THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Order Reinstating and Amending Rule 230.2 of the Rules of Civil Procedure; No. 634 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 9th day of December, 2015, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 45 Pa.B. 1843 (April 11, 2015):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 230.2 of the Pennsylvania Rules of Civil Procedure is reinstated and amended in the following form. The Order of April 23, 2014 suspending Rule 230.2, No. 594 Civil Procedural Rules Docket (April 23, 2014), is dissolved prospectively as of the effective date of this Order.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective December 31, 2016.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 230.2. Termination of Inactive Cases.

(a) **[The court may] At least once a year, the court shall** initiate proceedings to terminate **[a case] cases** in which there has been no activity of record for two years or more **[by serving a notice of proposed dismissal of court case], and shall report such information to the Court Administrator of Pennsylvania on a form supplied by the Administrative Office of Pennsylvania Courts or in such format as requested from time to time by the Administrative Office of Pennsylvania Courts**.

***Official Note*:** This rule provides an administrative method for the termination of inactive cases.

(b)(1) **[The] For each case identified pursuant to subdivision (a), the** court shall serve **[the notice] a notice of proposed termination** on counsel of record, and on the parties if not represented, **[sixty] thirty** days prior to the date of the proposed termination. The notice shall contain the date of the proposed termination and the procedure to avoid termination.

(2) The notice shall be served **[by mail] electronically pursuant to Rule 205.4(g)(1), or** pursuant to Rule 440 **on counsel of record and on the parties, if not represented, at the last address of record**. **[If the mailed notice is returned, the notice shall be served by advertising it in the legal publication, if any, designated by the court for the publication of legal notices or in one newspaper of general circulation within the county.]**

***Official Note*:** If the notice mailed to an attorney is returned by the postal service, the prothonotary should check **[a legal directory or contact the Administrative Office of Pennsylvania Courts] the website of the Disciplinary Board of the Supreme Court of Pennsylvania, www.padisciplinaryboard.org,** for a current address. **[Otherwise, publication in the legal newspaper or a newspaper of general circulation within the county is required under this rule if the mailed notice is returned.]**

See subdivision **[(e)] (f)** for the form of notice.

(c) If no statement of intention to proceed has been filed **on or before the date of the proposed termination**, the prothonotary shall enter an order as of course terminating the matter **[with prejudice]** for failure to prosecute.

***Official Note*:** The prothonotary may not enter an order terminating the action until more than **[sixty] thirty** days after service of the notice of proposed termination.

A court officer may certify to the prothonotary those matters which have been inactive and in which no statement of intention to proceed has been filed.

(d)(1) If an action has been terminated pursuant to this rule, an aggrieved party may petition the court to reinstate the action.

(2) If the petition is filed within **[thirty] sixty** days after the entry of the order of termination on the docket, the court shall grant the petition and reinstate the action.

***Official Note*:** The provision under subdivision (d)(2) for filing a petition within **[thirty] sixty** days is not intended to set a standard for timeliness in proceedings outside this rule.

(3) If the petition is filed more than **[thirty] sixty** days after the entry of the order of termination on the docket, the court shall grant the petition and reinstate the action upon a showing that

(i) the petition was timely filed following the entry of the order for termination and

(ii) there is a reasonable explanation or a legitimate excuse for the failure to file both

(A) the statement of intention to proceed prior to the entry of the order of termination on the docket and,

(B) the petition to reinstate the action within **[thirty] sixty** days after the entry of the order of termination on the docket.

***Official Note*:** The provision under subdivision (d)(2) for filing a petition within **[thirty] sixty** days of the entry of the order of termination on the docket is not a standard of timeliness. Rather, the filing of the petition during that time period eliminates the need to make the showing otherwise required by subdivision (d)(3).

(e) Any case which is reinstated pursuant to subdivision (d) shall be subject to termination with prejudice upon a subsequent termination pursuant to subdivision (a). No subsequent reinstatements shall be granted.

[(e)] (f) The notice required by subdivision (b) shall be in the following form:

(Caption)

NOTICE OF PROPOSED TERMINATION OF COURT CASE

The court intends to terminate this case without further notice because the docket shows no activity in the case for at least two years.

You may stop the court from terminating the case by filing a **[Statement of Intention to Proceed] statement of intention to proceed**. The **[Statement of Intention to Proceed] statement of intention to proceed** should be filed with the Prothonotary of the Court at _____
Address
on or before _____ .
Date

IF YOU FAIL TO FILE THE REQUIRED STATEMENT OF INTENTION TO PROCEED, THE CASE WILL BE TERMINATED **BY THE PROTHONOTARY WITHOUT FURTHER NOTICE**.

BY THE COURT**[;]:**

_____ _____
Date of this Notice Officer

[(f) The Statement of Intention to Proceed shall be in the following form:]

(g) The statement of intention to proceed shall be in the following form:

(Caption)

Statement of Intention to Proceed

To the Court:

_____ intends to proceed with the above captioned matter.

Date: _____ _____
Attorney for _____

(h) Upon receipt of a statement of intention to proceed, the court may schedule a status conference and establish appropriate timelines to ensure a timely and efficient disposition of the case.

EXPLANATORY COMMENT

In 2014, the Supreme Court of Pennsylvania made efforts to reduce the inventory of civil cases on the dockets of the Courts of Common Pleas. To expedite that process, it suspended Rule 230.2 governing the termination of inactive cases. Originally adopted in 2003, Rule 230.2 implemented the general policy provisions of Rule of Judicial Administration 1901(a) governing the prompt disposition of matters and the termination of inactive cases. While Pa.R.J.A. No. 1901(a) provided general guidelines for conducting an administrative purge, Rule 230.2 set forth a procedural mechanism for a court to perform an administrative purge of cases that had remained on the civil docket for two or more years with no evidence of any activity.

The Court has amended and reinstated Rule 230.2. The amendments have streamlined the procedure for the trial court to conduct an administrative purge of inactive cases, and are intended to ensure that the civil dockets reflect the current inventory of active cases, while encouraging attorneys to expeditiously litigate their cases.

Several concerns with the suspended Rule 230.2 were identified. The suspended rule did not specify how often a court should conduct an administrative purge; it only provided a procedure should a court decide to conduct an administrative purge. In order to ensure that the civil case inventory is accurate, the amendment of subdivision (a) requires a court to conduct an administrative purge at least once a year. The court is also required to report such information to the Court Administrator of Pennsylvania with a form supplied by the Administrative Office of Pennsylvania Courts.

