

# THE COURTS

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 1650 ]

#### Proposed Amendment of Pa.R.C.P. Nos. 1653 and 1656

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P. Nos. 1653 and 1656 governing actions upon mechanics' liens, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

Karla M. Shultz, Counsel  
Civil Procedural Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
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civilrules@pacourts.us

All communications in reference to the proposal should be received by September 2, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Civil Procedural  
Rules Committee*

WILLIAM S. STICKMAN, IV,  
*Chair*

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1650. ACTIONS IN MECHANICS' LIENS

#### Rule 1653. Commencement of Action.

An action shall be commenced by filing a **complaint** with the prothonotary.

[ (a) a complaint, or

(b) an agreement for an amicable action. ]

**The complaint shall be filed under the same docket number as the claim for the mechanics' lien.**

**Official Note:** To file a claim for a mechanics' lien, see the Mechanics' Lien Law of 1963, 49 P.S. § 1101-1902.

#### Rule 1656. The Complaint.

(a) The plaintiff shall set forth in the complaint

(1) the name and address of each party to the action and if the action is commenced by a subcontractor, the name and address of the contractor;

(2) [ **the court and number and** ] the date of the filing of the claim [ **and a copy thereof as an exhibit** ]; **and**

(3) a demand for judgment.

**(b) The plaintiff shall attach a copy of the claim to the complaint as an exhibit.**

**Official Note:** A claim for a mechanics' lien and the complaint to obtain judgment on the mechanics' lien shall be filed under the same docket number. See Rule 1653.

#### Explanatory Comment

The Civil Procedural Rules Committee is proposing the amendment of Rules 1653 and 1656 governing actions to obtain judgment on mechanics' liens to clarify and update both rules. Rule 1653 governing commencement of the action, is being amended in two respects. First, the rule currently allows for an action to obtain judgment on a mechanics' lien to be initiated by complaint or agreement for an amicable action. The proposed amendment would limit initiation of an action by complaint only. The agreement for an amicable action was deleted from Rule 1007 governing the commencement of general civil actions in 1991 because it was a device little used in modern practice, and could be achieved through alternate procedures. See Rule 1007, Explanatory Comment—1991. The proposed amendment of Rule 1653 will conform actions to obtain judgment on mechanics' liens to modern practice.

Second, the Rules of Civil Procedure are silent as to whether a claim for a mechanics' lien should be filed under the same or separate docket number as the complaint to obtain judgment on a mechanics' lien. The proposed amendment requires that the claim and the complaint should be filed under the same docket number to clarify procedure. The requirement to use one docket number would apply to all complaints filed after the effective date of the proposed amendment.

A proposed note has been added to Rule 1656 governing the complaint to aid practitioners as to the requirements for filing a mechanics' lien and the subsequent complaint to obtain judgment.

*By the Civil Procedural  
Rules Committee*

WILLIAM S. STICKMAN, IV,  
*Chair*

[Pa.B. Doc. No. 16-1156. Filed for public inspection July 8, 2016, 9:00 a.m.]

# Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 5 ]

## Proposed Amendments of Pa.R.Crim.P. 590

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 590 (Pleas and Plea Agreements) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

Jeffrey M. Wasileski, Counsel  
 Supreme Court of Pennsylvania  
 Criminal Procedural Rules Committee  
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All communications in reference to the proposal should be received by no later than Friday, September 16, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural Rules Committee*

JEFFREY A. MANNING,  
*Chair*

### Annex A

## TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

### PART H. Plea Procedures

#### Rule 590. Pleas and Plea Agreements.

\* \* \* \* \*

#### (B) PLEA AGREEMENTS.

(1) [ **When** ] **At any time prior to the verdict, when** counsel for both sides have arrived at a plea agreement, they shall state on the record in open court, in the presence of the defendant, the terms of the agreement, unless the judge orders, for good cause shown and with the consent of the defendant, counsel for the defendant, and the attorney for the Commonwealth, that specific conditions in the agreement be placed on the record in camera and the record sealed.

(2) The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea or plea of nolo contendere is based.

