

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4, 5, 7 AND 10]

Order Adopting New Rule 705.1, Amending Rules 454, 462 and 1010 and Approving the Revision of the Comments to Rules 409, 414, 424, 455, 550, 590 and 704 of the Rules of Criminal Procedure; No. 471 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 9th day of March, 2016, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 44 Pa.B. 2369 (April 19, 2014), and in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 87), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Pennsylvania Rule of Criminal Procedure 705.1 and the amendments to Pennsylvania Rules of Criminal Procedure 454, 462, and 1010 are adopted, and the revision to the Comments to Pennsylvania Rules of Criminal Procedure 409, 414, 424, 455, 550, 590, and 704 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 July 1, 2016.

Justice Eakin did not participate in the decision of this matter.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART B(1). Procedures When Citation Is Issued to Defendant

Rule 409. Guilty Pleas.

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Comment

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When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

See Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

[With regard to the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.]

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule [430] 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; **Comment revised March 9, 2016, effective July 1, 2016.**

Committee Explanatory Reports:

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Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

PART B(2). Procedures When Citation Filed

Rule 414. Guilty Pleas.

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Comment

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When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

See Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For arrest warrant procedures, see Rules 430 and 431.

[With regard to the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.]

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64

adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; **Comment revised March 9, 2016, effective July 1, 2016.**

Committee Explanatory Reports:

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Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

PART C. Procedures in Summary Cases When Complaint Filed

Rule 424. Guilty Pleas.

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Comment

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When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

See Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

[With regard to the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.]

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; **Comment revised March 9, 2016, effective July 1, 2016.**

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Committee Explanatory Reports:

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Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

PART E. General Procedures in Summary Cases

Rule 454. Trial in Summary Cases.

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(F) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

(a) the amount of the fine and the obligation to pay costs;

(b) the amount of restitution ordered, including

(i) the identity of the payee(s),

(ii) to whom the restitution payment shall be made, and

(iii) whether any restitution has been paid and in what amount; and

(c) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority may provide for installment payments and shall state the date on which each installment is due;

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Comment

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Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. *See* 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Certain costs are mandatory and must be imposed. See, e.g., Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

Paragraph (E) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule 456(A).

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; **amended March 9, 2016, effective July 1, 2016.**

Committee Explanatory Reports:

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Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 amendments to paragraph (F) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Rule 455. Trial in Defendant's Absence.

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Comment

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Paragraph (D) provides notice to the defendant of conviction and sentence after trial *in absentia* to alert the defendant that the time for filing an appeal has begun to run. [See Rule 413(B)(3).] See Rules 408(B)(3), 413(B)(3), and 423(B)(3).

See Rule 454(F) for what information must be included in a sentencing order when restitution is included in the sentence.

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least 13 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 13 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph [(B)(4)] (D) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or

the defendant does not appear within the 10-day time period, the issuing authority may allege the defendant dependent under 42 Pa.C.S. § 6303(a)(1). Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.

If the defendant is 18 years of age or older and fails to pay or appear as required in paragraph (D), the issuing authority must proceed under these rules.

[For the defendant's right to counsel, see Rule 122.]

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

For arrest warrant procedures in summary cases, see Rules 430 and 431.

Official Note: Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended August 15, 2005, effective February 1, 2006; Comment revised January 17, 2013, effective May 1, 2013; Comment revised July 17, 2013, effective August 17, 2013; **Comment revised March 9, 2016, effective July 1, 2016.**

Committee Explanatory Reports:

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Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision cross-referencing the sentencing provision in Rule 454(F) published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

PART F. Procedures in Summary Cases for Appealing to Court of Common Pleas for Trial De Novo

Rule 462. Trial De Novo.

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(G) At the time of sentencing, the trial judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

(a) the amount of the fine and the obligation to pay costs;

(b) the amount of restitution ordered, including

(i) the identity of the payee(s),

(ii) to whom the restitution payment shall be made, and

(iii) whether any restitution has been paid and in what amount; and

(c) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the trial judge may provide for installment payments and shall state the date on which each installment is due;

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Comment

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The provisions of paragraph (C) that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, [438 Pa. Super. 400,] 652 A.2d 873 (Pa. Super. 1995).

Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

Paragraph (F) was amended in 2008 to permit a trial judge to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension), but only if he or she meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial *de novo* at the time of sentencing.

Pursuant to paragraph (G), if the defendant is convicted, the trial judge must impose sentence, and advise the defendant of the payment schedule, if any, and the defendant's appeal rights. See Rule 704(A)(3) and Rule 720(D). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Certain costs are mandatory and must be imposed. See, e.g., Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

Once sentence is imposed, paragraph (H) makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs, and the case may not be returned to the magisterial district judge. The execution of sentence includes the collection of any fines and restitution.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

For the procedures for appeals from the Philadelphia Municipal Court Traffic Division, see Rule 1037.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000,

effective July 1, 2000; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009; Comment revised October 16, 2009, effective February 1, 2010; Comment revised May 7, 2014, effective immediately; **amended March 9, 2016, effective July 1, 2016.**

Committee Explanatory Reports:

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NEW RULE 462:

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Final Report explaining the May 7, 2014 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Final Report explaining the March 9, 2016 amendments to paragraph (G) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 550. Pleas of Guilty Before Magisterial District Judge in Court Cases.

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Comment

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Prior to accepting a plea of guilty under this rule, it is suggested that the magisterial district judge consult with the attorney for the Commonwealth concerning the case, concerning the defendant's possible eligibility for ARD or other types of diversion, and concerning possible related offenses that might be charged in the same complaint. See *Commonwealth v. Campana*, [452 Pa. 233,] 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, [455 Pa. 622,] 314 A.2d 854 (Pa. 1974).

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See Rule 590 and the Comment thereto for further elaboration of the required colloquy. See also *Commonwealth v. Minor*, [467 Pa. 230,] 356 A.2d 346 (Pa. 1976), overruled on other grounds in *Commonwealth v. Minarik*, [493 Pa. 573,] 427 A.2d 623, 627 (Pa. 1981); *Commonwealth v. Ingram*, [455 Pa. 198,] 316 A.2d 77 (Pa. 1974); *Commonwealth v. Martin*, [445 Pa. 49,] 282 A.2d 241 (Pa. 1971).

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Withdrawal of the guilty plea is the only relief available before a magisterial district judge for a defendant who has entered a plea pursuant to this rule. Any further challenge to the entry of the plea must be sought in the court of common pleas.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

At the time of sentencing, or at any time within the 30-day period before transmitting the case to the clerk of courts pursuant to paragraph (E), the magisterial district

judge may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.

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Official Note: Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006; amended January 6, 2014, effective March 1, 2014; **Comment revised March 9, 2016, effective July 1, 2016.**

Committee Explanatory Reports:

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Final Report explaining the January 6, 2014 changes to the rule increasing the time for withdrawal of the guilty plea from 10 to 30 days published with the Court's Order at 44 Pa.B. 478 (January 25, 2014).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 705.1 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

PART H. Plea Procedures

Rule 590. Pleas and Plea Agreements.

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Comment

The purpose of paragraph (A)(2) is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea or plea of nolo contendere is voluntarily and understandingly tendered. On the mandatory nature of this practice, see *Commonwealth v. Ingram*, [455 Pa. 198,] 316 A.2d 77 (Pa. 1974); *Commonwealth v. Campbell*, [451 Pa. 198,] 304 A.2d 121 (Pa. 1973); *Commonwealth v. Jackson*, [450 Pa. 417,] 299 A.2d 209 (Pa. 1973).

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The Court in *Commonwealth v. Willis*, [471 Pa. 50,] 369 A.2d 1189 (Pa. 1977), and *Commonwealth v. Dilbeck*, [466 Pa. 543,] 353 A.2d 824 (Pa. 1976), mandated that, during a guilty plea colloquy, judges must elicit the information set forth in paragraphs (1) through (6) above. In 2008, the Court added paragraph (7) to the list of areas of inquiry.

