

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION [204 PA. CODE CH. 29]

Promulgation of Consumer Price Index Pursuant to 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4); No. 448 Judicial Administration Doc.

Order

Per Curiam:

And Now, this 18th day of September, 2015, *It Is Ordered* pursuant to Article V, Section 10(c) of the Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to obtain and publish in the *Pennsylvania Bulletin* the percentage increase in the Consumer Price Index for calendar year 2014 as required by Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION CHAPTER 29. MISCELLANEOUS PROVISIONS Subchapter K. COSTS, FINES AND FEES

§ 29.401a. Consumer Price Index—costs and fines.

Pursuant to Article V, Section 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, the Supreme Court has authorized the Court Administrator of Pennsylvania to obtain and publish in the *Pennsylvania Bulletin* on or before November 30 the percentage increase in the Consumer Price Index for calendar year 2014 as required by Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended). See, No. 448 Judicial Administration Docket.

The Court Administrator of Pennsylvania reports that the percentage increase in the Consumer Price Index, All Urban Consumers, U.S. City Average, for calendar year 2014 was 0.8% percent. (See, U.S. Department of Labor, Bureau of Labor Statistics, Series CUUROOOSAO, January 16, 2015.)

[Pa.B. Doc. No. 15-1751. Filed for public inspection October 2, 2015, 9:00 a.m.]

PART II. GENERAL ADMINISTRATION [204 PA. CODE CH. 29]

Promulgation of Financial Regulations Pursuant to 42 Pa.C.S. § 3502(a); No. 449 Judicial Administration Doc.

Order

Per Curiam

And Now, this 18th day of September, 2015, *It Is Ordered* pursuant to Article V, Section 10(c) of the

Constitution of Pennsylvania and Section 3502(a) of the Judicial Code, 42 Pa.C.S. § 3502(a), that the Court Administrator of Pennsylvania is authorized to promulgate the following Financial Regulations. The costs outlined in the Financial Regulations are effective as of January 1, 2016.

To the extent that notice of proposed rule-making may be required by Pa.R.J.A. No. 103, the immediate promulgation of the regulations is hereby found to be in the interests of efficient administration.

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

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART II. GENERAL ADMINISTRATION CHAPTER 29. MISCELLANEOUS PROVISIONS Subchapter K. COSTS, FINES AND FEES

§ 29.401. Scope.

The Pennsylvania Supreme Court, pursuant to Art. V, § 10 of the Pennsylvania Constitution, and 42 Pa.C.S. § 1721, has authorized by Administrative Order, the Court Administrator of Pennsylvania to promulgate regulations relating to the accounting methods to be utilized in connection with the collection of fees and costs charged and collected by prothonotaries, and clerks of courts of all courts of common pleas, or by any officials designated to perform the functions thereof, as well as by the minor judiciary, including magisterial district judges, and judges and staff of all divisions of the Philadelphia Municipal Court.

Under authority of said Administrative Order and pursuant to the authority vested in the governing authority under 42 Pa.C.S. § 3502(a) of the Judicial Code, the following regulations are adopted to implement Act 96 of 2010, 42 Pa.C.S. §§ 1725.1(f) and 3571(c)(4) (as amended).

§ 29.402. 42 Pa.C.S. § 1725.1. Costs.

(a) *Civil cases.*—In calendar year 2016, the costs to be charged by magisterial district judges in every civil case, except as otherwise provided in this section, shall be as follows:

- (1) Actions involving \$500 or less \$51.50
- (2) Actions involving more than \$500 but not more than \$2,000 \$68.50
- (3) Actions involving more than \$2,000 but not more than \$4,000 \$85.50
- (4) Actions involving between \$4,001 and \$12,000 \$128.00
- (5) Landlord-tenant actions involving less than \$2,000 \$77.00
- (6) Landlord-tenant actions involving more than \$2,000 but not more than \$4,000 \$94.00
- (7) Landlord-tenant actions involving more than \$4,000 but not more than \$12,000 \$128.00
- (8) Order of execution \$38.50
- (9) Objection to levy \$17.50
- (10) Reinstatement of complaint \$9.00

(11) Entering Transcript on Appeal or Certiorari .\$.450
 Said costs shall not include, however, the cost of postage and registered mail which shall be borne by the plaintiff.

(a.1) *Custody cases.*—In calendar year 2016, the cost (in addition to the cost provided by general rule) to be charged by the court of common pleas shall be as follows:

(1) Custody cases, except as provided in section 1725(c)(2)(v)\$8.00

(b) *Criminal cases.*—In calendar year 2016, the costs to be charged by the minor judiciary or by the court of common pleas where appropriate in every criminal case, except as otherwise provided in this section, shall be as follows:

- (1) Summary conviction, except motor vehicle cases \$49.00
- (2) Summary conviction, motor vehicle cases, other than paragraph (3) \$38.50
- (3) Summary conviction, motor vehicle cases, hearing demanded \$46.50
- (4) Misdemeanor \$55.50
- (5) Felony \$64.00

Such costs shall not include, however, the cost of postage and registered mail which shall be paid by the defendant upon conviction.

(c) *Unclassified costs or charges.*—In calendar year 2016, the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

- (1) Entering transcript of judgment from another member of the minor judiciary\$9.00
- (2) Marrying each couple, making record thereof, and certificate to the parties \$43.00
- (3) Granting emergency relief pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from abuse) \$17.50
- (4) Issuing a search warrant (except as provided in subsection (d)) \$17.50
- (5) Any other issuance not otherwise provided in this subsection \$17.50

§ 29.403. 42 Pa.C.S. § 3571.

In calendar year 2016, Commonwealth portion of fines, etc.

* * * * *

- (c) *Costs in magisterial district judge proceedings.*
- (2) Amounts payable to the Commonwealth:
 - (i) Summary conviction, except motor vehicle cases \$17.10
 - (ii) Summary conviction, motor vehicle cases other than subparagraph (iii) \$17.10
 - (iii) Summary conviction, motor vehicle cases, hearing demanded \$17.10
 - (iv) Misdemeanor \$22.20
 - (v) Felony \$34.15
 - (vi) Assumpsit or trespass involving:
 - (A) \$500 or less \$21.50
 - (B) More than \$500 but not more than \$2,000 . \$34.30

- (C) More than \$2,000 but not more than \$4,000 \$51.30
- (D) Between \$4,001 and \$12,000 \$85.35
- (vii) Landlord-tenant proceeding involving:
 - (A) \$2,000 or less \$34.30
 - (B) More than \$2,000 but not more than \$4,000 \$42.75
 - (C) More than \$4,000 but not more than \$12,000 \$59.75
- (viii) Objection to levy\$8.75
- (ix) Order of execution \$25.65
- (x) Issuing a search warrant (except as provided in section 1725.1(d) (relating to costs)) .. \$12.25
- (xi) Order of possession \$15.00
- (xii) Custody cases (except as provided in section 1725(c)(2)(v))\$6.40

[Pa.B. Doc. No. 15-1752. Filed for public inspection October 2, 2015, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES [210 PA. CODE CH. 65]

Amendments to the Superior Court Operating Procedures

The Superior Court of Pennsylvania has adopted amendments to its published Operating Procedures. These amendments are reflected in the Superior Court Operating Procedures with amendments to Pa. Code § 65.51 *et seq.*

These changes were approved on June 10, 2015, effective on that date.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART II. INTERNAL OPERATING PROCEDURES CHAPTER 65. OPERATING PROCEDURES OF THE SUPERIOR COURT

WIRETAPS

§ 65.51. [(Rescinded)] Introduction.

