warrant information, based on both an Eight Amendment and common law rationale. The clearest pronouncement of this view is found in *PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 614 A.2d 1106 (1992). However, while noting with approval the process of sealing executed search warrants by court order, the Court specifically distinguished the pre-execution situation, stating, "The *ex parte* application for issuance of a search warrant and the issuing authority's consideration of the application are not subject to public scrutiny. The need for secrecy will ordinarily expire once the search warrant has been executed." 532 Pa. at 6, 614 A.2d at 1108.

The most recent decision on the question of search warrant records as public records is found in *Commonwealth v. Upshur*, 592 Pa. 273, 924 A.2d 642 (2007), where the Court stated that:

> Certainly, however, any item that is filed with the court as part of the permanent record of a case and relied on in the course of judicial decision-making will be a public judicial record or document. *See, e.g., Fenstermaker*, 515 Pa. at 510, 530 A.2d at 419 (arrest warrant affidavits filed with a magistrate); *PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 6, 614 A.2d 1106, 1108 (1992) (search warrants and supporting affidavits).

However, *Upshur* cites *PG Publishing* for the general proposition that the search warrant and affidavits are to be considered public records but does not note the specific exclusion of unexecuted warrants from this analysis. Additionally, while the language used in citing *PG Publishing* talks of a document relied on in the course of "judicial decision-making," it is unlikely that the probable cause determination is of a type of judicial decision-making contemplated by the Court. Such determinations are *ex-parte* proceedings and there is no public right to be present during a probable cause determination. If the search warrant is not utilized in any further proceedings, especially if it is never executed, the probable cause determination would not be reviewable in the public arena.

The Committee concluded that unexecuted search warrants and the associated affidavits of probable cause do not constitute public records until execution, and unexecuted search warrants and their supporting documentation should remain confidential even after return. A statement to that effect has been added as new paragraph (B) to Rule 212. Additionally, because an unexecuted warrant now would never be publically disseminated, the original language in paragraph (A) stating that the warrant would remain undisclosed for no "longer than 48 hours after the warrant has been issued" would contradict the provisions of new paragraph (B) and therefore has been deleted. Cross-references to the Rule 212 concept of an unexecuted warrant not being a public record have been added to the Comments to Rules 113, 209, and 210 along with the notation that the returned unexecuted search warrants would not be included in the criminal case file nor docketed.

Once this concept was introduced into the rules, the question then became how best to handle the documents themselves. The returned unexecuted search warrant will be expired and therefore will never be executed. In most cases, the returned warrant would not be a filing in a case and would therefore require separate treatment. Rather than burden the issuing authority with the need to create separate storage arrangements for these documents, the unexecuted search warrant documentation would be destroyed upon return. This procedure also will eliminate the possibility that information harmful to the privacy interests of an individual is made public when it has not resulted in any criminal charges.

This concept was borrowed from Maryland Criminal Procedure Rule 4-601 that states that the "judge to whom an unexecuted search warrant is returned may destroy the search warrant and related papers or make any other disposition the judge deems proper."

Brady Implications

The Committee also considered the potential implications of *Brady v. Maryland*, 373 U.S. 83 (1963) on the proposed new language in Rule 212 that would require the destruction of returned unexecuted warrants. In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the U.S. Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

The provisions in Rule 212 that provide for the destruction of unexecuted search warrants deal with documents from unexecuted search warrants that had been returned to the issuing authority. Since *Brady* and its progeny were concerned with information in the possession of the prosecution, the initial question in the Committee's consideration of this issue was whether the same obligation to preserve and disclose exculpatory information extended to the courts.

In Pennsylvania, there is a limited obligation for such disclosure by the courts when the information is exclusively in the possession of the court. In *Commonwealth v. Santiago*, 405 Pa. Super. 56, 591 A.2d 1095 (1991), a highly publicized case involving the murder of a police officer, the trial judge conducted pre-trial interviews with potential trial witnesses *in camera* without either counsel being present. The defendant argued that because neither he nor the prosecution was aware of the contents of such testimony, the trial court owed him a duty of disclosing favorable testimony offered during these interviews. A plurality of the Superior Court held:

In sum, therefore, we conclude that where a trial court is in the sole possession of materially exculpatory evidence, it must disclose that evidence to the defense. We note that the duty here is quite limited in practical effect. Ordinarily, prosecution or defense counsel will be privy to any information available to the judge; hence, the need for judicial disclosure will be obviated. When a judge has exclusive knowledge of such evidence, as here or as in

Pennsylvania v. Ritchie, supra, (480 U.S. 39 (1987)) then the duty will arise. Moreover, materiality is another significant limitation. It is only when a miscarriage of justice is threatened that due process requires judicial intervention through *sua sponte* disclosure. 405 Pa. Super at 91, 591 A.2d at 1113.

The fact pattern in *Santiago* was fairly unique and the potentially exculpatory evidence was entirely within the possession of the court, the prosecution being excluded from the witness interviews. Similarly, in *Pennsylvania v. Ritchie*, the U.S. Supreme Court case cited in *Santiago* above, the trial court conducted an *in camera* examination of the defendant's child and youth file to determine which portions of the record could be released.

The question raised by the Committee was whether a search warrant is similarly in the exclusive possession of the court. The Committee considered the circumstances under which exculpatory evidence might be found through an unexecuted search warrant. The most likely, albeit rare, scenario is the situation in which the defendant asserts that another individual had committed the offense. In that situation, the fact that the police had at one point sought a search warrant for that individual might bolster such a claim.

Arguably, the requirement to return the unexecuted warrant to the issuing authority places the search warrant within the possession of the court. On the other hand, the law enforcement agency that had requested the search warrant also would be in possession of information related to another individual being targeted as a suspect in the crime with which the defendant is charged as well as copies of the search warrant information.

Furthermore, the Committee questioned how materially exculpatory a search warrant that police never executed, especially in comparison to investigative materials in the possession of the police or prosecution, would be. In other words, any exculpatory materials that might be within the possession of the court would be duplicative of much fuller exculpatory information that was in the possession of the Commonwealth which has an unquestionable duty to provide it to the defendant.

The Committee concluded that the destruction of the search warrant information would not encompass the destruction of any exculpatory evidence since the original form of it would be in the possession of the police or prosecution. However, the Committee did not underestimate the importance of preserving potentially exculpatory evidence. To facilitate the maintenance of unexecuted search warrants that might have *Brady* implications, a sentence has been included in new paragraph (B) of Rule 209 that requires a copy of the returned unexecuted search warrant to be retained by the affiant. Additionally, a cross-reference reading "for the obligation of the Commonwealth to disclose exculpatory evidence, see Rule 573 and its Comment" has been added to the Rule 209 Comment.

Possession of Original Search Warrant

The Committee also received reports of an ongoing dispute in some counties regarding whether the original search warrant document should be given to the requesting police officers or retained by the issuing authority. Some issuing authorities had concluded that the issuing authority should retain the original search warrant and provide the police with copies. Other than the Rule 208 requirement that the police leave a copy of the warrant and affidavits at the premises that was searched, the rules did not address who retains the original search warrant. The Committee concluded that some clarification of this question would be helpful.

The Committee concluded that the more proper method would be to have the serving officer be able to display the actual warrant to the owner of the premises to be searched and so should be given the original of the warrant. However, the Committee recognizes that the rules authorize providing a search warrant to the officer via advanced communications technology (ACT) and did not want to undo that capability.

Therefore, a new paragraph (G) has been added to Rule 203 that would provide that the original of a search warrant be given to the executing police officer. Additionally, language has been added to the Comment that, when the search warrant is obtained using ACT, the version delivered to the police officer should be considered the original.

[Pa.B. Doc. No. 13-2101. Filed for public inspection November 8, 2013, 9:00 a.m.]

[234 PA. CODE CH. 1]

Order Adopting New Rule 151 and Approving the Revision of the Comment to Rule 150 of the Rules of Criminal Procedure; No. 439 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 24th day of October, 2013, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 42 Pa.B. 5164 (August 11, 2012), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 967), 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 new Pennsylvania Rule of Criminal Procedure 151 is adopted and the revision to the Comment to Pennsylvania Rule of Criminal Procedure 150 is approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2014.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

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

PART E. Miscellaneous Warrants

Rule 150. Bench Warrants.

* * * * *

Comment

This rule addresses only the procedures to be followed after a bench warrant is executed, and does not apply to execution of bench warrants outside the Commonwealth, which are governed by the extradition procedures in 42 Pa.C.S. § 9101 *et seq.*, or to warrants issued in connection with probation or parole proceedings.

For the bench warrant procedures when a witness is under the age of 18 years, see Rule 151.

Paragraph (A)(2) permits the bench warrant hearing to be conducted using two-way simultaneous audio-visual communication, which is a form of advanced communication technology. *See* Rule 103. Utilizing this technology will aid the court in complying with this rule, and in ensuring individuals arrested on bench warrants are not detained unnecessarily.

* * * * *

***Official Note*: Adopted December 30, 2005, effective August 1, 2006; Comment revised October 24, 2013, effective Janaury 1, 2014**.

Committee Explanatory Reports:

Final Report explaining new Rule 150 providing procedures for bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the October 24, 2013 Comment revision adding a cross-reference to new Rule 151 published with the Court's Order at 43 Pa.B. 6655 (November 9, 2013).

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

Rule 151. Bench Warrant Procedures When Witness is Under Age of 18 Years.

(A) In a court case when a bench warrant for a witness under the age of 18 years is executed, except as provided in this rule, the case is to proceed in accordance with the procedures in Rule 150.

(B) Upon execution of the warrant for a minor witness, the arresting officer immediately shall inform the proper judicial officer and a parent or guardian of the minor witness of the arrest of the minor witness.

(C) *Execution of Bench Warrant in County of Issuance*

(1) If the judicial officer who issued the bench warrant, or another judicial officer designated by the president judge or by the president judge's designee, is not available to conduct the bench warrant hearing without unnecessary delay, the minor witness shall be taken before the on-call judge of the court of common pleas.

