THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CHS. 40 AND 50]

Adoption of New Rules 4000—4016 and Rescission of Rules 5000.1—5000.13 of the Rules of Judicial Administration; No. 436 Judicial Administration Doc.

Order

Per Curiam

And Now, this 4th day of December, 2014, it is *Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 4000—4016 of the Pennsylvania Rules of Judicial Administration are adopted in the following form. It is furthered *Ordered* that Rules 5000.1—5000.13 of the Pennsylvania Rules of Judicial Administration are rescinded.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective June 1, 2015.

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 40. UNIFORM RULES GOVERNING COURT REPORTING AND TRANSCRIPTS

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

Rule

Rule 4001. Scope of Rules. Policy.

(A) These rules shall govern the making, preserving and transcribing of the record of proceedings before any trial court of record within the Unified Judicial System.

(B) Because complete and verbatim notes of testimony and transcripts are integral to the official record of court proceedings, it is the policy of the Unified Judicial System to ensure that (1) qualified court reporting services are available in each judicial district and that court reporters are fairly compensated, (2) transcripts are timely produced and are affordable to all litigants, and (3) efficient technologies are employed to reduce litigation costs and conserve public resources.

Comment

These rules are promulgated pursuant to the administrative and supervisory authority granted to the Supreme Court by Article V, § 10 of the Pennsylvania Constitution. *See also* 42 Pa.C.S.A. § 1724(a)(10).

Rule 4002. Definitions.

Condensed transcript means a miniaturized copy of the original transcript printed in such a way as to place more than one page of transcript on a single sheet of paper.

Court recorder means an individual employed, contracted or utilized by a court to record testimony by electronic means (audio or audio-visual).

Court reporter means an individual employed, contracted or utilized by a court to record testimony whether through use of a stenotype machine, stenomask equipment, written symbols, or otherwise.

Court reporter's dictionary is a computer file that matches a court reporter's steno strokes with English text. A court reporter's personal dictionary is an essential part of a computer aided transcription (CAT) system.

Court reporting personnel includes court reporters, court recorders, transcriptionists and any other personnel whether employed or contracted who make the court record for use in any Pennsylvania court.

Daily transcript means a transcript delivered within eighteen (18) hours of an official request, not including weekends or official court holidays. For the purposes of additional payment, a transcript is a daily transcript only if it is in fact delivered within the above time limit.

Digital audio files are those files created by digital recording systems and saved in a format that allows storage and playback through computer applications.

Electronic transcript means an official transcript delivered in an electronic, non-paper medium.

Expedited transcript means a transcript delivered within seventy-two (72) hours of an official request, not including weekends or official court holidays. For the purposes of additional payment, a transcript is an expedited transcript only if it is in fact delivered within the above time limit.

Filing office refers to an office without regard to title that has the responsibility and function in each judicial district to maintain the official dockets and case files of the court.

Financial institution account identifiers means financial institution account numbers, credit card numbers, debit card numbers, PINS or passwords to secure accounts, and other account identifying information.

Notes of testimony means the official recording of an oral proceeding made whether through use of an electronic device, stenomask equipment, stenotype machine, written symbols, or otherwise; and includes the dictionary, media storage files, and other documentation needed to prepare a transcript.

Ordinary transcript means a transcript ordered for delivery within the time limits set forth in Rule 4011.

Rough draft transcript (computer diskette, hard paper copy, or electronically distributed) is an unedited and uncertified transcript that may contain untranslated or mistranslated stenotype symbols. This also includes notes that appear on paper, unedited electronic data, tapes or other media in the original state in which they existed when they were taken at the time of testimony.

Transcript means a certified, written, verbatim record of a proceeding.

Transcriptionist means any person employed, contracted or utilized by a court to prepare a transcript of a proceeding from an electronic or other recording. A court recorder and a court reporter may also serve as a transcriptionist.

Rule 4003. Committee on Court Reporting and Transcripts.

(A) The Committee on Court Reporting and Transcripts shall consist of the following members appointed by the Supreme Court of Pennsylvania, one of whom shall be designated as Chair and one of whom shall be designated as Vice-Chair:

(1) One representative of the Superior Court of Pennsylvania;

(2) One representative of the Commonwealth Court of Pennsylvania;

(3) Two president judges of the courts of common pleas chosen from among the judicial districts of the Commonwealth;

(4) The district court administrator of the Philadelphia County Court of Common Pleas;

(5) The district court administrator of the Allegheny County Court of Common Pleas;

(6) Two district court administrators chosen from among the judicial districts of the Commonwealth other than Philadelphia and Allegheny;

(7) Two providers of court reporting services representing the various methods currently in usage within Pennsylvania; and

(8) Two members of the Pennsylvania Bar.

(B) Initial appointments shall be for one-, two- or three-year terms, and these members may serve one additional three-year term. Thereafter appointments shall be for three years and members shall serve no more than two consecutive three-year terms. A replacement appointee shall serve for the balance of the unexpired term.

(C) The Committee shall review current rules and practices, and, upon concurrence of the Court Administrator, recommend revisions to the Uniform Rules Governing Court Reporting and Transcripts as may be necessary to effectuate the policy of these rules.

(D) The Administrative Office shall provide staff support to the Committee.

Rule 4004. Qualifications and Certification of Court Reporters and Court Recorders.

(A) No person shall be employed or utilized by a court as a court reporter or court recorder unless certified by the president judge or his or her designee as meeting the minimum criteria set forth in subdivision (B)(1), (B)(2), or (C) except

(1) those persons already employed or utilized by a court at the time of the adoption of these rules or

(2) those court reporters who hold and maintain a professional certification.

(B) The minimum criteria for certification of a court reporter are the following:

(1) stenographic requirements: the court reporter is capable of recording proceedings at a 95% accuracy level at the following speeds:

(a) literary at 180 w.p.m.

(b) jury charge at 200 w.p.m.

(c) testimony and question and answer at 225 w.p.m.

(2) voice writing requirements: the court reporter is capable of recording proceedings at a 95% accuracy level at the following speeds:

(a) literary at 200 w.p.m.

(b) jury charge at 225 w.p.m.

(c) two-voice question and answer at 250 w.p.m.

(C) The minimum criteria for certification of a court recorder are the following:

(1) full familiarity with the controls of the electronic audio or audio-visual equipment;

(2) adequate hearing acuity to assure a high quality recording;

(3) insistence on clarity of the recording;

(4) ability to quickly diagnose and correct routine malfunctions;

(5) proficiency in note taking; and

(6) understanding of courtroom procedures and vocabulary.

(D) All persons employed or utilized by a court as a court reporter or court recorder, including those employed or utilized prior to the adoption of these rules, shall be recertified as meeting the above criteria at least every three (3) years.

(1) Court reporters shall be recertified upon completion of thirty (30) hours of continuing professional education every three (3) years. Proof of attendance shall be submitted to the president judge or his or her designee.

(2) Court recorders shall be recertified every three (3) years. The president judge may rely upon reports of the district court administrator and the judicial district's judges and quasi-judicial officers to determine whether the requirements set forth in subdivision (C) are satisfactorily met. Those reports must be based on recent courtroom experience and a review of work products (e.g., lists, log notes, CD recordings) for accuracy, timeliness and quality.

(E) Any person who fails to meet the minimum criteria at the time of recertification shall be given six months to comply. Anyone who fails to comply with this subdivision shall be prohibited from serving as a court reporter or court recorder.

(F) The president judge shall verify annually to the Court Administrator compliance with this rule on forms developed by the Administrative Office.

Rule 4005. Approval of Transcriptionists.