Many, though not all, of the areas to be covered by such questions are set forth in a footnote to the Court's opinion in *Commonwealth v. Martin*, [455 Pa. 49, 54-55,] 282 A.2d 241, 244-245 (Pa. 1971), in which the colloquy conducted by the trial judge is cited with approval. See also *Commonwealth v. Minor*, [467 Pa. 230,] 356 A.2d 346 (Pa. 1976), and *Commonwealth v. Ingram*, [455 Pa. 198,] 316 A.2d 77 (Pa. 1974). As to the requirement that the judge ascertain that there is a factual basis for the plea, see *Commonwealth v. Maddox*, [450 Pa. 406,] 300 A.2d 503 (Pa. 1973) and *Commonwealth v. Jackson*, [450 Pa. 417,] 299 A.2d 209 (Pa. 1973).

It is advisable that the judge conduct the examination of the defendant. However, paragraph (A) does not prevent defense counsel or the attorney for the Commonwealth from conducting part or all of the examination of the defendant, as permitted by the judge. In addition,

nothing in the rule would preclude the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the plea proceedings. This written colloquy would have to be supplemented by some on-the-record oral examination. Its use would not, of course, change any other requirements of law, including these rules, regarding the prerequisites of a valid guilty plea or plea of nolo contendere.

The "terms" of the plea agreement, referred to in paragraph (B)(1), frequently involve the attorney for the Commonwealth—in exchange for the defendant's plea of guilty or nolo contendere, and perhaps for the defendant's promise to cooperate with law enforcement officials—promising concessions such as a reduction of a charge to a less serious offense, the dropping of one or more additional charges, a recommendation of a lenient sentence, or a combination of these. In any event, paragraph (B) is intended to insure that all terms of the agreement are openly acknowledged for the judge's assessment. See, e.g., *Commonwealth v. Wilkins*, [442 Pa. 542,] 277 A.2d 341 (Pa. 1971).

The 1995 amendment deleting former paragraph (B)(1) eliminates the absolute prohibition against any judicial involvement in plea discussions in order to align the rule with the realities of current practice. For example, the rule now permits a judge to inquire of defense counsel and the attorney for the Commonwealth whether there has been any discussion of a plea agreement, or to give counsel, when requested, a reasonable period of time to conduct such a discussion. Nothing in this rule, however, is intended to permit a judge to suggest to a defendant, defense counsel, or the attorney for the Commonwealth, that a plea agreement should be negotiated or accepted.

Under paragraph (B)(1), upon request and with the consent of the parties, a judge may, as permitted by law, order that the specific conditions of a plea agreement be placed on the record in camera and that portion of the record sealed. Such a procedure does not in any way eliminate the obligation of the attorney for the Commonwealth to comply in a timely manner with Rule 573 and the constitutional mandates of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. Similarly, the attorney for the Commonwealth is responsible for notifying the cooperating defendant that the specific conditions to which the defendant agreed will be disclosed to third parties within a specified time period, and should afford the cooperating defendant an opportunity to object to the unsealing of the record or to any other form of disclosure.

When a guilty plea, or plea of nolo contendere, includes a plea agreement, the 1995 amendment to paragraph (B)(2) requires that the judge conduct a separate inquiry on the record to determine that the defendant understands and accepts the terms of the plea agreement. See *Commonwealth v. Porreca*, [595 Pa. 46,] 595 A.2d 23 (Pa. 1991).

Former paragraph (B)(3) was deleted in 1995 for two reasons. The first sentence merely reiterated an earlier provision in the rule. See paragraph (A)(3). The second sentence concerning the withdrawal of a guilty plea was deleted to eliminate the confusion being generated when that provision was read in conjunction with Rule 591. As provided in Rule 591, it is a matter of judicial discretion and case law whether to permit or direct a guilty plea or plea of nolo contendere to be withdrawn. See also *Commonwealth v. Porreca*, [528 Pa. 46,] 595 A.2d 23 (Pa. 1991) (the terms of a plea agreement may determine a defendant's right to withdraw a guilty plea).

For the procedures governing the withdrawal of a plea of guilty or nolo contendere, see Rule 591.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

Paragraph (C) reflects a change in Pennsylvania practice, that formerly required the judge to convene a panel of three judges to determine the degree of guilt in murder cases in which the imposition of a sentence of death was not statutorily authorized. The 2008 amendment to paragraph (C) and the Comment recognizes the Commonwealth's right to have a jury determine the degree of guilt following a plea of guilty to murder generally. See Article I, § 6 of the Pennsylvania Constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused." See also *Commonwealth v. White*, [589 Pa. 642,] 910 A.2d 648 (Pa. 2006).

Official Note: Rule 319(a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective 30 days hence; specific areas of inquiry in Comment deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraph (c) added and Comment revised May 22, 1978, effective July 1, 1978; Comment revised November 9, 1984, effective January 2, 1985; amended December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 590 and Comment revised March 1, 2000, effective April 1, 2001; amended September 18, 2008, effective November 1, 2008; **Comment revised March 9, 2016, effective July 1, 2016.**

Committee Explanatory Reports:

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Final Report explaining the September 18, 2008 amendments to paragraph (C) concerning juries determining degree of guilt published with the Court's Order at 38 Pa.B. 5431 (October 4, 2008).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 705.1 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART A. Sentencing Procedures

Rule 704. Procedure at Time of Sentencing.

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Comment

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TIME FOR SENTENCING

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Paragraph (A)(2) is not intended to sanction *pro forma* requests for continuances. Rather, it permits the judge to extend the time limit for sentencing under extraordinary circumstances only. For example, additional pre-sentence procedures may be required by statute. See 42 Pa.C.S. §§ [9791—9799.5] 9799.11—9799.41 for pre-sentence assessment and hearing procedures for persons convicted of sexually violent offenses. [See also 42 Pa.C.S. § 9714(c) for hearing to determine high risk dangerous offender status.]

Because such extensions are intended to be the exception rather than the rule, the extension must be for a specific time period, and the judge must include in the record the length of the extension. A hearing need not be held before an extension can be granted. Once a specific extension has been granted, however, some provision should be made to monitor the extended time period to insure prompt sentencing when the extension period expires.

Failure to sentence within the time specified in paragraph (A) may result in the discharge of the defendant. See *Commonwealth v. Anders*, [555 Pa. 467,] 725 A.2d 170 (Pa. 1999) (discharge is appropriate remedy for violation of Rule [1405] 704 time limits, but only if the defendant can demonstrate that the delay in sentencing was prejudicial to the defendant).

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SENTENCING PROCEDURES

Paragraph (C)(1) retains the former requirement that the judge afford the defendant an opportunity to make a statement and counsel the opportunity to present information and argument relative to sentencing. The defendant's right to allocution at sentencing is well established, and the trial judge must inform the defendant of that right. See *Commonwealth v. Thomas*, [520 Pa. 206,] 553 A.2d 918 (Pa. 1989).

The duty of the judge to explain to the defendant the rights set forth in paragraph (C)(3) is discussed in *Commonwealth v. Wilson*, [430 Pa. 1, 5,] 241 A.2d 760, 763 (Pa. 1968), and *Commonwealth v. Stewart*, [430 Pa. 7, 8,] 241 A.2d 764, 765 (Pa. 1968).

The judge should explain to the defendant, as clearly as possible, the timing requirements for making and deciding a post-sentence motion under Rule 720. The judge should also explain that the defendant may choose whether to file a post-sentence motion and appeal after the decision on the motion, or to pursue an appeal without first filing a post-sentence motion.

Paragraph (C)(3) requires the judge to ensure the defendant is advised of his or her rights concerning post-sentence motions and appeal, and the right to proceed with counsel. See, e.g., *Commonwealth v. Librizzi*, 810 A.2d 692 (Pa. Super. 2002).

The rule permits the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the sentencing proceeding. This written colloquy must be supplemented by an on-the-record oral examination to determine that the defendant has been advised of the applicable rights enumerated in paragraph (C)(3) and that the defendant has signed the form.

Other, additional procedures are required by statute. See, e.g., 42 Pa.C.S. § 9756(b)(3) that imposes requirements on the judge when a defendant may be eligible to participate in a re-entry plan and 42 Pa.C.S. § 9756(b.1) that imposes requirements on the judge when a defendant may be eligible for a recidivism risk reduction incentive (RRRI) minimum sentence; 42 Pa.C.S. § [9795.3] 9799.23 that requires the judge to inform certain offenders of the duty to register; and 42 Pa.C.S. § 9813 that imposes requirements on the judge when a defendant may be eligible for work release.