A second problem identified with suspended Rule 230.2 was the provision for service of the notice of proposed termination in subdivision (b). In subdivision (b)(1), the suspended rule required service of the notice of proposed termination on counsel of record or unrepresented parties at least sixty days prior to the date of termination. To expedite the process, the amendment of subdivision (b)(1) shortens that time frame and require the notice to be served to at least thirty days prior to the date of termination.

The suspended rule did not provide for modern, efficient methods for giving notice to counsel or unrepresented parties that cases were identified as having no activity on the docket for the previous two years. Subdivision (b)(2) of the suspended rule provided for the notice to be served by mail pursuant to Rule 440 at the last address of record. In the event that the notice was returned, publication was required in the legal publication designated by the court for such notices. In conjunction with the shortened time frame in subdivision (b)(1), the amendment of subdivision (b)(2) updates the method for giving notice by allowing the notice to be served electronically pursuant to Rule 205.4 governing electronic filing. The ability to serve notice by mail pursuant to Rule 440 has been retained, but publication in the legal journal when a notice has been returned has been eliminated.

A third problem identified with suspended Rule 230.2 was the filing of statements of intention to proceed in order to keep a case active, but then not requiring any further obligation on counsel or an unrepresented party to move the case forward to resolution. Subdivision (c) of the suspended rule required an attorney or unrepresented party to file a statement of intention to proceed before the termination date stated in the notice in order to prevent the purging of the case from the docket. If no statement of intention to proceed was filed, the prothonotary was directed to enter an order terminating the matter for failure to prosecute. In the newly amended rule, this provision has been retained. However, new subdivision (h) encourages the trial court to manage its cases by scheduling a status conference and establishing appropriate timelines to insure a timely and efficient disposition of the case.

Importantly, the amendment of Rule 230.2 retains the post-termination procedure set forth in subdivision (d) of the suspended rule, which allows a party to petition the court to reinstate the action. The suspended rule provided

certain requirements for reinstatement depending whether the petition is filed within thirty days or beyond thirty days. While the requirements remain unchanged, subdivision (d) has been amended to provide for sixty days rather than thirty days. New subdivision (e), however, limits reinstatements of a case. If any case, previously reinstated, is terminated pursuant to this rule, then it is terminated with prejudice. No additional reinstatements will be granted. This provision is intended to encourage the efficient litigation of cases and to not let them languish on the docket.

By the Civil Procedural Rules Committee

PETER J. HOFFMAN,
Chair

[Pa.B. Doc. No. 15-2269. Filed for public inspection December 24, 2015, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Proposed Amendment of Pa.R.Crim.P. 544

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 544 (Reinstituting Charges Following Withdrawal or Dismissal) 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, January 29, 2016. 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 544. Reinstituting Charges Following Withdrawal or Dismissal.

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, or when a grand jury declines to indict and the complaint is dismissed, the attorney for the Commonwealth may reinstitute the charges by approving, in writing, the re-filing of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges **or any issuing authority designated by the president judge or his or her designee to receive the reinstitution of charges**.

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

Comment

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

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

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

Pursuant to paragraph (A), in the usual case, charges will be reinstituted by filing a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges. However, there may be cases in which the attorney for the Commonwealth determines that a differ-

ent issuing authority should conduct the preliminary hearing, such as when an error of law is made by the issuing authority in finding that the Commonwealth did not sustain its burden to establish a *prima facie* case. Paragraph (B) requires that, in these cases, the attorney for the Commonwealth must file a petition with the court of common pleas requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. For the procedure for requesting assignment of a different issuing authority, see Rule 132.

Paragraph (A) was amended in 2016 to address the reinstitution of charges in those judicial districts that have consolidated the issuing authority functions into a centralized body. These include the Pittsburgh Municipal Court, the Philadelphia Municipal Court, and those judicial districts that have established "central courts" in which the judicial district's magisterial district judges undertake the issuing authority function at a central location on a rotating basis. In these situations, it is not necessary for charges to be reinstated with the individual issuing authority and the charges may be reinstituted with the centralized issuing authority designated by the president judge.

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

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

***Official Note*:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000. New Rule 143 adopted October 8, 1999, effective January 1, 2000; renumbered Rule 544 and amended March 1, 2000, effective April 1, 2001; amended June 21, 2012, effective in 180 days**; amended , 2016, effective , 2016**.

Committee Explanatory Reports:

* * * * *

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

Report explaining the proposed amendments concerning the definition of the issuing authority who dismissed charges published for comment at 45 Pa.B. 7286 (December 26, 2015).

REPORT

Proposed amendment of Pa.R.Crim.P. 544

Magistrate for the Refiling of Charges

The Committee was recently presented with a question regarding the Rule 544(A) requirement for the Commonwealth to refile previously dismissed criminal charges with "the issuing authority who dismissed or permitted the withdrawal of the charges." In most jurisdictions, it is simply a matter of approaching the magisterial district judge (MDJ) having jurisdiction who is most frequently the MDJ who dismissed the complaint or permitted its withdrawal. However, in jurisdictions that have centralized minor courts such as the Pittsburgh and Philadelphia[1] Municipal Courts, there is a question whether the issuing authority who initially handled the matter must be approached about the re-filing or if any of the issuing authorities who staff these centralized courts may be approached about the re-filing.

Rule 544 was adopted in 1999 to standardize the reinstitution of charges. As noted in the Comment to the rule and in the Final Report that the Committee issued when the rule was adopted, see 29 Pa.B. 5505 (Oct. 23, 1999), the authority for reinstituting charges is within the discretion of the attorney for the Commonwealth. There are however two limitations on this authority. First, the applicable statute of limitations must not have run. Second, reinstitution may be barred when the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. *See Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997); *Commonwealth v. Shoop*, 617 A.2d 351 (Pa. Super. 1992).

The requirement to have the charges filed before the issuing authority who dismissed them is premised on the idea that the original issuing authority would be in a better position to determine that the refiling is not being done from an improper motive or has resulted in prejudice to the defendant. This is also a means of reducing "judge-shopping" by preventing the repeated refiling until the prosecution finds a more amenable magistrate. It should be noted that, in situations where the original dismissal was improper, the Commonwealth's remedy is to seek a reassignment to a different magistrate pursuant to Rule 544(B).