No person or organization shall be employed or utilized by a court as a transcriptionist unless approved by the president judge.

Comment

The American Association of Electronic Reporters and Transcribers (AAERT) recommends the following criteria for transcriptionists: (a) scores at least 70% on an examination with a timed, 100-question, written examination on technical aspects of electronic reporting, courtroom procedures, and vocabulary; and (b) scores at least 98% accuracy on at least ten text pages produced during a half-hour AAERT-prepared audiotape in ASCII, Word, WordPerfect, or WordStar.

Rule 4006. Employment and Duties of Court Reporting Personnel.

(A) The president judge or his or her designee shall select, appoint, and supervise court reporting personnel for the district. The number of court reporting personnel in any district shall be adequate to support the full and unrestricted operation of the courts.

(B) The president judge or his or her designee shall assign court reporting personnel in a manner as to

(1) cover all proceedings and timely produce all transcripts; and

(2) substantially equalize the workload of recording testimony, and of transcript production and generating fees.

(C) All court reporting personnel are officers of the court with a duty to comply with all court regulations and orders and to maintain the highest standards of professional and ethical conduct.

(D) No court reporting personnel shall work outside his or her official duties unless in full compliance with all rules regarding timeliness of transcripts.

(E) All court reporters using computer-aided transcription are required to submit to the president judge or his or her designee a copy of the reporter's dictionary upon employment or contractual engagement. An updated dictionary must be provided to the president judge or his or her designee at least quarterly.

(F) Court reporters, court recorders and transcriptionists shall file a monthly report with the district court administrator of all ordered or requested transcripts in chronological order indicating the date of each order or request, the case name and number, whether the transcript requires rapid completion (e.g., a Children's Fast Track appeal), the approximate length of the record to be transcribed, the status of the transcription, and the expected date of the filing of the transcript. A court reporter, court recorder or transcriptionist must coordinate the district court administrator or his or her designee whenever courtroom coverage must be arranged in order to timely deliver the transcript.

(G) The district court administrator shall prepare a summary statistical report of the number of transcripts requested, delivered and pending, as well as the age of all pending transcripts, which shall be forwarded to the Administrative Office quarterly on forms designed by the Court Administrator.

(H) All court reporting personnel and county administrative personnel are required to comply with all standing and special requests of the Administrative Office for information, including information on transcript cost and fee payments and data relative to transcript production, delivery, and delay.

Rule 4007. Requests for Transcripts.

(A) All requests for transcripts shall be set forth on a standardized form provided by the Court Administrator. The form shall indicate the current rates authorized to be charged for transcripts under these rules.

(B) For an ordinary transcript, the party requesting a full or partial transcript of a trial or other proceeding shall file the original request with the appropriate filing office of the court. Copies of the formal request shall be delivered to:

(1) the judge presiding over the matter;

(2) the court reporter, court recorder or transcriptionist;

(3) the district court administrator or his or her designee; and

(4) opposing counsel, but if not represented, the opposing party.

(C) In courts where daily, expedited or rough draft transcripts are available, requests for these transcripts shall be filed in writing in the appropriate filing office at least 10 days prior to the proceeding. Copies of the written request shall be delivered as required by subsection (B). In the event of an emergency, a party may request by oral motion a daily, expedited or rough draft transcript.

(D) When a private litigant who is responsible for the costs requests a transcript,

(1) the litigant ordering a transcript shall make partial payment of the estimated cost of the transcript to the court's designee. Deposit checks are to be made payable to the judicial district or county.

(2) the court reporter or transcriptionist shall prepare the transcript upon direction of the court's designee.

(3) the court reporter, court recorder or transcriptionist shall notify the ordering party and the court's designee of the completion of the transcript and deliver a copy of the transcript to the judge presiding over the matter. Checks for the final balance are to be made payable to the judicial district or county.

(4) upon payment of any balance owed, the court reporter, court recorder or transcriptionist shall deliver the original transcript to the appropriate filing office and copies to the parties.

(E) When a transcript is requested for which the court or county is responsible for the cost, the court reporter, court recorder or transcriptionist shall prepare the transcript upon receipt of the request.

Comment

Nothing in this rule prevents a local court from adopting an electronic filing request procedure provided the request is effectively communicated to the listed persons.

Within the framework of these rules, the particular methods and logistics for receiving and accounting for costs is left to the discretion of the president judge and district court administration. Note, however, that deposit checks and final payment checks are to be made payable to the judicial district or county, not to the individual court reporter or transcriptionist preparing the transcript.

Rule 4008. Transcript Costs Payable by a Requesting Party Other Than the Commonwealth or a Subdivision Thereof.

(A) *Costs*

(1) The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, for an electronic transcript shall not exceed:

(a) for an ordinary transcript, $2.25 per page;

(b) for an expedited transcript, $3.25 per page; and

(c) for a daily transcript, $4.25 per page.

(2) When the transcript is prepared in bound paper format, the costs shall be in accordance with paragraph (1) relating to electronic format plus a surcharge of $0.25 per page.

Comment

The rules encourage the use of electronic transcripts which will result in reduced costs for preparing and distributing transcripts. No-cost, user-friendly software is available for converting text files into PDF format (see Rule 4010(B)). Unlike paper transcripts, electronic transcripts can offer features such as keyword searches, copy and paste functions, and speedy transmission. Moreover, the ability to store transcripts and reporters' notes on disks and networks should greatly reduce the courts' storage costs. Electronic systems support the business trend of moving toward paperless operations and also respond to ecological concerns by reducing paper waste.

Many judges prefer to read paper transcripts, including condensed transcripts, and these rules do not inhibit the practice. However, when a condensed paper transcript is ordered by a party, the surcharge of $0.25 per page in Rule 4008(A)(2) shall refer to $0.25 per sheet of paper, regardless of the number of pages of transcript on the sheet.

(B) *Economic hardship—minimum standards*

(1) Transcript costs for ordinary transcripts shall be waived for a litigant who has been permitted by the court to proceed *in forma pauperis* or whose income is below the poverty line as defined by the U.S. Department of Health and Human Services (HHS) poverty guidelines for the current year.

(2) Transcript costs for ordinary transcripts shall be reduced by one-half for a litigant whose income is less than 200 percent of poverty as defined by the HHS poverty guidelines for the current year.

(3) The court shall advise litigants of the procedure for requesting a waiver or reduction of costs.

Comment

Transcript costs can be quite expensive. By establishing minimum standards, subdivision (B) is intended to ensure that costs do not effectively deny access to the court system to impoverished persons and persons of limited financial means when further proceedings necessitate a transcript. Procedures for waiving or reducing transcripts costs must be published by the court and clearly communicated to litigants.

(C) *Assignment and allocation of transcript costs*

(1) *Assignment of costs.* The requesting party, or party required by general rule to file a transcript, shall be responsible for the cost of the transcript. Costs shall not be assessed against any party for transcripts prepared at the initiation of the court.

(2) *Allocation of costs.* When more than one party requests the transcript, or are required by general rule to file the transcript, the cost shall be divided equally among the parties.

(D) *Copies of transcript*

(1) An electronic copy of the transcript shall be provided without charge to all parties other than the requesting party. A paper copy may be purchased at the surcharge rate specified in Rule 4008(A)(2).

(2) The cost of copies prepared for the court or filing office are included in the costs set forth in Rule 4008(A) and shall not be charged to any party.

(3) The cost charged to the public for a copy of a transcript that has been filed of record shall not exceed $0.25 per page.

