

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Amendment of Rule 1910.23 of the Rules of Civil Procedure; No. 572 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 25th day of January, 2013, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1910.23 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on February 24, 2013.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.23. Support Order. Enforcement. Attachment of Assets Held by Financial Institutions.

(a) Upon identification of an obligor's assets held by a financial institution, the court shall, upon certification of the overdue support owed by the obligor, enter an immediate order prohibiting the release of those assets until further order of court. The order shall be served on the financial institution in the manner prescribed by Rules 400 through 406 governing service of original process or by registered mail, return receipt requested **or by electronic service upon the request of the financial institution**. Service by mail is complete upon the return of the registered mail receipt personally signed by the financial institution or other evidence of service satisfactory to the court. Service of the order on the financial institution shall attach the asset up to the amount of the overdue support until further order of court.

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[Pa.B. Doc. No. 13-220. Filed for public inspection February 8, 2013, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 8]

Proposed Amendments to Pa.R.Crim.P. 802

The Criminal Procedural Rules Committee is considering recommending that the Supreme Court of Pennsylvania amend Rule 802 (Notice of Aggravating Circum-

stances) to require a defendant to provide notice of mitigating circumstances in a capital case. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to the rule precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Jeffrey M. Wasileski, Counsel
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Criminal Procedural Rules Committee
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no later than Friday, March 15, 2013.

By the Criminal Procedural Rules Committee

NANCY L. BUTTS,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 8. SPECIAL RULES FOR CASES IN WHICH DEATH SENTENCE IS AUTHORIZED

Rule 802. Notice of Aggravating **and Mitigating** Circumstances.

(A) The attorney for the Commonwealth shall file a Notice of Aggravating Circumstances that the Commonwealth intends to submit at the sentencing hearing and contemporaneously provide the defendant with a copy of such Notice of Aggravating Circumstances. Notice shall be filed at or before the time of arraignment, unless the attorney for the Commonwealth becomes aware of the existence of an aggravating circumstance after arraignment or the time for filing is extended by the court for cause shown.

(B) **The attorney for the defendant, or the defendant if unrepresented, shall file a Notice of Mitigating Circumstances that the defendant intends to submit at the sentencing hearing and contemporaneously provide the attorney for the Commonwealth with a copy of such Notice of Mitigating Circumstances. Notice shall be filed within 90 days after the arraignment, unless the attorney for the defendant, or the defendant if unrepresented, becomes aware of the existence of a mitigating circumstance after the time for filing or the time for filing is extended by the court.**

Comment

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If the trial court orders a new sentencing hearing, or the Supreme Court remands a case for a redetermination

of penalty pursuant to 42 Pa.C.S. § 9711(h)(4), the attorney for the Commonwealth may not introduce any new aggravating circumstance except when there has been an intervening conviction for an offense committed prior to the present conviction which would constitute an aggravating circumstance. The trial judge must set the time within which the attorney for the Commonwealth must notify the defendant of such an additional circumstance, and the time set for notice must allow the defendant adequate time to prepare for the new sentencing hearing. No additional notice is required for those aggravating circumstances previously offered and not struck down upon review.

Paragraph (B) of this rule provides for pretrial disclosure of those mitigating circumstances that the defendant intends to prove at the sentencing hearing. See Sentencing Code, 42 Pa.C.S. § 9711(e). Although the rule requires that notice generally be given within 90 days after arraignment, it authorizes prompt notice thereafter when a circumstance becomes known to the defendant's attorney at a later time or when the court otherwise permits. Paragraph (B) was added to the rule in 2013 to encourage early discussion between prosecution and defense regarding the evidence of mitigating circumstance so that those cases in which the death penalty is not appropriate or likely to be awarded, would be amenable to negotiations on the capital aspects of the case. Paragraph (B) is not intended to preclude the introduction of any constitutionally permissible mitigating evidence.

Official Note: Previous Rule 352 adopted July 1, 1985, effective August 1, 1985; renumbered Rule 353 February 1, 1989, effective July 1, 1989. Present Rule 352 adopted February 1, 1989, effective as to cases in which the arraignment is held on or after July 1, 1989; Comment revised October 29, 1990, effective January 1, 1991; amended January 10, 1995, effective February 1, 1995; renumbered Rule 801 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; renumbered Rule 802 June 4, 2004, effective November 1, 2004; amended , 2013, effective , 2013.