After sentencing, following a conviction in a trial *de novo* in a summary case, the judge should advise the defendant of the right to appeal and the time limits

within which to exercise that right, the right to proceed *in forma pauperis* and with appointed counsel to the extent provided in Rule 122(A), and of the qualified right to bail under Rule 521(B). See paragraphs (C)(3)(a), (b), and (e). See also Rule 720(D) (no post-sentence motion after a trial *de novo*).

After sentencing, the judge should inquire whether the defendant intends to file a post-sentence motion or to appeal, and if so, should determine the defendant's bail status pursuant to paragraph (C)(3)(e) and Rule 521. It is recommended, when a state sentence has been imposed, that the judge permit a defendant who cannot make bail to remain incarcerated locally, at least for the 10-day period during which counsel may file the post-sentence motion. When new counsel has been appointed or entered an appearance for the purpose of pursuing a post-sentence motion or appeal, the judge should consider permitting the defendant to remain incarcerated locally for a longer period to allow new counsel time to confer with the defendant and become familiar with the case. See also Rule 120 (Attorneys—Appearances and Withdrawals).

It is difficult to set forth all the standards that a judge must utilize and consider in imposing sentence. It is recommended that, at a minimum, the judge look to the standards and guidelines as specified by statutory law. See the Judicial Code, 42 Pa.C.S. § 9701 *et seq.* See also *Commonwealth v. Riggins*, [474 Pa. 115,] 377 A.2d 140 (Pa. 1977) and *Commonwealth v. Devers*, [519 Pa. 88,] 546 A.2d 12 (Pa. 1988). The judge also should consider other preexisting orders imposed on the defendant. See 18 Pa.C.S. § 1106(c)(2)(iv). And see 42 Pa.C.S. § 9728.

[In all cases in which restitution is imposed, the sentencing judge must state on the record the amount of restitution, if determined at the time of sentencing, or the basis for determining an amount of restitution. See 18 Pa.C.S. § 1106 and 42 Pa.C.S. §§ 9721, 9728.]

For procedures in cases in which restitution is imposed, see Rule 705.1.

For the right of a victim to have information included in the pre-sentence investigation report concerning the impact of the crime upon him or her, see [71 P.S. § 180-9.3(1)] 18 P.S. § 11.201(4)—(5) and Rule 702(A)(4).

For the duty of the sentencing judge to state on the record the reasons for the sentence imposed, see *Commonwealth v. Riggins*, [474 Pa. 115,] 377 A.2d 140 (Pa. 1977) and *Commonwealth v. Devers*, [519 Pa. 88,] 546 A.2d 12 (Pa. 1988). If the sentence initially imposed is modified pursuant to Rule 720(B)(1)(a)(v), the sentencing judge should ensure that the reasons for the ultimate sentence appear on the record. See also Sentencing Guidelines, 204 PA. CODE §§ [303.1(b), 303.1(h), and 303.3(2)] 303.1(d)—(e) and 303.13(c).

In cases in which a mandatory sentence is provided by law, when the judge decides not to impose a sentence greater than the mandatory sentence, regardless of the number of charges on which the defendant could be sentenced consecutively, and when no psychiatric or psychological examination is required under Rule 702(B), the judge may immediately impose that sentence. *But see* Rule 702(A)(2), which requires that the court state on the record the reasons for dispensing with a pre-sentence

report under the circumstances enumerated therein. See also 42 Pa.C.S. § 9721 *et seq.*

No later than 30 days after the date of sentencing, a Pennsylvania Commission on Sentencing Guideline Sentence Form must be completed at the judge's direction and made a part of the record. In addition, a copy of the form must be forwarded to the Commission on Sentencing. 204 PA. CODE § 303.1(e).

With respect to the recording and transcribing of court proceedings, including sentencing, see Rule 115.

Official Note: Previous Rule 1405 approved July 23, 1973, effective 90 days hence; Comment amended June 30, 1975, effective immediately; Comment amended and paragraphs (c) and (d) added June 29, 1977, effective September 1, 1977; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment amended April 24, 1981, effective July 1, 1981; Comment amended November 1, 1991, effective January 1, 1992; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1405. Present Rule 1405 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended January 3, 1995, effective immediately; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996. Comment revised December 22, 1995, effective February 1, 1996. The April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; Comment revised April 18, 1997, effective immediately; Comment revised January 9, 1998, effective immediately; amended July 15, 1999, effective January 1, 2000; renumbered Rule 704 and amended March 1, 2000, effective April 1, 2001; Comment revised March 27, 2003, effective July 1, 2003; amended April 28, 2005, effective August 1, 2005; Comment revised March 15, 2013, effective May 1, 2013; **Comment revised March 9, 2016 effective July 1, 2016.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the March 15, 2013 revision of the Comment adding citations to the Sentencing Code published with the Court's Order at 43 Pa.B. 1705 (March 30, 2013).

Final Report explaining the March 9, 2016 revision of the Comment adding a cross-reference to Rule 705.1 concerning restitution published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

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

Rule 705.1. Restitution.

(A) At the time of sentencing, the judge shall determine what restitution, if any, shall be imposed.

(B) In any case in which restitution is imposed, the judge shall state in the sentencing order:

- (1) the amount of restitution ordered;
- (2) the details of a payment plan, if any, including when payment is to begin;
- (3) the identity of the payee(s);
- (4) to which officer or agency the restitution payment shall be made;

(5) whether any restitution has been paid and in what amount; and

(6) whether the restitution has been imposed as a part of the sentence and/or as a condition of probation.

Comment

This rule provides the procedures for the statutory requirement for the judge to impose restitution. In all cases in which restitution is imposed, the sentencing judge must state on the record the amount of restitution at the time of sentencing. See 18 Pa.C.S. § 1106 and 42 Pa.C.S. §§ 9721, 9728.

The extent of restitution also may be provided by statute. See, e.g., 18 Pa.C.S. § 1107 (restitution for timber theft); § 1107.1 (restitution for identity theft); and § 1110 (restitution for cleanup of clandestine labs).

When imposing restitution, the sentencing judge should consider whether the defendant has received notice of the intention to seek restitution prior to the hearing and whether the defendant intends to object to the imposition of restitution. The sentencing hearing may need to be continued as a result.

Paragraph (B)(6) requires that the sentencing order make clear whether any restitution is being imposed as a part of the sentence pursuant to 18 Pa.C.S. § 1106 or as a condition of probation pursuant to 42 Pa.C.S. § 9754. Unlike restitution imposed under § 1106 that is penal in nature, restitution imposed as a condition of probation is primarily aimed at rehabilitation. Sentences of probation give a trial court the flexibility to determine all the direct and indirect damages caused by a defendant. *Commonwealth v. Harner*, 617 A.2d 702 (Pa. 1992); *Commonwealth v. Hall*, 80 A.3d 1204 (Pa. 2013). Because a term of probation may not exceed the maximum term for which the defendant could be confined, and a court cannot enforce a restitution sentence past the statutory maximum date, a court may not require that restitution imposed as a condition of probation be paid beyond the statutory maximum date. *Commonwealth v. Karth*, 994 A.2d 606 (Pa. Super. 2010).

Certain costs are mandatory and must be imposed. See, e.g., Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

Official Note: New Rule 705.1 adopted March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Final Report explaining new Rule 705.1 concerning sentences of restitution published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

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

PART A. Philadelphia Municipal Court Procedures

Rule 1010. Procedures for Trial De Novo.

* * * * *

(D) At the time of sentencing, the Common Pleas Court judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

(a) the amount of the fine and the obligation to pay costs;

(b) the amount of restitution ordered, including

(i) the identity of the payee(s),

(ii) to whom the restitution payment shall be made, and

(iii) whether any restitution has been paid and in what amount; and

(c) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the Common Pleas Court judge may provide for installment payments and shall state the date on which each installment is due;

* * * * *

Comment

In any case in which there are summary offenses joined with the misdemeanor charges that are the subject of the appeal, the attorney for the Commonwealth must include the summary offenses in the information. See *Commonwealth v. Speller*, [311 Pa. Super. 569,] 458 A.2d 198 (Pa. Super. 1983).