Government officials are advised to consult the applicable provisions of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5701 et seq. (“Wiretap Act”). Any Operating Procedure inconsistent with the Wiretap Act is preempted by the statute.

§ 65.52. Confidential Docket Number.

The applicant for the interception of wire, **electronic** or oral communication[, **shall**] **is to** call the Prothonotary[, **the President Judge or judge designated by the President Judge to make assignments,**] for a confidential docket number. The confidential docket number is to be written on the envelope containing the application for interception **which will subsequently be**

sealed. All applications, affidavits, progress reports, and orders shall utilize the confidential docket number assigned to the matter.

§ 65.53. Assignment to a Particular Judge.

[The Prothonotary or Deputy is to call the President Judge, or a judge designated by the President Judge to make assignments, and request assignment of a judge to entertain the application. The President Judge, or a judge designated by the President Judge to make assignments, after first ascertaining the locale of the proposed interception from the Attorney General, the District Attorney or designee, shall then assign a judge of the Court with due consideration of the nature and location of the proposed interception and the offense being investigated. The Prothonotary or Deputy is to then call the assigned judge to determine availability.]

After receiving an assigned docket number from the Prothonotary, the applicant is to call the Supervising Judge designated by the President Judge to make assignments, and request assignment of a judge to entertain the application. The Supervising Judge, after first ascertaining the locale of the proposed interception from the applicant, shall then determine the availability of a judge. The Supervising Judge then shall assign a judge of the Court with due consideration of the nature and location of the proposed interception and the offense being investigated and inform the applicant of the assigned judge.

§ 65.54. Submission of Application to Assigned Judge.

The applicant should submit the application, affidavit and proposed order to the assigned judge in chambers. This *ex parte* proceeding need not be on the record if all the necessary information required by the judge is contained within the four corners of the application. However, any additional testimony or explanation, if supplied orally, must be made of record. A tape recorder or court reporter may be utilized and must be provided by the applicant. The [Judge] judge should be requested to direct the court reporter to transcribe the proceedings as expeditiously as possible and to submit the stenographic notes and original transcript to the Court for sealing at the earliest possible moment. The Court should instruct all present concerning the need for confidentiality.

Comment

It is up to the [reviewing] issuing judge whether to simply conduct the entire proceeding on the record. If a tape recorder is utilized, at the close of the hearing, the tape is to be sealed with the application. Further, the judge may require that all additional information be in writing instead of the taking of any oral testimony.

§ 65.57. Content of [Affidavit] Application.

[A. In the event a pen register has been or is being utilized to support the affidavit under this Rule, the Attorney General, District Attorney or designee shall, as part of the application, certify that the authority for the use of the pen register which was or is being utilized was obtained pursuant to the probable cause requirement of *Commonwealth v. Melilli*, 521 Pa. 405, 555 A.2d 1254 (1989). A copy of the affidavit of probable cause submitted in support of the application for the pen register must accompany the application for the wiretap.]

An application under § 5709 must be made upon the personal oath or affirmation of the Attorney General (or a deputy attorney general designated in writing by the Attorney General) or the District Attorney (or an assistant district attorney designated in writing by the District Attorney) of the county wherein the interception is to be made and must contain the following:

A. A statement of the applicant's authority to make the application. 18 Pa.C.S. § 5709(1).

B. A statement of the identity, State Police certification number and qualifications of the investigative or law enforcement officer who will supervise the conduct of the interception and the identity of the agency which will conduct the interception. 18 Pa.C.S. § 5709(2).

C. A sworn statement, *i.e.*, affidavit, by the investigative or law enforcement officer who has knowledge of relevant information justifying the application, *see* 18 Pa.C.S. 5709(3), including a statement that the applicant seeks authorization to intercept wire, oral, or electronic communications of the subject(s) of the investigation concerning one or more of the offenses listed in 18 Pa.C.S. § 5708.

D. A statement that applicant has discussed all of the above circumstances of the offenses with the officer who has conducted the investigation to date and has examined the officer's affidavit (which is attached and incorporated by reference).

E. A complete statement of the facts concerning all previous applications known to the applicant made to any court for authorization to intercept a wire, electronic, or oral communication involving any of the same facilities or places specified in the application, or involving any person whose communication is to be intercepted, and the action taken by the court on each such application.

F. Where the application is for the renewal or extension of an order, a particular statement of facts showing the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

G. A request that, based on the facts and circumstances set forth in the application and the attached affidavit, the Court issue an order pursuant to § 5710 of the Act authorizing the designated officers to intercept wire, electronic, or oral communications to and from, or on, the described devices or at the described premises until the earlier of:

1. communications are intercepted which reveal:

(a) the manner in which the subject(s) and others unknown have participated, are participating, or will participate in the commission of the enumerated offenses,

(b) the identities of their confederates, and

(c) the nature of their operation or criminal enterprise; or

2. a period of thirty (30) days or less.

H. The application should request that, pursuant to § 5712(f) of the Act, the order direct the communication service provider to furnish the applicant forthwith with all information, facilities and technical assistance (including in-progress traces) to accomplish the interception unobtrusively and with a

minimum of interference with the services being afforded by the company to the subject(s) and that the company be compensated by the applicant at the prevailing rates.

I. The applicant should state whether, in order to accomplish the purposes of the Act, it is reasonably necessary that law enforcement officers enter the described premises for the purpose of installing, maintaining or removing intercepting devices. If so, the applicant should request that, pursuant to § 5712(g) of the Act, the Court should authorize the entry of the described premises or facilities by the designated officers as often as necessary solely for the purpose of installing, maintaining, or removing intercepting devices. Prior to such entry, the judge issuing the order must, if practical, be notified—preferably in writing—of the time and method of each such entry. If prior notice is impractical, the judge must nevertheless be notified within 48 hours of entry.

J. Any legal applications and all subsequent motions or petitions relating to an application must be presented to the Court by an attorney-at-law.

§ 65.58. [(Rescinded)] Target Specific Wiretaps (18 Pa.C.S. § 5712.1).

Section 5712.1 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5712.1, provides that an investigative or law enforcement officer may seek a target specific order. An application for a target specific wiretap must meet the requirements of an application under § 5709 and § 5712, except § 5712(a)(3) and § 5709(3)(iv) and (v), shall not apply if:

A. In the case of oral communications:

i. a full and complete statement as to why specification is not practical and identifies the person committing the offense and whose communications are to be intercepted. The judge must find that the specification is not practical. *See* 18 Pa.C.S. § 5712.1(a)(1).

B. In the case of wire or electronic communications:

i. the identity of the person believed to be committing the offense and whose communications are to be intercepted, and the applicant shows that there is probable cause to believe that the person's actions could have the effect of thwarting interception by changing facilities or devices. The judge must find that the purpose for the target specific order has been adequately shown. *See* 18 Pa.C.S. § 5712.1(a)(2).

C. In the event the affiant seeks a supplementary order for a target specific wiretap, such application shall contain:

1. The identity of the investigative or law enforcement officers or agency to whom the authority to intercept wire, electronic, or oral communication is given, and the name and official identity of the person who made the application. *See* 18 Pa.C.S. § 5712.1(c)(1).