Committee Explanatory Reports:

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Report explaining the proposed amendments concerning the requirement of filing a notice of mitigating circumstances published for comment at 43 Pa.B. 802 (February 9, 2013).

REPORT

Proposed Amendments to Pa.R.Crim.P. 802

Notice of Mitigating Circumstance

The Committee has been examining a proposal to amend Rule 802 to require a defendant to provide notice of mitigating circumstances similar to the Commonwealth's requirement to provide notice of aggravating circumstances in a capital case.

It was suggested that adding this requirement will facilitate discussions about a possible non-trial disposition. Under current practice, the prosecution is not privy to much information regarding the defendant and the defendant's background at the initiation of a case. There are many cases where an early disclosure of the nature of

mitigation would cause the prosecution to review the alleged circumstances and support therefor, leading to a plea agreement for a penalty other than death or, absent an agreement, a decision not to seek the death penalty. The earlier in the process that this information is shared, the earlier such decisions can be made. Furthermore, requiring such notices to be made by the defendant would be consistent with similar notice provisions in the rules, such as is required for alibis in Rule 567 and for mental health defenses in Rule 568.

The Committee examined the procedures in other jurisdictions and concluded that a notice requirement would not be a radical departure from the practice in other states. For example, Florida has a criminal procedural rule, Florida Rule of Criminal Procedure 3.202, that is similar to what was suggested. It should be noted that the Florida rule is limited to requiring the defendant to provide notice of "expert testimony of mental mitigation." Additionally, several states address this issue by means of reciprocal discovery statutes. For example, California Penal Code § 1054.3, that requires disclosure of certain forms of defense evidence, is applicable to penalty-phase evidence in capital prosecutions and this disclosure must be made at least 30 days prior to the guilt phase of trial. Similarly, Georgia has a statute, Georgia Code § 17-16-4, that, *inter alia*, requires providing a list of the witnesses that the defense intends to call at the presentencing hearing usually no later than five days before trial commences.

The Committee is cognizant that the defense may not have a fully developed mitigation case at the time the notice is required, within 90 days after the arraignment, and the notice requirement is not intended to replace normal discovery procedures. The Committee does not contemplate that the notice requirement will represent a full disclosure of the details of the mitigation circumstances, but rather, will represent a counter-part to the Commonwealth's notice of aggravating circumstances.

The Committee recognizes that there is a constitutional dimension to the presentation of mitigating circumstance. See *Lockett v. Ohio*, 438 U.S. 586 (1978) (Eighth and Fourteenth Amendments "require that the sentencer, in all but the rarest kind of capital case, not be precluded from considering as a mitigating factor any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death."). One of the Committee's concerns was whether there should be sanctions for a failure to provide notice such as precluding the defendant from presenting mitigating evidence. It is clear from current law that a waiver must be knowing, intelligent, and voluntary. See, e.g., *Commonwealth v. Davido*, 582 Pa. 52, 868 A.2d 431 (2005), reargument denied 872 A.2d 1125 582 Pa. 437 (2005), *certiorari* denied 546 U.S. 1020 (2005); *Commonwealth v. Wilson*, 861 A.2d 919, 580 Pa. 439 (2004). The Committee concluded that the failure to meet a notice deadline solely would be insufficient to meet this standard. Therefore, the Rule 802 Comment would be revised to further explain the intention of this requirement and that it not be used to preclude the defendant from presenting constitutionally-protected evidence of mitigation.

[Pa.B. Doc. No. 13-221. Filed for public inspection February 8, 2013, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Jerrold Neil Kaminsky, having been suspended from the practice of law in the State of New Jersey for a period of 3 months by Order of the Supreme Court of New Jersey filed September 12, 2012; the Supreme Court of Pennsylvania issued an Order dated January 23, 2013 suspending Jerrold Neil Kaminsky from the practice of law in this Commonwealth for a period of 3 months. 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. 13-222. Filed for public inspection February 8, 2013, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Marc Edward Yonker, having been suspended from the practice of law in the State of Florida for a period of 60 days by Opinion and Order of the Supreme Court of Florida dated September 6, 2012; the Supreme Court of Pennsylvania issued an Order dated January 23, 2013 suspending Marc Edward Yonker from the practice of law in this Commonwealth for a period of 60 days. 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. 13-223. Filed for public inspection February 8, 2013, 9:00 a.m.]