Comment

As no additional effort is needed to produce a copy of an electronic transcript, no copy charges may be levied upon the parties. With respect to a non-party (i.e., general public) request for a photocopy of a transcript, Rule 4007(D)(4) anticipates that the filing offices of the judicial district are the proper custodians of court case records and transcripts. Rule 4008(D)(3) provides that the cost charged to the public for a transcript copy that has been filed of record shall not exceed $0.25 per page, regardless of the form or location in which the transcript is filed or stored. At this time, the rules do not require the sale of electronic transcripts to the public.

(E) *Additional Costs*

No transcript or related costs may be charged to the parties or the public other than those listed in subdivisions (A), (B) and (D) without the written approval of the Court Administrator.

(F) *Requests for Rate Increases*

The president judge of a judicial district may request an increase in the rates prescribed in subdivision (A) by submitting a written request to the Committee on Court Reporting and Transcripts. The request shall only be approved where it is established that the judicial district faces an economic hardship caused by the current rates and that the requested rates are reasonable. If the Committee approves the request by majority vote, it shall be forwarded to the Court Administrator for review. If the Court Administrator determines that the increase is necessary, the request shall be forwarded to the Supreme Court.

Rule 4009. Fees Payable to the Court Reporter or Transcriptionist by the Judicial District. Local Rule.

Each judicial district shall promulgate and publish a local rule establishing the fees to be paid to court reporters and transcriptionists for all court reporting products.

***Official Note*:** For rules governing the promulgation of local rules, see Pa.R.J.A. No. 103(c).

Comment

By local rule, each judicial district shall set forth a comprehensive schedule of fees to be paid to court reporting personnel for all transcript products. While the maximum costs that may be charged to litigants or the public is fixed by Rule 4008, and may not be exceeded, a judicial district has the discretion to pay court reporters and transcriptionists a differing amount. In sum, these rules provide that litigants pay the transcript costs to the court according to the statewide schedule set forth in Rule 4008. The court, in turn, pays transcript fees to the court reporting personnel according to the fee schedule set by the judicial district.

The fee schedule of a judicial district must specify the fees that court reporters and transcriptionists are paid for both transcripts requested by litigants and transcripts requested by the Commonwealth or a subdivision thereof. Therefore, at a minimum, the local rule required in Rule 4009 must include the fees payable to court reporters and transcriptionists for (1) private-party transcripts, (2) transcripts ordered by governmental entities, (3) indigency and economic hardship cases, and (4) accelerated delivery surcharges.

Rule 4010. Format of Transcript.

(A) The format of paper transcripts shall be as follows:

(1) *Size.* Paper size shall be 8 1/2 x 11 inches.

(2) *Paper.* Paper shall be opaque, white, archival quality paper, at least 13 pounds for both originals and copies.

(3) *Preprinted Marginal Lines.* Pages shall contain preprinted solid left and right marginal lines. Preprinted top and bottom marginal lines are optional.

(4) *Line Numbers.* Each page shall bear numbers indicating each line of transcription on the page.

(5) *Number of Lines per Page.* Each page shall contain 25 lines of text. The last page may contain fewer lines if it is less than a full page of transcription. Page numbers or notations (e.g., page headers) shall not be considered part of the 25 lines of text.

(6) *Margins.* Typing shall begin on each page at the 1 3/4 inch left margin and continue to the 3/8 inch right margin.

(7) *Type Size.* The letter character size is to be 12 point with 10 letters to the inch. This type size provides for approximately 63 characters to each line. Courier 12 point type is recommended.

(8) *Spacing.* Lines of text shall be double spaced.

(9) *Indentations.*

(a) *Q and A.* All "Q" and "A" designations shall begin at the left margin. The statement following the "Q" and "A" shall begin on the fifth space from the left margin. Subsequent lines shall begin at the left margin. Since depositions read at a trial have the same effect as oral testimony, the indentations for "Q" and "A" should be the same as described above. In the transcript, each question and answer read should be preceded by a quotation mark. At the conclusion of the reading, a closing quotation mark should be used.

(b) *Colloquy.* Speaker identification shall begin on the tenth space from the left margin followed directly by a colon. The statement shall begin on the third space after the colon. Subsequent lines shall begin at the left margin.

(c) *Quotations.* Quoted material other than depositions shall begin on the tenth space from the left margin, with additional quoted lines beginning at the tenth space from the left margin, with appropriate quotation marks used.

(d) *Interruptions of Speech and Simultaneous Discussions.* Interruptions of speech shall be denoted by the use of a dash at the point of interruption, and again at the point the speaker resumes speaking.

(e) *Page Heading (also known as "Headers").* A page heading is brief descriptive information noted to aid in locating a person and/or event in a transcript. Page headings shall appear above line 1 on the same line as the page number. This information shall not to be counted as a line of transcript.

(f) *Parentheses.* Parenthetical notations shall be marked by parentheses. They shall begin with an open parenthesis on the fifth space from the left margin, with the remark beginning on the sixth space from the left margin. Parentheses are used for customary introductory statements such as call to order of court or swearing in a witness. Parentheses are also used for indicating nonverbal behavior, pauses, and readback/playback.

(B) Electronic transcripts shall comply with the format standards set forth in Rule 4010(A)(3) through (9) for paper transcripts and, in addition, shall be in PDF format with the following settings:

(1) *functions disabled*: content changes

(2) *functions enabled*: search, select, copy, paste and print.

Comment

Rule 4010 standards for both paper and electronic transcripts, which closely follow federal court standards, assure that all transcripts of proceedings before the Pennsylvania courts are formatted in the same way, whether prepared by official court reporters or transcriptionists, contract or per diem personnel, or by transcription companies.

Rule 4011. Deadline for Delivery of Transcript.

(A) The court reporter or transcriptionist shall deliver the transcript within 30 calendar days of receiving notice to prepare the transcript as provided by Rule 4007, unless an accelerated timeframe is mandated by law. The court reporter or transcriptionist, upon a showing of good cause to the president judge or his or her designee, may request an extension of the deadline for a period of time not to exceed an additional 30 days. In no case shall more than one extension be granted.

(B) Transcripts prepared pursuant to the Children's Fast Track Appeal program shall be given priority.

***Official Note*:** For rules governing children's fast track appeals, see Pa.R.A.P. 102 *et seq*.

Rule 4012. Sanctions for Delayed Transcript.

(A) The president judge may take disciplinary action, including reassignment, reduction of fees, contempt of court, or decertification against any court reporter, court recorder, or transcriptionist who impedes the prompt administration of justice, whether by protracted delinquency in a single case or by engaging in a pattern of delinquency in a number of cases.

(B) The failure of a court reporter or transcriptionist to complete the notes within the time imposed by these rules or by court order, which delays transmission of the complete record to the appellate court, interferes with the reviewing court's proceedings. The appellate court may enter an order to compel the preparation, filing and transmission of the notes and may take disciplinary action including contempt of court or reduction of fees.

(C) A district court administrator or his or her designee may cause a transcript to be prepared by another court reporter or transcriptionist from notes in the event of the inability, unavailability, or unwillingness of the individual who took the notes to do so within the time ordered by the court.

(D) The Court Administrator shall notify the Supreme Court of Pennsylvania of instances of unreasonable delay in preparing transcripts. The Court Administrator may recommend imposition of sanctions, including decertification of individual court reporters or transcriptionists.

(E) The president judge shall ensure that the number, proficiency and organization of court reporting personnel in any district are adequate to support the full and unrestricted operation of the courts. When transcript delay is caused by an insufficient supply of qualified court reporters or other staff resources, or inefficient management of the court reporting operation, the Supreme Court may direct the president judge to take immediate corrective actions.

Rule 4013. Certification of Transcript.