2. The identity of or a particular description of the person, if known, whose communications are to be intercepted. *See* 18 Pa.C.S. § 5712.1(c)(2).

3. The period of time during which the interception is authorized, including a statement as to

whether or not the interception shall automatically terminate when the described communication has been first obtained. *See* 18 Pa.C.S. 5712.1(c)(3).

4. A showing of reasonable suspicion that the target of the original order has in fact changed communications devices or facilities. *See* 18 Pa.C.S. § 5712.1(c)(4).

5. A showing of reasonable suspicion that the target of the original order is likely to use the additional facility or device or place for criminal purposes similar to or related to those specified in the original order. *See* 18 Pa.C.S. § 5712.1(c)(5).

D. A supplementary order shall not act as an extension of the time limit identified in § 5712(b). *See* 18 Pa.C.S. § 5712.1(d).

(*Editor's Note:* Sections 65.59 and 65.60 are new and printed in regular type to enhance readability.)

§ 65.59. Mobile Communication Tracking, Pen Registers, Trap and Trace Devices, and Telecommunication Identification Interception Devices (18 Pa.C.S. §§ 5771—5773).

Sections 5771—5773 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §§ 5771—5773, authorize the installation and usage of pen registers, trap and trace devices, telecommunication identification interception devices and the disclosure or production of mobile communication tracking information upon a showing of probable cause. An applicant may seek such an order from the Superior Court when an application for an order authorizing interception of communications is or has been made for the targeted telephone or another application for interception under the Wiretap Act has been made involving the same investigation. *See* 18 Pa.C.S. § 5772(a). An application for such an order shall contain:

A. The identity and authority of the attorney making the application and the identity of the investigative or law enforcement agency conducting the investigation. 18 Pa.C.S. § 5772(b)(1).

B. A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency. 18 Pa.C.S. § 5772(b)(2).

C. An affidavit by an investigative or law enforcement officer which establishes probable cause for the issuance of an order or extension of an order under section 5773. 18 Pa.C.S. § 5772(b)(3).

§ 65.60. Content of Affidavit.

Section 5709(3) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5709(3), provides that the investigative or law enforcement officer shall execute an affidavit setting forth information justifying the application for an order authorizing interception of wire, electronic, or oral communications. The affidavit should contain the following:

A. The affiant's title, pertinent employment history, authority to conduct investigations, and experience in conducting investigations of similar offenses. *See* 18 Pa.C.S. § 5709(2).

B. The name, qualifications, and State Police certification number of the officers who will supervise and conduct the interception of the communications as well as the agency which will conduct the interception. *See* 18 Pa.C.S. § 5709(2).

C. A statement by the affiant setting forth facts which, when viewed in light of the totality of the underlying circumstances, establish their intrinsic reliability.

Comment

See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983).

D. The identity of the person or persons, if known, who are believed to be committing one or more of the crimes in 18 Pa.C.S. § 5708, and whose communications will be intercepted. See 18 Pa.C.S. § 5709(3)(i).

E. The particular type of communication to be intercepted; e.g., in gambling case, transmittal and acceptance of wagers placed on the outcome of sporting events and horse race results, line information, etc. See 18 Pa.C.S. § 5709(3)(iii).

F. The character and location of the particular wire or electronic communication facilities involved or the particular place where the oral communications will be intercepted, see 18 Pa.C.S. § 5709(3)(v), except where target specific orders pursuant to 18 Pa.C.S. § 5712.1 are sought.

G. Where 18 Pa.C.S. § 5712.1, governing target specific wiretaps does not apply, a detailed statement of the facts and circumstances establishing probable cause to believe that:

1. The subject(s) has committed, is committing or will commit one of the crimes enumerated in 18 Pa.C.S. § 5708;

2. The particular wire, electronic, or oral communications of the subject(s) concerning those offenses may be obtained through the proposed interception;

3. The facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted, are, have been, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name(s) of, or commonly used by such subject(s).

H. The period of time (not to exceed thirty (30) days) for which the interception will be needed, and if the character of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur and should be intercepted thereafter.

I. A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and failed or reasonably appear unlikely to succeed if tried or are too dangerous to employ, e.g., normal investigative procedures would include standard visual or aural surveillance techniques, questioning of subject under an immunity grant or use of search warrants.

J. The basic probable cause in the affidavit should, whenever practical, be no more than twenty-one (21) days old.

K. In the event a pen register, mobile communications tracking information, trap and trace device, or telecommunication identification interception device has been or is being utilized to support the affidavit under this Rule, the Attorney General, District Attorney, or designee shall, as part of the application, certify that the authority for the use of the pen register, mobile communications tracking information, trap and trace device, or telecommunica-

tion identification interception device which was or is being utilized was obtained pursuant to probable cause. See *Commonwealth v. Melilli*, 521 Pa. 405, 555 A.2d 1254 (1989); 18 Pa.C.S. § 5772(b)(3); 18 Pa.C.S. § 5773. A copy of the affidavit of probable cause submitted in support of the application for the pen register, mobile communications tracking information, trap and trace device, or telecommunication identification must accompany the application for the wiretap.

[§ 65.59] § 65.61. Order: In General. Notice of Confidentiality.

Section 5710 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5710, provides that upon consideration of the application, the Court may enter an ex parte order authorizing interception anywhere in the Commonwealth.

All proposed orders shall include, on the first page, the following notice of confidentiality to third parties:

WIRETAP CONFIDENTIALITY NOTICE

You have been served with an intercept order pursuant to Pennsylvania's Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §§ 5701—5781 (the "Wiretap Act").

In order to implement wiretaps and electronic surveillance authorized by intercept orders, the assistance of third parties, those outside of law enforcement, is often required. You have been made aware of an intercept order because your assistance is required to facilitate wiretapping or other surveillance in an on-going criminal investigation.

This is a very serious and highly confidential matter and must be treated with the utmost care and discretion. Except as specifically authorized under the Wiretap Act, IT IS A CRIME TO WILLFULLY USE OR DISCLOSE THE EXISTENCE OF AN INTERCEPT ORDER. SUCH USE OR DISCLOSURE IS PUNISHABLE BY IMPRISONMENT OF UP TO 2 YEARS, AND A FINE OF UP TO \$5,000.

The Wiretap Act [**Provides**] provides as follows:

§ 5719. Unlawful use or disclosure of existence of order concerning intercepted communication

Except as specifically authorized pursuant to this subchapter any person who willfully uses or discloses the existence of an order authorizing interception of a wire, electronic or oral communication is guilty of a misdemeanor of the second degree.

(A misdemeanor of the second degree is punishable by imprisonment of up to two years, 18 Pa.C.S. § 1104, and a fine of up to \$5,000, *id.* § 1101.)

See also 18 Pa.C.S. §§ 5725, 5726 and 5717.

(*Editor's Note:* Sections 65.62—65.78 are new and printed in regular type to enhance readability.)

§ 65.62. Order: Probable Cause Statement.

A proposed order, except those pertaining to supplementary target specific orders or orders under §§ 5771—5773, should be submitted by the applicant to the Court, and it should state that based on the application, the Court finds probable cause to believe the following:

A. The person(s) whose communication is to be intercepted is committing, has committed, or is about to commit the offense(s) set forth in the application.