**(3) Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule mandating deadline dates for the acceptance of a plea entered pursuant to a plea agreement.**

#### (C) MURDER CASES.

In cases in which the imposition of a sentence of death is not authorized, when a defendant enters a plea of guilty or nolo contendere to a charge of murder generally, the degree of guilt shall be determined by a jury unless the attorney for the Commonwealth elects to have the judge, before whom the plea was entered, alone determine the degree of guilt.

#### Comment

\* \* \* \* \*

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.

**Paragraph (B)(1) was amended and paragraph (B)(3) was added in 2016 to clarify that the intent of this rule is that a plea made pursuant to an agreement may be entered any time prior to verdict. Any local rule that places a time limit for the entry of such pleas prior to verdict is in conflict with this rule and therefore invalid.**

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.

\* \* \* \* \*

**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; **amended** , 2016, effective , 2016.

*Committee Explanatory Reports:*

\* \* \* \* \*

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).

**Report explaining the proposed amendments concerning plea agreement deadlines published for comment at 46 Pa.B. 3637 (July 9, 2016).**

### REPORT

#### *Proposed amendment of Pa.R.Crim.P. 590*

#### **Plea Bargain Deadline**

It has come to the Committee's attention that several counties have local rules that contain a date after which a defendant may not enter a plea pursuant to an agreement.<sup>1</sup> These rules provide that if this date is missed, the defendant is then required to enter an open plea or take a trial.

The Committee has concluded that these provisions are in conflict with statewide Rule 590(B) that provides the procedures for the entry of pleas made pursuant to a plea agreement. Rule 590(B) provides:

- (1) When counsel for both sides have arrived at a plea agreement, they shall state on the record in open court, in the presence of the defendant, the terms of the agreement, unless the judge orders, for good cause shown and with the consent of the defendant, counsel for the defendant, and the attorney for the Commonwealth, that specific conditions in the agreement be placed on the record in camera and the record sealed.
- (2) The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea or plea of *nolo contendere* is based.

Statewide Rule 590(B) does not contain a temporal limit for the entry of a negotiated plea. The creation of such a deadline in a local rule constitutes an additional local requirement not contemplated by the statewide rule and creates an inconsistency with practice elsewhere in the Unified Judicial System.

The Committee recognizes that there is no right to a plea bargain and a trial judge has a great amount of discretion in whether to accept a plea bargain. The Committee also appreciates that the main rationale of these local deadlines is to more effectively administer a court's trial case load. However, from a practical standpoint, there are a number of circumstances in which a negotiated plea may be entered late in a case, even during trial. For example, the way in which the evidence develops may significantly alter the parties' positions on a

negotiated plea. An absolute bar on the acceptance of post-deadline agreements is counter-productive. While some "down-time" may result when a scheduled trial is resolved by a plea, it seems far less inefficient than forcing the parties into a trial that they are willing to forego for a negotiated plea. The Committee members believe that a trial judge should exercise individualized consideration on the merits of a negotiated plea in determining whether to accept or reject it rather than reliance on a set deadline. Therefore, the Committee has concluded that the prerogative of the parties to freely enter into a negotiated disposition of a case should not be summarily refused solely because of the timing of the presentation of the agreement to the court.

Although the Committee has concluded that such local rules are already in conflict with statewide Rule 590, it was believed that some clarification of this point would be beneficial. Therefore, Rule 590(B)(1) would be amended by the addition of a prefatory statement that a plea pursuant to an agreement may be entered any time prior to the verdict. The prohibition against plea entry deadlines would be further elaborated in the Comment.

[Pa.B. Doc. No. 16-1157. Filed for public inspection July 8, 2016, 9:00 a.m.]

### [ 234 PA. CODE CH. 7 ]

#### **Proposed New Pa.R.Crim.P. 791**

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of new Rule 791 (Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access.) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

All communications in reference to the proposal should be received by no later than Friday, September 16, 2016. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural  
Rules Committee*

JEFFREY A. MANNING,  
*Chair*

<sup>1</sup> It appears that most of these rules were in place prior to 2009 when Rule 105 was amended to require approval from the Committee prior to a local rule being adopted.

## Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE**  
**CHAPTER 7. POST-TRIAL PROCEDURES IN**  
**COURT CASES**

**PART C. Court Case Expungement Procedures**

**Rule 791. Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access.**

(A) PETITION FOR ORDER FOR LIMITED ACCESS

(1) Pursuant to 18 Pa.C.S. § 9122.1, an individual who satisfies the statutory requirements for obtaining an order for limited access may request an order that limits the dissemination of his or her criminal history record information by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas, magisterial district judge, or Philadelphia Municipal Court judge who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the court of common pleas docket number, magisterial district court docket number; or the Philadelphia Municipal Court docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be subject to limited access;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for the order for limited access;

(j) a statement that the case qualifies for a limited access order and none of the exceptions under 18 Pa.C.S. § 9122.1(b) are applicable; and

(k) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

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

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

(B) OBJECTIONS; HEARING

(1) Within 60 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 60-day period in paragraph (B)(1), the judge of the court of common pleas shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for limited access, the judge shall enter an order directing that the defendant's criminal record history information that is subject to the limited access order shall not be disseminated to an individual, a noncriminal justice agency or an internet website and that dissemination of the defendant's criminal record history be limited only to a criminal justice agency or government agency as provided in 18 Pa.C.S. § 9122.1.

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

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

(5) If the judge denies the petition for an order of limited access, the judge shall enter an order denying the petition and stating the reasons for the denial.

(6) If the judge grants the petition for an order of limited access, the petition and order are subject to limited access.

(C) ORDER

(1) Every order for limited access shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas, magisterial district judge, or Philadelphia Municipal Court judge who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

- (i) the reason(s) for the order for limited access;
- (j) a statement that the case qualifies for a limited access order and none of the exceptions under 18 Pa.C.S. § 9122.1(b) are applicable; and
- (k) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

### Comment

Section 9122.1 of the Criminal Code, provides for an order limiting dissemination of a record of a criminal conviction for a misdemeanor of the second degree, a misdemeanor of the third degree, or an ungraded misdemeanor which carries a maximum penalty of no more than two years only to a criminal justice agency or government agency. This rule, adopted in 2016, provides the procedures for requesting and ordering an order for limited access as provided in the statute.

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

The petition must be filed with the clerk of courts of the judicial district in which the charges that are the subject of the petition were disposed. The petition must be decided by a judge of the court of common pleas, even if the charges that are the subject of the petition were disposed by a magisterial district judge or Philadelphia Municipal Court judge.

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

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

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

The "reason for the order for limited access" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, the defendant's freedom from arrest or prosecution for 10 years.

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

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

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

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102. For the definition of "government agency," see 18 Pa.C.S. § 9121 (b.1) and (b.2).

Nothing in this rule is intended to alter procedures regarding expungement. *See* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary case expungement procedures, Rule 790 for court case expungement, and 35 P.S. § 780-119 for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act.

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

**Official Note:** Adopted , 2016, effective , 2016

*Committee Explanatory Reports:*

Report explaining proposed new Rule 791 providing the procedures for orders for limited access in court cases published for comment at 46 Pa.B. 3639 (July 9, 2016).

### REPORT

#### *Proposed new Pa.R.Crim.P. 791*

#### **Orders for Limited Access**

##### *Background*

On February 16, 2016, the Governor signed into law Act 5 of 2016 (originally SB 166 of 2016). The Act originated from a proposal for an expansion of the current expungement statute to cover second and third degree misdemeanors but was subsequently modified to introduce a new concept, a petition for limited access. The Act added new Section 9122.1 to the Crimes Code, 18 Pa.C.S. § 9122.1, that provides that a qualified defendant may petition for an order that would allow only certain entities access to criminal history record information, primarily criminal justice or other government agencies. The offenses in question are, with certain exceptions, misdemeanors of the second and third degree and ungraded offenses carrying a maximum penalty of no more than two years. The Act also includes an amendment to Section 9122 of the Crimes Code, 18 Pa.C.S. § 9122, that provides that a court or the Administrative Office of Pennsylvania Courts may not disseminate criminal case information that is subject to "a court order for limited access as provided in Section 9122.1 (relating to order for limited access)." Act 5 will become effective on November 14, 2016.