The question presented to the Committee was whether refiling should be treated differently when the preliminary hearing function is handled by a combined body of the judicial district's issuing authorities. Such courts will usually have a single filing office and may assign cases in a less direct manner than would be the case in a typical MDJ office, resulting in more difficulty in ensuring that the refiled charges are presented to the original dismissing issuing authority. The Committee observed that, in the Philadelphia Municipal Court, a case is refiled by presenting a motion to refile to the Municipal Court Judge designated to handle motions and does not return to the original judge who dismissed it. It was also noted that many more jurisdictions are setting up centralized minor courts in which the MDJs within the judicial district preside over preliminary hearings on a rotating basis.

The Committee concluded that, in these circumstances, allowance should be made for the refiling to be reviewed by any magistrate within the centralized court or, as in the case of the Philadelphia Municipal Court, with the specific magistrate designated by the President Judge to review refilings.

Therefore, paragraph (A) would be amended to allow reinstatement of charges with the issuing authority "des-

[1] The Philadelphia Municipal Court, which has a somewhat similar combined body of magistrates albeit Municipal Court judges, does not have a separate rule relating to the refiling of dismissed charges. Under Rule 1000(B), the Municipal Court is bound by the statewide rules when no specific MC rule is provided so that the provisions of Rule 544 would govern. Preliminary hearings are only provided in felony cases in the Municipal Court.

ignated by the president judge to receive the reinstitution of charges." This terminology would be intentionally broad since the manner in which these centralized courts are organized and function can vary considerably. Rather than generally permitting the reinstitution to be done before any issuing authority, the Committee believed it would be good practice to have this duty specifically designated. It is contemplated that, in the central court situation, this designation could simply be one of the duties enumerated for the sitting magistrate.

[Pa.B. Doc. No. 15-2270. Filed for public inspection December 24, 2015, 9:00 a.m.]

[234 PA. CODE CH. 5]

Proposed Amendment of Pa.R.Crim.P. 564

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 564 (Amendment of Information) 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.

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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 F. Procedures Following a Case Held for Court

Rule 564. Amendment of Information.

The court may allow an information to be amended **[when there is a defect in form, the description of the offense(s), the description of any person or any property, or the date charged, provided the information as amended does not charge an additional or different offense], provided that the information as amended does not charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge that the defendant would be unfairly prejudiced**. Upon amendment, the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

Comment

The rule was amended in 2015 to more accurately reflect the interpretation of this rule that has developed since it first was adopted in 1974. *See Commonwealth v. Brown*, 727 A.2d 541 (Pa. 1999). *See also Commonwealth v. Beck*, 78 A.3d. 656 (Pa. Super 2013); *Commonwealth v. Page*, 965 A.2d 1212 (Pa. Super. 2009); *Commonwealth v. Sinclair*, 897 A.2d 1218 (Pa. Super. 2006).

***Official Note*: Rule 229 adopted February 15, 1974, effective immediately; renumbered Rule 564 and amended March 1, 2000, effective April 1, 2001; amended , 2016, effective , 2016.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Report explaining the proposed amendment regarding the standard for amendment published for comment at 45 Pa.B. 7287 (December 26, 2015).

REPORT

Proposed amendment of Pa.R.Crim.P. 564

Addition of Offenses to the Criminal Information

Recently, the Committee had been presented with a suggestion that Rule 564 (Amendment of Information) be amended. Rule 564 provides that the court may allow an information to be amended so long as the amended information "does not charge an additional or different offense." It was suggested that case law has interpreted the rule more broadly than a plain reading of the language would indicate. The Committee has concluded this to be the case and is proposing that the rule be changed to reflect this broader interpretation.

Rule 564 was adopted as Rule 229 in 1974. Except for renumbering as part of the general reorganization of the Rules of Criminal Procedure in 2000, the language of the rule has remained virtually unchanged since its initial adoption.

There has been a considerable body of case law interpreting whether amendments that add new offenses were permissible under the rule. As defined in these cases, the purpose of Rule 564 (or then-Rule 229) is to ensure that a defendant is fully apprised of the charges, and to avoid prejudice to the defendant by prohibiting the last minute addition of alleged criminal acts of which the defendant is uninformed. *See, e.g. Commonwealth v. Lawton,* 414 A.2d 658 (Pa. Super. 1979). Courts apply the rule allowing amendment of a defective information with an eye toward its underlying purposes and with a commitment to do justice rather than be bound by a literal or narrow reading of the procedural rules. *Commonwealth v. Roser*, 914 A.2d 447 (Pa. Super. 2006), *appeal denied* 927 A.2d 624 (Pa. 2007). In effecting this purpose, the courts employ the test of whether the crimes specified in the original information involved the same basic elements

and evolved out of the same factual situation as the crimes specified in the amended information. If so, the defendant is deemed to have been placed on notice regarding the alleged criminal conduct. However, if the amended provision alleges a different set of events, or the elements or defense to the amended crime are materially different from the elements or defense to the crime originally charged, so that the defendant would be prejudiced by the change, then amendment is not permissible. *Commonwealth v. Page*, 965 A.2d 1212 (Pa. Super. 2009). *See also, Commonwealth v. Beck*, 78 A.3d 656 (Pa. Super 2013). Factors that the trial court must consider in determining whether a defendant was prejudiced by an amendment include: (1) whether the amendment changes the factual scenario supporting the charges; (2) whether the amendment adds new facts previously unknown to the defendant; (3) whether the entire factual scenario was developed during a preliminary hearing; (4) whether the description of the charges changed with the amendment; (5) whether a change in defense strategy was necessitated by the amendment; and (6) whether the timing of the Commonwealth's request for amendment allowed for ample notice and preparation. *Commonwealth v. Sinclair*, 897 A.2d 1218 (Pa. Super. 2006), *citing Commonwealth v. Grekis,* 601 A.2d 1284 (Pa. Super. 1992).

The most recent Pennsylvania Supreme Court case dealing with Rule 564 is *Commonwealth v. Brown,* 727 A.2d 541 (Pa. 1999), which held that, since the purpose of the information is to apprise the defendant of the charges against him so that he may have a fair opportunity to prepare a defense, an amendment should be precluded only when the variance between the original and the new charges prejudices an appellant by, for example, rendering defenses which might have been raised against the original charges ineffective with respect to the substituted charges. In this case, an amendment of the information changing the charge from one of sexual assault using force to one of sexual assault on an unconscious person was not proper because it prejudiced the defendant due to the differences in potential defenses available.