B. Particular communications concerning such offense(s) may be obtained through such interception.

C. Normal investigative procedures with respect to such offense(s) have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ.

D. The facilities from which (or the place where) the wire, electronic or oral communications are to be intercepted, are, have been, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by, the subject(s).

E. The investigative or law enforcement officers or agency to be authorized to do the interception are qualified by training and experience to execute the interception sought and are certified under § 5724 of the Act.

F. The application is based on new evidence or information different from and in addition to the evidence or information offered to support any prior order for interception (other than a renewal or extension of an existing order).

§ 65.63. Supplementary Target Specific Orders.

A proposed order for a supplementary target specific wiretap should be submitted to the Court, and it should state that based on the application, the Court finds reasonable suspicion that:

A. The target of the original target specific wiretap has in fact changed communication devices or facilities or is presently using additional communication devices, communications facilities or places. *See* 18 Pa.C.S. § 5712.1(b)(1).

B. The target of the original target specific wiretap is likely to use the specified communications device or facility for criminal purposes similar to or related to those specified in the original order. *See* 18 Pa.C.S. § 5712.1(b)(2).

C. The Attorney General or the District Attorney, or their designees, shall be responsible for the supervision of the interception. *See* 18 Pa.C.S. 5712.1(e).

§ 65.64. Orders for Mobile Communication Tracking, Installation and Use of a Pen Register, Trap and Trace Device, and Telecommunication Identification Interception Device.

A proposed order for mobile communication tracking, installation and use of a pen register, trap and trace device or a telecommunication identification interception device should be submitted to the Court, and it should state:

A. There is probable cause to believe that information relevant to an ongoing criminal investigation will be obtained from the targeted telephone. 18 Pa.C.S. § 5773(b)(i).

B. The identity, if known, of the person to whom is leased or in whose name is listed the targeted telephone, or, in the case of the use of a telecommunication identification interception device, the identity, if known, of the person or persons using the targeted telephone. 18 Pa.C.S. § 5773(b)(ii).

C. The identity, if known, of the person who is the subject of the criminal investigation. 18 Pa.C.S. § 5773(b)(iii).

D. In the use of pen registers and trap and trace devices only, the physical location of the targeted telephone. 18 Pa.C.S. § 5773(b)(iv).

E. A statement of the offense to which the information likely to be obtained by the pen register, trap and trace device or the telecommunication identification interception device relates. 18 Pa.C.S. § 5773(b)(v).

F. Direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register under section 5771 (relating to general prohibition on use of certain devices and exception). 18 Pa.C.S. § 5773(b)(2).

G. In the case of a telecommunication identification interception device, direct that all interceptions be recorded and monitored in accordance with section 5714(a)(1) and (2) and (b) (relating to recording of intercepted communications). 18 Pa.C.S. § 5773(b)(3).

H. The order authorizes the disclosure or production of mobile communication tracking information or installation and use of a pen register, trap and trace device, or a telecommunication identification interception device for a period not to exceed 60 days. *See* 18 Pa.C.S. § 5773(c) (this statutory subsection provision omits reference to mobile communication tracking and therefore the sixty day period is not specifically referenced for mobile communication tracking).

I. Extensions of such an order may be granted but only upon an application for an order under § 5772 and upon the judicial finding required by § 5772(a). The period of each extension shall be for a period not to exceed 30 days.

J. The order be sealed until otherwise ordered by the Court.

K. The person owning or leasing the targeted telephone, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the mobile communication tracking, pen register, trap and trace device, or telecommunication identification interception device, or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the Court.

Comment

The targeted telephone number, if known, should be included in the proposed order.

§ 65.65. Order: Factual Statement.

After reciting the relevant facts, the order must set for the following:

A. The identity of the investigative or law enforcement officers or agency to whom authority to intercept is given (i.e., the Supervising Officer named in the application along with "all qualified members" of the named agency).

B. The identity of the person who made application for authority to intercept. Since only the District Attorney or the Attorney General may swear to the application form, he must be identified along with any designee who actually submits the application to the Court.

C. The identity of, or a particular description of, the person(s), if known, whose communications are to be intercepted.

D. The character and location of the particular communication facilities as to which, or the particular place as to which, authority to intercept is granted, except where a target specific order is at issue.

E. A particular description of the type of communication to be intercepted and a statement of the particular offense(s) to which it relates.

F. The period of time during which such interception is authorized not to exceed thirty (30) days, or sixty (60) days in the cases of orders authorizing production or disclosure of mobile communication tracking,¹ the installation and use of pen registers, trap and trace devices, or telecommunication identification interception devices, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained. The order shall state that such interception or tracking is authorized only for that period of time necessary under the circumstances to accomplish the objectives of the interception or tracking. The order shall require that the interception or tracking begin and terminate as soon as practicable and that the interception be conducted in such a manner as to minimize or eliminate interception of communications not otherwise subject to interception under the Act and require reasonable efforts, whenever possible, to reduce the hours of interception.

G. The order shall require the Attorney General or the District Attorney or their designees to supervise the interception or tracking.

H. The order should require periodic progress reports to the issuing judge indicating the progress made toward achieving the objective of the interception or tracking and the need for continued interception.

I. If requested by the applicant, the order shall direct the pertinent communications common carrier to furnish the applicant with all information, facilities and technical assistance necessary to accomplish the interception or tracking unobtrusively and with a minimum of interference with the services being afforded to the subject(s) of the interception. The order shall provide that the common carrier shall be compensated at prevailing rates.

J. If requested by the applicant, the order shall authorize the entry of the subject premises or facilities (or other premises necessary to gain entry into the subject premises) by the law enforcement officers previously authorized in the order to conduct the interception as often as necessary solely for the purpose of installing, maintaining or removing an interception device. The order shall further provide that such entry is found to be reasonably necessary to accomplish the purposes of the Act and shall require that the issuing (authorizing) judge be notified of the time and method of each such entry in advance, if practical, and in any event, within forty-eight (48) hours of entry.

§ 65.66. Procedure Upon Signing the Order.

The judge should note on the order the date and time at which it was signed. The original application, affidavit and order should be placed in an envelope and sealed by the judge. The seal should be in the form of an order signed by the judge and affixed to the envelope by the judge in such a manner as to prevent the removal of the contents without physically disturbing the seal. The confidential docket number should be placed on the envelope.

§ 65.67. Seal.

The seal should set forth the following:

1. Contents of the envelope;
2. The location at which custody of the sealed item should be maintained;

¹ The sixty day period is not specified by statute for mobile communication tracking in 18 Pa.C.S. § 5773(c). This appears to have been a legislative oversight.

3. Date, time and location of the signing of the sealing order;

4. Signature of the judge.

Comment

Neither the targeted telephone number nor any other identifying information should be included on the sealing order.

§ 65.68. Duplicate Original for Communications Common Carrier.

At the time the original order is signed, a duplicate original should also be signed for presentation to the communications common carrier.

§ 65.69. Renewal or Extension Procedure.

A. Section 5712(b) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5712(b), provides that an interception order may be renewed or extended for a period up to thirty (30) days beyond the expiration date of the original order. To obtain such an extension, it is necessary that an application, affidavit and proposed extension order be submitted to the Court. The application must have all of the features contained in the original application and, pursuant to § 5709(4) of the Act, must also contain a particular statement of facts showing the results obtained to date from the interception or a reasonable explanation of the failure to obtain such results.