(a) The on-call judge shall determine whether to release the witness or to detain the witness pending the bench warrant hearing. If the bench warrant specifically orders detention of the minor witness, the on-call judge shall not release the witness.

(b) If the on-call judge determines the witness must be detained, the witness shall be detained in a detention facility. The on-call judge shall notify the parent or guardian of the minor witness of the detention.

(2) The minor witness shall not be detained without a bench warrant hearing on that bench warrant longer than 24 hours, or the close of the next business day if the 24 hours expires on a non-business day.

(D) *Execution of Bench Warrant Outside County of Issuance*

(1) The minor witness shall be taken before a common pleas court judge of the county of arrest without unnecessary delay and in no case later than the end of the next business day.

(2) The judge shall identify the minor witness as the subject of the bench warrant, decide whether detention as a minor witness is necessary, and order that arrangements be made immediately to transport the minor witness to the county of issuance.

(3) If transportation cannot be arranged immediately, the minor witness shall be released unless the bench warrant specifically orders detention of the witness. In this case, the minor witness shall be detained in an out-of-county detention facility.

(4) If detention is ordered, the minor witness shall be brought to the county of issuance within 72 hours from the execution of the bench warrant.

(5) If the time requirements of this paragraph are not met, the minor witness shall be released.

Comment

This rule was adopted in 2013 to establish the procedures when a witness subject to a bench warrant is under the age of 18. The procedures following the execution of a bench warrant set forth in Rule 150 apply to cases when the witness is under the age of 18, except as otherwise provided in this rule.

Paragraph (B) ensures that the judicial officer who issued the bench warrant is aware that the minor witness has been arrested, and that a parent or guardian of the arrested minor witness is notified of the arrest.

The procedures in paragraph (C) for cases in which the bench warrant is executed in the county of issuance, recognize the need, when the issuing judicial officer is unavailable, to conduct the bench warrant hearing, for the common pleas court judge who is on call to determine whether a minor witness may be released or must be detained. If the minor witness is detained, the bench warrant hearing must be held no later than the end of the next business day. If the bench warrant hearing is not conducted within this time period, the minor witness must be released.

The minor witness may not be detained in an adult facility pending a bench warrant hearing.

In cases in which the bench warrant is executed outside the county of issuance, the minor witness must be transported to the county of issuance within 72 hours of the execution of the bench warrant, and the bench warrant hearing must be conducted by the end of the next business day.

As used in this rule, "minor witness" means a witness who is under the age of 18 years, and "proper judicial officer" means the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee.

***Official Note*: Adopted October 24, 2013, effective January 1, 2014.**

Committee Explanatory Reports:

Final Report explaining the October 24, 2013 adoption of new Rule 151 providing procedures for bench warrants when a witness is under the age of 18 published with the Court's Order at 43 Pa.B. 6655 (November 9, 2013).

FINAL REPORT[1]

Adoption of New Pa.R.Crim.P. 151, and Approval of Revisions to the Comment to Pa.R.Crim.P. 150

Bench Warrant Procedures for Witnesses Who Are Under the Age of 18 Years

On October 24, 2013, effective January 1, 2014, upon the recommendation of the Criminal Procedural Rules Committee ("Criminal Committee"), the Court adopted

[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.

new Rule of Criminal Procedure 151 (Bench Warrant Procedures When Witness is Under Age of 18 Years) and approved the revision of the Comment to Pa.R.Crim.P. 150 (Bench Warrants). The new rule and correlative Comment revision establish new procedures for court cases after the execution of a bench warrant that was issued for a witness who is under the age of 18 years.

For the past several years, the Committee has been examining procedures governing the use of subpoenas in the courts of common pleas and in magisterial district courts.[2] The Committee agreed a comparable procedure should be included in the proposed changes to Rule 107 that were being developed. Correlative to this discussion, the Committee also discussed procedures for the issuance of bench warrants for witnesses under the age of 18 who have failed to appear when issued a subpoena. The Committee reviewed the provisions for bench warrants in Juvenile Rule 140 (Bench Warrants for Failure to Appear at Hearings), specifically in paragraph (D) for witnesses. The Committee agreed there should be comparable special procedures for bench warrants for minor witnesses in the Rules of Criminal Procedure, and that these special procedures should be set forth in a separate rule, new Rule 151.

Rule 151 sets forth the procedures after a bench warrant for a witness who is under the age of 18 years is issued and executed. Paragraph (A) establishes that, except as provided in Rule 151, the bench warrant procedures in Rule 150 govern cases in which the bench warrant is for a witness under the age of 18 years. Paragraph (B) requires the arresting officer to notify the judicial officer that the minor witness has been arrested on the bench warrant. The arresting officer also is required to notify the parent or guardian of the minor witness. This parental notification requirement is comparable to the requirements in Juvenile Rule 140(D)(3).

The Committee discussed at length the procedure when a minor witness is arrested on a bench warrant and the issuing judicial officer is not available. The issue was whether magisterial district judges (MDJs) are permitted to lodge juveniles in detention facilities. The consensus was that MDJs do not have the authority to lodge juveniles in a detention facility on these bench warrants.

The Committee also discussed the issue of detention of underage witnesses in common pleas court cases in judicial districts without easy access to detention facilities. The members opined that alternatives to detention should be considered such as release on an electronic monitor.

The Committee concluded that the best resolution of issues related to the detention of a minor witness when the issuing judicial officer is not available, whether the bench warrant was issued by an MDJ or by a common pleas court judge, is to require that the minor witness be taken before the on-call common pleas court judge for a bail decision, including release on an electric monitoring unit, or a detention decision. Paragraph (C)(1) and paragraph (C)(1)(a) require the minor witness to be taken to the on-call common pleas court judge for a determination whether to set bail or to detain the witness pending the bench warrant hearing if the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee, is not available to conduct the bench warrant hearing without unnecessary delay. Paragraph (C)(1)(a) also limits the on-call judge's ability to release when the bench warrant specifically orders the detention of the minor witness. *See also* Juvenile Rule 140(D)(1)(b). If the on-call judge determines that the minor witness must be detained, paragraph (C)(1)(b) requires that the witness be detained in a detention facility.

Paragraph (C)(2) is taken from Juvenile Rule 140(D)(2) (Prompt Hearing) that requires the bench warrant hearing to be conducted "by the next business day" when the minor witness is detained, and if the hearing is not conducted within this time frame, the witness must be released. This language has been modified slightly in Rule 151(C)(2) to provide that the hearing be conducted "before the end of the next business day." The Committee believes this language is clearer.

Paragraph (D) (Execution of Bench Warrant Outside County of Issuance) is taken from Juvenile Rule 140(D)(4) (Out-of-County Custody). Rule 140(D)(4)(a) is addressed in Rule 151(B) by the requirement that the arresting officer notify the proper judicial officer of the arrest of the minor witness.

Paragraphs (D)(2), (D)(3), (D)(4), and (D)(5) follow the requirements in Rule 140(D)(4)(b), (c), (d), (e), (f), and (g). When a minor witness is arrested on a bench warrant out of the county of issuance, paragraph (D)(1) requires the minor witness to be taken before a judge of the county of arrest without unnecessary delay. In no case may there be a delay longer than the end of the next business day. When the minor witness appears before the judge, the judge is required to confirm that the minor witness is the subject of the bench warrant, must decide whether to detain the minor witness, and make arrangements to transport the minor witness to the county of issuance. If the judge is not able to arrange transport, the minor witness must be released unless the bench warrant specifically orders detention. In these cases, the minor witness must be brought to the county of issuance within 72 hours from the execution of the bench warrant or be released.

Because Rule 151 is a court case rule and not a Juvenile Court rule, the Committee did not included the provisions in Juvenile Rule 140(D) for a master or for an "other order of court." Rule 151 applies only to bench warrants issued in court cases unlike the bench warrants that are issued pursuant to Juvenile Rule 140.

The Rule 151 Comment elaborates on the provisions of the new rule and includes a cross-reference to Rule 150. The fourth paragraph explains that a minor witness may not be detained in an adult facility pending the bench warrant hearing.

The Rule 150 Comment has been revised to include a cross-reference to new Rule 151.

[Pa.B. Doc. No. 13-2102. Filed for public inspection November 8, 2013, 9:00 a.m.]

[2] *See* Committee explanatory Report at 35 Pa.B. 1557 (March 5, 2005) and Supplemental Report at 35 Pa.B. 5677 (October 15, 2005). During these discussions, Rule of Juvenile Court Procedure ("Juvenile Rule") 123 was amended to require parental notification when a subpoena is issued for a minor witness. The Committee also looked at Act 98 of 2008 that amended 42 Pa.C.S. § 6333 to require notice to a parent or guardian of the subpoena issued to any witness who is under the age of 18 years. Changes correlative to this statutory provision also have been added to Civil Rule 234.2 and MDJ Rule 214. Although the Committee's work on Rule 107 is continuing, the members have agreed a comparable procedure should be included in the final version of any changes to Rule 107 that would be proposed.

[234 PA. CODE CH. 10]

Order Amending Rule 1013 of the Rules of Criminal Procedure; No. 440 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 24th day of October, 2013, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration, and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendment to Pennsylvania Rule of Criminal Procedure 1013 is adopted as in the following form.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

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

PART A. Philadelphia Municipal Court Procedures

Rule 1013. Prompt Trial—Municipal Court.

(A) (1) **[Trial in a Municipal Court case in which a preliminary arraignment is held after June 30, 1974, but before July 1, 1975, shall commence no later than 210 days from the date on which the preliminary arraignment is held.**

(2)] Trial in a Municipal Court case shall commence no later than 180 days from the date on which the preliminary arraignment is held.

[(3)] (2) Trial in a Municipal Court case in which the defendant appears pursuant to a summons shall commence no later than 180 days from the date on which the complaint is filed.

[(4)] (3) Trial in a case that commenced as a Common Pleas Court case but was later ordered to be tried in Municipal Court shall commence no later than 180 days from the date on which the preliminary arraignment is held or 60 days from the date on which the order is made, whichever is greater.