Court reporting personnel who take the notes, record or transcribe a proceeding shall certify that the transcript of

proceedings is true and correct and meets the format specifications established by the Supreme Court of Pennsylvania in Rule 4010. When more than one person was engaged in the production of the transcript, each shall certify as to his or her contribution.

Rule 4014. Redaction of Personal Data Identifiers.

(A) On its own motion, or upon motion of any party, the court may order the court reporter or transcriptionist preparing the transcript to redact the following personal data identifiers:

(1) Social Security numbers;

(2) financial institution account identifiers;

(3) dates of birth;

(4) names of minor children;

(5) home addresses and telephone numbers; and

(6) other identifiers as privacy and security may require.

(B) Information that is redacted shall, unless otherwise directed by the court, appear in transcripts that are provided to the court and to the parties, but not in any transcript filed in the appropriate filing office or provided to any other requestor.

Rule 4015. Ownership of Notes.

Notes of testimony of court proceedings, stenographic notes, tapes, rough draft transcripts or other media used by court reporting personnel to record or monitor a proceeding in or for a court as well as any transcriptions thereof, are the exclusive property of the judicial district.

Comment

Nothing in these rules prohibits someone who has lawfully obtained a transcript from making a copy.

Rule 4016. Storage and Retention.

(A) Each judicial district shall make provision for the archiving, storage and retention of transcribed and untranscribed notes of testimony, rough draft transcripts, reporter and recorder log notes, tapes, other electronic or digital audio files, and any hardware, software, tools or dictionaries necessary for proper transcription.

(B) Notes of testimony and other materials specified in subdivision (A) shall be retained in compliance with the *Record Retention and Disposition Schedule with Guidelines* adopted by the Supreme Court.

Comment

Each judicial district is responsible for the preservation of the transcript production materials listed in Rule 4016(A) in a form that guarantees their accuracy, authenticity, and accessibility. These materials must be protected from loss arising from personnel turnover in the court, environmental hazards, or unsecured access.

Exhibits admitted into evidence are part of the court record and must be maintained with the official court record in the appropriate filing office. Excluded here are drugs, weapons, and other dangerous materials kept in secure locations by law enforcement for production on appeal or for a new trial, or pending forfeiture or destruction order of the court. Original materials shall not be maintained in the personal files of court reporting personnel.

CHAPTER 50. **[UNIFORM RULES GOVERNING COURT REPORTING AND TRANSCRIPTS] (Reserved)**

Rules 5000.1—5000.13. (Reserved).

[Pa.B. Doc. No. 14-2609. Filed for public inspection December 19, 2014, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 15]

Order Amending Rule 1513 of the Rules of Appellate Procedure; No. 250 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 2nd day of December, 2014, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published before adoption at 44 Pa.B. 2052 (April 5, 2014):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 1513 is amended in the following form.

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

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1513. Petition for Review.

(a) *Caption and parties on appeal.* In an appellate jurisdiction petition for review, the aggrieved party or person shall be named as the petitioner and, unless the government unit is disinterested, the government unit and no one else shall be named as the respondent. If the government unit is disinterested, all real parties in interest, and not the government unit, shall be named as respondents.

(b) *Caption and parties in original jurisdiction actions.* The government unit and any other indispensable party shall be named as respondents. Where a public act or duty is required to be performed by a government unit, it is sufficient to name the government unit, and not its individual members, as respondent.

(c) *Form.* Any petition for review shall be divided into consecutively numbered paragraphs. Each paragraph shall contain, as nearly as possible, a single allegation of fact or other statement. When petitioner seeks review of an order refusing to certify an interlocutory order for immediate appeal, numbered paragraphs need not be used.

(d) *Content of appellate jurisdiction petition for review.* An appellate jurisdiction petition for review shall contain:

[(1)] 1. a statement of the basis for the jurisdiction of the court;

[(2)] 2. the name of the party or person seeking review;

[(3)] 3. the name of the government unit that made the order or other determination sought to be reviewed;

[(4)] 4. reference to the order or other determination sought to be reviewed, including the date the order or other determination was entered;

[(5)] 5. a general statement of the objections to the order or other determination**[; and], but the omission of an issue from the statement shall not be the basis for a finding of waiver if the court is able to address the issue based on the certified record;**

[(6)] 6. a short statement of the relief sought**[. A]; and**

7. a copy of the order or other determination to be reviewed**, which** shall be attached to the petition for review as an exhibit. **[The statement of objections will be deemed to include every subsidiary question fairly comprised therein.]**

No notice to plead or verification is necessary.

Where there were other parties to the proceedings conducted by the government unit, and such parties are not named in the caption of the petition for review, the petition for review shall also contain a notice to participate, which shall provide substantially as follows:

If you intend to participate in this proceeding in the (Supreme, Superior or Commonwealth, as appropriate) Court, you must serve and file a notice of intervention under **[Rule] Pa.R.A.P.** 1531 of the Pennsylvania Rules of Appellate Procedure within 30 days.

(e) *Content of original jurisdiction petition for review.* A petition for review addressed to an appellate court's original jurisdiction shall contain:

[(1)] 1. a statement of the basis for the jurisdiction of the court;

[(2)] 2. the name of the person or party seeking relief;

[(3)] 3. the name of the government unit whose action or inaction is in issue and any other indispensable party;

[(4)] 4. a general statement of the material facts upon which the cause of action is based **[and];**

[(5)] 5. a short statement of the relief sought**[. It shall also contain]; and**

6. a notice to plead and **[be verified] verification** either by oath or affirmation or by verified statement.

(f) *Alternative objections.* Objections to a determination of a government unit and the related relief sought may be stated in the alternative, and relief of several different types may be requested.

***Official Note*:** The 2004 amendments to this rule clarify what must be included in a petition for review addressed to an appellate court's appellate jurisdiction and what must be included in a petition for review addressed to an appellate court's original jurisdiction. Where it is not readily apparent whether a "determination" (defined in **[Rule] Pa.R.A.P.** 102 as "[a]ction or inaction **[of] by** a government unit**"**) is reviewable in the court's appellate or original jurisdiction, compliance with the requirements of **[Subdivisions] paragraphs** (d) and (e) is appropriate.

[Subdivisions] Paragraphs (a) and (b) reflect the provisions of **[Rule 501 (Any Aggrieved Party May Appeal), Rule 503 (Description of Public Officers)] Pa.R.A.P. 501, Pa.R.A.P. 503**, Section 702 of the Administrative Agency Law, 2 Pa.C.S. § 702 (Appeals), and Pa.R.C.P. **No.** 1094 (regarding parties defendant in mandamus actions).

Government units that are usually disinterested in appellate jurisdiction petitions for review of their determinations include:

- the Board of Claims,
- the Department of Education (with regard to teacher tenure appeals from local school districts pursuant to section 1132 of the Public School Code of 1949, 24 P. S. § 11-1132),
- the Environmental Hearing Board,
- the State Charter School Appeal Board,
- the State Civil Service Commission, and
- the Workers' Compensation Appeal Board.

The provision for joinder of indispensable parties in original jurisdiction actions reflects the last sentence of section 761(c) of the Judicial Code, 42 Pa.C.S. § 761(c), providing for the implementation of ancillary jurisdiction of the Commonwealth Court by general rule.

[Subdivisions] Paragraphs (d) and (e) reflect the differences in proceeding in a court's original and appellate jurisdiction, while preserving the need for sufficient specificity to permit the conversion of an appellate document to an original jurisdiction pleading and vice versa should such action be necessary to assure proper judicial disposition. See also the notes to **[Rules] Pa.R.A.P.** 1501 and 1502. **[The paragraph regarding the notice to participate was formerly found in Rule 1514(c).**

Explanatory Comment—1979

The note is expanded to reflect the fact that the Department of Education does not defend its decisions in teacher tenure appeals from local school districts.