B. The procedure for obtaining an extension should in all other respects be the same as that used in obtaining the original order.

§ 65.70. Verbal Authorization in General.

Section 5713 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5713, provides that, in certain emergency situations, verbal authorization to intercept wire, electronic, or oral communications may be given by the Court. Similarly, 18 Pa.C.S. § 5773, governing orders for pen registers, mobile communication tracking devices, trap and trace devices, and telecommunication identification interception devices allows verbal authorization under exigent circumstances. Application for such authorization should be made *in camera*, under oath and on the record. When, due to time limitations, an application cannot be made in person, the application may be made by telephone. Moreover, whenever the application proceedings cannot be recorded stenographically, by a court reporter provided by the applicant, the applicant should, with the permission of all speaking parties, tape record the proceedings.

Comment

The requirement for an under oath and on the record in camera proceeding, as well as the recording of the matter is not covered by statute.

§ 65.71. Content of Verbal Application.

The verbal application should include as many of the elements of a written application and affidavit, *supra*, as can be provided under the emergency conditions. In any event, the verbal application must include sufficient facts for the Court to find the following:

A. An emergency situation exists with respect to the investigation of an offense designated in § 5708 of the Act.

B. The investigation involves conspiratorial activities characteristic of organized crime; or

C. A substantial danger to life or limb exists.

D. As a result of (A) and (B) or (C), authorization for immediate interception of wire or oral communications is needed before a written application could, with due diligence, be submitted and acted upon by the Court.

§ 65.72. Verbal Authorization Contingent Upon Written Application.

Based on these findings, the Court may verbally authorize interception, pursuant to § 5713, conditioned upon the filing within forty-eight (48) hours of a written application for an interception order. Such written application and affidavit should be in the form previously described and should, along with the written order, include the following:

A. A recitation of the date, time, place and circumstances of the verbal authorization.

B. The written authorization conferred by the Court is retroactive to the time of the verbal authorization.

C. The authorized interception shall terminate immediately when the communication sought is obtained. Section 5713 of the Act provides that if the subsequent written application is not made, any interception conducted pursuant to verbal authorization will be illegal.

D. Pursuant to 18 Pa.C.S. § 5773, if exigent circumstances exist, the Court may verbally authorize the installation and use of a pen register, trap and trace device, telecommunications identification interception device, or permit mobile communication tracking. However, a written order authorizing the disclosure must be entered within 72 hours of the oral authorization.

§ 65.73. Progress Reports.

Section 5712(c) of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5712(c), requires that the Attorney General or District Attorney or designee supervise the interception. Pursuant to § 5712(d) of the Act, this Supervising Attorney may be required under the terms of the order to submit periodic progress reports to the Court during the course of the interception. These reports should explain to the Court the progress being made toward achieving the objectives of the interception and should explain why continued interception is necessary. Progress reports shall be sealed and filed in the same manner as applications.

Comment

The judge may establish the time period for these reports within his or her order. A period of seven (7) days has proven to be practical.

§ 65.74. Content of Final Report.

Pursuant to § 5712(e) of the Act, at the termination of the interception, the Supervising Attorney must submit a final report consisting of a complete written list of names of persons intercepted (if known) and evidence of offenses discovered, including those offenses not set forth in the application or order. Where communications relating to offenses other than those specified in the application or order are intercepted, the contents of those communications and any evidence derived therefrom must be included in the final report.

§ 65.75. Motions for Unsealing Orders.

A motion by an interested party to unseal an application, report, order, or other document previously placed under seal shall be in writing, shall state specifically the reason for the unsealing order and the use to be made of the unsealed application, report, order, or other document, and, when possible, shall be presented to the judge

who ordered the same sealed. The Court, upon good cause shown, may order an application, report, order, or other document within the Prothonotary's file to be unsealed and may impose such conditions or limitations thereon as may be necessary to safeguard the confidentiality of such information.

When a motion to unseal is granted, the Prothonotary, within ten (10) days, shall deliver to the requesting party a certified copy of the document(s) unsealed. The Prothonotary, without express written permission from the Court, shall not surrender original documents constituting a part of his or her file.

The motion should identify the following:

A. The specific application, report, order or other contents sought to be unsealed. The application, report, order or other contents sought to be unsealed shall be limited and described with particularity.

B. The purpose for which the order is sought.

1. Trial or Other Criminal Proceeding.

If the application, report, order or other contents under seal is/are sought for a trial or other criminal proceeding, the motion shall state the type of proceeding, court docket number(s), the name(s) of the party(ies) involved, the forum, the date(s) and approximate length of time for which such application, report, order or other contents will be utilized and name(s) and designation(s) of the person(s) having access to the unsealed application, report, order, or other contents.

2. Criminal Investigation.

If the application, report, order, or other contents under seal is/are sought for the purpose of disclosure to law enforcement or investigative officers in connection with a criminal investigation, the name(s) of the investigative or law enforcement officer(s) shall be set forth together with his/her/their designation(s), his/her/their authority to conduct said investigation, the purpose of the investigation and the approximate date(s) and length of time for which such application, report, order or other contents are sought.

§ 65.76. Order of Court.

The Court may, upon due cause shown by the said motion, order unsealed the application, report, order, or other contents which is/are the subject of the motion for the purpose(s) set forth therein. If the motion to unseal is granted, the order authorizing unsealing shall be limited to the application, report, order, or other contents which is/are the subject of the motion. The unsealing order shall be valid for a period not to exceed twenty (20) days or the length of the trial or other criminal proceeding or investigation, whichever period is shorter.

§ 65.77. Return of Documents to Court.

The application, report, or order or other contents subject to the unsealing or any extension(s) thereof shall be returned to the Court within forty-eight (48) hours of the expiration of the life of the unsealing order or any extension(s) thereof or within forty-eight (48) hours of the termination of the trial or other criminal proceeding or investigation, whichever event occurs sooner, unless a timely motion to extend the life of the unsealing order or to extend the scope of a previously granted unsealing order has been filed and granted.

§ 65.78. Responsibility for Unsealed Documents.

After a motion for an unsealing order or any extension(s) therefor has/have been granted and the application, report, order or other contents which was/were the subject of the said motion or any extensions(s) therefor

granted has/have been turned over to the custody of the investigative or law enforcement officer(s) designated in the motion or any extensions therefor and Order(s) granting same to receive the said application, order, report or other contents for the purpose(s) set forth in the said motion or any extension(s) thereof and Order(s) granting same, the said investigative or law enforcement officer(s) shall assume complete responsibility for and the safekeeping of such application, order, report or other contents for the entire duration of the time set forth in the said unsealing Order or any extension(s) thereof in which said application, order, report or other contents remain in his/her/their custody for the purpose(s) set forth in the said motion or any extension(s) thereof and Order(s) granting same and, further, shall assume responsibility for the safe return of such application, order, report or other contents to the Court pursuant to § 65.77.