[(5)] (4) Trial in a case which is transferred from the juvenile court to the Municipal Court shall commence no later than 180 days from the date of filing the transfer order.

* * * * *

Comment

For a discussion of the general principles underlying this rule and for other explanatory comments applicable to it, see the Comment to Rule 600. It should be noted, however, that in several technical respects the text of this rule differs from that of Rule 600.

Paragraph **[(A)(3)] (A)(2)** is intended to apply only when a defendant appears in compliance with a summons. It is not intended to apply when a defendant is arrested after non-compliance with or return of a summons.

Paragraph **[(A)(4)] (A)(3)** is intended to provide a minimum 60-day period for trial of those cases which become Municipal Court cases when, at the preliminary hearing, in court, or otherwise after preliminary arraignment, all offenses punishable by more than five years imprisonment are discharged.

The time for trial in cases that originate as Court of Common Pleas cases and are transferred to the Municipal Court but are subsequently transferred back to the Court of Common Pleas are governed by Rule 600. *See Commonwealth v. Far*, **616** Pa. **149**, 46 A.3d 709 (2012).

"Order requiring the retrial," as used in paragraph (H) is intended to include, for example, the declaration of a mistrial, or the withdrawal, rejection of, or successful challenge to a guilty plea.

***Official Note*:** Rule 6013 adopted June 28, 1974, effective prospectively as set forth in paragraphs (A)(1) and (A)(2) of this rule; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; the amendment to paragraph (D) as it regards exclusion of defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982, and paragraph (H), which provides the time for retrials, was specifically made effective as to retrials required by orders entered on or after January 1, 1982; amended September 3, 1993, effective January 1, 1994; renumbered Rule 1013 and amended March 1, 2000, effective April 1, 2001; amended August 8, 2002, effective January 1, 2003; amended June 26, 2003, effective July 1, 2003; Comment revised July 1, 2013, effective August 1, 2013**; amended October 24, 2013, effective immediately**.

Committee Explanatory Reports:

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Final Report explaining the October 24, 2013 amendment deleting paragraph (A)(1) as obsolete published with the Court's Order at 43 Pa.B. 6657 (November 9, 2013).

FINAL REPORT[1]

Amendment to Pa.R.Crim.P. 1013

On October 24, 2013, effective immediately, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted the amendment of Rule of Criminal Procedure 1013 (Prompt Trial—Municipal Court), removing paragraph (A)(1) of Rule 1013 as no longer necessary. Paragraph (A)(1) states:

> (A)(1) Trial in a Municipal Court case in which a preliminary arraignment is held after June 30, 1974, but before July 1, 1975, shall commence no later than 210 days from the date on which the preliminary arraignment is held.

Paragraph (A)(1) was part of then-Rule 6013 when it was first adopted on June 28, 1974 to provide guidance in determining what time limit for prompt trials should be applied to cases then pending in the Philadelphia Municipal Court. The Committee is not aware of any case to which this provision would apply that is still open and

[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.

concluded that this provision is obsolete. Therefore, the paragraph has been deleted from the rule.

[Pa.B. Doc. No. 13-2103. Filed for public inspection November 8, 2013, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 11, 12 AND 16]

Order Amending Rules 1120, 1150, 1151, 1200, 1608, 1609 and 1613, Renumbering Rule 1613 to 1631 and Adopting New Rules 1610, 1611, 1634 and 1635 of the Rules of Juvenile Court Procedure; No. 616 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 21st day of October, 2013, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 42 Pa.B. 7257 (December 1, 2012), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 54, No. 3, November 30, 2012), and on the Supreme Court's web-page, and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 1120, 1150, 1151, 1200, 1608, 1609, and 1613; the renumbering of Rule 1613 to Rule 1631; and the adoption of new Rules 1610, 1611, 1634, and 1635 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective December 1, 2013.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 1120. Definitions.

* * * * *

CHILD is a person who**:**

1) is under the age of eighteen **[who] and** is the subject of the dependency petition**[, or who]; or**

2) is under the age of twenty-one; and

a) was adjudicated dependent before reaching the age of eighteen **[years and who, while engaged in a course of instruction or treatment, requests];**

b) has requested the court to retain jurisdiction **[until the course has been completed, but in no event shall remain in a course of instruction or treatment past the age of twenty-one years.]; and**

c) who remains under the jurisdiction of the court or for whom jurisdiction has been resumed as a dependent child because the court has determined that the child is one of the following:

i) completing secondary education or an equivalent credential;

ii) enrolled in an institution which provides postsecondary or vocational education;

iii) participating in a program actively designed to promote or remove barriers to employment;

iv) employed for at least eighty hours per month; or

v) incapable of doing any of the activities as prescribed above in (2)(c)(i)—(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child.

* * * * *

Comment

In 2013, the definition of "child" was expanded to include those children who have requested the court to resume jurisdiction after juvenile court supervision had been previously terminated. This rule change followed the changes to the definition of "child" in the Juvenile Act pursuant to Act of July 5, 2012 (P. L. 880, No. 91). *See* 42 Pa.C.S. § 6302.

A party to the proceedings is not to function as the clerk of courts. Because the clerk of courts maintains the official court record, this person is to remain neutral and unbiased by having no personal connection to the proceedings. The county agency is a party to the proceeding and is not to function as the "Clerk of Courts."

The definition of **["clerk of courts"] "Clerk of Courts"** should not necessarily be interpreted to mean the office of clerk of courts as set forth in 42 Pa.C.S. § 102, but instead refers to that official who maintains the official court record and docket regardless of the person's official title in each judicial district. It is to be determined locally which official is to maintain these records and the associated docket.

* * * * *

***Official Note*: Rule 1120 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. Amended June 24, 2013, effective January 1, 2014. Amended October 21, 2013, effective December 1, 2013.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1120 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

PART B(2). COUNSEL

Rule 1150. Attorneys—Appearances and Withdrawals.

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Comment

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See also Rule 1613 for termination of court supervision.

***See* the Comment to Rule 1634 for assisting children in filing resumption of jurisdiction motions. It**

is best practice for the court to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel in the reopened case. If there are extenuating circumstances preventing the attorney from representing the child, the attorney should make this known at the time of the filing of the motion for resumption of jurisdiction so the court can assign a new attorney.

***Official Note*:** Rule 1150 adopted August 21, 2006, effective February 1, 2007. **Amended October 21, 2013, effective December 1, 2013.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1150 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

Rule 1151. Assignment of Guardian *Ad Litem* and Counsel.

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B. *Counsel for child.* The court shall appoint legal counsel for a child:

1) if a proceeding has been commenced pursuant to Rule 1200 alleging a child to be dependent who:

* * * * *

d) has been formerly adjudicated dependent, and is under the jurisdiction of the court, subject to its conditions or placements and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); **[or]**

e) has been referred pursuant to section 6323 (relating to informal adjustment), and who commits an act which is defined as ungovernable in paragraph (B)(1)(b); or

f) has filed a motion for resumption of jurisdiction pursuant to Rule 1634; or

2) upon order of the court.

* * * * *

Comment

See 42 Pa.C.S. §§ 6302, 6311, and 6337.

The guardian *ad litem* for the child may move the court for appointment as legal counsel and assignment of a separate guardian *ad litem* when, for example, the information that the guardian *ad litem* possesses gives rise to the conflict and can be used to the detriment of the child. To the extent 42 Pa.C.S. § 6311(b)(9) is inconsistent with this rule, it is suspended. *See* Rule 1800. *See also* Pa.R.P.C. 1.7 and 1.8.

Pursuant to paragraph (B)(1)(f), the court is to appoint legal counsel when a motion for resumption of jurisdiction has been filed. It is best practice to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel.

Under paragraph (C), legal counsel represents the legal interests of the child and the guardian *ad litem* represents the best interests of the child.

* * * * *

***Official Note*:** Rule 1151 adopted August 21, 2006, effective February 1, 2007. Amended February 20, 2007, effective immediately. Amended May 12, 2008, effective immediately. Amended April 29, 2011, effective July 1, 2011. **Amended October 21, 2013, effective December 1, 2013.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1151 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

CHAPTER 12. COMMENCEMENT OF PROCEEDINGS, EMERGENCY CUSTODY, AND PRE-ADJUDICATORY PLACEMENT

PART A. COMMENCING PROCEEDINGS

Rule 1200. Commencing Proceedings.

Dependency proceedings within a judicial district shall be commenced by:

1) the filing of a dependency petition;

2) the submission of an emergency custody application;

3) the taking of the child into protective custody pursuant to a court order or statutory authority;

4) the court accepting jurisdiction of a resident child from another state; **[or]**

5) the court accepting supervision of child pursuant to another state's order **[.]; or**

6) the filing of a motion for resumption of jurisdiction pursuant to Rule 1634.

Comment

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For proceedings that have already been commenced in another judicial district, see Rule 1302 for inter-county transfer of the case.

For resumption of jurisdiction, see Rules 1634 and 1635 & 42 Pa.C.S. §§ 6302 and 6351(j).

The clerk of courts and the county agency should have form motions available for children who want to file for resumption of juvenile court jurisdiction. These forms are available at http://www.pacourts.us/Forms/dependency.htm.

The clerk of courts or county agency is to assist any child who requests assistance in completing the form and the clerk of courts is to accept all filings for resumption of juvenile court jurisdiction regardless of whether the motions meet the standard for legal filings or there are objections by other parties. This is to ensure these children have easy access to the court. *See also* Rule 1126.

***Official Note*:** Rule 1200 adopted August 21, 2006, effective February 1, 2007. **Amended October 21, 2013, effective December 1, 2013.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1200 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B(2). PERMANENCY HEARING

Rule 1608. Permanency Hearing.

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Comment

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See Rule 1136 regarding *ex parte* communications.

***See* Rule 1610 for permanency hearing for children over the age of eighteen.**

***Official Note*: Rule 1608 adopted August 21, 2006, effective February 1, 2007. Amended December 18, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1608 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

Rule 1609. Permanency Hearing Orders.