Explanatory Comment—2011

With respect to the general statement of objections in an appellate jurisdiction petition for review required in subdivision (d)(5), see *Maher v. Unemployment Comp. Bd. of Review*, 983 A.2d 1264, 1266 (Pa. Cmwlth. 2009).]

Official Note—2014

The 2014 amendments to Pa.R.A.P. 1513(d) relating to the general statement of objections in an appellate jurisdiction petition for review are intended to preclude a finding of waiver if the court is able, based on the certified record, to address an issue not within the issues stated in the petition for review but included in the statement of questions involved and argued in a brief. The amendment neither expands the scope of issues that may be

addressed in an appellate jurisdiction petition for review beyond those permitted in Pa.R.A.P. 1551(a) nor affects Pa.R.A.P. 2116's requirement that "[n]o question will be considered unless it is stated in the statement of questions involved [in appellant's brief] or is fairly suggested thereby."

[Pa.B. Doc. No. 14-2610. Filed for public inspection December 19, 2014, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Order Amending Rules 528 and 535 of the Rules of Criminal Procedure; No. 457 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 8th day of December, 2014, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 42 Pa.B. 6252 (October 6, 2012) and 44 Pa.B. 778 (February 8, 2014), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 81), 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 528 and 535 are adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 9, 2015.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(1). Release Procedures

Rule 528. Monetary Condition of Release on Bail.

(A) If the bail authority determines that it is necessary to impose a monetary condition of bail, to determine the amount of the monetary condition, the bail authority shall consider:

(1) the release criteria set forth in Rule 523; and

(2) the financial ability of the defendant.

(B) The amount of the monetary condition shall be reasonable.

(C) After determining the amount of the monetary condition, the bail authority may permit the deposit of a sum of money not to exceed **[10] 10%** of the full amount of the monetary condition if he or she determines that such a deposit is sufficient to ensure the defendant's appearance and compliance.

(D) One or a combination of the following forms of security shall be accepted to satisfy the full amount of the monetary condition:

(1) Cash or when permitted by the local court a cash equivalent.

(2) Bearer bonds of the United States Government, of the Commonwealth of Pennsylvania, or of any political subdivision of the Commonwealth, in the full amount of the monetary condition, provided that the defendant or the surety files with the bearer bond a sworn schedule which shall verify the value and marketability of such bonds, and which shall be approved by the bail authority.

(3) Realty located anywhere within the Commonwealth, including realty of the defendant, as long as the actual net value is at least equal to the full amount of the monetary condition. The actual net value of the property may be established by considering, for example, the cost, encumbrances, and assessed value, or another valuation formula provided by statute, ordinance, or local rule of court. Realty held in joint tenancy or tenancy by the entirety may be accepted provided all joint tenants or tenants by the entirety execute the bond.

(4) Realty located anywhere outside of the Commonwealth but within the United States, provided that the person(s) posting such realty shall comply with all reasonable conditions designed to perfect the lien of the county in which the prosecution is pending.

(5) The surety bond of a professional bondsman licensed under the Judicial Code, 42 Pa.C.S. §§ 5741—5749, or of a surety company authorized to do business in the Commonwealth of Pennsylvania.

(E) The bail authority shall record on the bail bond the amount of the monetary condition imposed and the form of security that is posted by the defendant or by an individual acting on behalf of the defendant or acting as a surety for the defendant.

(F) Except as limited in Rule 531, the defendant or another person may deposit the cash percentage of the bail. If the defendant posts the money, the defendant shall sign the bond, thereby becoming his or her own surety, and is liable for the full amount of bail if he or she fails to appear or to comply. When a person other than the defendant deposits the cash percentage of the bail, the clerk of courts or issuing authority shall explain and provide written notice to that person that:

1) if the person agrees to act as a surety and signs the bail bond with the defendant, the person shall be liable for the full amount of bail if the defendant fails to appear or comply; or

2) if the person does not wish to be liable for the full amount of bail, the person shall be permitted to deposit the money for the defendant to post, and will relinquish the right to make a subsequent claim for the return of the money pursuant to these rules. In this case, the defendant would be deemed the depositor, and only the defendant would sign the bond and be liable for the full amount of bail.

3) Pursuant to Rule 535(E), if the bail was deposited by or on behalf of the defendant and the defendant is the named depositor, the amount otherwise returnable to the defendant may be used to pay and satisfy any outstanding restitution, fees, fines, and costs owed by the defendant as a result of a sentence imposed in the court case for which the deposit is being made.

Comment

Nothing in this rule precludes the bail authority from releasing the defendant on an unsecured bail bond whereby the defendant, upon executing the bail bond, binds himself or herself to be liable for an amount of

money in the event the defendant fails to appear or to comply with the conditions of the bail bond. Although this is a monetary condition, no actual security or money is deposited as a condition of the release. *See* Rule 524(C)(3) for the definition of unsecured bail bond.

The bail authority may impose a monetary condition in addition to nonmonetary conditions if a combination of such conditions is necessary to reasonably ensure the defendant's appearance and compliance. For example, a defendant could be released conditioned upon posting a certain amount of money and subject to the supervision of a designated probation department or bail agency, or a designated person or private organization. The supervisor would maintain close contact with the defendant, assist the defendant in making arrangements to appear in court, and, if appropriate, accompany the defendant to court. In addition, the bail authority could require that the supervisor also be a surety for the full amount of the monetary condition so that the supervisor would be financially responsible if the defendant failed to appear.

Paragraph (C) requires that in all cases, the bail authority must consider whether a defendant should be permitted to deposit a percentage of the cash bail.

Nothing in this rule changes the practice of permitting the judicial districts to require by local rule the use of percentage cash bail.

When the bail authority determines that it is appropriate to accept a percentage of the cash bail, the defendant, or an individual acting on behalf of the defendant or acting as a surety for the defendant, may make the deposit with the clerk of courts or the issuing authority. *See* Rule 535.

When the bail authority authorizes the deposit of a percentage of the cash bail, the defendant may satisfy the monetary condition by depositing, or having an individual acting as a surety on behalf of the defendant deposit, the full amount of the monetary condition. For example, there may be cases in which the defendant does not have the cash to satisfy the percentage cash bail, but has some other form of security, such as realty. In such a case, the defendant must be permitted to execute a bail bond for the full amount of the monetary condition and deposit one of the forms or a combination of the forms set forth in paragraph (D).

If a percentage of the cash bail is accepted pursuant to these rules, when the funds are returned at the conclusion of the defendant's bail period, the court or bail agency may retain as a fee an amount reasonably related to the cost of administering the cash bail program. *See Schilb v. Kuebel*, 404 U.S. 357 (1971).

[Except as limited in Rule 531 (Qualification of Surety), the defendant or another person, such as a relative or neighbor, may deposit the cash percentage of the bail. If the defendant posts the money, the defendant must sign the bond, thereby becoming his or her own surety, and is liable for the full amount of bail if he or she fails to appear or to comply. When someone other than the defendant deposits the cash percentage of the bail, the clerk of courts or issuing authority must explain to that person that:

1) if the person agrees to act as a surety and signs the bail bond with the defendant, the person will be liable for the full amount of bail if the defendant fails to appear or comply; or

2) if the person does not wish to be liable for the full amount of bail, the person will be permitted to deposit the money for the defendant to post, and will relinquish the right to make a subsequent claim for the return of the money pursuant to these rules. In this case, the defendant would be deemed the depositor, and only the defendant would sign the bond and be liable for the full amount of bail. *See* Rule 535.]