[Pa.B. Doc. No. 15-1753. Filed for public inspection October 2, 2015, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4 AND 7]

Proposed Amendments of Pa.Rs.Crim.P. 490 and 790

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure For Obtaining Expungement In Court Cases; Expungement Order) for the reasons set forth in the accompanying supplemental explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, November 13, 2015. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural
Rules Committee*

PAUL M. YATRON,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART H. Summary Case Expungement Procedures Rule 490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

(A) *Petition for Expungement*

* * * * *

(3) [A] Unless the attorney for the Commonwealth agrees in writing to waive this requirement, a current copy of the petitioner's Pennsylvania State Police criminal record shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) *Objections; Hearing*

* * * * *

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) [The] Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

* * * * *

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition. **The attorney for the Commonwealth may waive the requirement that the criminal record be attached to the petition. The rule anticipates that, in such a case, the petitioner and the attorney for the Commonwealth will reach an agreement prior to the submission of the petition to the court that the petitioners' criminal history has been confirmed by means other than the Pennsylvania State Police criminal record. The copy of the written waiver signed by the attorney for the Commonwealth must be attached to the petition in lieu of the Pennsylvania State Police criminal record.**

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.]

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

“Petition,” as used in this rule, is a “motion” for purposes of Rules 575, 576, and 577.

The “reason for expungement” in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, “criminal justice agency” includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, [594 Pa. 346,] 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, [563 Pa. 248,] 759 A.2d 1269 (Pa. 2000).

Official Note: Adopted September 22, 2010 effective in 90 days; amended , 2015, effective , 2015.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court’s Order at 40 Pa.B. 5740 (October 9, 2010).

Report explaining the proposed amendment regarding the stay on expungement when the Commonwealth has consented and petition and order forms published for comment at 45 Pa.B. 3978 (July 25, 2015); Supplemental Report explaining the proposed amendment regarding the agreement to waive the requirement of a PSP criminal record published for comment at 45 Pa.B. 5915 (October 3, 2015).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART C. Court Case Expungement Procedures

Rule 790. Procedure for Obtaining Expungement in Court Cases; Expungement Order.

(A) *Petition for Expungement*

* * * * *

(3) [A] Unless the attorney for the Commonwealth agrees in writing to waive this requirement, a current copy of the petitioner’s Pennsylvania State Police criminal record shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) *Objections; Hearing*

* * * * *

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) [The] Except when the attorney for the Commonwealth has filed a consent to the petition pur-

suant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

* * * * *

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in court cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under this rule.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary case expungement procedures, and 35 P.S. § 780-119 for expungement procedures under The Controlled Substance, Drug, Device, and Cosmetic Act.

This rule sets forth the only information that must be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal record to the petition. **The attorney for the Commonwealth may waive the requirement that the criminal record be attached to the petition. The rule anticipates that, in such a case, the petitioner and the attorney for the Commonwealth will reach an agreement prior to the submission of the petition to the court that the petitioners’ criminal history has been confirmed by means other than the Pennsylvania State Police criminal record. The copy of the written waiver signed by the attorney for the Commonwealth must be attached to the petition in lieu of the Pennsylvania State Police criminal record.**

An order for expungement under The Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. § 780-119, also must include the information in paragraph (C).

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.]

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

“Petition” as used in this rule is a “motion” for purposes of Rules 575, 576, and 577.

The “reason for expungement” in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

When a summons instead of an arrest warrant is issued pursuant to Rule 519, the date of the summons constitutes the “date of arrest” for purposes of paragraph (A)(2)(f).

For purposes of this rule, “criminal justice agency” includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, [594 Pa. 346,] 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, [563 Pa. 248,] 759 A.2d 1269 (Pa. 2000).

Official Note: Adopted September 22, 2010 effective in 90 days; amended , 2015, effective , 2015.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 790 providing the procedures for expungements in court cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

Report explaining the proposed amendment regarding the stay on expungement when the Commonwealth has consented and petition and order forms published for comment at 45 Pa.B. 3978 (July 25, 2015); Supplemental Report explaining the proposed amendment regarding the agreement to waive the requirement of a PSP criminal record published for comment at 45 Pa.B. 5915 (October 3, 2015).

SUPPLEMENTAL REPORT

Proposed amendment of Pa.Rs.Crim.P. 490 and 790

Contents of Expungement Petitions and Orders

Recently, the Committee had considered suggested amendments to the procedures contained in Rules 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure For Obtaining Expungement In Court Cases; Expungement Order). Proposed rule changes were published that would have (1) removed the requirement for including the petitioner's Social Security number in the petition and order, (2) eliminate the 30-day stay on the expungement order during which time the Commonwealth may appeal cases in which the Commonwealth has consented to the expungement, and (3) add a cross-reference to the Comments of both rules to the webpage where the AOPC forms for expungement petitions and orders are found. See 45 Pa.B. 3978 (July 25, 2015), and <http://www.pacourts.us/assets/uploads/Resources/Documents/Publication%20Report%20Rule%20490%20790%20Expungements%2000000003%20-%200004601.pdf?cb=ddd57>.

Based on responses to this publication, the Committee has decided to make changes to the proposal. The Committee received a number of complaints that the length of time that it takes for a petitioner to receive the required Pennsylvania State Police (PSP) criminal record reports is excessive. It was suggested that this requirement be eliminated or modified so that the PSP criminal history could be replaced with an alternative such as the AOPC web docket sheets. The Committee concluded that the PSP report represents the best available criminal history record information and therefore the requirement would be retained in this proposal.

However, the Committee has determined that there are jurisdictions, such as Philadelphia, in which very large numbers of expungement petitions are being filed and, as a result, protocols have been developed between petitioners and district attorney's offices to speed the process of expungement in a large majority of cases. These include means of alternative confirmation of a petitioner's criminal history. The Committee concluded that such agreements are beneficial and therefore, the current proposal would provide that the requirement for the attachment of the PSP report may be waived by the attorney for the Commonwealth. Since the approval of the court is re-

quired for any expungement petition, a written copy of the waiver must be attached to the petition in lieu of the PSP report. The Comment would be revised to provide further detail regarding this option.

As noted in the prior publication, the proposal to remove the requirement to include the petitioner's Social Security number in the petition and order originated from a meeting between Committee members and certain representatives of the PSP who had suggested this change. Upon publication, however, the Committee received an official statement from the PSP indicating that the Social Security number is still necessary for proper identification of the petitioners' cases and removal of the requirement would be detrimental to the processing of expungement orders. Therefore, this proposal has been removed.

The other two provisions of the original proposal, elimination of the stay on the order when the Commonwealth consents to expungement and addition of cross-references to the AOPC forms, proved uncontroversial and so have been retained in the current version of the proposal.

[Pa.B. Doc. No. 15-1754. Filed for public inspection October 2, 2015, 9:00 a.m.]

[234 PA. CODE CH. 5]

Proposed Amendment of Pa.R.Crim.P. 540

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 540 (Preliminary Arraignment) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, November 13, 2015. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural
Rules Committee*

PAUL M. YATRON,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

* * * * *

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

(1) fix a day and hour for a preliminary hearing which shall not be later than 14 days after the preliminary arraignment if the defendant is in custody **on the current case** and no later than 21 days if not in custody unless[:] **extended for cause shown; and**

[(a) **extended for cause shown; or**

(b) **the issuing authority fixes an earlier date upon request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and]**

(2) give the defendant notice, orally and in writing,

* * * * *

Comment

* * * * *

For public access to arrest warrant information, see Rules 513, 513.1, and *Commonwealth v. Fenstermaker*, [515 Pa. 501,] 530 A.2d 414 (Pa. 1987).