##### *Proposed New Rule 791*

Because the Act requires a petition to be filed with the court and subsequent order to be produced, there is a need for procedural rules implementing the Act. Given the history of the Act, the Committee believes that the concept of limiting access to a conviction record is closely related to expungement. Therefore, the Committee concluded that the procedures should be similar. The procedures for obtaining a limited access order contained in proposed new Rule 791 are derived from the existing court case expungement procedures in Rule 790. These new procedures would be placed in a separate rule rather than an addition to the expungement rule since the nature and purpose of this procedure is different from expungement and placing it in the same rule as expunge-

ment procedures might lead to confusion. The new rule would immediately follow the court case expungement procedures.

In terms of information required in the petition and order, the same concern, that of correctly identifying the criminal record, would be applicable to limited access procedures as it is for expungement. Therefore, the required contents of the petition, contained in paragraph (A), and the contents of the order, contained in paragraph (C), are virtually identical to those required in Rule 790 for expungement petitions and orders.

Proposed paragraph (A)(3) contains the requirement that the Pennsylvania State Police criminal history report shall be attached to the petition. This is currently required by Rule 790 for expungement petitions and the Committee believes that this is the best means of verifying the defendant's criminal history. However, the Committee is also aware that, in several jurisdictions, the prosecution has a practice of agreeing to a waiver of this requirement and verifying the defendant's criminal history by other means. The Committee intends to recommend an amendment to the expungement rules to recognize this practice and also incorporates this provision in proposed Rule 791(A)(3). *See* 45 Pa.B. 5913 (October 3, 2015).

Paragraph (B) describes the procedures to be followed once the petition is filed. Section 9122.1(c) provides that the court notify the district attorney of the petition within 10 days of filing and the district attorney then has 30 days to respond. The current procedure for court case expungement in Rule 790 requires that the petition be served on the prosecution concurrent with filing. The Committee believes that simultaneous service is a more efficient procedure and one that would help in the prosecution reaching a quicker decision on whether to oppose the petition or not. The Committee intends that this is an additional procedural step being added to make the process more efficient and ensure proper and timely notice to the prosecution.

The Act allows 30 days for the prosecution to respond to a petition for limited access. Several members expressed concern that this period is an inadequate amount of time in which the prosecution has to evaluate whether to oppose the petition. It is anticipated that the number of limited access petitions will be substantial, particularly in the larger counties. The district attorneys' offices may be hard-pressed to properly evaluate the defendant's record in that time, resulting in opposition to petitions as a matter of course. It was noted that Rule 790 gives the prosecution 60 days to respond to a court case expungement petition. The Committee concluded that a 60-day period for response is more reasonable and will likely result in more unopposed petitions. Even though the Act provides the 30-day time limit for response, the Committee concluded that this is a purely procedural provision, falling within the Court's exclusive rule-making authority. Therefore, paragraph (B)(1) requires the prosecution's response within 60 days following service of the petition.

The Act requires a petition to be filed requesting the issuance of the order, similar to expungement procedures. Section 9122.1 describes the effect of the order as permitting the criminal record to be disseminated "only to a criminal justice agency or a governmental agency. . ." However, the language that is added to Section 9121, which directly states the applicability of the statute to the courts and AOPC, uses the terminology that they "may not disseminate to an individual, a noncriminal justice

agency or an internet website any information" relating to information that is subject to a limited access order. In the proposed paragraph (B)(4), the terminology in both selections is used to describe the order granting the petition so that there is no confusion concerning the order's effects.

Rule 790 provides for a 30-day stay on any granted petition to provide time for the prosecution to appeal. A similar provision is included in Rule 791(B)(4)(b) when the petition for limited access is granted. However, this stay is waived when the prosecution agrees to the petition. This is similar to a provision that the Committee is intending to recommend as an amendment to Rule 790. *See* 45 Pa.B. 3978 (July 25, 2015).

The Committee also considered several other suggestions for this proposal but ultimately declined to add them. This included a suggestion for specific procedures for cases where some charges will be able to be subject to limited access and others will be able to be expunged. The Committee concluded that these are two separate procedures with separate eligibility requirements. Since Rule 790 already provides expungement procedures while proposed Rule 791 would provide limited access order procedures, the Committee concluded that no additional rule changes would be necessary.