Paragraph (F), which formerly was included in the Comment, was added to the rule in 2014 to clarify the manner in which the defendant or a third party may act as a surety for the defendant's bond. The rule now requires that written notice be given to the person posting the bail, especially a third party, of the possible consequences if the defendant receives a sentence that includes restitution, a fine, fees, and costs. *See also* Rule 535 for the procedures for retaining bail money for satisfaction of outstanding restitution, fines, fees, and costs.

The defendant must be permitted to substitute the form(s) of security deposited as provided in Rule 532.

The method of valuation when realty is offered to satisfy the monetary condition pursuant to paragraphs (D)(3) and (D)(4) is determined at the local level. If no satisfactory basis exists for valuing particular tracts of offered realty, especially tracts located in remote areas, acceptance of that realty is not required by this rule.

***Official Note*:** Former Rule 4007 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4013; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4011. Present Rule 4007 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 528 and amended March 1, 2000, effective April 1, 2001; amended September 21, 2012, effective November 1, 2012**; amended December 8, 2014, effective February 9, 2015**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the December 8, 2014 amendment providing for the advice required to be given concerning possible forfeiture of the deposit published with the Court's Order 44 Pa.B. 7833 (December 20, 2014).

PART C(2). General Procedures in all Bail Cases

Rule 535. Receipt for Deposit; Return **or Retention** of Deposit.

(A) Any deposit of cash in satisfaction of a monetary condition of bail shall be given to the issuing authority, the clerk of courts, or another official designated by the president judge by local rule pursuant to Rule 117(C). The issuing authority, clerk, or other official who accepts the deposit shall give the depositor an itemized receipt, and shall note on the bail bond the amount deposited and the name of the person who made the deposit. The defendant shall sign the bail bond, and be given a copy of the signed bail bond.

(1) When the issuing authority accepts a deposit of bail, the issuing authority shall note on the docket transcript the amount deposited and the name of the

person who made the deposit. The issuing authority shall have the deposit, the docket transcript, and a copy of the bail bond delivered to the clerk of courts.

(2) When another official is designated by the president judge to accept a bail deposit, that official shall deliver the deposit and the bail bond to either the issuing authority, who shall proceed as provided in paragraph (A)(1), or the clerk of courts, who shall proceed as provided in paragraph (A)(3).

(3) When the clerk of courts accepts the deposit, the clerk shall note in the list of docket entries the amount deposited and the name of the person who made the deposit, and shall place the bail bond in the criminal case file.

[(4) At the time bail is being deposited, no inquiry shall be made of the depositor whether he or she consents to have the deposit retained to be applied toward the defendant's fines, costs, or restitution, if any.]

(B) When the deposit is the percentage cash bail authorized by Rule 528, the depositor shall be notified that by signing the bail bond, the depositor becomes a surety for the defendant and is liable for the full amount of the monetary condition in the event the defendant fails to appear or comply as required by these rules **and that, if the defendant is the named depositor, the amount otherwise returnable may be used to pay and satisfy any outstanding restitution, fees, fines, and costs owed by the defendant as a result of a sentence imposed in the court case for which the deposit is being made**.

(C) The clerk of courts shall place all cash bail deposits in a bank or other depository approved by the court and shall keep records of all deposits.

(D) **[Within] Unless a motion is filed pursuant to paragraph (E), within** 20 days of the full and final disposition of the case, the deposit shall be returned to the depositor, less any bail-related fees or commissions authorized by law, and the reasonable costs, if any, of administering the percentage cash bail program.

(E) In any case in which the defendant is the named depositor, upon the full and final disposition of the case, the court may order, upon motion of the attorney for the Commonwealth, that any money deposited pursuant to this rule by or on behalf of the defendant that is otherwise returnable to the defendant be held and applied to the payment of any restitution, fees, fines, and costs imposed upon the defendant in the case for which the deposit had been made, unless the defendant shows that he or she would suffer an undue hardship.

[(E)] (F) When a case is transferred pursuant to Rule 130(B) or Rule 555, the full deposit shall be promptly forwarded to the transfer judicial district, together with any bail-related fees, commissions, or costs paid by the depositor.

Comment

When the president judge has designated another official to accept the bail deposit as provided in Rule 117, the other official's authority under Rule 117 and this rule is limited to accepting the deposit, having the defendant sign the bail bond, releasing the defendant, and delivering the bail deposit and bail bond to the issuing authority or the clerk of courts.

[Paragraph (A) was amended in 2006 to make it clear that the clerk of courts or other official accepting a deposit of cash bail is not permitted to request that the depositor agree to have the cash bail deposit retained after the full and final disposition of the case to be applied toward the payment of the defendant's fines, costs, or restitution, if any. *See, e.g., Commonwealth v. McDonald*, 476 Pa. 217, 382 A.2d 124 (1978), which held that a deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be retained to pay for the defendant's court costs and/or fines.]

Paragraph (E) was added in 2014 to permit the attorney for the Commonwealth to seek, at the full and final disposition of any case in which the defendant is the named depositor of bail money, to have the deposited bail money applied to any restitution, fees, fines, and costs imposed on the defendant in the case for which the deposit had been made. This new provision, adopted pursuant to the authority granted in 42 Pa.C.S. § 5702, is a procedural mechanism by which the court may retain money previously deposited with the court to satisfy the defendant's obligations but only in the current criminal case. This procedure also secures the right of the defendant to proffer reasons why retention of the bail money would be an undue hardship. *See Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978).

The procedure stated in this rule is the only procedure by which bail may be retained to pay for assessments imposed on the defendant. Any local practice that permits the retention of bail other than as provided in this rule is inconsistent with the statewide rules and subject to the provisions in Rule 105(B).

For the manner of distribution of any funds applied to the outstanding restitution, fees, fines, and costs owed by the defendant, see the Pennsylvania Supreme Court's Uniform Disbursement Schedule, *In Re: Promulgation of Financial Regulations Pursuant to Act 49 of 2009 (42 Pa.C.S. §§ 3733(A.1) and 3733.1)*, No. 335 Judicial Administration Docket (October 29, 2009), 204 Pa. Code § 29.353.

The procedures in paragraph (E) contemplate the decision to retain the bail to be made at the court of common pleas. There may be court cases in which bail had been set that are resolved at the magisterial district court, for example, in cases in which a plea agreement is entered to withdraw misdemeanor or felony charges in exchange for a plea to summary charges or misdemeanor charges within the jurisdiction of the magisterial district judge. In such cases, the magisterial district judge may not order the retention of bail money where the defendant is the named depositor for the payment of assessments unless the Commonwealth and the defendant agree.

Any order issued pursuant to paragraph (E) shall be in conformance with Rule 114.

Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside the normal business hours.

Paragraph (B) requires the issuing authority or the clerk of courts who accepts a percentage cash bail deposit to explain to the person who deposits the money the consequences of acting as a surety. There will be cases in which a person merely deposits the money for the defendant to post, and is not acting as the defendant's surety. In this situation, the defendant is the depositor and should receive the receipt pursuant to paragraph (A). *See* Rule 528. ***See also*** **Rule 528 for the notice the clerk of courts or issuing authority must provide when a person other than the defendant deposits the cash percentage of the bail.**

When cash bail that is deposited in a bank pursuant to paragraph (C) is retained by a county in an interest-bearing account, case law provides that the county retains the earned interest. *See Crum v. Burd*, **[131 Pa.Cmwlth. 550,]** 571 A.2d 1 (**Pa.Cmwlth.** 1989), *allocatur* denied **[525 Pa. 649,]** 581 A.2d 574 (**Pa.** 1990).