* * * * *

Paragraph (G)(2)(c) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (“[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent ‘without cause.’”).

There have been some judicial districts in which the practice has been to set a date for the preliminary hearing within the time limits of this rule with no intention of a preliminary hearing actually taking place on that date; instead, the preliminary hearing is automatically continued by the court. This practice is inconsistent with the intent of the rule.

Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.

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

See Chapter 5, Part H, Rules 595, 596, 597, and 598, for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses

excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended June 21, 2012, effective in 180 days; amended July 31, 2012, effective November 1, 2012; amended May 2, 2013, effective June 1, 2013; Comment revised December 23, 2013, effective March 1, 2014; **amended , 2015, effective , 2015.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the December 23, 2013 Comment revisions concerning sealed arrest warrant information published with the Court's Order at 44 Pa.B. 243 (January 11, 2014).

Report explaining the proposed amendments concerning the scheduling of the preliminary hearing published for comment at 45 Pa.B. 5916 (October 3, 2015).

REPORT

Proposed amendment of Pa.R.Crim.P. 540

Scheduling of Preliminary Hearings for Incarcerated Defendants

Recently, the Committee had been presented with a question regarding the interpretation of the Rule 540(G)(1) requirement for scheduling the preliminary hearing if the defendant is in custody no later than 14 days after the preliminary arraignment or no later than 21 days if the defendant was not in custody.¹ The question was whether the defendant had to be in custody for the current case or for any matter, even one unrelated to the current case, for the shorter time-period to be applicable.

The preliminary arraignment rule has had a provision requiring the scheduling of the preliminary hearing since it was first adopted as Rule 119 in 1964. Originally, the time limitation was simply “within 3 to 10 days after the arraignment” without reference to custody. This provision was changed in 2012 as part of the package that reinstated indicting grand juries, increasing the time limitations to the current 14 and 21 days. The Final Report to those amendments, 42 Pa.B. 4140 (July 7, 2012), contained the following explanation:

¹ It should be noted that the practice in Philadelphia is different from the rest of the Commonwealth due to the different procedures in the Philadelphia Municipal Court. Preliminary arraignment procedures, including the provisions for the scheduling of the preliminary hearing, which are generally held only in felony cases, are governed by Rule 1003. Rule 1003(D)(3)(d)(iii) provides that the preliminary hearing “shall not be less than 14 nor more than 21 days after the preliminary arraignment . . .” without making a distinction between defendants who are in custody and those who are not.

Rule 540(F)² includes, as an exception to when an issuing authority would set the date for the preliminary hearing, the situation when the attorney for the Commonwealth is presenting the case to an indicting grand jury. Paragraph (F)(3) has been amended to extend the time for conducting the preliminary hearing from 3 to 10 days after the preliminary arraignment to 14 to 21 days after the preliminary arraignment to accommodate the timing for proceeding to an indicting grand jury depending on whether or not the defendant is in custody.

During the development of these changes, the Committee also noted that the 3/10 day time limitation was more honored in the breach in most jurisdictions and felt that the extended time limitations would be helpful in all cases, not just those which were being considered for presentation to an indicting grand jury.

In reviewing the history of Rule 540, the Committee concluded that the intention of the scheduling provision was to ensure that the defendant received a timely preliminary hearing. The distinction made for a defendant who was in custody was designed to ensure that a defendant did not languish unduly in jail before a *prima facie* determination could be made. In other words, the rule is premised on the idea that the defendant should receive a timely preliminary hearing on the possibility that if no *prima facie* case would be found, the defendant would be given his or her liberty. If the reason that a defendant is incarcerated is unrelated to the charges that would be reviewed at the preliminary hearing, presumably due to charges or a conviction in another case, the defendant will remain incarcerated even if the charges in the current case are dismissed. Therefore, the Committee determined that the rule was intended to apply only to incarceration on the current pending charges. The proposed change to paragraph (G) reflects this clarification.

The Committee also noted that there appears to have been an omission when the time limitation language was changed in 2012. Paragraph (G)(1)(b) states that the preliminary hearing will be scheduled in the listed time periods unless “(b) the issuing authority fixes an earlier date upon request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth.” Since the 2012 changes altered the language of the paragraph to read “fix a day and hour for a preliminary hearing which shall not be later than 14 days after the preliminary arraignment if the defendant is in custody and no later than 21 days if not in custody” there is no “earlier date” unlike in the “3 to 10 days” in the former rule. Therefore this language was no longer necessary and would be removed.

During the discussion of the time limitations of the rules, it was noted that the practice in a few jurisdictions is to schedule the preliminary hearing within the time-period required by the rule but with no intention for the hearing to be held on that date. Instead, the court automatically continues the preliminary hearing to a later date. The Committee concluded that this practice is inconsistent with the intent of the rule and is proposing that language be added to the Comment stating so.

[Pa.B. Doc. No. 15-1755. Filed for public inspection October 2, 2015, 9:00 a.m.]

² Rule 540 was amended again later in 2012 and then-paragraph (F) was re-lettered to paragraph (G).

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Prisoner Release from September 23, 2015 through September 28, 2015; No. 02 of 2015

Order

And now, this 21st day of September, 2015, upon consideration of this Court's order dated August 7, 2015 regarding the Administrative Closure of the Courts of the First Judicial District of Pennsylvania, it is hereby ordered and decreed that any inmate presently incarcerated in the Philadelphia Prison System whose maximum sentence will expire, or whose release/parole has been approved by the applicable court and the defendant is scheduled to be released/paroled, between Wednesday, September 23, 2015 and Monday, September 28, 2015 shall be released on Wednesday, September 23rd, 2015.

This Order shall be filed with the Office of Judicial Records in a Docket maintained for orders issued by the Administrative Governing Board of the First Judicial District of Pennsylvania, and shall be submitted to the *Pennsylvania Bulletin* for publication. Copies of the order shall be submitted to the Administrative Office of Pennsylvania Courts, American Lawyer Media, *The Legal Intelligencer*, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the website of the First Judicial District of Pennsylvania: <http://www.courts.phila.gov/regs>.

By the Court

HONORABLE KEVIN M. DOUGHERTY,
*Chair, Administrative Governing Board
First Judicial District of Pennsylvania
Administrative Judge, Trial Division,
Court of Common Pleas, Philadelphia County*

[Pa.B. Doc. No. 15-1756. Filed for public inspection October 2, 2015, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MIFFLIN COUNTY

In the Matter of Local Rules 58th Judicial District; No. 2 of 2015

Administrative Order

And Now, this 15th day of September, 2015, with respect to the Mifflin County Local rules of Court, the Court hereby states the following:

The following Mifflin County Local rule of Court became effective July 1, 2014.

I. Judicial Commitment to Caseflow Management.

In order to promote the prompt and fair administration of justice for the citizens of Mifflin County, Pennsylvania, the Court of Common Pleas for the 58th Judicial District of Pennsylvania hereby adopts a case management plan for civil cases. The Court assumes the responsibility of ensuring the fair and prompt disposition of all cases as well as assuring effective and efficient use of Court resources paid for by taxpayers. Our success is attribut-

able to the commitment of this principle by each Judge, Court staff and County staff of this judicial district.