Based on the foregoing analysis, the Committee has concluded that the language of the rule does not accurately reflect the correct standards, as developed by the courts, for allowance of amendment of the information. Therefore, the language of the rule would be amended to reflect that a court may allow the information to be amended provided that the amended information does not "charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge such that the defendant would be unfairly prejudiced."

[Pa.B. Doc. No. 15-2271. Filed for public inspection December 24, 2015, 9:00 a.m.]

[234 PA. CODE CH. 5]

Proposed Revision of the Comment to Pa.R.Crim.P. 523

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the revision of the Comment to Rule 523 (Release Criteria) 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
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fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, January 29, 2016. 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 C(1). Release Procedures

Rule 523. Release Criteria.

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Comment

This rule clarifies present practice, and does not substantively alter the criteria utilized by the bail authority to determine the type of release on bail or the conditions of release reasonably necessary, in the bail authority's discretion, to ensure the defendant's appearance at subsequent proceedings and compliance with the conditions of the bail bond.

When deciding whether to release a defendant on bail and what conditions of release to impose, the bail authority must consider all the criteria provided in this rule, rather than considering, for example, only the designation of the offense or the fact that the defendant is a nonresident. **Nothing in this rule prohibits the use of a pretrial risk assessment tool as one of the means of evaluating the factors to be considered under paragraph (A). However, a risk assessment tool must not be the only means of reaching the bail determination.**

In addition to the release criteria set forth in this rule, in domestic violence cases under Section 2711 of the Crimes Code, 18 Pa.C.S. § 2711, the bail authority must also consider whether the defendant poses a threat of danger to the victim.

When a defendant who has been released on bail and is awaiting trial is arrested on a second or subsequent charge, the bail authority may consider that factor in conjunction with other release criteria in setting bail for the new charge.

***Official Note*: Previous Rule 4002, formerly Rule 4003, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4002 and amended July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and not replaced. Present Rule 4002 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; amended September 3, 1999, effective immediately; renumbered Rule 523 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised , 2016, effective , 2016**.

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **[1477] 1478** (March 18, 2000).

Report explaining the proposed Comment revisions regarding the use of risk assessment tools published for comment at 45 Pa.B. 7289 (December 26, 2015).

REPORT

Proposed Revision of the Comment to Pa.R.Crim.P. 523

Risk Assessment Tools for Bail Determination

Recently, representatives of the First Judicial District (FJD) in Philadelphia had requested that the Committee consider clarifying that risk assessment tools may be used as part of the determination when setting bail. The FJD is in the process of developing a risk tool to assist Arraignment Court Magistrates and Judges in determining whether defendants at the time of their arrest should be held in custody, released under House Arrest/Electronic Monitoring, released under special conditions or released on their own recognizance.

This effort in the FJD is consistent with a national trend in moving from a "cash-based release system," which is believed to be more burdensome on lower income defendants, to a "risk-based release system," that attempts to assess the likely danger of non-appearance or other misconduct. In particular, risk assessment tools are intended to use quantifiable statistics in an attempt to determine the potential risk that the defendant may pose and then use that as a basis for determining what conditions should be placed on release. The ultimate goal is to try to add more objectivity to the bail decision.

Simply put, a risk assessment tool is developed by studying cases in the past in which the defendants have committed misconduct while on pretrial bail and determining what factors, like drug addiction, unemployment, or prior criminal history, are present. Usually, some type of point system is then developed from this data that will be used to "score" a new defendant as a means of predicting whether the defendant will commit misconduct while on bail.

The risk assessment tool being implemented in Philadelphia is a good example of how such an analysis is developed. It is based on data of defendants in Philadelphia from 2007-2014 who were arrested and released on pretrial status. The data was analyzed to determine which defendants committed new crimes and the types of characteristics these defendants who were arrested for new crimes possess. The types of new crimes for which these defendants were arrested while on pretrial status were also analyzed. Over 200,000 defendants' cases were studied. The factors studied included a defendant's criminal history, age at time of first adult arrest, previous time in jail, current and new charges, and length of previous time in jail.

Risk assessment tools are already in use in a number of jurisdictions, such as Colorado, Florida, and Kentucky. Use of risk assessment tools is also encouraged in the ABA's Standard on Pretrial Release 10-1.10(i) that urges each jurisdiction, *inter alia,* to:

> (i) develop and operate an accurate information management system to support prompt identification, information collection and presentation, risk assessment, release conditions selection, compliance monitoring and detention review functions essential to an effective pretrial services agency; . . .

The consensus of the Committee was that currently nothing in the rules precludes the use of such a tool so long as it is not the exclusive means of making the assessment regarding bail. However, the Committee concluded that a clarification on this point would be helpful. Therefore, the Comment to Rule 523 would be revised to state that the rule does not forbid the use of a risk assessment tool but that the tool must not be the only means of reaching the bail decision.

[Pa.B. Doc. No. 15-2272. Filed for public inspection December 24, 2015, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 11 AND 16]

Order Amending Rules 1120 and 1608 of the Rules of Juvenile Court Procedure; No. 686 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 9th day of December, 2015, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 45 Pa.B. 3999 (July 25, 2015), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 116, No. 2, August 7, 2015), and on the Supreme Court's web-page, and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 1120 and 1608 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2016.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART A. BUSINESS OF COURTS

Rule 1120. Definitions.

ADULT is any person, other than a child, eighteen years old or older.

ADVANCED COMMUNICATION TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations and includes, but is not limited to, systems providing for two-way simultaneous audio-visual communication, closed circuit television, telephone and facsimile equipment, and electronic mail.

AGE-APPROPRIATE OR DEVELOPMENTALLY-APPROPRIATE is used to describe the: 1) activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; or 2) in the case of a specific child, activities or items that are suitable based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

AGGRAVATED CIRCUMSTANCES are those circumstances specifically defined pursuant to the Juvenile Act, 42 Pa.C.S. § 6302.

CAREGIVER is a person with whom the child is placed in an out-of-home placement, including a resource family or individual designated by a county agency or private agency. The resource family is the caregiver for any child placed with them.