The full and final disposition of a case includes all avenues of direct appeal in the state courts. Therefore, the return of any deposits would not be required until after either the expiration of the appeal period or, if an appeal is taken, after disposition of the appeal. *See* Rule 534.

Any fees, commissions, or costs assessed pursuant to paragraph (D) must be reasonably related to the county's actual bail administration costs. Each county should establish local procedures to ensure adequate notice and uniform application of such fees, commissions, or costs. *See, e.g., Buckland v. County of Montgomery*, 812 F.2d 146 (3rd Cir. 1987).

When a case is transferred pursuant to Rules 130(B) and 555, paragraph **[(E)] (F)** and Rules 130(B) and 555 require that any bail-related fees, commissions, or costs collected pursuant to paragraph (D) be forwarded to the transfer judicial district. Fees, commissions, or costs that have been assessed but not paid at the time of transfer may not be collected in the transferring judicial district.

When bail is terminated upon acceptance of the defendant into an ARD program, such action constitutes a "full and final disposition" for purposes of this rule and Rule 534 (Duration of Obligation). *See* Rule 313.

***Official Note*:** Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4015. Present Rule 4015 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000; amended March 3, 2004, effective July 1, 2004; amended June 30, 2005, effective August 1, 2006; amended March 9, 2006, effective August 1, 2006**; amended December 8, 2014, effective February 9, 2015**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the December 8, 2014 changes concerning defendant's deposits of bail to be applied to restitution, fees, fines, and costs in the current case published with the Court's Order 44 Pa.B. 7833 (December 20, 2014).

FINAL REPORT[1]

Proposed Amendments to Pa.Rs.Crim.P. 528 and 535

Use of Bail Money for Payment of Restitution, Fees, Fines, and Costs

On December 8, 2014, effective February 9, 2015, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 528 (Monetary Condition for Release of Bail) and Rule 535 (Receipt for Deposit; Return of Deposit) to provide (1) procedures for applying bail monies that would be returnable to the defendant after full and final disposition of the case to the defendant's outstanding restitution, court fees, fine, and costs in the current case and (2) notice to depositors to warn of the possibility of the loss of security deposited.

The Committee had examined procedures that would permit retention of a defendant's bail money that otherwise would be returnable to the defendant after full and final disposition of the case in order for it to be applied to the defendant's outstanding restitution, court fees, fine, and costs. The Rules of Criminal Procedure traditionally have precluded directly applying bail money in this manner, based on the concept that the purpose of bail is to ensure the presence of the defendant during the pendency of the case and not to obtain a "deposit" on future assessments. However, the Committee concluded that a change that would permit the retention of returnable bail money to satisfy a defendant's existing obligations to the court is a valid exercise of the rule-making authority. In addition, such a change is a potentially useful tool for the more efficient collection of owed moneys, including restitution, reducing collection costs for the court and even for the defendant who would otherwise face additional costs where the court is forced to seek collections processes.

In reaching this conclusion, the first question that the Committee had considered was whether distribution of bail money in this manner fell within the purview of the Rules of Criminal Procedures. As part of this review, the Committee examined the current law in Pennsylvania on the return of bail, as well as the practice in other jurisdictions with regard to this question.

Under the common law, the purpose of bail was to ensure the appearance of the defendant and courts did not have the inherent power to apply bail money for another purpose. In terms of constitutional concerns, the Eight Amendment of U.S. Constitution prohibits excessive bail. A U.S. Supreme Court case, *Cohen v. United States*, 7 L.Ed. 518, 82 S.Ct. 526 (1962), held that conditioning bail on the payment of a fine is excessive and in violation of the Eighth Amendment.

Several decades after the *Cohen* decision, a federal statute, 28 U.S.C. § 2044, was adopted that permitted the use of deposited bail money to be applied to a defendant's costs, fines, restitution and other assessments. Constitutional challenges to this provision have been rejected because, unlike the *Cohen* case, Section 2044 does not precondition bail on the payment of any fine but rather is a procedural mechanism by which the court, after the defendant has appeared and the purpose

[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.

of bail has been served, may disburse deposited money to those with claims on the funds. *See United States v. Higgins*, 987 F.2d 543 (1993).

The Committee's research revealed that, in many states, courts have allowed the application of bail to fines or costs. Numerous states also have adopted statutes authorizing this practice. *See, e.g.*, California Penal Code § 1297, Florida Statutes Annotated § 903.286, Illinois Complied Statutes § 5/110-7(f), Minnesota Statutes Annotated § 629.53, Nevada Revised Statutes § 178.522, New York Criminal Procedure Law § 420.10(1)(e), Tennessee Code § 40-11-121, Wisconsin Statutes § 969.03(4). In instances where specific statutory authority existed, courts have been inclined to allow the application of the bail to fines or costs. For example, in *State v. Iglesias*, 185 Wis. 2d 118, 517 N.W.2d 175 (1990), cert. den. 513 U.S. 1045 (1994), the Wisconsin Supreme Court found that bail is not excessive if it is used for a purpose which the legislature has deemed to be a compelling state interest and the amount is not excessive relative to the interest sought to be furthered.

Rather uniquely, Pennsylvania's Bail Statute delegates all authority over bail to the Supreme Court through its rule-making authority. Section 5702 of the Judicial Code, 42 Pa.C.S. § 5702, provides:

> Except as otherwise provided by this title and the laws relating to the regulation of surety companies, all matters relating to the fixing, posting, forfeiting, exoneration and distribution of bail and recognizances shall be governed by general rules.

While there are no Pennsylvania cases addressing the propriety of retaining returnable bail money for payment of fines, costs, or restitution, there have been a few cases that dealt with certain aspects of this issue, usually involving cases in which third parties were seeking the return of money they had posted on behalf of a defendant. For example, in *Commonwealth v. McDonald*, 476 Pa. 217, 382 A.2d 124 (1978), the Court held that the trial court erred in refusing to return the bail deposit after the defendant was taken into custody after allegedly committing a new offense, concluding that the bail was revoked when the defendant was placed in custody, and the trial court no longer had the authority to retain it. The Court specifically reserved judgment on the question of "whether and to what extent the Rules of Criminal Procedure allow bail deposits to be applied to the collection of fines imposed upon the defendant." FN. 5, 476 Pa. at 222, 382 A.2d. at 126.

Based on the foregoing analysis, the Committee initially developed a proposal, which was published for comment at 42 Pa.B. 6253 (October 6, 2012), that would have amended Rule 535 and revised the Comment to Rule 528 to permit the clerk of courts to automatically apply any bail monies that otherwise would be returnable to the defendant after full and final disposition of the case to any of the defendant's outstanding restitution, court fees, fines, costs, and bail judgments. The proposal would have been limited to only money that has been deposited by the defendant and would have permitted relief where its application would work a hardship on the defendant.

Following publication of this proposal, the Committee received further direction from the Supreme Court of Pennsylvania to narrow the scope of the proposal by requiring the prosecution to make a motion for holding deposited funds for payment of outstanding restitution, fees, fines, and costs assessed in the case for which the deposit had originally been made. Additionally, the exemption for third party sureties and for cases in which the defendant would suffer an undue hardship were to be more explicitly stated and fuller notice be provided to the depositor of the potential loss of the deposit.