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Comment

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Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

***See* Rule 1611 for permanency hearing orders for children over the age of eighteen.**

***Official Note*: Rule 1609 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 1609 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

(*Editor's Note*: Rule 1610 and 1611 are new and printed in regular type to enhance readability.)

Rule 1610. Permanency Hearing for Children over Eighteen.

A. *Purpose and timing of hearing.* For every case for children over the age of eighteen, the court shall conduct a permanency hearing at least every six months for purposes of determining:

(1) whether the child continues to meet the definition of child under Rule 1120 and has requested the court to retain dependency jurisdiction;

2) whether the transition plan of the child is consistent with Rule 1631 (E)(2);

3) the date by which the goal of permanency for the child might be achieved; and

4) whether the placement continues to be best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Recording.* The permanency hearing shall be recorded.

C. *Evidence.* Any evidence helpful in determining the appropriate course of action, including evidence that was not admissible at the adjudicatory hearing, shall be presented to the court.

D. *Court's findings.* At the permanency hearing, the court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1611.

Comment

See 42 Pa.C.S. §§ 6341, 6351.

To the extent practicable, the judge or master who presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearings for the same child. In resumption of jurisdiction cases, to the extent practicable, the judge or master who presided over the original case should preside over the re-opened case.

Pursuant to paragraph (A), courts are to conduct a permanency hearing every six months. Courts are strongly encouraged to conduct more frequent permanency hearings, such as every three months, when possible.

A three-month hearing or conference is considered best practice for dependency cases and is highly recommended. The court should not wait until six months has elapsed to determine if the transition plan is progressing. Time to achieve permanency is critical in dependency cases. In order to seek reimbursement under Title IV-E of the Social Security Act, 42 U.S.C. § 601 *et seq.*, a full permanency hearing is to be conducted every six months.

In addition to the permanency hearing contemplated by this rule, courts may also conduct additional and/or more frequent intermittent review hearings or status conferences, which address specific issues based on the circumstances of the case, and which assist the court in ensuring timely transition.

See 42 U.S.C. § 675 (5)(A)—(H) for development of a transition plan.

See Rule 1128 regarding presence at proceedings and Rule 1136 regarding *ex parte* communications.

When the court has resumed jurisdiction pursuant to Rule 1635, the court is to schedule regular permanency hearings. The county agency is to develop a new transition plan for the child.

***Official Note*: Adopted October 21, 2013, effective December 1, 2013.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1610 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

Rule 1611. Permanency Hearing Orders for Children over Eighteen.

A. *Court order.* After every permanency hearing for children over the age of eighteen, the court shall issue a written order, which provides whether the transition plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.

B. *Determinations made.* The court's order shall reflect the determinations made pursuant to Rule 1610(D).

C. *Orders concerning education.* The court's order shall address the stability and appropriateness of the child's

education, if applicable, including whether an educational decision maker is appropriate.

D. *Orders concerning health care and disability.*

1) The court's order shall identify, monitor, and address the child's needs concerning health care and disability; and

2) The court's orders may authorize evaluations and treatment.

Comment

When issuing a permanency order, the court should issue an order that is "best suited to the safety, protection, and physical, mental, and moral welfare of the child." 42 Pa.C.S. § 6351(a). *See In re S.J.*, 906 A.2d 547, 551 (Pa. Super. Ct. 2006) (citing *In re Tameka M.*, 525 Pa. 348, 580 A.2d 750 (1990)), for issues addressing a child's mental and moral welfare.

Pursuant to paragraph (C), the court's order is to address the child's educational stability, including the right to an educational decision maker. The intent of this paragraph is to ensure that the inquiry regarding the appointment of an educational decision maker is considered. Federal and state law requires educational decision makers until the age of twenty-one if an educational decision maker is necessary. *See* Comment to Rule 1609(D) and 34 C.F.R. § 300.320(c).

Pursuant to paragraph (D), the court's order is to address the child's needs concerning health care and disability. *See* Comment to Rule 1609(E).

***Official Note*:** Adopted October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1611 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

PART (C). POST-DISPOSITIONAL PROCEDURES

Rule 1613. **[Termination of Court Supervision] (Reserved)**.

[A. *Concluding Supervision.* Any party, or the court on its own motion, may move for the termination of supervision when court-ordered services from the county agency are no longer needed and:

1) the child has remained with the guardian and the circumstances which necessitated the dependency adjudication have been alleviated;

2) the child has been reunified with the guardian and the circumstances which necessitated the dependency adjudication and placement have been alleviated;

3) the child has been placed with a ready, willing, and able parent who was not previously identified by the county agency;

4) the child has been adopted and services from the county agency are no longer needed;

5) the child has been placed in the custody of a permanent legal custodian and services from the county agency are no longer needed;

6) the child has been placed in the physical and legal custody of a fit and willing relative and services from the county agency are no longer needed;

7) the child has been placed in another living arrangement intended to be permanent and services from the county agency are no longer needed and a hearing has been held pursuant to paragraph (E) for a child who is age eighteen or older;

8) the child has been adjudicated delinquent and services from the county agency are no longer needed because all dependency issues have been resolved;

9) the child has been emancipated by the court;

10) the child is eighteen years of age or older and a hearing has been held pursuant to paragraph (E);

11) the child has died;

12) a court in another county of this Commonwealth has accepted jurisdiction; or

13) a court in another state has accepted jurisdiction.

B. *Ready, willing, and able parent.* When services from the county agency are no longer necessary because the court has determined that the child is not dependent pursuant to paragraph (A)(3) because a non-custodial parent has been found by the court to be able and available, the court shall enter an order awarding custody to that parent and the court order shall have the effect and be docketed as a decision entered pursuant to Pa.R.C.P.

C. *Objection.* Any party may object to a motion under paragraph (A) and request a hearing.

D. *Hearing.* If objections have been made under paragraph (C), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.

E. *Children eighteen years of age or older.*

1) Before the court can terminate its supervision of a child who is eighteen years of age or older, a hearing shall be held at least ninety days prior to termination.

2) Prior to the hearing, the child shall have the opportunity to make decisions about the transition plan and confer with the county agency about the details of the plan. The transition plan shall, at a minimum, include:

a) the specific plans for housing;

b) a description of the child's source of income;

c) the specific plans for pursuing educational or vocational training goals;

d) the child's employment goals and whether the child is employed;

e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;

f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;

g) verification that all vital identification documents and records have been provided to the child; and

h) a description of any other needed support services.

3) At the hearing, the court shall review the transition plan for the child. If the court is not

satisfied that the requirements of paragraph (E)(2) have been met, a subsequent hearing shall be scheduled.

4) The court shall not terminate its supervision of the child without approving an appropriate transition plan, unless the child, after an appropriate transition plan has been offered, is unwilling to consent to the supervision and the court determines termination is warranted.

F. *Cessation of services.* When all of the above listed requirements have been met, the court may discharge the child from its supervision and close the case.

Comment

For procedures on motions, see Rule 1344. For procedures on the dispositional order, see Rule 1515.

For guidelines under paragraph (A), see 42 Pa.C.S. §§ 6301(b) & 6351(f.1).

Pursuant to paragraph (A)(8), if a child has been adjudicated delinquent, the court may terminate court supervision unless dependency is necessary for placement. *In re Deanna S.*, 422 Pa. Super. 439, 619 A.2d 758 (1993). The court may also decide to retain dependency jurisdiction regardless of the delinquency adjudication because the child still needs dependency services.

If dependency issues have not been resolved, the case should be kept open and services ordered. The court should ensure that services are not discontinued solely because the child was adjudicated delinquent. The county agency and the juvenile probation are to collaborate on the case and resolve all outstanding issues. If a child is in a delinquency placement, the court is to ensure that the county agency and the juvenile probation office have collaborated to ensure appropriate services are in place.

For procedures on emancipation pursuant to paragraph (A)(9), see *Berks County Children and Youth Services v. Rowan*, 428 Pa. Super. 448, 631 A.2d 615 (1993). *See also*, 22 Pa. Code § 11.11, 55 Pa. Code § 145.62.

Pursuant to paragraph (A)(10), a child who was adjudicated dependent prior to reaching the age of eighteen and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, may remain in the course of instruction or treatment until the age of twenty-one. 42 Pa.C.S. § 6302. *See also*, 55 Pa. Code §§ 3130.5 & 3130.87; *In re S.J.*, 906 A.2d 547 (Pa. Super. Ct. 2006).

The court may not terminate jurisdiction solely because the dependent child is a runaway. *In re Deanna S.*, 422 Pa. Super. 439, 619 A.2d 758 (1993).

A child whose non-custodial parent is ready, willing, and able to provide adequate care for the child may not be found dependent. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). *See* paragraph (B).

Pursuant to 42 Pa.C.S. § 6351(a)(2.1), a court may transfer permanent legal custody to a person found by the court to be qualified to receive and care for the child. 42 Pa.C.S. § 6351(a)(2.1). *See also Justin S.*, 375 Pa.Super. 88, 543 A.2d 1192 (1988).

Pursuant to paragraph (E)(2), the county agency is to assist the child and provide all the support necessary in developing a transition plan. *See* 42 U.S.C. § 675 (5)(A)—(H).

Pursuant to paragraph (E)(3), the court is to approve a transition plan that is suitable for the child and that has been personalized at the direction of the child.

***Official Note*: Rule 1613 adopted August, 21, 2006, effective February 1, 2007. Amended July 29, 2009, effective immediately. Amended April 29, 2011, effective July 1, 2011.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1613 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1613 published with the Court's Order at 39 Pa.B. 4887 (August 15, 2009).

Final Report explaining the amendments to Rule 1613 published with the Court's Order at 41 Pa.B. 2430 (May 14, 2011).]

Comment

This rule was renumbered from Rule 1613 to Rule 1631 on October 21, 2013. *See* Rule 1631.

PART D. CESSATION OR RESUMPTION OF COURT SUPERVISION OR JURISDICTION

Rule
1631. Termination of Court Supervision.
1634. Motion for Resumption of Jurisdiction.
1635. Hearing on Motion for Resumption of Jurisdiction.