CHILD is a person who:

* * * * *

PROTECTIVE CUSTODY is when a child is taken into custody for protection as an alleged dependent child pursuant to the Juvenile Act, 42 Pa.C.S. § 6301 et seq. or custody may be assumed pursuant to 23 Pa.C.S. § 6315.

REASONABLE AND PRUDENT PARENT STANDARD is the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while encouraging the emotional and developmental growth of the child, that a caregiver must use when determining whether to allow a child to participate in extracurricular, enrichment, cultural, and social activities.

RECORDING is the means to provide a verbatim account of a proceeding through the use of a court stenographer, audio recording, audio-visual recording, or other appropriate means.

* * * * *

***Official Note*: Rule 1120 adopted August 21, 2006, effective February 1, 2007. Amended March 19, 2009, effective June 1, 2009. Amended December 24, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 20, 2011, effective July 1, 2011. Amended June 24, 2013, effective January 1, 2014. Amended October 21, 2013, effective December 1, 2013. Amended July 28, 2014, effective September 29, 2014. Amended July 13, 2015, effective October 1, 2015. Amended December 9, 2015, effective January 1, 2016.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the amendments to Rule 1120 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Final Report explaining the amendments to Rule 1120 published with the Court's Order at 45 Pa.B. 7289 (December 26, 2015).

CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

PART B(2). PERMANENCY HEARING

Rule 1608. Permanency Hearing.

* * * * *

D. *Court's findings.*

1) *Findings at all six-month hearings.* At **[the] each** permanency hearing, the court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 1609. On the record in open court, the court shall state:

* * * * *

k) the services needed to assist a child who is **[sixteen] fourteen** years of age or older to make the transition to **[independent living] a successful adulthood**, including:

* * * * *

vii) the **[job readiness] job-readiness** services that have been provided to the child and the employment/career goals that have been established;

viii) whether the child has physical health or behavioral health needs that will require continued services into adulthood; and

ix) the steps being taken to ensure that the youth will have stable housing or living arrangements when discharged from care;

l) any educational, health care, and disability needs of the child and the plan to ensure those needs are met;

m) if a sibling of a child has been removed from the home and is in a different setting than the child, whether reasonable efforts have been made to place the child and sibling of the child together or whether such joint placement is contrary to the safety or well-being of the child or sibling; **[and]**

n) if the child has a sibling, whether visitation of the child with that sibling is occurring no less than twice a month, unless a finding is made that visitation is contrary to the safety or well-being of the child or sibling**[.];**

o) whether sufficient steps have been taken by the county agency to ensure the caregiver is exercising the reasonable and prudent parent standard; and

p) whether sufficient steps have been taken by the county agency to ensure the child has been provided regular, ongoing opportunities to engage in age-appropriate or developmentally-appropriate activities, including:

i) consulting the child in an age-appropriate or developmentally-appropriate manner about the opportunities to participate in activities; and

ii) identifying and addressing any barriers to participation.

2) *Another Planned Permanent Living Arrangement (APPLA) for Children Sixteen Years of Age or*

***Older*. APPLA shall not be utilized for any child under the age of sixteen. At each permanency hearing for a child who is sixteen years or older and has a permanency goal of APPLA, the following additional considerations, inquiry, and findings shall be made by the court:**

a) *Court's APPLA Considerations*. Before making its findings pursuant to paragraph (D)(2)(c), the court shall consider evidence, which is obtained as of the date of the hearing, and entered into the record concerning:

i) the intensive, ongoing, and unsuccessful efforts made to:

A) return the child home; or

B) secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent;

ii) the specific services, including the use of search technology and social media to find biological family members and kin, as well as permanency services that have been provided to the child that serve as the intensive ongoing, and unsuccessful efforts to achieve reunification, adoption, or placement with a guardian or a fit and willing relative;

iii) the full name of at least one identified supportive adult with whom the child has significant connections;

iv) how each identified supportive adult has formalized the connection with the child;

v) the specific services that will be provided by the agency to support and maintain the connection between the child and identified supportive adult(s); and

vi) the specific planned, permanent placement or living arrangement for the child that will provide the child with stability.

b) *Court's Inquiry of Child's Desired Permanency Outcome*. Before making its findings pursuant to paragraph (D)(2)(c), the court shall ask the child about the child's desired permanency outcome.

c) *Court's APPLA Findings*. After making all the findings of paragraph (D)(1) and before assigning the permanency goal of APPLA, at each subsequent permanency hearing, based upon the considerations and inquiry provided in paragraph (D)(2)(a) & (b) and any other evidence deemed appropriate by the court, the court shall state in open court on the record the following:

i) reasons why APPLA continues to be the best permanency plan for the child; and

ii) compelling reasons why it continues not to be in the best interests of the child to:

A) return home;

B) be placed for adoption;

C) be placed with a legal guardian; and

D) be placed with a fit and willing relative.

[2)] 3) *Additional findings for fifteen of last twenty-two months.* If the child has been in placement for fifteen of the last twenty-two months, the court may direct the county agency to file a petition to terminate parental rights.

* * * * *

Comment

See 42 Pa.C.S. §§ 6341, 6351.

Permanency planning is a concept whereby children are not relegated to the limbo of spending their childhood in foster homes, but instead, dedicated effort is made by the court and the county agency to rehabilitate and reunite the family in a reasonable time, and failing in this, to free the child for adoption. **[*In re M.B.*, 449 Pa. Super. 507, 674 A.2d 702 (1996) *quoting In re Quick*, 384 Pa. Super. 412, 559 A.2d 42 (1989).] *In re M.B.*, 674 A.2d 702, 704 (Pa. Super. Ct. 1996) (quoting *In re Quick*, 559 A.2d 42 (Pa. 1989)).**

To the extent practicable, the judge or master who presided over the adjudicatory and original dispositional hearing for a child should preside over the permanency hearing for the same child.

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

The court may schedule a three-month hearing or conference. At the three-month hearing, the court should ensure that: 1) services ordered at the dispositional hearing pursuant to Rule 1512 are put into place by the county agency; 2) the guardian who is the subject of the petition is given access to the services ordered; 3) the guardian is cooperating with the court-ordered services; and 4) a concurrent plan is developed if the primary plan may not be achieved.