The amendments therefore now afford enhanced protection to third party depositors by requiring detailed notice that the bail authority must provide to depositors to warn them of the possibility of the loss of security deposited if they allow the defendant to be the named depositor. Rule 528 has been amended to move into the rule text the language currently in the Comment that describes the manner by which a depositor may be named and the consequences for a third party of allowing the defendant to be named depositor when the third party has supplied the bail money, including the possibility of the money being applied to assessments. This notice requirement is reiterated in Rule 535(B).

Additionally, a new paragraph (E) has been added to Rule 535 that establishes the procedures for retaining the bail money. A motion by the attorney for the Commonwealth is required before the bail money can be retained and can only be retained for the payment of assessments placed on the case for which the money had originally been deposited with the defendant being the named depositor. The paragraph also contains the exemption when the defendant shows that retention of the bail money would be a hardship.

Additionally, the current paragraph (A)(4) of Rule 535 that prohibits inquiring whether the defendant consents to applying deposited bail money towards fines, costs, etc. has been removed because the defendant's consent to having the bail money retained is no longer needed if the defendant was the named depositor and third party depositors are to be provided with more detailed notice of the potential consequences.

The Comment to Rule 535 has been revised to describe the rationale and basis for this change as well as cross-referencing the Court's Uniform Disbursement Schedule that details the manner in which the retained money would be dispersed. The Comment also states that the new procedures would not apply to cases before a magisterial district judge unless the parties agree.

There was a concern raised by the Committee that some counties may be retaining bail presently, despite being contrary to the rules, so language has been added in the Rule 535 Comment that any local practice that varies from that in Rule 535 is inconsistent with the statewide rules.

[Pa.B. Doc. No. 14-2611. Filed for public inspection December 19, 2014, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUCKS COUNTY

Mortgage Foreclosure Diversion Program; Administrative Order No. 55

And Now, this 2nd day of December, 2014, Paragraph 7 of Bucks County Civil Division Administrative Order No. 55, promulgated on June 5, 2009, is hereby amended to read as follows:

7. This Order shall remain in effect until December 31, 2015, unless further extended by the Court.

This Amendment shall take effect thirty days from the date of publication in the *Pennsylvania Bulletin*.

By the Court

JEFFREY L. FINLEY,
President Judge

[Pa.B. Doc. No. 14-2612. Filed for public inspection December 19, 2014, 9:00 a.m.]

SUPREME COURT

Reaccreditation of the National Elder Law Foundation as a Certifying Organization; No. 131 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 2nd day of December, 2014, upon the recommendation of the Pennsylvania Bar Association Review and Certifying Board, the National Elder Law Foundation is hereby reaccredited as a certifying organization in the area of Elder Law for a period of five years commencing January 26, 2015.

[Pa.B. Doc. No. 14-2613. Filed for public inspection December 19, 2014, 9:00 a.m.]

SUPREME COURT

Reestablishment of the Magisterial Districts within the 6th Judicial District; No. 378 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 3rd day of December 2014, upon consideration of the Petition to Reestablish the Magisterial Districts of the 6th Judicial District (Erie County) of the Commonwealth of Pennsylvania, it is hereby *Ordered and Decreed* that the Petition, which provides for the elimination of Magisterial Districts 06-2-01 and 6-3-04 within Erie County, to be effective January 3, 2016, is granted; and that the Petition, which provides for the realignment of Magisterial Districts 06-1-01, 06-1-03, and 06-2-04, within Erie County, to be effective January 3, 2016, is granted; and that the Petition, which provides for the realignment of Magisterial District 06-3-01, within Erie County, to be effective January 3, 2016, is granted; and that the Petition, which also provides for the reestablishment of Magisterial Districts 06-1-02, 06-1-04, 06-1-05, 06-2-02, 06-3-01, 06-3-02, 06-3-03, 06-3-05, 06-3-06 and 06-3-08, within Erie County, to be effective immediately, is granted. The President Judge of Erie County shall provide to this Court no later than September 1, 2015 a recommendation for the placement of the voting districts within Ward 4 of the City of Erie.

Said Magisterial Districts shall be as follows:

Magisterial District 06-1-01 Magisterial District Judge Suzanne C. Mack	City of Erie (Ward 1)
Magisterial District 06-1-02 Magisterial District Judge Paul G. Urbaniak	City of Erie (Ward 2)
Magisterial District 06-1-03 Magisterial District Judge Thomas Carney	City of Erie (Ward 3)
Magisterial District 06-1-04 Magisterial District Judge Joseph R. Lefaiver	City of Erie (Ward 5)
Magisterial District 06-1-05 Magisterial District Judge Dominick D. DiPaolo	City of Erie (Ward 6)
Magisterial District 06-2-02 Magisterial District Judge Paul Manzi	Millcreek Township (Voting Districts 3—10, 13—17, and 22—24)
Magisterial District 06-2-04 Magisterial District Judge Brenda A. Nichols	City of Corry Elgin Borough Union City Borough Amity Township Concord Township Union Township Wayne Township
Magisterial District 06-3-01 Magisterial District Judge Mark R. Krahe	Wesleyville Borough Harborcreek Township Lawrence Park Township
Magisterial District 06-3-02 Magisterial District Judge Scott D. Hammer	North East Borough Greenfield Township North East Township
Magisterial District 06-3-03 Magisterial District Judge Susan D. Strohmeyer	Wattsburg Borough Greene Township Millcreek Township (Voting Districts 1, 2, 11, 12, 18, 19, 20, and 21) Venango Township
Magisterial District 06-3-05 Magisterial District Judge Brian M. McGowan	Mill Village Borough Waterford Borough Le Boeuf Township Summit Township Waterford Township
Magisterial District 06-3-06 Magisterial District Judge Denise M. Stuck-Lewis	Edinboro Borough McKean Borough Fairview Township Franklin Township McKean Township
Magisterial District 06-3-08 Magisterial District Judge Christopher K. MacKendrick	Albion Borough Cranesville Borough Girard Borough Lake City Borough Platea Borough Conneaut Township Elk Creek Township Girard Township Springfield Township

[Pa.B. Doc. No. 14-2614. Filed for public inspection December 19, 2014, 9:00 a.m.]

SUPREME COURT

Reestablishment of the Magisterial Districts within the 11th Judicial District; No. 313 Magisterial Rules Doc.

Amended Order

And Now, this 29th day of November 2014, the Order dated February 25, 2013, that Reestablished the Magisterial Districts of the 11th Judicial District (Luzerne County) of the Commonwealth of Pennsylvania, is hereby *Amended* as follows: The elimination of Magisterial District 11-3-05 and the realignment of Magisterial Districts 11-3-01, 11-3-03, and 11-3-06 shall be effective December 1, 2014. The Order of February 25, 2013, shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 14-2615. Filed for public inspection December 19, 2014, 9:00 a.m.]

SUPREME COURT

Reestablishment of the Magisterial Districts within the 28th Judicial District; No. 340 Magisterial Rules Doc.

Amended Order

And Now, this 29th day of November, 2014, the Order dated April 23, 2013, and Amended Orders dated July 3, 2013, and January 6, 2014, that Reestablished the Magisterial Districts of the 28th Judicial District (Venango County) of the Commonwealth of Pennsylvania, are hereby *Amended* as follows: Magisterial District 28-3-04, shall not be eliminated. Magisterial District 28-3-02, shall be eliminated and Magisterial Districts 28-3-01 and 28-3-04 realigned effective January 1, 2015. The Orders of April 23, 2013, July 3, 2013, and January 6, 2014, shall remain in effect in all other respects.

RONALD D. CASTILLE,
Chief Justice of Pennsylvania

[Pa.B. Doc. No. 14-2616. Filed for public inspection December 19, 2014, 9:00 a.m.]