Paragraph (B) makes it clear that the Common Pleas Court judge may dismiss an appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the Common Pleas Court judge must enter judgment and order execution of any sentence imposed by the Municipal Court judge. Nothing in this rule is intended to preclude the judge from issuing a bench warrant when the defendant fails to appear.

Certain costs are mandatory and must be imposed. See, e.g., Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

Once a judgment is entered and sentence is imposed, paragraph (E) makes it clear that the case is to remain in the Court of Common Pleas for execution of the sentence and collection of any costs, and the case may not be returned to the Municipal Court judge. The execution of sentence includes the collection of any fines and restitution and any proceedings for violation of probation, intermediate punishment, or parole as provided by Rule 708.

Official Note: Rule 6010 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended August 28, 1998, effective immediately; renumbered Rule 1010 March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended February 12, 2010, effective April 1, 2010; amended September 21, 2011, effective November 1, 2011; **amended March 9, 2016, effective July 1, 2016.**

Committee Explanatory Reports:

* * * * *

Final Report explaining the September 21, 2011 amendments to paragraphs (A)—(C) and adding new paragraphs (D) and (E) concerning the procedures for trials *de novo* in the Court of Common Pleas published with the Court's Order at 41 Pa.B. 5354 (October 8, 2011).

Final Report explaining the March 9, 2016 amendments to paragraph (D) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

FINAL REPORT¹

New Pa.R.Crim.P. 705.1, amendments to Pa.Rs.Crim.P. 454, 462, and 1010, and revisions to the Comments to Pa.Rs.Crim.P. 409, 414, 424, 455, 550, 590, and 704

Sentences of Restitution

On March 9, 2016, effective July 1, 2016, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule of Criminal Procedure 705.1 and the amendments to Rules of Criminal Procedure 454, 462, and 1010, and approved the revision to the Comments to Rules of Criminal Procedure 409, 414, 424, 455, 550, 590, and 704 to standardize the procedures by which restitution is awarded in criminal cases.

Background

These rule changes were developed from the Committee's study of the recommendations of the Restitution in Pennsylvania Task Force. The Task Force had been convened by the Pennsylvania Office of the Victim Advocate to study "solutions to increase the quality of restitution services at the state and county levels." The Task Force included representatives from a wide spectrum of agencies involved in the justice system. Two of the Task Force's recommendations are directed to the Rules of Criminal Procedure. One was to encourage "AOPC and/or the Court Rules Committee to standardize a restitution order for use at sentencing/disposition" and included suggested elements for such an order. The other recommendation was for the Committee to examine other jurisdictions "to consider whether any rules should be amended or new rules adopted to improve the collection of restitution."²

The Committee reviewed the report of the Restitution in Pennsylvania Task Force as well as the statutes that provide for the award of restitution and the practice in this area in several other jurisdictions. Subsequently, the Committee developed proposed rule changes that were published for comment in April of 2014. See 44 Pa.B. 2369 (April 19, 2014). As a result of publication responses and communications from the Court, the rule changes were revised to their current form.

Discussion

The Committee first considered the Task Force's conclusion that too often the question of restitution and the manner in which it is awarded is an afterthought at sentencing. The Committee concurred with this conclusion and considered it anomalous that Rule 706 addresses fines and costs but no rule mentions the procedures for awarding restitution. The Committee therefore concluded that it would be a good idea to have a general rule stating the requirement to order restitution as part of sentencing to provide greater emphasis on the actual award of restitution at time of sentencing and to require a minimum standard of information to be included directly in the sentencing order.

This new rule is numbered 705.1.³ Paragraph (A) of the rule is a statement reminding the sentencing judge to impose restitution. By use of the phrase "... restitution, if any . . .," it acknowledges that some cases may not have

restitution to impose. Originally, the Committee considered including a provision for the award of fines and costs. However, as the text of the rule and the Comment are directed primarily to restitution, it seemed to detract from the purpose of the rule to include provisions for fines and costs.

Paragraph (B) of the rule contains a list of elements that the judge should include in the sentencing order to identify the restitution award details and assist in its collection. Originally, this provision was contained in the Comment. The Committee concluded that it would be more effective in the rule itself. However, a concern was expressed that by placing this in the rule itself, unwarranted challenges might be raised based on a technical failure to include all the listed elements. Ultimately, the Committee concluded that it should be contained in the rule text to ensure compliance.

One of the problems the Committee discussed was that the nature of a restitution sentence varies depending on how the sentence was imposed. If awarded as part of the sentence, under 18 Pa.C.S. § 1106, the award is punitive in nature. However, it also may be imposed as a condition of probation pursuant to 42 Pa.C.S. § 9754. Unlike restitution imposed under § 1106 that is penal in nature, restitution imposed as a condition of probation is primarily aimed at rehabilitation. Because a term of probation may not exceed the maximum term for which the defendant could be confined, and a court cannot enforce a restitution sentence past the statutory maximum date, a court may not require that restitution imposed as a condition of probation be paid beyond the statutory maximum date. *Commonwealth v. Karth*, 994 A.2d 606 (Pa. Super. 2010). As a result, the means and extent to which the sentence can be enforced varies. The Committee determined that this issue should be described in the Comment and that the rule should require that the sentencing judge make clear in the sentencing order which of the two sentencing concepts are applicable to any restitution award. Therefore, this has been added to the list of items required to be in the sentencing order with a detailed explanation contained in last paragraph of the Rule 705.1 Comment.

As originally published, proposed Rule 705.1 also contained a requirement that a hearing or review be held prior to the expiration of probation when there is outstanding restitution owed. This would enable the court to decide whether to hold the defendant in violation for failure to pay before the court loses jurisdiction by the completion of the probation. A number of publication responses were received expressing the view that it would be unduly burdensome to require such a hearing or review in every case. They expressed the view that in cases in which restitution has been awarded, the courts and probation offices generally are maintaining good control over the collection process. This provision therefore was removed from the proposal.

The Committee also contemplated including procedures for adjudicating a restitution sentence. The Committee ultimately determined that any dispute as to restitution would occur usually at the sentencing hearing and that any subsequent challenge to the award would be part of a normal sentencing appeal. The Committee concluded that a separate provision to provide for this was unnecessary. However, the Committee agreed that there should be some notice to the defendant prior to sentencing. There was a divergence of opinion among the members as to whether the rules should require the prosecution to provide notice and information about any restitution well

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

² *Restitution in Pennsylvania Task Force Final Report*, <http://www.center-school.org/Restitution/index.html>, pgs 30 and 42.

³ In terms of placement, the new rule follows Rule 705 (Imposition of Sentence) which provides specifics regarding sentences that include incarceration. The Committee concluded that it is logical to follow this rule with one dealing with restitution.

in advance of the sentencing hearing. The Committee also acknowledged that in most cases there would not be a dispute as to restitution. Ultimately, the Committee agreed that the proposed amendments should not introduce a notice requirement that would be unnecessary and burdensome in most cases. Those cases in which restitution is disputed and notice is provided, the sentencing judge may need to permit a continuance. Therefore, language is included in the third paragraph of the Rule 705.1 Comment that the judge should consider the notice provided to the defendant and the defendant's desire to challenge the restitution before it is awarded, including the possible need to continue the sentencing hearing.

The Comment to Rule 704 contained a brief discussion of restitution sentences. Since Rule 705.1 now provides the fuller procedures for restitution sentences, the Rule 704 Comment language has been removed.

The Committee also considered whether the similar requirements should be added to the procedures for summary cases. The Committee agreed that it should. Paragraph (F) of Rule 454 (Trial in Summary Cases) has been amended to provide guidance as to what should be included in a restitution sentence similar to that which is provided for court cases in new Rule 705.1. A cross-reference to this provision has been added to the Comment to Rule 455 (Trial in Defendant's Absence) to ensure that the judge addresses restitution in these cases.

The Committee considered a suggestion that Rule 462(G)(1) and Rule 1010(D)(1), which address trials *de novo* in summary and Municipal Court case appeals, should contain provisions similar to the proposed amendments to Rule 454(F)(1) that describe the information that must be contained in a restitution sentence. The Committee agreed that the court in a trial *de novo*, in effect, would be imposing a new sentence. Therefore, this language has been added to these two rules.