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

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

Every child should have a concurrent plan, which is a secondary plan to be pursued if the primary permanency plan for the child cannot be achieved. *See* Comment to Rule 1512. For example, the primary plan may be reunification with the guardian. If the guardian does not substantially comply with the requirements of the court-ordered services, subsidized legal guardianship may be utilized as the concurrent plan. Because of time requirements, the concurrent plan is to be in place so that permanency may be achieved in a timely manner.

Pursuant to paragraph (D)(1)(h), the court is to determine whether the county agency has reasonably satisfied the requirements of Rule 1149 regarding family finding, including the location and engagement of relatives and kin at least every six months, prior to each permanency hearing. If the county agency has failed to meet the diligent family finding efforts requirements of Rule 1149, the court is to utilize its powers to enforce this legislative mandate. *See* 62 P. S. § 1301 *et seq.* **[*See*]; *see* *also***

Rules 1210(D)(8), 1242(E)(3), 1409(C), 1609(D), and 1611(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1515, 1609, and 1611.

When making its determination for reasonable efforts made by the county agency, the court is to consider family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c) and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1515, 1609, and 1611 for reasonable efforts determinations.

***See* 42 U.S.C. § 675(5)(A)—(I) for development of a transition plan pursuant to paragraph (D)(1)(k).**

Pursuant to paragraph (D)(1)(o), the county agency is to testify and enter evidence into the record on how it took sufficient steps to ensure the caregiver is exercising the reasonable and prudent parent standard. For the definition of "caregiver" and the "reasonable and prudent parent standard," see Rule 1120. Pursuant to paragraph (D)(1)(p), when documenting its steps taken, the county agency is to include how it consulted with the child in an age-appropriate or developmentally-appropriate manner about the opportunities of the child to participate in activities. For the definition of "age-appropriate or developmentally-appropriate," see Rule 1120. These additions have been made to help dependent children have a sense of normalcy in their lives. These children should be able to participate in extracurricular, enrichment, cultural, and social activities without having to consult caseworkers and ask the court's permission many days prior to the event. *See also* Preventing Sex Trafficking and Strengthening Families Act (P. L. 113-183), 42 U.S.C. §§ 675 and 675a (2014).

Pursuant to paragraph (D)(2), there are additional considerations, inquiries, and findings when the court conducts a permanency hearing for a child, who is sixteen years of age or older and has a permanency plan of APPLA. APPLA should only be utilized as a permanency plan when all other alternatives have been exhausted. Even after exhaustive efforts have been made, the county agency should identify at least one supportive adult to be involved in the life of the child. Diligent efforts to search for relatives, guardians, adoptive parents, or kin are to be utilized. *See* Rule 1149 on family finding. Independent living services should also be addressed. Under paragraph (D)(2)(a)(i)(B), a fit and willing relative may include adult siblings.

Pursuant to paragraph (D)(2)(b), the court is to engage the child in conversation to ascertain the child's desired permanency outcome. The conversation is to be between the child and the court, not the guardian *ad litem* answering for the child.

After all the requirements of paragraph (D)(1) and (D)(2)(a) and (b) have been made, the court is to state in open court on the record the specific reasons why APPLA continues to be the best permanency plan for the child and the compelling reasons why it continues not to be in the best interests of the child to return home or be placed for adoption, with a legal guardian, or with a fit and willing relative. *See* paragraph (D)(2)(c). The standards of this rule make choosing the plan of APPLA difficult to ensure that it is the last alternative available for the child. Additionally, this rule requires the court to state its finding in open court on the record. If the court takes a case under advisement, it is to continue the hearing until it is ready to make these findings. The time requirements of the Rules are to be followed when taking a case under advisement.

Pursuant to paragraph **[(D)(2)] (D)(3)**, a "petition to terminate parental rights" is a term of art used pursuant to 23 Pa.C.S. § 2511 and **[Pa.R.O.C.] Pa.O.C.** Rule 15.4 to describe the motion terminating parental rights. This does not refer to the "petition" as defined in Pa.R.J.C.P. 1120.

The court is to move expeditiously towards permanency. A goal change motion may be filed at any time.

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

A President Judge may allow Common Pleas Judges to "wear multiple hats" during a proceeding by conducting a combined hearing on dependency and Orphans' Court matters. *See* 42 Pa.C.S. § 6351(i); *see also In re Adoption of S.E.G.*, **[587 Pa. 568,]** 901 A.2d 1017 (**Pa.** 2006), where involuntary termination occurred prior to a goal change by the county agency.

For family service plan requirements, see 55 Pa. Code §§ 3130.61 and 3130.63.

[*See* 42 U.S.C. § 675(5)(A)—(H) for development of a transition plan pursuant to paragraph (D)(1)(k).]

See Rule 1136 regarding *ex parte* communications.

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

***Official Note*: Rule 1608 adopted August 21, 2006, effective February 1, 2007. Amended December 18, 2009, effective immediately. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. Amended July 13, 2015, effective October 1, 2015. Amended December 9, 2015, effective January 1, 2016.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the amendments to Rule 1608 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

Final Report explaining the amendments to Rule 1608 published with the Court's Order at 45 Pa.B. 7289 (December 26, 2015).

EXPLANATORY REPORT

The Supreme Court of Pennsylvania has adopted the amendments to Rules 1120 and 1608. The amendments are effective January 1, 2016.

Rule discussion

On September 29, 2014, the Preventing Sex Trafficking and Strengthening Families Act (PSTSFA) (P. L. 113-183) was passed. In order to receive federal Title IV-E payments for foster care and adoption assistance, states had to comply with the requirements of the PSTSFA by September 29, 2015. Pennsylvania was granted an extension to January 1, 2016 to comply with the PSTSFA.

Rule 1120

Three new definitions, "age-appropriate or developmentally-appropriate," "caregiver," and "reasonable and prudent parent standard" have been added to Rule 1120. These terms are utilized in Rule 1608 as a component of strengthening families in the dependency system.

Rule 1608

Independent living services are now offered to dependent children who are fourteen years of age or older and the phrase "transition to independent living" is now coined "transition to a successful adulthood."

At each permanency hearing, the court must make specific findings. Two new findings were added to paragraph (D)(1)(o) & (p). The court must make a finding whether the county agency is taking sufficient steps to ensure: 1) the caregiver is exercising the reasonable and prudent parent standard; and 2) the child has been provided regular opportunities to engage in age-appropriate or developmentally-appropriate activities.