Rule **[1613] 1631**. Termination of Court Supervision.

A. *Concluding Supervision.* Any party, or the court on its own motion, may move for the termination of supervision when court-ordered services from the county agency are no longer needed and:

1) the child has remained with the guardian and the circumstances which necessitated the dependency adjudication have been alleviated;

2) the child has been reunified with the guardian and the circumstances which necessitated the dependency adjudication and placement have been alleviated;

3) the child has been placed with a ready, willing, and able parent who was not previously identified by the county agency;

4) the child has been adopted and services from the county agency are no longer needed;

5) the child has been placed in the custody of a permanent legal custodian and services from the county agency are no longer needed;

6) the child has been placed in the physical and legal custody of a fit and willing relative and services from the county agency are no longer needed;

7) the child has been placed in another living arrangement intended to be permanent and services from the county agency are no longer needed and a hearing has been held pursuant to paragraph (E) for a child who is age eighteen or older;

8) the child has been adjudicated delinquent and services from the county agency are no longer needed because all dependency issues have been resolved;

9) the child has been emancipated by the court;

10) the child is eighteen years of age or older and a hearing has been held pursuant to paragraph (E);

11) the child has died;

12) a court in another county of this Commonwealth has accepted jurisdiction; or

13) a court in another state has accepted jurisdiction.

B. *Ready, willing, and able parent.* When services from the county agency are no longer necessary because the court has determined that the child is not dependent pursuant to paragraph (A)(3) because a non-custodial parent has been found by the court to be able and available, the court shall enter an order awarding custody to that parent and the court order shall have the effect and be docketed as a decision entered pursuant to **the** Pa.R.C.P.

C. *Objection.* Any party may object to a motion under paragraph (A) and request a hearing.

D. *Hearing.* If objections have been made under paragraph (C), the court shall hold a hearing and give each party an opportunity to be heard before the court enters its final order.

E. *Children eighteen years of age or older.*

1) Before the court can terminate its supervision of a child who is eighteen years of age or older, a hearing shall be held at least ninety days prior to **[termination] the child turning eighteen years of age**.

2) Prior to the hearing, the child shall have the opportunity to make decisions about the transition plan and confer with the county agency about the details of the plan. The **county agency shall provide the** transition plan **to the court and the plan** shall, at a minimum, include:

a) the specific plans for housing;

b) a description of the child's source of income;

c) the specific plans for pursuing educational or vocational training goals;

d) the child's employment goals and whether the child is employed;

e) a description of the health insurance plan that the child is expected to obtain and any continued health or behavioral health needs of the child;

f) a description of any available programs that would provide mentors or assistance in establishing positive adult connections;

g) verification that all vital identification documents and records have been provided to the child; **[and]**

h) a description of any other needed support services **[.] ; and**

i) notice to the child that the child can request resumption of juvenile court jurisdiction until the child turns twenty-one years of age if specific conditions are met.

3) At the hearing, the court shall review the transition plan for the child. If the court is not satisfied that the requirements of paragraph (E)(2) have been met, a subsequent hearing shall be scheduled.

4) The court shall not terminate its supervision of the child without approving an appropriate transition plan, unless the child, after an appropriate transition plan has been offered, is unwilling to consent to the supervision and the court determines termination is warranted.

F. *Cessation of services.* When all of the above listed requirements have been met, the court may discharge the child from its supervision and close the case.

Comment

For procedures on motions, see Rule 1344. For procedures on the dispositional order, see Rule 1515.

For guidelines under paragraph (A), see 42 Pa.C.S. §§ 6301(b) & 6351(f.1).

Pursuant to paragraph (A)(8), if a child has been adjudicated delinquent, the court may terminate court supervision unless dependency is necessary for placement. *In re Deanna S.*, 422 Pa. Super. 439, 619 A.2d 758 (1993). The court may also decide to retain dependency jurisdiction regardless of the delinquency adjudication because the child still needs dependency services.

If dependency issues have not been resolved, the case should be kept open and services ordered. The court should ensure that services are not discontinued solely because the child was adjudicated delinquent. The county agency and the juvenile probation are to collaborate on the case and resolve all outstanding issues. If a child is in a delinquency placement, the court is to ensure that the county agency and the juvenile probation office have collaborated to ensure appropriate services are in place.

For procedures on emancipation pursuant to paragraph (A)(9), see *Berks County Children and Youth Services v. Rowan*, 428 Pa. Super. 448, 631 A.2d 615 (1993). *See also*, 22 Pa. Code § 11.11, 55 Pa. Code § 145.62.

Pursuant to paragraph (A)(10), a child who was adjudicated dependent prior to reaching the age of eighteen and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, may remain in the course of instruction or treatment until the age of twenty-one. 42 Pa.C.S. § 6302. *See also*, 55 Pa. Code §§ 3103.5 & 3130.87; *In re S.J.*, 906 A.2d 547 (Pa. Super. Ct. 2006).

The court may not terminate jurisdiction solely because the dependent child is a runaway. *In re Deanna S.*, 422 Pa. Super. 439, 619 A.2d 758 (1993).

A child whose non-custodial parent is ready, willing, and able to provide adequate care for the child may not be found dependent. *In re M.L.*, 562 Pa. 646, 757 A.2d 849 (2000). *See* paragraph (B). **Paragraph (B) does not apply to resumption of jurisdiction cases.**

Pursuant to 42 Pa.C.S. § 6351(a)(2.1), a court may transfer permanent legal custody to a person found by the court to be qualified to receive and care for the child. 42 Pa.C.S. § 6351(a)(2.1). *See also Justin S.*, 375 Pa.Super. 88, 543 A.2d 1192 (1988).

Pursuant to paragraph (E)(2), the county agency is to assist the child and provide all the support necessary in developing a transition plan. *See* 42 U.S.C. § 675 (5)(A)—(H).

Pursuant to paragraph (E)(3), the court is to approve a transition plan that is suitable for the child and that has been personalized at the direction of the child.

If the court has resumed jurisdiction pursuant to Rule 1635, a new transition plan is to be developed for the child. Before the court can terminate supervision, the requirements of paragraph (E) are to be followed. In no case is a juvenile over twenty-one to remain under juvenile court supervision. *See* Rule 1635(E). *See also* Rule 1635(E) for termination of juvenile court jurisdiction if the court denies the motion for resumption of jurisdiction.

***Official Note*:** Rule 1613 adopted August, 21, 2006, effective February 1, 2007. Amended July 29, 2009, effective immediately. Amended April 29, 2011, effective July 1, 2011. **Amended October 21, 2013 and renumbered from Rule 1613 to Rule 1631, effective December 1, 2013.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1613 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1613 published with the Court's Order at 39 Pa.B. 4887 (August 15, 2009).

Final Report explaining the amendments to Rule 1613 published with the Court's Order at 41 Pa.B. 2430 (May 14, 2011).

Final Report explaining the amendments to Rule 1631 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

(*Editor's Note*: Rules 1634 and 1635 are new and printed in regular type to enhance readability.)

Rule 1634. Motion for Resumption of Jurisdiction.

A. *Venue.* A motion to resume jurisdiction shall be filed with the court that terminated court supervision of the child pursuant to Rule 1631.

B. *Contents.* The motion for resumption of jurisdiction shall aver:

1) dependency jurisdiction was previously terminated:

a) within ninety days prior to the child's eighteenth birthday; or

b) on or after the child's eighteenth birthday; and

2) the child:

a) is under twenty-one years of age;

b) was adjudicated dependent prior to turning eighteen years of age;

c) has requested the court to resume jurisdiction; and

d) is:

i) completing secondary education or an equivalent credential;

ii) enrolled in an institution which provides postsecondary or vocational education;

iii) participating in a program actively designed to promote or prevent barriers to employment;

iv) employed for at least eighty hours per month; or

v) incapable of doing any of the activities as prescribed in paragraphs (B)(2)(d)(i)—(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child;

3) whether the child would like his or her guardian or other interested adult involved in the court proceedings;

4) that a verification has been signed by the child attesting the above requirements have been met; and

5) whether an expedited hearing for placement and services is being requested due to the child's current living arrangement.

C. *Service.* A copy of the motion shall be served upon:

1) the county agency;

2) the attorney for the county agency;

3) the child;

4) the child's attorney; and

5) the guardian or other interested adult if the child requesting resumption of jurisdiction would like the guardian or other interested adult involved in the case as averred in paragraph (B)(3).

Comment

A motion to resume jurisdiction can be filed by the child, county agency, or attorney for the child. At the request of the child, if the county agency or previous attorney is approached by the child concerning the court reopening the child's case, the county agency or attorney is to assist the child in the filing of the motion.

Pursuant to paragraph (A), the motion is to be filed in the county that terminated juvenile court jurisdiction. If the juvenile has moved to another county, the juvenile may request the court to transfer jurisdiction pursuant to Rule 1302 at any time after the filing of the motion to resume jurisdiction, including prior to the hearing on the motion. *See* Rules 1302 and 1635.

If the child does not have an attorney at the time of the filing of the motion, the court is to assign legal counsel pursuant to Rule 1151 and immediately order service of the motion to resume jurisdiction on the child's attorney. It is best practice to appoint the guardian *ad litem* or legal counsel who was previously assigned to the child as legal counsel. *See* Rule 1151.

If the child is the party filing the motion, the President Judge of each judicial district is to designate a person to serve the other parties for the child. If the county agency or attorney is filing the motion, they should serve the other parties.

If the child has averred that the child desires the involvement of a guardian or other interested adult in their case, this person is to be served with the motion and given notice of any subsequent hearings if the court orders such involvement. Notice does not confer standing upon the guardian or other interested adult. *See* Rule 1635(B)(5) and Comment.

See 42 Pa.C.S. §§ 6302 & 6351(j).

See also Rule 1300 for change of venue and Rule 1302 for inter-county transfer of the case.

***Official Note*:** Adopted October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1634 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

Rule 1635. Hearing on Motion for Resumption of Jurisdiction.