Because Rules 462 and 1010 include provisions regarding costs as part of the sentence, this change prompted a discussion regarding the requirement to state the costs on a case at time of sentencing. The Committee agreed that the usual practice is not to have the costs available at the time of sentencing in court cases. Instead, due to the complexity of calculations, particularly because of certain statutorily required costs, the total costs are calculated after sentence is imposed, usually by the probation office. Ultimately, the Committee concluded that Rules 454, 462, and 1010 should state the sentence should include a statement concerning the obligation to pay costs rather than the costs themselves since these are invariably determined only after sentence has been imposed while the Comments to these rules should contain a reminder that the assessment of certain costs may be statutorily required.

Another suggestion was to add a cross-reference to Rule 705.1 to the Comment to Rule 550 since the latter rule, which addresses guilty pleas before magisterial district judges in court cases, includes procedures for imposing sentence. This suggestion caused the Committee to consider whether a similar cross-reference should be added to Rule 590 (Pleas and Plea Agreements) since that rule also referenced sentencing. The addition of these cross-references to the court case rules raised the question of whether to add a cross-reference to the new provisions in Rule 454 to the summary case guilty plea procedure rules, Rules 409, 414, and 424. The Committee ultimately concluded that all of these additions would be helpful and so have been included in the amendments.

Finally, several technical corrections have been made. In the Comments to Rules 409, 414, 424, and 455, there is a change to the terminology cross-referencing Rules 121 and 122 regarding "the defendant's right to counsel" to read "Concerning the appointment or waiver of counsel, see Rules 121 and 122," consistent with the similar changes made to Rule 431 in Recommendation 4 of 2014, which dealt with the incarceration in summary cases for failure to post collateral. Several corrections to outdated statutory cross-references in the Rule 704 Comment also have been made.

[Pa.B. Doc. No. 16-509. Filed for public inspection March 25, 2016, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Mass Tort Protocols; General Court Regulation No. 2013-01

Order

And Now, this 10th day of March, 2016, it is hereby *Ordered, Adjudged and Decreed* that Section 9 of General Court Regulation 2013-01, concerning Mass Torts protocols, is amended to read as follows:

9. The panel of former judges invited to participate in the special mediation of mass tort cases are the following:

1. Phyllis W. Beck, Retired Judge
Independence Foundation
Offices at the Bellevue
200 South Broad Street, Suite 1101
Philadelphia, PA 19102
2. Jane Cutler Greenspan, Retired Justice
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494
3. G. Craig Lord, Retired Judge
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
(215) 569-5496
4. James R. Melinson, Retired Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494
5. Russell Nigro, Retired Justice
210 W. Washington Square
Philadelphia, PA 19106
(215) 287-5866
6. Diane M. Welsh, Retired Judge
JAMS Arbitration, Mediation and ADR Services
1717 Arch Street
Suite 4010—Bell Atlantic Tower
Philadelphia, PA 19103
(215) 246-9494

7. Sandra Mazer Moss, Retired Judge
The Dispute Resolution Institute
Two Logan Square—6th Floor
18th and Arch Streets
Philadelphia, PA 19103
(215) 656-4374
8. William J. Manfredi, Retired Judge
1528 Walnut Street—4th Floor
Philadelphia, PA 19102
(215) 817-9825

All other terms of General Court Regulation 2013-01 shall remain in full force and effect.

This General Court Regulation is promulgated in accordance with Pa.R.C.P. No. 239 and the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration. The original General Court Regulation shall be filed with the Office of Judicial Records (formerly Prothonotary) in a Docket maintained for General Court Regulations issued by the Administrative Judge of the Trial Division, Court of Common Pleas of Philadelphia County, and shall be submitted to the *Pennsylvania Bulletin* for publication. Copies of the General Court Regulation shall be submitted to the Administrative Office of Pennsylvania Courts, the Civil Procedural Rules Committee, 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://courts.phila.gov/regs>.

By the Court

HONORABLE JACQUELINE F. ALLEN,
Administrative Judge, Trial Division

[Pa.B. Doc. No. 16-510. Filed for public inspection March 25, 2016, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

**Amended Local Rule 122.1 Court Appointed Counsel;
General Guidelines; AD-16 No. 000104-C1**

Order of Court

And Now, to-wit, this 24th day of February, 2016, it is hereby *Ordered, Adjudged* and *Decreed* that the Court of Common Pleas of Allegheny County, Pennsylvania, adopted the following Rule 122.1 Court Appointed Counsel; General Guidelines by unanimous vote of the Board of Judges on Wednesday, February 17, 2016, and shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

JEFFREY A. MANNING,
President Judge

Rule 122.1. Court Appointed Counsel; General Guidelines.

(a) The appointment of counsel for criminal cases shall be at the discretion of each Judge of the Fifth Judicial District and shall require a written motion by the Office of the Public Defender of Allegheny County setting forth the basis for the conflict.

(b) If, in any court case, prior to arraignment and the assignment of a Judge, the Office of the Public Defender of Allegheny County asserts a conflict in representation, the Office of the Public Defender shall refer a request to the Office of Conflict Counsel, which shall accept the case or if rejecting the case, refer the request to appoint to the Administrative Judge.

(c) After a Judge has been assigned to a case, the Public Defender shall file a petition to withdraw. The court shall make a determination on the record as to whether a valid conflict exists precluding the Public Defender's representation. If the Judge grants the petition, the Office of Conflict Counsel shall accept the case or refer the case to the assigned Judge for the appointment of counsel.

(d) In homicide cases and cases deemed by the Administrative Judge to be of a complex nature, the provisions of (b) and (c) shall not apply and, in those cases, the appointment of counsel shall be at the discretion of the Administrative Judge or his or her designee.

(e) The Administrative Judge of the Criminal Division shall maintain a list of eligible attorneys available for appointments. Attorneys interested in appointments shall submit a request for consideration to the Administrative Judge.

(f) Upon appointment by either the Administrative Judge or Trial Judge, private counsel will receive an appointment order with information concerning the date and time of the next court appearance. Counsel must be available on the next court appearance date.

(g) Attorneys requesting and accepting court appointments should be familiar with the procedures for consideration and court appointed counsel, the Court Appointed Counsel Fee Schedule, Billing Guidelines and Billing Procedures set forth by the Administrative Judge of the Criminal Division which are available in the Department of Records Office and published on the website of the Fifth Judicial District of Pennsylvania at www.alleghecourt.us.

[Pa.B. Doc. No. 16-511. Filed for public inspection March 25, 2016, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CARBON COUNTY

**Adoption of 56th Judicial District—Constable
Manual; No. CP-13-AD-0000005-2016**

Administrative Order No. 10-2016

And Now, this 11th day of March, 2016, it is hereby

Ordered and *Decreed*, that effective May 1, 2016, the Carbon County Court of Common Pleas *Adopts* the following Constable Manual governing the procedures to be followed by all Constables performing judicial duties for the 56th Judicial District.

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

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

2. File two (2) certified copies and one (1) computer diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of this Administrative Order on the Unified Judicial System's website at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Order in the Clerk of Courts' Office.

By the Court

ROGER N. NANOVIC,
President Judge

CONSTABLE MANUAL

I. General Provisions

A. Definitions—Subject to additional definitions contained in subsequent sections of this manual, the following words and phrases shall have, unless the context indicates otherwise, the meanings given to them in this section.

C.C.C.F.—Carbon County Correctional Facility

Clerk of Courts—The official, and that official's office, in the 56th Judicial District who, pursuant to 42 Pa.C.S.A. §§ 2756 and 2757, has the responsibility and function to maintain the official criminal case file and list of docket entries for each criminal proceeding, and to perform such other duties as required by rule or law.

Constable—All elected, court appointed, and/or deputy constables duly elected or appointed pursuant to statutory authority. As elected or appointed officials, constables are independent contractors and are not employees of the Commonwealth, the judiciary, or the municipality in which they serve.

Constable's Education and Training Board (C.E.T.B.)—The Constable's Education and Training Board established and created pursuant to 44 Pa.C.S.A. § 7143 responsible for developing basic training and firearms education for constables and to certify constables who perform judicial duties.

Controller—The duly elected County Controller for the County of Carbon empowered with the rights, duties, and responsibilities under the County Code, 16 P.S. § 101 et seq.

County—County of Carbon.