A new paragraph (D)(2) has been added to address another planned permanent living arrangement (APPLA). This section has been broken down into three areas: additional considerations, inquiry, and findings concerning APPLA. Under additional considerations, the court must entertain evidence from the county agency concerning the intensive, ongoing, and unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, a legal guardian, or an adoptive parent. The court must engage in family finding and exhaust all other permanency plans before selecting APPLA. APPLA is to only be utilized as a last resort. Once APPLA is chosen, the county agency is to identify at least one supportive adult with whom the child has significant connections, support and formalize the connection with the supportive adult, and offer services to maintain the connection between the supportive adult and the child. Finally, APPLA is to provide the child with stability. *See* paragraph (D)(2)(a).

Next, under its inquiry pursuant to paragraph (D)(2)(b), the court must engage in a conversation with the child to determine the child's desired permanency outcome. The child is to speak with the judge rather than having the guardian *ad litem* speak on her or his behalf.

Then, the court must make specific findings pursuant to paragraph (D)(2)(c), including the reasons why APPLA is the best permanency plan for the child and the compelling reasons why it continues to not to be in the best interests of the child to return home or be placed for adoption or with a legal guardian or with a fit and willing relative.

[Pa.B. Doc. No. 15-2273. Filed for public inspection December 24, 2015, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Administrative Order Clerk of Courts Fee Bill; No. AD-370-2015

Order

And Now, this 1st day of December, 2015, the Court approves the following Clerk of Courts Fee Schedule to be effective January 1, 2016.

By the Court

WILLIAM J. FURBER, Jr.,
President Judge

Montgomery County Clerk of Courts

Fee Schedule

Effective 01/01/2016

Description	*Fee*	*Plus Automation Fee*	*Total*
Appeal to Superior Court (Clerk of Courts Fee)	$71.25	$5.00	$76.25
Appeal to Superior Court (Superior Court Fee)	$85.50	N/A	$85.50
Bail Bond Filing Fees (Applicable to Bonding Companies Only)	$23.25	$5.00	$28.25
Bail Pieces	$23.25	N/A	$23.25
Certified Copies	$10.50	N/A	$10.50
Checks returned due to Insufficient Funds	$38.25	N/A	$38.25
Clerk of Courts Fee During and After Trial	$355.25	N/A	$355.25
Clerk of Courts Fee Prior to Trial	$296.25	N/A	$296.25
Clerk of Courts Processing Fee—Summary	$31.75	N/A	$31.75
Constable Appointment Petitions	$23.25	$5.00	$28.25
Copies (Per Sheet)	$1.00	N/A	$1.00
Copies from Micro Fiche (Per Sheet)	$2.00	N/A	$2.00
Criminal Record Searches (Computer & Micro Fiche search)	$23.25	N/A	$23.25
Criminal Record Searches (Computer search back to 1984)	$23.25	N/A	$23.25

Description	*Fee*	*Plus Automation Fee*	*Total*
Expungements	$23.25	$5.00	$28.25
Finger Print Cards (Per Card)	$15.75	N/A	$15.75
Nunc Pro Tunc	$23.25	$5.00	$28.25
Pre-Trial Motions and Miscellaneous Filings	$23.25	$5.00	$28.25
Private Detective License—(New Application)	$23.25	$5.00	$28.25
Private Detective License—(Renewal Application)	$23.25	$5.00	$28.25
Private Detective License—New (Corporation)	$300.00	N/A	$300.00
Private Detective License—New (Person)	$200.00	N/A	$200.00
Private Detective License—Renewal (Corporation)	$750.00	N/A	$750.00
Private Detective License—Renewal (Person)	$500.00	N/A	$500.00
Property Bail	$23.25	$5.00	$28.25
Return of Property Filings	$23.25	$5.00	$28.25
Subpoenas	$3.75	N/A	$3.75
Summary Appeals	$58.25	$5.00	$63.25
Tax Collector Bonds	$23.25	$5.00	$28.25

[Pa.B. Doc. No. 15-2274. Filed for public inspection December 24, 2015, 9:00 a.m.]

MONTGOMERY COUNTY

Amendment to Local Rule of Civil Procedure 2039(a)*—Minor's Compromise; No. 2015-00001

Order

And Now, this 7th day of December, 2015, the Court amends Montgomery County Local Rule of Civil Procedure 2039(a)*—Minor's Compromise. This Amendment shall become effective thirty days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In further conformity with Pa.R.C.P. 239, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

WILLIAM J. FURBER, Jr.,
President Judge

Note: Bold and bracketed material is deleted.
Bold material is added.

Rule 2039(a)*. Minor's Compromise.

No personal injury action in which a minor has an interest shall be settled without court approval.

1. *Contents of Petition, Exhibits, and Proposed Decrees*:

(A) *Petition.* A petition for approval of settlement shall set forth:

(1) The date of birth, social security number, and address of the minor plaintiff, the name and address of the minor's parent(s) or guardian(s);

(2) The facts out of which the cause of action arose;

(3) The elements and items of damages sustained;

(4) A list of all expenses incurred or to be incurred, whether or not they have been paid, by whom payment was made, and arrangements for payment of unpaid bills;

(5) Any limits on the financial responsibility of the defendant(s);

(6) A statement as to whether or not a lien or claim has been raised on behalf of any health care supplier, medical supplier, health insurer, worker's compensation carrier or government entity, including the Department of Public Welfare;

(7) The fees of counsel, which shall not exceed 25% of the present value of a structured settlement, or 25% of the gross recovery of any other settlement, unless counsel has rendered extraordinary services;

(8) The present status of the minor's health and injuries; and

(9) Any other circumstances relevant to the propriety of granting the petition.

(B) *Exhibits.* The petition shall also contain the following exhibits:

(1) A written report from attending health care providers stating the extent of the injury, the treatment given and the prognosis for the injured minor, except that in cases where the gross settlement does not exceed $5,000.00, or in other cases where the Court is satisfied that the treating physician's office notes and/or records set forth adequately the injury, the treatment given and the prognosis, such notes and/or records may be provided in lieu of a written report;

(2) The written consent of the minor, if (s)he is sixteen (16) years of age or older; and

(3) Copies of counsel's time sheets and other supporting documentation showing the nature and extent of services rendered, if counsel is claiming fees in excess of 25%.