Goal setting provides the objectives and a benchmark for measuring its success. The Court must meet reasonable time standards for the processing and prompt disposition of various types of cases in terms of their nature and legal issues.

II. Effective Communications with the Bar.

The Court shall have exclusive control over the scheduling of all court cases. Operative scheduling allows efficient case processing.

While attorneys should not control movement of the court calendar, it is equally inappropriate for the Court to ignore legitimate requests from counsel and parties. When reasonably made in a timely manner, the Court should make accommodations to attorneys, on behalf of their clients and as Officers of the Court, and the parties in the management of all cases.

III. Early and Continuous Court Supervision of Case Progress.

To promote fair and expeditious case dispositions, the Court shall schedule trials to be held as soon after case commencement as the circumstances of each case warrant. This Court uses case management orders and status conferences to manage the civil docket. Status conferences are brief conferences at which the parties appear before the Court to explain the current status of the case. The Court orders counsel and/or the parties to appear for a status conference in those cases in which a period of inactivity follows the filing of the initial pleading in the case.

If, at status conference, the parties advise the Court they are in negotiations or have otherwise resolved the matter, the Court orders the parties to file a praecipe to withdraw and discontinue the case within ninety (90) days. Occasionally, the Court will provide the parties six (6) months to bring the matter to conclusion subject to case complexity.

Where agreement of counsel/parties is not sufficient grounds for the Court to grant continuances. When a continuance is granted, the matter is continued to a specified date.

IV. Event-Date Certainty.

Reasonable certainty about filing deadlines and event dates avoids aggravation, waste and unnecessary cost to the parties and their attorneys. Moreover, national studies have found that nothing promotes pretrial dispositions more than the expectation that a trial is more likely than not to occur on or near the scheduled date.

Mifflin County hosts three civil jury terms per year, i.e., February, June and October. Court Administration schedules annual dates for civil jury selections, pretrial conferences, dates for jury trials, nonjury trials and summary jury trials a year and one-half in advance upon preparation of the Annual Court Calendar. This ensures the Court can issue orders for future civil terms into the following year.

Case management orders are detailed, multi-page orders scheduling deadlines for discovery, a pretrial conference, jury selection and trial dates certain. Case management orders also attach counsel of record. A copy of the jury trial, nonjury trial and summary jury trial case management orders, with summary jury trial guidelines, are attached.

V. Functional Case Management Information System.

The fully automated court computer system provides relevant, accurate and timely case information supporting

an efficient case management plan by tracking and maintaining cases and events. Monthly reports identify specific cases that have been pending longer than the time standards so appropriate steps can be taken.

VI. Time Standards and Case Management Criteria.

A. Court Ruling on Motions

1. Motions are decided pursuant to Pa.R.C.P. 208.4.
2. Each Judge monitors the status of all outstanding motions.

3. *Semi-annual Reports*—Pursuant to Pennsylvania Rule of Judicial Administration 703(B)(2), each Judge is responsible to report on matters submitted and undisposed for 90 days or more. Primary responsibility to ascertain and report on matters submitted and remaining undisposed shall be on the District Court Administrator.

B. Differentiated Case Management by Case Track

Court Administration assigns a Judge, track and timelines based on the case type, number of parties and the timeframes established by this Court. These provisions govern each case unless changed per an attorney's request, upon management review by Court Administration or upon the Court's own directive. If the amount in controversy is less than \$50,000.00, the case proceeds on the expedited track directly to arbitration. The Court does not issue a trial order in compulsory arbitration cases.

C. Expedited Track

A case is assigned to the expedited track when it appears it can be promptly tried with little pretrial discovery and other pretrial proceedings. Except in extraordinary circumstances, the Court strives to dispose of all expedited cases within twelve (12) months after initial filing. Upon completion of the discovery period, the case is given a date certain for arbitration or trial. In any case where an appeal for an arbitration award is filed, the case is given a date certain for a pretrial conference or non-jury trial forty-five (45) to sixty (60) days following the filing of the appeal. If settlement is not reached at the pre-trial conference, the case is scheduled for trial date certain.

D. Standard Track

All cases not designated expedited or complex are standard civil cases. Except in extraordinary circumstances, the Court strives to dispose all standard cases within 24 months after initial filing. At pretrial conference, the Court will discuss the possibility of settlement, the possibility of alternative dispute resolution (if not already attempted), stipulations and any other appropriate issues. If settlement is not reached at the pretrial conference, the case is scheduled for trial.

E. Complex Track

A case is assigned to the complex track when it is likely to require a disproportionate expenditure of court time and resources to bring the case to disposition. Civil cases involving construction contracts, three or more parties or claims of asbestos, medical malpractice or products liability are complex cases. Upon completion of the discovery period, the case is given a date certain for a pretrial conference. In addition to the ordinary matters discussed at pretrial conference, the Court shall attempt to determine whether the matter can be simplified through stipulations or settlements with respect to particular issues. If settlement is not reached at the pretrial conference, the case is scheduled for trial. Except in extraordinary circumstances, the Court strives to dispose all complex cases within 36 months after initial filing. See Page 5 for Case Management Track Criteria.

Case Management Track Criteria			
<i>Case Type</i>	<i>Number of Parties</i>	<i>Management Track</i>	<i>Disposition Within</i>
Assault, Battery Premises Liability, Slip & Fall Other Personal Injury Torts to Land Motor Vehicle Property Damage Other Personal Property Damage Motor Vehicle Accident (under \$25,000) Insurance, Declaratory Judgment Negotiable Instruments Recovery of Overpayment Contracts for Goods Other Contract Foreclosure Rent, Lease, Ejectment Title to Real Property Replevin Appeals from District Justice Mechanic's Lien Other: Consumer or Credit	< 4	Fast	12 months
Employment/Wrongful Discharge Assault, Battery Premises Liability, Slip & Fall Other Personal Injury Torts to Land Motor Vehicle Property Damage Other Personal Property Damage Motor Vehicle Accident (under \$25,000) Insurance, Declaratory Judgment Negotiable Instruments Recovery of Overpayment Contracts for Goods Other Contract Foreclosure Partition Right to Know Rent, Lease, Ejectment Title to Real Property Other: Consumer or Credit	> 4	Standard	< 24 months
Fraud Truth in Lending	Any Number	Standard	< 24 months
Class Action Construction Contracts Medical Malpractice Toxic Waste, Contamination & Environmental Professional Malpractice Toxic Tort Personal Injury Stockholders Suits Defamation, Discrimination, Malicious Prosecution Motor Vehicle Accident (over \$25,000) Motor Vehicle Product Liability Product Liability Product Liability Property Damage Contract Product Liability	Any Number	Complex	< 36 months

VII. Inactive Cases.

In cases eligible for administrative dismissal under Pa.R.J.A. 1901, the Court and the law clerks shall work with the Prothonotary annually to determine whether cases can be terminated due to inactivity. The Court shall send notice to counsel and/or the parties not less than thirty (30) days prior to the opportunity for hearing on such proposed termination. No case will be dismissed without prior review of the Prothonotary file for filings

that may not have been docketed. Where a party objects to the termination of an inactive matter, it is intended the Court exercise its judicial discretion.

By the Court

DAVID W. BARRON,
President Judge

[Pa.B. Doc. No. 15-1757. Filed for public inspection October 2, 2015, 9:00 a.m.]