A. *Time for hearing.* Within thirty days of receiving a motion for resumption of jurisdiction, the court shall conduct a hearing to determine whether it will resume juvenile court jurisdiction.

B. *Notice.* Notice of the date, time, place, and purpose of the hearing shall be given to:

1) the county agency;

2) the attorney for the county agency;

3) the child;

4) the child's attorney;

5) any other persons, including the guardian or other interested adult, as directed by the court.

C. *Hearing.* At the hearing, the court shall state its findings and conclusions of law on the record in open court as to whether:

1) dependency jurisdiction was previously terminated:

a) within ninety days prior to the child's eighteenth birthday; or

b) on or after the child's eighteenth birthday but before the child turns twenty-one years of age; and

2) the child continues to meet the definition of child pursuant to 42 Pa.C.S. § 6302 because the child:

a) is under twenty-one years of age;

b) was adjudicated dependent prior to turning eighteen years of age;

c) has requested the court to resume jurisdiction; and

d) is:

i) completing secondary education or an equivalent credential;

ii) enrolled in an institution which provides postsecondary or vocational education;

iii) participating in a program actively designed to promote or prevent barriers to employment;

iv) employed for at least eighty hours per month; or

v) incapable of doing any of the activities as prescribed in paragraphs (C)(2)(d)(i)—(iv) due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child;

3) reasonable efforts were made by the county agency to prevent the return of the child to juvenile court jurisdiction unless, due to the child's immediate need for assistance, such lack of efforts was reasonable;

4) it will exercise jurisdiction pursuant to 42 Pa.C.S. § 6351(j) because it is best suited to the protection and physical, mental, and moral welfare of the child;

5) a guardian or other interested adult should be involved in the child's case;

6) there are any health or educational needs of the child; and

7) the county agency has developed an appropriate transition plan.

D. *Orders.*

1) After a hearing, the court shall enter an order granting or denying the motion to resume juvenile court jurisdiction.

2) If the court resumes jurisdiction, the court shall order:

a) that resumption of jurisdiction is best suited to the protection and physical, mental, and moral welfare of the child;

b) any findings as to the transition plan for the child;

c) regular scheduling of permanency hearings pursuant to Rule 1608;

d) any designations of custody and/or placement of the child; and

e) any evaluations, tests, or treatments for the health and educational needs of the child.

E. *Termination of court supervision in resumption cases.*

1) Once the goals in the transition plan have been accomplished for a child which, at a minimum, includes the requirements pursuant to Rule 1631(E)(2), or the child has refused to cooperate with the plan, a party may move for termination of court supervision pursuant to Rule 1631.

2) In no event shall a child remain under juvenile court supervision once the child has turned twenty-one years of age.

F. *Advanced Communication Technology.* The provisions of Rule 1129 shall apply to this proceeding.

Comment

The court may decide whether a guardian or other interested adult will participate in the child's case. The court is to consider the preferences of the child when making an order for participation. *See* Rule 1634(B)(3) for notation of child's preference and 42 Pa.C.S. § 6310 for guardian involvement. Notice or invitation to participate does not confer standing upon the guardian or other interested adult.

See 42 Pa.C.S. §§ 6302 & 6351(j).

A master may conduct these hearings. *See* Rule 1187.

***Official Note*:** Adopted October 21, 2013, effective December 1, 2013.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1635 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

EXPLANATORY REPORT

OCTOBER 2013

The Supreme Court of Pennsylvania has adopted the amendments to Rules 1120, 1150, 1151, 1200, 1608, 1609, and 1613, and renumbered Rule 1613 to Rule 1631, and adopted new Rules 1610, 1611, 1634, and 1635. The amendments are effective December 1, 2013.

Rule discussion

With the enactment of the Act of July 5, 2012 (P. L. 880, No. 91, Cl. 18), a child may request the court to resume juvenile court jurisdiction if specific requirements are met.

Rule 1120

The definition of a child now includes those children who are under twenty-one years of age and were adjudicated dependent prior to turning eighteen years of age and who are requesting the court to resume juvenile court jurisdiction after jurisdiction had been previously terminated.

In addition, these children must be: 1) completing secondary education or an equivalent credential; 2) enrolled in an institution which provides postsecondary or vocational education; 3) participating in a program actively designed to promote or prevent barriers to employment; 4) employed for at least eighty hours per month; or 5) incapable of doing any of the activities as prescribed above due to a medical or behavioral health condition, which is supported by regularly updated information in the permanency plan for the child. *See* 42 Pa.C.S. § 6302.

Rules 1150 and 1151

Courts should easily be accessible to children requesting the court to resume jurisdiction of their cases. If the

child contacts the previously assigned attorney, the attorney should assist the child in filing a motion for resumption of jurisdiction. If extenuating circumstances exist and the attorney cannot represent the child, the attorney should still file the motion for the child but explain the circumstances to the court and ask not to be reappointed.

The court is to appoint counsel for the child in the new resumption of jurisdiction case. The Comment to Rule 1151 provides that it is best practice for the court to assign the previous attorney as counsel for the child if they are available.

Rule 1200

Dependency proceedings commence when a motion for resumption of jurisdiction pursuant to Rule 1634 has been filed.

If the court grants the motion for resumption of jurisdiction, dependency proceedings would continue and regular permanency hearings would occur for children over eighteen pursuant to Rule 1611.

Rules 1608 & 1609

References to the new rules for permanency hearings and permanency hearing orders for children over eighteen have been placed in the Comments.

Rule 1610

This is a new separate rule for permanency hearing for children over eighteen. The Committee thought it was important to have a different rule for these children because the purpose of the hearing is slightly different. There is only a transition plan for these children with no permanency plan.

Paragraph (A) provides the purpose and the timing of the hearing. The court must conduct hearings every six months. The child must appear in person at the six-month hearing. *See* Rules 1128 and 1129.

Paragraph (B) provides that the hearing must be recorded and paragraph (C) sets forth the evidentiary standard for the hearing.

Paragraph (D) provides the findings and conclusions of law that the court must enter into the record in open court.

Rule 1611

This is a new separate rule that governs the permanency hearing orders for children over eighteen.

Rule 1631

The Comment to the Rule explains that a new transition plan is to be developed for the child if the court resumes jurisdiction. Before those cases can be terminated, the requirements of paragraph (E) must be met.

All dependency cases must be terminated when the child turns twenty-one. *See* Rules 1120 and 42 Pa.C.S. § 6302 for definition of "child" and Comments to Rules 1631 and 1635.

Rule 1634

This new rule governs venue, the contents of the motion for resumption of jurisdiction, and service of the motion.

If the child meets the definition of "child," a motion for resumption of jurisdiction must be filed with the court that terminated court supervision. There would be no record of the case in any other court. The Comment to Rule 1634 provides that if the juvenile has moved to another county, the court may transfer the case pursuant to Rule 1302 at any time after the filing of the motion, including prior to the hearing on the motion. *See* paragraph (A).

Paragraph (B) governs the contents of the motion, including whether the child wants his or her parent, guardian, or other interested adult involved in the court proceedings. There may be instances in which the court would want to order parental involvement even when the child does not desire to have the parents present or involved in the case. *See* 42 Pa.C.S. § 6310 for parental participation.

Paragraph (C) provides for service of the motion. If the child is filing the motion, the President Judge is to designate a person to serve the other parties. *See* Comment.

The Comment to the rule provides that the child, county agency, or attorney for the child may file the motion for resumption of jurisdiction. The clerk of courts must accept all resumption motions. *See* Comment to Rule 1200. Children should have access to the court and all parties approached by the child should assist the child in the filing of the motion. Counties may have form motions available for the child to fill out at the clerk of courts' and county agency's offices.

Rule 1635

This new rule provides for the hearing on the resumption of jurisdiction. Within thirty days of receiving a motion to resume juvenile court jurisdiction, the court must conduct a hearing on the motion. *See* paragraph (A).

Pursuant to paragraph (B), notice of the date, time, place, and purpose of the hearing must be given to the county agency, the attorney for the county agency, the child, the child's attorney, and any other persons as directed by the court.

After the court has determined whether jurisdiction can be resumed and has made findings and conclusions of law on the record in open court pursuant to paragraph (C), the court must enter an order pursuant to paragraph (D).

Paragraph (E) governs termination of court supervision in resumption cases. Because a resumption of jurisdiction case is commenced upon the filing of a motion, if the court denies the motion for resumption of jurisdiction, an order terminating supervision must be entered to close the case.

Advanced communication technology may be utilized pursuant to paragraph (F); however, the court must see the child in person every six months. *See* Rules 1128 and 1129.

[Pa.B. Doc. No. 13-2104. Filed for public inspection November 8, 2013, 9:00 a.m.]

Title 255—LOCAL COURT RULES

GREENE COUNTY

Local Rule of Court G5220; C.A. No. 2, 2013

Order

And Now, this 23rd day of October, 2013, the Court *Amends* Local Rule G5002 to read as follows:

All persons are prohibited from smoking or using tobacco products in the Greene County Courthouse, and are prohibited from use, possession, or influence of alcoholic beverages or other drugs in the Greene County Courthouse**, except for celebratory or holiday functions held after normal court hours when approved in writing by the President Judge**.

This Amendment shall be effective 30 days after publication in the *Pennsylvania Bulletin*.

The Court Administrator shall distribute two certified copies of this Order and a copy of the rule on computer diskette or CD-Rom to the Legislative Reference Bureau for publication with the *Pennsylvania Bulletin*.

The Court Administrator shall distribute one certified copy of this Order to the Administrative Office of Pennsylvania Courts.

WILLIAM R. NALITZ,
President Judge

[Pa.B. Doc. No. 13-2105. Filed for public inspection November 8, 2013, 9:00 a.m.]