(C) *Decrees.* If the gross settlement exceeds **[$2,500.00] $10,000.00**, counsel shall submit both a preliminary decree setting a hearing date and a proposed final decree setting forth the proposed distribution of the settlement proceeds. If the gross settlement is **[$2,500.00] $10,000.00** or less, counsel need submit only the proposed final decree.

2. *Filing of Petition.* In any action where a civil suit has been initiated by writ of summons or complaint, the petition shall be filed with the Prothonotary under the caption of the civil suit. No motions court cover sheet is required. In any action where no civil suit has been initiated, the petition shall be filed with the Clerk of the Orphans' Court under the caption "ABC, a minor."

3. *Hearing.* All petitions for gross settlements in excess of **[$2,500.00] $10,000.00** shall be set for hearing before a Judge of the Orphans' Court. The minor's presence is required at the hearing, unless (s)he is excused by the Court for cause shown. Petitions for settlements of **[$2,500.00] $10,000.00** or less may be approved without hearing, unless the Judge assigned to the matter, in his or her discretion, determines that a hearing is necessary.

4. *Affidavit of Deposit.* When a compromise settlement is approved by the Court, an Affidavit of Deposit of Minor's Funds shall be filed with the division of the Court where the petition was filed within 30 days of the date of the order approving the settlement. The Affidavit shall be substantially in the following form:

See Form

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA CIVIL DIVISION—LAW

_____ :
VS. : NO.
_____ :

AFFIDAVIT OF DEPOSIT OF MINOR'S FUNDS

I, _____ being duly sworn according to law depose and say:

1. I am employed by _____ as _____ .
(Name of bank or authorized depository)

2. I am authorized to make this affidavit on behalf of _____ .
(Name of bank or authorized depository)

3. On _____ the sum of $ _____ was deposited by _____ in an insured, interest-bearing Savings Account/Certificate of Deposit No. _____ pursuant to Order of Court dated _____ to File No. _____ .

4. Account/Certificate No. _____ is entitled _____ .

5. The express prohibition of withdrawals of income or principal prior to _____ without FURTHER ORDER OF COURT has been noted on the depository's records and on the passbook/certificate.

_____
Signature

_____
Print Name/Title

Sworn to and subsribed before me
this day of , 20 .

_____
Address

_____ _____
Notary Public

THIS AFFIDAVIT SHALL BE FILED IN THE OFFICE OF THE PROTHONOTARY, MONTGOMERY COUNTY COURTHOUSE, SWEDE AND AIRY STREETS, NORRISTOWN, PENNSYLVANIA WITHIN THIRTY (30) DAYS OF THE DATE OF THE ORDER OF COURT.

[Pa.B. Doc. No. 15-2275. Filed for public inspection December 24, 2015, 9:00 a.m.]

MONTGOMERY COUNTY

Amendment of Local Rules of Civil Procedure 206.4(c), 208.3(b), 1028(c), 1034(a) and 1035.2(a); No. 2015-00001

Order

And Now, this 9th day of December, 2015, the Court hereby Amends Montgomery County Local Rules of Civil Procedure 206.4(c), 208.3(b), 1028(c), 1034(a), and 1035.2(a). These Amended Local Rules shall become effective upon publication on the UJS Web Portal at http://ujsportal.pacourts.us.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.C.P. 239 and 239.8, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and one (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Law Library of Montgomery County, and one (1) copy with each Judge of this Court.

By the Court

WILLIAM J. FURBER, Jr.,
President Judge

Rule 206.4(c). Issuance of a Rule to Show Cause.

(1) * * *

(2) *Disposition.* Forty-five (45) days from the filing of the petition, the matter shall be referred to a Judge for disposition. If discovery was requested by either party on their respective cover sheets, said discovery shall be concluded within forty-five (45) days from the filing of the petition. If oral argument was requested by either party on their respective cover sheets, the matter may be scheduled for argument. If discovery or oral argument were not requested by either party, the Judge may direct the scheduling of discovery or oral argument, or may decide the matter upon the filings. If the respondent did not file an answer to the petition within the timeframe outlined in the proposed order, the Court will consider the petition without an answer, and enter an appropriate order in accordance with Rule 206.7(a).

(3) * * *

Comment: * * *

Rule 208.3(b). Motion Practice. Rule to Show Cause. Disposition of Motions.

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(7) *Disposition.* Once briefs, if required, are filed, the matter shall be referred to a Judge for disposition. If oral argument was requested by either party on their respective cover sheets or the argument praecipe, the matter may be scheduled for argument. If oral argument was not requested by either party, the Judge may direct the scheduling of argument, or may simply decide the matter upon the filings.

Comments: * * *

Rule 1028(c). Preliminary Objections.

(1) * * *

(2) * * *

(3) *Disposition.* Forty-five (45) days from the filing of preliminary objections, the matter shall be referred to a Judge for disposition. If discovery was requested by either party on their respective cover sheets, said discovery shall be concluded within forty-five (45) days from the filing of preliminary objections. If oral argument was requested by either party on their respective cover sheets, the matter may be scheduled for argument. If discovery or oral argument were not requested by either party, the Judge may direct the scheduling of discovery or oral argument, or may decide the matter upon the filings.

(4) * * *

Comments: * * *

Rule 1034(a). Motion for Judgment on the Pleadings.

(1) * * *

(2) * * *

(3) *Disposition.* Forty-five (45) days from the filing of the motion for judgment on the pleadings, the matter shall be referred to a Judge for disposition. If oral argument was requested by either party on their respective cover sheets, the matter may be scheduled for argument. If oral argument was not requested by either party, the Judge may direct the scheduling of oral argument, or may decide the matter upon the filings.

(4) * * *

Comments: * * *

Rule 1035.2(a). Motion for Summary Judgment.

(1) * * *

(2) * * *

(3) *Disposition.* Forty-five (45) days from the filing of the motion for summary judgment, the matter shall be referred to a Judge for disposition, unless the underlying case has already been praeciped for trial or ordered on the trial list, in which case the motion will be assigned to the trial judge for disposition. If discovery was requested by either party on their respective cover sheets, said discovery shall be concluded within forty-five (45) days from the filing of the motion. If oral argument was requested by either party on their respective cover sheets, the matter may be scheduled for argument. If oral argument was not requested by either party, the Judge may direct the scheduling of oral argument, or may decide the matter upon the filings.

(4) * * *

Comment: * * *

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