Court—The Court of Common Pleas for the 56th Judicial District.

Court Administrator—The District Court Administrator for the 56th Judicial District as designated by the Pennsylvania Supreme Court and the Administrative Offices of the Pennsylvania Courts.

Court Official—The Judges of the Court of Common Pleas for the 56th Judicial District, the Magisterial District Judges for the 56th Judicial District, the Carbon County District Court Administrator, the Chief Adult Probation Officer for the Carbon County Probation Department, and all employees in the respective offices.

Judicial Duties—Services and duties performed by a constable for the payment of fees as authorized by 44 Pa.C.S.A. § 7161, including all services specified therein

regardless of whether a fee is actually sought by the constable or paid by the County.

Magisterial District Judge—A public official having the power and authority of a magisterial district judge whose jurisdiction falls within the 56th Judicial District.

P.C.C.D.—Pennsylvania Commission on Crime and Delinquency.

Prothonotary—The duly elected Prothonotary for the 56th Judicial District empowered with the rights, duties, and responsibilities under 42 Pa.C.S.A. §§ 2736 and 2737, who has the responsibility to maintain official court records and to perform such other duties as required by rule or law.

Sheriff—The duly elected Sheriff for the County of Carbon empowered with the rights, duties, and responsibilities under the County Code, 16 P.S. § 101 et seq., including all deputies appointed in compliance with the County Code.

II. Powers and Duties

A. Requirements of Constables Performing Judicial Duties in the 56th Judicial District—Constables performing judicial duties within the 56th Judicial District must:

1. Be certified by C.E.T.B.

2. Post a bond with the Clerk of Courts' Office in the sum of \$2,500 conditioned upon the just and faithful discharge by the constable of the duties of his/her office. The bond shall be held in trust for the use and benefit of persons who may sustain injury by reason of a constable's neglect of duty. Proof of the filing of a bond must be provided to the Court Administrator's Office.

3. Maintain a policy of professional liability insurance providing coverage for the performance of judicial duties with a minimum coverage of \$250,000 per incident and a minimum aggregate of \$500,000 per year. Proof of insurance coverage must be filed with the Clerk of Courts Office and the Court Administrator's Office annually.

4. Maintain a valid and current Pennsylvania driver's license and required financial responsibility (automobile insurance) on any vehicle used for the performance of judicial duties. Proof of licensing and insurance must be provided to the Court Administrator's Office as required by that office. Absence of a driver's license does not preclude a constable who is otherwise approved by the Court to perform judicial duties from working with a constable pursuant to 44 Pa.C.S.A. § 7161(c), provided the unlicensed or uninsured constable does not operate a motor vehicle. However, unless accompanied by another constable who maintains a valid and current Pennsylvania driver's license and required financial responsibility, a constable who does not possess a valid driver's license or required financial responsibility shall not perform judicial duties.

5. Maintain current contact information with the Court Administrator's Office. Current contact information shall include constable's current address, telephone number, and cell phone number. Contact information shall also include information as to any other communication equipment utilized by the constable to perform judicial duties (e.g. pager, fax machine).

6. If carrying a firearm in the performance of judicial duties, a constable shall provide the Court Administrator's Office with proof of certification or qualification to carry or use firearms as provided by 44 Pa.C.S.A. § 7148.

7. Complete and provide the Controller with all vendor authorization documents, including the production of a

tax identification number as required by local, state, or federal law or policies and procedures of the Controller.

8. Provide the Court Administrator's Office with an executed acknowledgment evidencing the constable has received a copy of the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct and understands the provisions and terms set forth therein. The acknowledgment shall be in the form attached hereto as "Exhibit A."

9. Provide the Court Administrator's Office with an executed acknowledgment evidencing the constable has received a copy of the Constable Manual for the 56th Judicial District and understands the provisions and terms set forth in the manual governing the performance of judicial duties. The acknowledgment shall be in the form attached hereto as "Exhibit A."

B. Authorization to Perform Judicial Duties—No Magisterial District Judge, nor any other Court Official, shall request or otherwise authorize a constable to perform judicial duties, nor shall the Controller authorize payment of fees for a constable performing judicial duties, unless the constable has been designated by the Court Administrator's Office as a constable authorized to perform judicial duties.

1. The Court Administrator's Office shall maintain a list of all constables who are authorized to perform judicial duties within the 56th Judicial District. The Court Administrator's Office shall publish the list with all Magisterial District Judges in the 56th Judicial District; any other Court office utilizing constable services in the performance of judicial duties; the Controller; and the Clerk of Courts Office on a regular basis. This list shall be updated and published at least annually. In the event the privilege of a constable to perform judicial duties is revoked by the Court, the Court Administrator's Office shall promptly notify the identified offices of the same.

2. The Court Administrator's Office shall develop policy and procedure to effectuate and ensure a constable's compliance with the requirements set forth in Section A above.

C. Removal of Authorization to Perform Judicial Duties—Although a constable may only be removed or disciplined for acts of malfeasance or misfeasance upon petition of the District Attorney or an individual citizen (see 13 P.S. § 31), a constable's authorization to perform judicial duties pursuant to Section B above may be revoked at any time pursuant to the authority of the President Judge for the 56th Judicial District.

1. A constable's authority to perform judicial duties may be revoked in the following circumstances:

a. a constable permits his/her compliance with the requirements of Section A above to lapse;

b. the constable commits a breach of the duties or requirements of this manual including, but not limited to, the Constable Code of Conduct as set forth in Section V herein;

c. the constable commits any violation of the law while in the performance of judicial duties or is otherwise convicted of criminal conduct which places the integrity or honesty of the constable at issue;

d. the constable commits any act which jeopardizes public trust in or brings disrespect to the Court.

2. Court Officials who know, or have reason to believe, that a constable has committed a violation of the Code of

Conduct or the provisions of the Constable Manual shall promptly inform the Court Administrator's Office of the same.

3. All complaints of constable misconduct, including complaints related to failure to comply with the Constable Manual, shall be promptly investigated by the Court Administrator. The results of the investigation shall be provided to the President Judge for further action, if any.

D. Minimum Requirements—Compliance with the provisions of this manual does not guarantee a constable the right to perform judicial duties for a Magisterial District Judge. Rather, the provisions of this section set forth the minimum requirements which must be complied with before a constable may be utilized by a Magisterial District Judge to perform judicial duties. Magisterial District Judges retain the right to assign constable work within their reasonable discretion provided the utilized constable is otherwise in compliance with this section.

III. Warrant Procedures

A. Definitions—The following words and phrases shall have, unless the context indicates otherwise, the meanings given to them in this section.

Legal Holiday—For purposes of this manual, the following shall be defined as legal holidays: New Year's Day, Martin Luther King, Jr.'s Day, Presidents' Day, Good Friday, Easter, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the Day after Thanksgiving Day, and Christmas Day. For those holidays identified herein which annually fall on a rotating calendar day, the actual date shall be defined as the day designated as the federal holiday.

Arrest Warrant—An arrest warrant for a misdemeanor/felony offense issued pursuant to Pa.R.Crim.P. 513 et. al by a Magisterial District Judge for private criminal complaints, including those filed by the Pennsylvania Department of Inspector General, and which have been approved by the District Attorney's Office.

Summary Warrant—A warrant issued by a Magisterial District Judge pursuant to Pa.R.Crim.P. 430. This definition includes both arrest warrants and bench warrants issued pursuant to Rule 430.

B. Summary Warrants and Misdemeanor/Felony Warrants for Private Criminal Complaints—The following procedures shall apply to the issuance and service of these warrants.

1. Magisterial District Judges possess the exclusive right, subject to the authority of the President Judge, to distribute warrants issued by them to a constable of their choice who satisfies the requirements of the C.E.T.B., this manual, and the Court Administrator's Office to perform judicial duties. Magisterial District Judges shall issue warrants where appropriate pursuant to the Pennsylvania Rules of Criminal Procedure and prevailing law.