LANCASTER COUNTY

Adoption of New Local Rules of Criminal Procedure 120, 311A, 570A, 570B, 570C, 570D, 571, 590 and Rescinding Existing Local Rules of Criminal Procedure 3, 4, 5, 6 and 10; CPJ. No. 7, Page 1357; No. 18 AD 2013

Administrative Order

And Now, this 30th day of September, 2013, it is hereby Ordered that new or revised Lancaster County Rules of Criminal Procedure 120, 311A, 570A, 570B, 570C, 570D, 571, 590 are adopted and existing Lancaster County Rules of Criminal Procedure 3, 4, 5, 6 and 10, are rescinded as set forth as follows:

The Court Administrator is directed to:

1. File one (1) certified copy of this Order and Rules with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified paper copies and one (1) diskette or CD-ROM containing this Order and Rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of this Order and Rules on the Unified Judicial System's web site at http://ujsportal.pacourts.us/localrules/ruleselection.aspx.

4. Keep continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

This order shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

JOSEPH C. MADENSPACHER,
President Judge

Rule 2. Business Judge **[Trial List]**.

[Rule 3. Call of the List] Rescinded.

[Rule 4. Continuances During Trial Term] Rescinded.

[Rule 5. Trial Priority List] Rescinded.

[Rule 6. Guilty Pleas During Trial Term] Rescinded.

[Rule 10. Business Judge] Rescinded.

Rule 120. Attorneys—Appearances and Withdrawals.

(A) ***Entry of Appearance***

(1) Counsel for defendant shall file an entry of appearance with the Clerk of Courts promptly after being retained, and serve a copy of the entry of appearance on the attorney for the Commonwealth.

(a) If a firm name is entered, the name of an individual lawyer shall be designated as being responsible for the conduct of the case.

(b) The entry of appearance shall include the attorney's address, phone number, attorney ID number, and e-mail address.

(2) When counsel is appointed pursuant to Pa.R.Crim.P. 122 (Appointment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.

(3) Counsel shall not be permitted to represent a defendant following a preliminary hearing unless an entry of appearance is filed with the clerk of courts.

(4) An attorney who has been retained or appointed by the court shall continue such representation through direct appeal or until granted leave to withdraw by the court pursuant to paragraph (B).

(5) After a case has been returned to the Court of Common Pleas, the filing of any motion or petition on behalf of the defendant shall be deemed to be an entry of appearance by the filing attorney on behalf of the defendant as to all matters pertaining to the case in which the filing is made, notwithstanding any statement contained in the filing which purports to limit the scope of the filing attorney's representation.

(B) ***Withdrawal of Appearance***

(1) Counsel for a defendant may not withdraw his or her appearance except by leave of court.

(2) A motion to withdraw shall be:

(a) filed with the clerk of courts, and a copy concurrently served on the attorney for the Commonwealth and the defendant; or

(b) made orally on the record in open court in the presence of the defendant.

(3) Upon granting leave to withdraw, the court shall determine whether new counsel is entering an appearance, new counsel is being appointed to represent the defendant, or the defendant is proceeding without counsel.

Rule 311A. ARD Application Process.

A. Accelerated Rehabilitative Disposition (ARD) applications shall be submitted to the Office of the District Attorney using the approved form. A defendant shall simultaneously submit a Motion for Trial Continuance and Waiver using the approved form. A defendant shall be notified by first class United States mail of acceptance or rejection. A defendant whose application has been accepted shall be listed for an ARD hearing on the first

available date. A defendant whose application has been rejected shall be placed on the next Pretrial conference list.

B. Application for non-DUI related ARD may be made **at** any time **[prior to formal arraignment], but no later than the date of the Status Conference.**

C. Applications for DUI related ARD shall be submitted to the Office of the District Attorney within thirty days of the filing of the criminal complaint. Additionally, within thirty days of the filing of the criminal complaint, a defendant shall waive the preliminary hearing and schedule a Court Reporting Network evaluation. Qualification information and further application requirements may be obtained by contacting the Office of the District Attorney.

Rule 570A. Status Conference.

A. *Scheduling of Status Conference*

1. Within 45 days of the arraignment conducted in accordance with Local Rule 571, each case in which an Information has been issued and which has not already been disposed of by or scheduled for a plea, nolle prosequi, or other final action, shall be reviewed by the court at a status conference scheduled by the District Court Administrator.

2. The District Court Administrator shall provide notice of the status conference to counsel no later than seven days before the conference and shall provide notice to pro se defendants pursuant to Pa.R.Crim.P. 114.

3. The appearance of the assigned attorney for the Commonwealth and the defense attorney or the pro se defendant shall be mandatory. The status conference shall take place in open court, unless agreed by the defendant to be in chambers.

4. No status conference may be continued or rescheduled absent compelling reasons and with the approval of the judge before whom the case has been scheduled.

B. *Information Provided at Status Conference*

1. The general purpose of the status conference is to determine the likely disposition of the assigned case prior to the Pretrial conference conducted in accordance with Local Rule 570B. Accordingly, at the time of the status conference the parties shall be prepared to provide, at a minimum, the following information: (1) whether the case is scheduled, or will be scheduled, for a guilty plea or Accelerated Rehabilitative Disposition; (2) whether all discovery has been provided in accordance with the Pennsylvania Rules of Criminal Procedure; (3) whether all Pretrial motions have been timely filed; and (4) any additional information necessary for the court to complete the Status Conference Order.

2. A pro se defendant who does not intend to remain pro se throughout the pendency of the case shall advise the court at the status conference of the status of the defendant's efforts to secure legal representation.

C. *Failure to Appear for Status Conference*

1. If a pro se defendant fails to appear for a duly scheduled and noticed status conference, the court may, in its discretion, issue a bench warrant and forfeit bail.

2. If an attorney for the Commonwealth or defense attorney fails to appear for a duly scheduled and noticed status conference, the court may take such disciplinary action as it deems appropriate, including, but not limited to, disciplinary action under the Rules of Professional Conduct or instituting proceedings for contempt.

D. Order Following Status Conference

1. At the conclusion of the status conference the court shall enter a Status Conference Order reflecting the disposition of the case as represented by the parties (e.g., guilty plea, nolo contendere plea, ARD or nolle prosequi), or if the matter shall be scheduled for a Pretrial conference pursuant to Local Rule 570B, or if the matter is to be listed for trial, or if a bench warrant has been issued and bail has been forfeit.

2. The completed Status Conference Order shall be filed with the Clerk of Courts at the conclusion of the status conference.

Rule 570B. Pretrial Conference.

A. *Scheduling of Pretrial Conference*

1. Within 6 weeks of the status conference held pursuant to Local Rule 570A, any case designated on the Status Conference Order as requiring a pretrial conference, or any case which has not been disposed of by plea, ARD or nolle prosequi, shall be reviewed by the court at a Pretrial conference scheduled by the District Court Administrator.

2. The District Court Administrator shall provide notice of the pretrial conference to counsel no later than seven days before the conference and shall provide notice to pro se defendants pursuant to Pa.R.Crim.P. 114.

3. The appearance of the assigned attorney for the Commonwealth, the defense attorney, and the defendant, whether pro se or represented by legal counsel, shall be mandatory. The pretrial conference shall take place in open court, unless agreed by the defendant to be in chambers.

4. No pretrial conference may be continued or rescheduled absent compelling reasons and with the approval of the judge before whom the case has been scheduled.

B. *Information Provided at Pretrial Conference*

1. The general purpose of the pretrial conference is to apply and enforce the letter and spirit of Pa.R.Crim.P. 570, and the comments thereto, and to ascertain the information contemplated thereby, in order to determine the readiness of a criminal case for trial or the likelihood of and timeframe for a non-trial disposition. Accordingly, at the time of the pretrial conference, the parties shall be prepared to provide, at a minimum, the information enumerated in Pa.R.Crim.P. 570, and the official comment thereto.

2. A Pretrial Conference Memorandum in the form approved by the President Judge shall be submitted to the court by the assigned attorney for the Commonwealth and by the defense attorney at the time of the pretrial conference. At the discretion of the court, a pro se defendant who intends to remain pro se throughout the pendency of the case may also be required to complete and submit a Pretrial Conference Memorandum.

3. A pro se defendant who has not yet retained legal counsel and does not intend to remain pro se throughout the pendency of the case shall advise the court at the Pretrial conference of the status of the defendant's efforts to secure legal representation. Absent compelling circumstances, a continuance to obtain legal representation shall not be granted more than once.

4. The approved form of Pretrial Conference Memorandum shall be published as a part of these Local Rules as Local Rule 570B-1.

C. ***Failure to Comply***

1. If a pro se defendant fails to appear for a duly scheduled and noticed pretrial conference, the court may, in the discretion, issue a bench warrant and forfeit bail.

2. If an attorney for the Commonwealth or defense attorney fails to appear for a duly scheduled and noticed Pretrial conference or fails to provide the Pretrial Conference Memorandum required by this rule, the court may take such disciplinary action as it deems appropriate, including, but not limited to, disciplinary action under the Rules of Professional Conduct or instituting proceedings for contempt.

D. ***Order Following Pretrial Conference***

1. At the conclusion of the pretrial conference, the court shall enter a Pretrial Conference Order indicating the disposition of the case as represented by the parties (e.g., guilty plea, nolo contendere plea, ARD or nolle prosequi), or if the matter will be scheduled for an additional pretrial conference pursuant to this Local Rule, or if the matter is to be listed for trial, or if a bench warrant has been issued and bail has been forfeit.

2. If the case is to be disposed of by guilty plea, nolo contendere plea, ARD or nolle prosequi, the parties shall advise the court of the date of such proceeding at the pretrial conference.

3. If a case is certified as trial ready by the pretrial conference judge, the case shall be assigned to a trial judge by the District Court Administrator. The assigned trial judge shall determine the trial date and schedule, as well as the need for any pretrial case management conferences. Absent compelling circumstances, cases assigned to a trial judge for trial shall remain with that judge until final disposition.

4. Absent compelling circumstances, a definitive non-trial disposition (with dates certain) or trial certification is expected no later than the pretrial conference. Cases will not be continued to a second or subsequent pretrial conference absent good cause shown, and, if the continuance is requested by defense counsel, with the knowledge and concurrence of the individual defendant.

5. The Pretrial Conference Memoranda and the Pretrial Conference Order shall be filed with the Clerk of Courts at the conclusion of the pretrial conference.