SUPREME COURT

Reestablishment of the Magisterial Districts within the 4th Judicial District; No. 303 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 24th day of January 2013, upon consideration of the Petition to Reestablish the Magisterial Districts of the 4th Judicial District (Tioga County) of the Commonwealth of Pennsylvania, it is hereby *Ordered and Decreed* that the Petition, which provides for the realignment of Magisterial Districts 04-3-01, 04-3-02, and 04-3-03, within Tioga County, to be effective April 1, 2013, is granted.

Said Magisterial Districts shall be reestablished as follows:

Magisterial District 04-3-01
Magisterial District Judge
Brian W. Edgcomb

Elkland Borough
Knoxville Borough
Lawrenceville Borough
Tioga Borough
Westfield Borough
Brookfield Township
Clymer Township
Deerfield Township
Farmington Township
Jackson Township
Lawrence Township
Nelson Township
Osceola Township
Tioga Township
Westfield Township

Magisterial District 04-3-02
Magisterial District Judge
Robert L. Repard

Liberty Borough
Wellsboro Borough
Charleston Township
Chatham Township
Delmar Township
Duncan Township
Elk Township
Gaines Township
Liberty Township
Middlebury Township
Morris Township
Shippen Township

Magisterial District 04-3-03
Magisterial District Judge
James E. Carlson

Mansfield Borough
Blossburg Borough
Roseville Borough
Bloss Township
Covington Township
Hamilton Township
Putnam Township
Richmond Township
Rutland Township
Sullivan Township
Union Township
Ward Township

[Pa.B. Doc. No. 13-224. Filed for public inspection February 8, 2013, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 15th Judicial District; No. 302 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 24th day of January 2013, upon consideration of the Petition to Reestablish the Magisterial Districts of the 15th Judicial District (Chester County) of the Commonwealth of Pennsylvania, it is hereby *Ordered and Decreed* that the Petition, which provides for the elimination of Magisterial District 15-2-05, within Chester County, to be effective January 2, 2014, is granted; and that the Petition, which provides for the realignment of Magisterial Districts 15-1-03, 15-1-05, 15-2-01, 15-2-06, 15-3-01, 15-3-04, 15-3-06, and 15-3-07 within Chester County, to be effective April 1, 2013, is granted; and that the Petition, which provides for the realignment of Magisterial Districts 15-1-02 and 15-4-01 within Chester County, to be effective January 2, 2014, is granted; and that the Petition, which also provides for the reestablishment of Magisterial Districts 15-1-01, 15-1-04, 15-2-03, 15-2-07, 15-3-05, 15-4-02, 15-4-03, and 15-4-04,

within Chester County, to be effective immediately, is granted. The judgeship for Magisterial District 15-2-05 shall not appear on the ballot in the 2013 municipal election.

Said Magisterial Districts shall be as follows:

Magisterial District 15-1-01 West Chester Borough
Magisterial District Judge (Wards 3, 5, 6, and 7)
Mark A. Bruno

Magisterial District 15-1-02 East Goshen Township
Magisterial District Judge Easttown Township
Thomas W. Tartaglio Malvern Borough
Tredyffrin Township (Voting Districts East 1 & 2, Middle 1, 5, and 6, and West 3 & 4)
Willistown Township

Magisterial District 15-1-03 City of Coatesville (Wards 2 & 4)
Magisterial District Judge Gregory V. Hines South Coatesville Borough

Magisterial District 15-1-04 West Chester Borough
Magisterial District Judge (Wards 1, 2, and 4)
Gwenn S. Knapp

Magisterial District 15-1-05 City of Coatesville (Wards 1, 3, and 5)
Magisterial District Judge Grover E. Koon Valley Township

Magisterial District 15-2-01 Charlestown Township
Magisterial District Judge Phoenixville Borough
Theodore P. Michaels, Jr. Schuylkill Township

Magisterial District 15-2-03 West Goshen Township
Magisterial District Judge Westtown Township
William D. Kraut Thornbury Township