2. Upon issuance of a warrant, the Magisterial District Judge may assign the warrant to a constable authorized to perform judicial duties by the Court Administrator's Office. Unless the warrant is unassigned, no constable other than the assigned constable shall serve a warrant within 60 days of the initial issuance of the warrant by the Magisterial District Court, subject to the following:

a. If the subject of the warrant is in the custody of the Sheriff's Department as a result of contact between the subject and the Sheriff's Department unrelated to the warrant or in the custody of prison officials in which case a duplicate warrant may be issued to the Sheriff's

Department. In the event the Sheriff's Department serves such a warrant, the Magisterial District Judge, upon notice of the same, shall promptly alert the assigned constable that the warrant has been served; or

b. If the subject of the warrant is present in the Carbon County Courthouse and, as a result of routine examination by the Sheriff's Department of any person appearing before the Court of Common Pleas or other information acquired by the Sheriff's Department, the Sheriff's Department learns that an individual present in or at the Courthouse is the subject of a warrant, a duplicate warrant may be issued to the Sheriff's Department. In the event the Sheriff's Department serves such a warrant, the Magisterial District Judge, upon notice of the same, shall promptly alert the assigned constable that the warrant has been served; or

c. If the subject of the warrant is in the custody of a constable who has exercised custody pursuant to another warrant issued and served in compliance with this manual in which case the original warrant shall be recalled and reissued to the constable who has custody of the subject; or

d. If the subject of the warrant is in the custody of a constable as the result of execution of another warrant issued by a Court official or Magisterial District Judge of another Judicial District of this Commonwealth in which case the original warrant shall be recalled and reissued to the Constable.

3. Upon service of the warrant, the constable to whom the warrant has been assigned shall immediately notify the issuing authority of service and promptly return a certified copy of the warrant to the District Court evidencing service of the warrant.

4. If the subject of the warrant is in the custody of a municipal or state police officer who, for any reason, has taken the subject before the issuing authority, the Magisterial District Judge shall promptly notify any constable to whom the warrant has been assigned that the warrant has been served.

5. During the normal operating hours of the Magisterial District Court, if a Constable reasonably believes he/she will be able to serve a summary warrant which has been assigned to another Constable, or is unassigned, within the next 12 hours, he/she shall contact the issuing District Court in which case a warrant may be issued to the Constable.

6. All assigned, unserved summary warrants shall be available for service by any constable authorized to perform judicial duties in the 56th Judicial District after the 60th day following issuance of the warrant. In all such cases, it shall be the responsibility of the constable seeking to serve the warrant to review the warrant and determine if the warrant is available to be served by that constable. A constable shall not request a warrant to be reissued unless imminent service of the warrant is anticipated. For purposes of this paragraph, imminent service requires a good faith belief as to the whereabouts of the subject of the warrant and the likelihood that the warrant will be served within the immediately subsequent 12-hour period.

7. When a summary warrant is issued pursuant to Pa.R.Crim.P. 430, upon service of the warrant, the constable shall either:

a. Accept a signed guilty plea together with payment in full of the amount of the fines and costs as stated on the warrant;

b. Accept from the defendant a signed not guilty plea together with payment in full of the amount of the collateral stated on the warrant; or

c. If the defendant is unable to pay the full amount of the fines and costs or collateral, cause the defendant to be taken without unnecessary delay before the issuing authority during normal court hours, or before the on-call Magisterial District Judge.

8. When a constable accepts fines and costs or collateral, the constable shall issue a receipt to the defendant setting forth the amount of the fines and costs or collateral received and promptly return a copy of the receipt, signed by the defendant and constable, to the proper issuing authority. Constables must return the warrant and any pleas, fines, costs, and/or restitution collected to the issuing authority no later than the close of business during the same business day; or if served after normal court hours, on the next business day. Constables should make every effort to resolve service of the warrant as per Pa.R.Crim.P. 430 before physically transporting the defendant to the proper issuing authority, or on-call Magisterial District Judge.

9. A constable shall not serve a summary warrant issued pursuant to Pa.R.Crim.P. 430 at a residence between the hours of 10:00 p.m. and 6:00 a.m., or after 10:00 p.m. on the day preceding a legal holiday until after 6:00 a.m. of the day following the legal holiday.

10. A constable shall not attempt to serve a summary warrant or take the subject of such a warrant into custody unless in possession of a valid warrant.

C. *Return of Unserved Warrants*

1. A constable who has been issued a warrant pursuant to this manual shall return the warrant to the Magisterial District Court at the expiration of sixty (60) days of its issuance or 12 hours for those warrants issued pursuant to Chapter III, B(5), (6) if the constable is unable to execute or effectuate service within those time periods. Failure to return the warrant within the time period set forth herein may, at the discretion of the President Judge, result in a revocation/restriction of one's right to perform judicial duties.

2. A constable shall not, under any circumstance, make a duplicate or copy of any warrant for purposes of service.

D. *Warrant Service on Incarcerated Parties*

1. Unless expressly approved in advance by the Issuing Authority, President Judge or Court Administrator, warrant service on parties already incarcerated or otherwise in the custody of prison officials [is not authorized and] will not be compensated.

2. The Court may authorize payment in Summary Warrant matters in the event, through the efforts of a constable seeking a defendant, the constable learns that a defendant is incarcerated in a County jail outside of Carbon County but within the Commonwealth, and relays that information to the issuing authority.

a. The Magisterial District Judge must indicate that he/she was unaware that the defendant was incarcerated in a County jail outside of Carbon County but within the Commonwealth when the warrant was issued.

IV. **Compensation**

A. *Preliminary Provisions*—Constables shall be paid fees in compliance with the fee schedule set forth in 44 Pa.C.S.A. § 7161 or subsequent legislative act or rule of court. Constables shall not be paid a fee for any judicial act committed in violation of the provisions of this

manual. Fees shall not be paid unless the request for fees is made in compliance with the procedures set forth in this chapter. When three or more warrants are served on the same subject of the warrant, compensation shall be paid for a maximum of three warrants served.

B. Reimbursement Procedure—Constables shall comply with the procedures of this section in seeking reimbursement for services. A request for reimbursement of services not in compliance with the procedures of this section may be denied on that basis.

1. Magisterial District Judge Warrants—Payment for the performance of judicial duties related to the issuance of a warrant by a Magisterial District Judge shall be submitted to the Magisterial District Judge who authorized the service on the form prescribed by the Court Administrator's Office or the Administrative Office of the Pennsylvania Courts. See Exhibit "B" attached to this manual. The Magisterial District Judge shall acknowledge receipt of the request by executing the same and promptly forwarding the request to the County Controller's Office for payment. Execution of a constable's fee request by a Magisterial District Judge evidences that the Magisterial District Judge authorized the service for which fee reimbursement is being requested.

2. All reimbursement forms shall be completed in their entirety. A form which is incomplete will be returned to the constable by the Magisterial District Court promptly and shall be considered as not having been filed for purposes of the time period set forth in Section IV(C) of this manual.

C. Time of Invoice—Request for payment of all fees shall be made to the Magisterial District Judge in the manner directed by this manual within 30 days of the date of the performed service. Although the County's liability for the payment of fees submitted after 30 days of the date of service shall be controlled by prevailing law, failure to submit requests for payment of fees within the time period set forth herein may result in the revocation of a constable's privilege to perform judicial duties.

D. Mileage—The following rules shall apply to reimbursement for actual mileage:

1. Actual mileage for travel by motor vehicle shall be reimbursed at a rate equal to the highest rate allowed by the Internal Revenue Service.

2. No constable shall undertake travel in the performance of judicial duties by any mode other than motor vehicle, unless prior written consent for the same is authorized by the Court Administrator.

3. In effectuating service of a warrant, actual mileage for travel by motor vehicle for purposes of the payment of fees shall be the number of miles from the issuing authority's office to the location where the warrant is served plus the number of miles to the location of commitment, if necessary, plus the number of miles from the commitment location to the issuing authority's office. Where commitment does not occur, actual mileage for travel by motor vehicle for purposes of the payment of fees shall be the number of miles from the issuing authority's office to the location where the warrant is served plus the number of miles to the location where acceptance of payment or collateral is made, plus the number of miles from this location to the issuing authority's office.

E. Hours Worked—All work that calculates reimbursement by the hour shall be rounded to the nearest quarter-hour.

F. Second Constable—Upon prior approval by the issuing authority, when a second constable is utilized in the service of a warrant, the second constable shall also examine the warrant to ensure that service of the warrant is in compliance with the provisions of this Manual. The second constable shall follow all requirements as described in the Manual and will be held to the same standards as the constable who obtained the warrant for service.