Rule 570C. Trial Priority List.

All cases are deemed to be trial ready when certified for trial at the Pretrial conference and will be listed in a priority established by the trial judge to whom the case is assigned by the District Court Administrator.

Rule 570D. Assignment and Trial of Homicide Cases.

B. Homicide cases shall be assigned to a trial judge by the President Judge. All matters thereafter shall be the responsibility of the **assigned** trial judge **[and shall not be included on the regularly scheduled criminal Pretrial conference lists]**.

C. Status, Pretrial, and case management conferences shall be scheduled at the discretion of the assigned trial judge.

D. The trial judge shall issue a final Pretrial order establishing a firm trial date and containing any further final instructions. Once set, the firm trial date shall not be continued except for extraordinary circumstances. Copies of all Pretrial orders shall be provided to the President Judge, the District Court Administrator and counsel.

Rule 571. Arraignment.

D. The District Attorney shall provide a written Arraignment Rights form to each defendant, whether represented or not, who appears at arraignment. The approved Arraignment Rights form required by this Rule shall be published as a part of these Local Rules as Local Rule 571-1.

Rule 590. Pleas and Plea Agreements.

A. Guilty pleas **and pleas of nolo contendere** shall be scheduled through the **[with the guilty plea secretary in]** the Office of the District Attorney **using the forms designated by that office for the scheduling of pleas**. When scheduling the **[guilty]** plea, counsel shall inform the District Attorney guilty plea secretary if and where the defendant is incarcerated. **[Once a guilty plea date is obtained, the defendant or counsel must file with the District Attorney a Request to Schedule a Guilty Plea in the form provided by the District Attorney.]**

B. **A completed Plea Scheduling Form, the form of which shall be published as a part of these Local Rules as Local Rule 590-1, shall be presented to the District Attorney before a plea is scheduled.**

C. Once a plea is scheduled**, it may only be rescheduled by submitting a completed Request to Reschedule Plea form to the judge before whom the plea is scheduled. [It may be removed from the guilty plea list at anytime up to seven days before the scheduled date by notifying the guilty plea secretary. If the defendant or counsel elects to remove the guilty plea from the list within seven days of the scheduled date, the defendant must personally appear on the scheduled date to request a continuance from the Court.] If the request to reschedule is granted by the judge before whom the plea is scheduled, the form will be forwarded to the District Court Administrator, who will schedule the matter on that judge's next available plea date or on the date specified by the judge and indicated on the Request to Reschedule Plea form.**

D. Any plea which is withdrawn shall be placed on the trial list of the judge before whom the plea was scheduled at the time it was withdrawn. The

case will be deemed to be trial ready and will be assigned a trial date by the judge, who shall determine trial priority in accordance with Local Rule 570C.

E. Rejected pleas shall be handled as follows:

1. If the case has not previously had a pretrial conference under Rule 570B, the District Court Administrator shall schedule the case for a pretrial conference on the next available date with a judge other than the judge who rejected the plea.

2. If the case has previously had a pretrial conference, the plea shall be rescheduled. Counsel shall note on the Request to Reschedule Plea form that the plea was rejected, the form will be forwarded to the District Court Administrator and the plea will be rescheduled by the District Court Administrator with a different judge on the next available plea date.

[C.] F. Prior to entering a guilty plea **or plea of nolo contendere**, a defendant shall complete and sign a written **[guilty]** plea colloquy on the form provided by the District Attorney. The form shall be presented to the Court at the time of the **[guilty]** plea hearing**, together with the completed Plea Scheduling form required by this Rule**.

L.C.R.Crim.P.No. 570B-1

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :
:
vs. : No. _____
:
_____ :

PRETRIAL CONFERENCE MEMORANDUM

Attorney for Commonwealth _____
Print Name/Signature Attorney ID No.

Attorney for Defendant _____
Print Name/Signature Attorney ID No.

Related Cases: Defendant Docket Number

Prior Continuances: Commonwealth - _____ Defense - _____
Discovery: Provided - _____ Received - _____

Disputed: _____

Motions: Filed/To be Filed: _____

Defenses: (insanity, alibi) Notice Filed - _____

Anticipated Trial Issues:
Expert witnesses: _____

Scheduling: _____

Pretrial Hearings: _____

Other: _____

Date: _____

L.C.R.Crim.P.No. 571-1

ARRAIGNMENT
(ARREGLO)

(1) I have been advised of the charges against me.

(2) I have been advised of the following time periods in which I must begin discovery on these charges:

(a) Bill of Particulars must be filed within seven (7) days following this Arraignment;

(b) Motion for Inspection and Discovery must be filed within fourteen (14) days following this Arraignment; and

(c) Omnibus Pre-Trial Motion must be filed within thirty (30) days after this arraignment.

(3) I understand that I have the right to counsel and that if I am unable to afford an attorney the Court will appoint an attorney to represent me.

(4) A Status Conference on my case will be held within 45 days of this Arraignment. I understand that I will receive written notice of the Status Conference date at least 7 days prior to the date of the Status Conference. I understand that if I am not represented by an attorney and I fail to appear at the Status Conference, a bench warrant may be issued and my bail may be forfeit.

(5) If my case has not already been disposed of by trial, plea or dismissal, I understand that a Pretrial Conference on my case will be held within 6 weeks of the Status Conference. I understand that I will receive written notice of the Pretrial Conference date at least 7 days prior to the date of the Status Conference. I understand that my attendance at the Pretrial Conference is mandatory, even if I am represented by an attorney. I understand that if I fail to appear at the Pretrial Conference, a bench warrant may be issued and my bail may be forfeit.

(6) I have read the above and understand my rights.

_____
Signature of Defendant

_____
Signature of Defendant's Counsel

_____
Date signed

L.C.R.Crim.P.No. 590-1

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CRIMINAL

COMMONWEALTH OF PENNSYLVANIA :
:
vs. : No. _____
:
_____ :

PLEA SCHEDULING FORM

I. I certify that I have reviewed the case file, the Defendant's prior record, and have consulted with the prosecuting officer and victim(s), if necessary.

The Commonwealth's plea offer is as follows (a summary memorandum, Tentative Plea Negotiation form or proposed Plea Agreement may be attached):

Charge Terms

This plea offer is withdrawn unless accepted by _____ .

_____

Attorney for Commonwealth -Print Name/Signature/Attorney ID No. Date

II. I certify that I have discussed the above plea offer with my client and advised my client of his/her rights under Pa. R. Crim. P. 600, and my client has authorized me to accept this Plea Agreement and the Commonwealth's plea offer on his/her behalf and to schedule the plea.

_____

Attorney for Defendant -Print Name/Signature/Attorney ID No. Date

III. I certify that I have discussed the above plea agreement with my attorney and I have authorized my attorney to accept this agreement on my behalf and to schedule the plea. I have been advised of my rights under Rule 600 of the Pennsylvania Rules of Criminal Procedure understand that by scheduling this plea I am waiving my right to be brought to trial on these charges within 180 or 365 days, as applicable. I specifically agree that the time period for beginning trial under Rule 600 shall be expanded beyond the 180 or 365 days, as applicable, and will include the time period from the date of my signing this Plea Agreement to the date the plea is scheduled, pursuant to Pa. R. Crim. P. 600(c).

_____

Defendant -Print Name/Signature (OR signature of attorney for Defendant if Defendant is not available) Date

If this agreement is not signed by the Defendant, explain (e.g., Defendant incarcerated outside/resides outside Lancaster County, etc.):

_____

_____

FOR DA SCHEDULING USE ONLY:

IV. Scheduling

_____ _____ _____ _____

Date Time Courtroom Judge

[Pa.B. Doc. No. 13-2106. Filed for public inspection November 8, 2013, 9:00 a.m.]

SCHUYLKILL COUNTY

Amended Criminal Rules of Procedure; MD-1099-2013

Order of Court

And Now, this 21st day of October, 2013, at 8:30 a.m., Schuylkill County Criminal Rule of Procedure, Rule 570.1 is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

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

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

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.

3) File one (1) certified copy of this Order and Rule with the Pennsylvania Criminal Procedural Rules Committee.

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

5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Court of Common Pleas

Rule 570.1. Certification of Trial List/Pre-Trial Conference.

On or before the date established by the Court Calendar, the District Attorney shall submit the Trial List consisting of those cases to be attached for trial during the next Criminal Term. The Court will promptly enter an order for each case on the list, attaching the parties and counsel for trial and giving notice of the important dates for the Criminal Term for which the case is attached. A Defendant may, by motion filed with the Clerk of Courts, at any time request that a case be added to the next available Trial List. (*Note*: Cases in which the Commonwealth has charged murder as defined in 18 Pa.C.S.A. § 2502 shall not be included on the Trial List, but shall, instead, proceed pursuant to Sch.R.Crim.P. 560(f).)

Motions for continuances shall be heard and pretrial conferences shall be conducted on the dates and times established by the Court Calendar. The pretrial conference with a member of the Court shall be conducted for all cases that were attached for trial and not removed by the granting of a continuance, the filing of a timely guilty plea petition or motion for an A.R.D., or by entry of an order of Court removing the case. For those cases remaining on the Trial List, the conference shall be attended by the attorneys who will try the case and by the defendants.

It shall be the duty of each party, **prior to the pretrial conference,** to verify the availability of all necessary witnesses for trial and to notify the Court at the conference of all scheduling problems, contemplated motions and other matters that may affect the scheduling of the trial. The Court may decline to consider scheduling problems and requests which are not brought to the Court's attention at the pretrial conference.

[Pa.B. Doc. No. 13-2107. Filed for public inspection November 8, 2013, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Roger M. Roisman, having been suspended from the practice of law in the State of New York for a period of 1 year by Order of the Supreme Court of New York, Appellate Division, First Judicial Department, dated October 18, 2011; the Supreme Court of Pennsylvania issued an Order dated October 25, 2013 suspending Roger M. Roisman from the practice of law in this Commonwealth for a period of 1 year. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 13-2108. Filed for public inspection November 8, 2013, 9:00 a.m.]