Magisterial District 15-2-06 Downingtown Borough
Magisterial District Judge East Bradford Township
Rita A. Arnold East Caln Township
West Bradford Township

Magisterial District 15-2-07 Upper Uwchlan Township
Magisterial District Judge Uwchlan Township
Lori Novak Donatelli West Pikeland Township

Magisterial District 15-3-01 East Coventry Township
Magisterial District Judge East Nantmeal Township
James V. DeAngelo East Pikeland Township
East Vincent Township
North Coventry Township
South Coventry Township
Spring City Borough
Warwick Township
West Vincent Township

Magisterial District 15-3-04 Birmingham Township
Magisterial District Judge East Marlborough Township
Daniel J. Maisano Kennett Township
Kennett Square Borough
Newlin Township
Pennsbury Township
Pocopson Township

Magisterial District 15-3-05 East Nottingham Township
Magisterial District Judge Elk Township
Scott A. Massey Lower Oxford Township
New London Township
Oxford Borough
Penn Township
Upper Oxford Township
West Nottingham Township

Magisterial District 15-3-06 Elverson Borough
Magisterial District Judge Honey Brook Borough
Michael J. Cabry, III Honey Brook Township
Wallace Township
West Brandywine Township
West Caln Township
West Nantmeal Township
Sadsbury Township

Magisterial District 15-3-07 Atglen Borough
Magisterial District Judge East Fallowfield Township
Nancy A. Gill Highland Township
Londonderry Township
Modena Borough
Parkesburg Borough
West Fallowfield Township
West Sadsbury Township

Magisterial District 15-4-01 East Whiteland Township
Magisterial District Judge (Voting Districts 3, 4, 5, and 6)
Analisa S. Sondergaard Tredyffrin Township (Voting Districts East 3, 4, and 5, Middle 2, 3, 4, and 7, and West 1, 2, and 5)

Magisterial District 15-4-02 Caln Township
Magisterial District Judge East Brandywine Township
Jeffrey J. Valocchi

Magisterial District 15-4-03 East Whiteland Township
Magisterial District Judge (Voting Districts 1 & 2)
John R. Bailey West Whiteland Township

Magisterial District 15-4-04 Avondale Borough
Magisterial District Judge Franklin Township
Matthew Seavey London Britain Township
London Grove Township
New Garden Township
West Grove Borough
West Marlborough Township

[Pa.B. Doc. No. 13-225. Filed for public inspection February 8, 2013, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 24th Judicial District; No. 301 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 24th day of January 2013, upon consideration of the Petition to Reestablish the Magisterial Districts of the 24th Judicial District (Blair County) of the Commonwealth of Pennsylvania, it is hereby *Ordered and Decreed* that the Petition, which provides for the realignment of Magisterial Districts 24-3-01, 24-3-02, and 24-3-03, within Blair County, to be effective April 1, 2013, is granted; and that the Petition, which also provides for the reestablishment of Magisterial Districts 24-1-02, 24-1-03, and 24-3-04, within Blair County, to be effective immediately, is granted.

Said Magisterial Districts shall be as follows:

Magisterial District 24-1-02 City of Altoona (Wards 3, 4, 5, 6, 9, 12, and 14)
Magisterial District Judge Todd F. Kelly

Magisterial District 24-1-03 Magisterial District Judge Jeffrey P. Auker	City of Altoona (Wards 1, 2, 7, 8, 10, 11, and 13)
Magisterial District 24-3-01 Magisterial District Judge Fred B. Miller	Antis Township Bellwood Borough Snyder Township Tyrone Township Tyrone Borough
Magisterial District 24-3-02 Magisterial District Judge Steven D. Jackson	Tunnellhill Borough Allegheny Township Logan Township
Magisterial District 24-3-03 Magisterial District Judge Paula M. Aigner	Blair Township Catharine Township Duncansville Borough Frankstown Township Hollidaysburg Borough Newry Borough Williamsburg Borough Woodbury Township
Magisterial District 24-3-04 Magisterial District Judge Craig E. Ormsby	Freedom Township Greenfield Township Huston Township Juniata Township Martinsburg Borough North Woodbury Township Roaring Spring Borough Taylor Township

[Pa.B. Doc. No. 13-226. Filed for public inspection February 8, 2013, 9:00 a.m.]