V. Constable Code of Conduct

A. Introduction—A fair and independent court system is essential to the administration of justice. Although constables are not employees of the Commonwealth, the judiciary or any municipal agency, as an independent contractor, they provide services and aid to the judicial process. Proper conduct by those involved in assisting the judicial process inspires public confidence and trust in the Courts and conveys the values of impartiality and fairness that promote the integrity of our system of justice. A constable's conduct reflects upon the Court's commitment to serving the public. A constable performing judicial duties shall observe high standards of conduct so that the integrity and independence of the judicial system are preserved. The provisions of this code shall be applied to further those objectives. All constables performing judicial duties shall observe the standards of conduct set forth in this section. These standards however shall not limit or preclude, nor be interpreted to limit or preclude, other more stringent standards as established by law or by Court order or rule.

B. Performance of Judicial Duties—Constables performing judicial duties shall conduct themselves in an appropriate and lawful manner at all times and shall adhere to the following standards. Constables performing judicial duties:

1. Shall not engage in any form of discrimination, harassment, or retaliation against any person as prohibited by law or Court policy;

2. Shall not engage in any form of violence, threat of violence, or disruptive conduct;

3. Shall not make intentionally false or misleading statements when performing judicial duties. Specifically, a constable may not make a false statement of material fact or law or fail to correct a false statement of material fact or law to any party for purposes of obtaining compliance or forfeiture by a person of their legal rights;

4. Shall not falsify, or improperly alter or destroy work-related documents or records;

5. Shall not be impaired by alcohol, drugs, medications, or other intoxicating substances while performing judicial duties;

6. Shall not give legal advice while performing judicial duties beyond an explanation of the duty they are performing and one's right to be represented by counsel;

7. Shall not illegally possess weapons or controlled substances while performing judicial duties;

8. Shall avoid impropriety or the appearance of impropriety in the performance of all judicial duties;

9. Shall not commit any violation of the law while performing their judicial duties;

10. Shall not be convicted of any crime which shall place their integrity, honesty, or credibility at issue or otherwise negatively reflect upon the integrity and independence of the Court or Court offices;

11. Shall not make any sexual advance, request for sexual favors, or perform other verbal or physical conduct of a sexual nature while in the performance of judicial duties. Such conduct shall include but is not limited to touching, fondling, patting, pinching, kissing, or other physical contact for sexual gratification;

12. Shall treat all those with whom they interact, including Court staff, with professionalism, dignity, respect, and impartiality;

13. Shall cooperate with all law enforcement agencies and their representatives including the Sheriff's Department, the C.C.C.F., and Carbon County staff;

14. Shall not use any means that has no substantial purpose other than to embarrass, delay, or burden the rights of another person or use methods that violate the legal rights of such person;

15. Shall not in any manner hold himself/herself out to be an agent, employee, or representative of any Court office; and

16. Shall not utilize a motor vehicle in the performance of judicial duties contrary to the provisions of the Pennsylvania Motor Vehicle Code.

C. *Confidentiality*—Constables shall not disclose or use confidential information obtained through the performance of judicial duties for any purpose not connected with the performance of their judicial duties.

D. *Conflicts of Interest*—

1. Constables shall not solicit, accept, or agree to accept anything of value from any person or entity doing or seeking to do business with, or having an interest in a matter related to the performance of judicial duties.

2. Constables shall not permit family, social, or other relationships to influence their official conduct or judgment, or to create the appearance of influence in the exercise of their official conduct or judgment, while in the performance of judicial duties. Constables performing judicial duties shall inform the Court Administrator of any situation creating undue influence or the appearance of undue influence.

3. Constables shall not use the resources, employees, property, facilities, time, or any funds under their control while in the performance of their judicial duties to improperly benefit them or any other person.

E. *Use of Force*—A constable's use of force shall be consistent with Pennsylvania law and in compliance with

training and education provided by the C.E.T.B. A constable shall never employ unnecessary force or violence and shall use only such force in the discharge of duty as is reasonable under the circumstances. While the use of force is occasionally unavoidable, every constable in the performance of judicial duties shall refrain from applying any unnecessary infliction of pain or suffering and shall never engage in cruel, degrading, or inhuman treatment of any person. A constable shall not fire, unholster, or otherwise remove a firearm from its holster in the performance of judicial duties unless the same is necessary for the defense of the constable or others in response to the threat or use of deadly force against the constable or another where the action is consistent with firearms training provided by P.C.C.D. In no event shall a firearm be unholstered for purposes of intimidation.

F. *Appearance*—

1. *Dress*—All constables shall dress in customary law enforcement uniform or casual business dress while performing judicial duties. Denim jeans are considered neither customary law enforcement uniform nor casual business dress and are prohibited.

2. *Sign of Authority*—While in the performance of judicial duties, all constables shall prominently display a badge of authority on their outermost clothing. The badge of authority shall consist of either a Pennsylvania state constable patch or a badge pinned to the outermost garment, displayed around the neck, or attached to a belt. Additionally, while performing judicial duties, a constable shall carry at all times a constable certification card issued by C.E.T.B. indicating certification number and expiration date.

G. *Duty to Report*—Constables who are arrested, charged with, or convicted of a crime, including summary offenses, which occurred while the constable was acting in the course of performing judicial duties, shall report this fact to the Court Administrator at the earliest opportunity, however, in no event shall this report be made later than three (3) business days from the date of arrest or receipt of charges. Constables who are arrested, charged with, or convicted of a crime, other than summary traffic offenses not committed while in the performance of judicial duties, regardless of the jurisdiction in which the conduct occurred, shall report this fact to the Court Administrator at the earliest reasonable opportunity, however, in no event shall this report be made later than three (3) business days from the date of the arrest or receipt of charges.

Exhibit A

ACKNOWLEDGMENT

I, _____, have received a copy of the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct. I also acknowledge receipt of a copy of the Fifty-Sixth Judicial District Constable Manual. I understand that in order to perform judicial duties, or to be paid for work performed for the Fifty-Sixth Judicial District, I must abide by the procedures and requirements set forth in the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct and the Fifty-Sixth Judicial District Constable Manual, including the Code of Conduct, and hereby agree to abide by those procedures and requirements.

Print Name

Date

Signature

Witness

THE COURTS

Exhibit B

CARBON COUNTY CONSTABLE PAYMENT SHEET

CONSTABLE NAME _____ CONSTABLE NUMBER _____
DISTRICT COURT NUMBER _____ DISTRICT JUDGE _____
DEFENDANT'S NAME _____ DOCKET NUMBER _____
DEFENDANT'S ADDRESS _____

Table with 6 columns: SERVICE, FEE, DATE(S) SERVICES PERFORMED, SERVICE, FEE, DATE(S) SERVICES PERFORMED. Rows include WARRANT, ARRAIGNMENT, HOW WAS SERVICE MADE?, COMMIT TO, RETURN OF SERVICE, CONVEY (FINGERPRINTING), FINGERPRINTING, RELEASED ON BOND, OTHER, TO: OTHER, OTHER.

* MAY ONLY BE CHARGED ONCE PER DEFENDANT PER DATE HANDLED TOTAL \$ _____
NAME OF ASSISTING CONSTABLE OR DEPUTY _____

Table with 3 columns: DATE, FROM/TO, MILES. Multiple rows for recording travel dates and distances.

MILEAGE @ _____ CENTS PER MILE TOTAL MILES _____ MILES \$ _____
ATTACH ADDITIONAL SHEETS, IF NECESSARY.

CETA \$ _____
TOTAL AMOUNT DUE \$ _____

I HEREBY CERTIFY THAT THE ABOVE SERVICES HAVE BEEN PERFORMED.

THE UNDERSIGNED HEREBY CERTIFIES THAT THE ABOVE SERVICES HAVE BEEN PERFORMED AND THAT NO OTHER REQUESTS FOR PAYMENT FOR THESE SERVICES HAS BEEN MADE.

_____ DAY OF _____, _____
DISTRICT JUDGE (DISTRICT COURT SEAL)

SIGNATURE OF CONSTABLE

[Pa.B. Doc. No. 16-512. Filed for public inspection March 25, 2016, 9:00 a.m.]