The Committee discussed a suggestion to incorporate procedures for obtaining *in forma pauperis* status. However, the procedures for an *in forma pauperis* request are well known and a regular part of expungement practice. Therefore, the Committee concluded that including specific provisions in the limited access order procedures was unnecessary.

The Committee also considered suggestions regarding the manner in which the exclusory provision of the Act and the statutory fees for the petitions should be defined. The Committee concluded that these provisions were substantive in nature and should not be defined in a procedural rule.

[Pa.B. Doc. No. 16-1158. Filed for public inspection July 8, 2016, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### BUCKS COUNTY

#### Order Promulgating Rule of Civil Procedure 205.4(f)(3)—Electronic Filing and Service of Legal Papers—Signature

##### Order

*And Now*, this 17th day of June, 2016, pursuant to Pa.R.C.P. No. 239.8, Bucks County Rule of Civil Procedure 205.4(f)(3)—Electronic Filing and Service of Legal Papers—Signature, is promulgated as follows:

#### **Bucks County Rule 205.4(f)(3). Signature.**

(a) The electronic filing of legal papers by a filing attorney or party ("the filing party") utilizing the user name and password associated with the filing party by the Electronic Filing System shall be deemed the filing party's signature on the legal papers submitted and shall constitute a certification by the filing party:

(i) that the original hard copy of the legal paper was properly signed, and where applicable, verified pursuant to Pa.R.C.P. No. 205.4(b)(3)(i), subject to the sanctions provided by Pa.R.C.P. No. 205.4(b)(5);

(ii) that the original hard copy of the legal paper is being maintained as provided by Pa.R.C.P. No. 205.4(b)(4), subject to the sanctions provided by Pa.R.C.P. No. 205.4(b)(5);

(iii) as provided by Pa.R.C.P. No. 1023.1(c) governing Signing of Documents, violation of which shall be subject, pursuant to Pa.R.C.P. No. 1023.1(d), to the sanctions provided by Pa.R.C.P. No. 1023.4; and

(iv) if the filing party is an attorney, of the filing party's right to practice in the Commonwealth and of authorization to file the legal paper, as provided in Pa.R.C.P. No. 205.1.

(b) All legal papers submitted for filing using the Electronic Filing System must identify the filing party by name in a signature block placed at the conclusion of the legal paper. Legal papers which identify the filing party as a person other than the registered filer under whose user name the legal paper is submitted will not be accepted for filing by the Prothonotary.

(c) Verifications, affidavits and any other documents included in an electronically filed legal paper that are signed by a person other than the filing party shall be manually signed, scanned in .pdf format, and attached to or included as part of the electronically filed legal paper.

(d) Documents requiring the signatures of more than one party, including documents signed by more than one party in counterparts (e.g., stipulations) shall be manually signed, scanned in .pdf format, and attached to or included as part of the electronically filed legal paper.

*Note:* For signature requirements for legal papers submitted for filing via mail or hand delivery, see B.C.R.C.P. No. 1023.1(b)(1).

This Rule shall take effect upon publication on the Pennsylvania Judiciary's Web Application Portal (<http://ujportal.pacourts.us>).

*By the Court*

JEFFREY L. FINLEY,  
*President Judge*

[Pa.B. Doc. No. 16-1159. Filed for public inspection July 8, 2016, 9:00 a.m.]

## BUCKS COUNTY

### Order Promulgating Rule of Civil Procedure 1023.1(b)(1)—Signing of Documents

#### Order

*And Now*, this 17th day of June, 2016, pursuant to Pa.R.C.P. No. 239, Bucks County Rule of Civil Procedure 1023.1(b)(1), Signing of Documents, is promulgated as follows:

#### **B.C.R.C.P. No. 1023.1(b)(1). Signing of Documents.**

(a) Except as permitted by subsection (b) below, all legal papers submitted to the Prothonotary for filing via mail or hand delivery shall bear the original handwritten signature of the filing attorney or party ("the filing party").

(b) Photocopies of legal papers bearing the original handwritten signature of the filing party will be accepted for filing as permitted by Pa.R.C.P. No. 205.3(a).

(c) Documents submitted to the Prothonotary for filing via mail or hand delivery that contain an electronically stored and inserted image of, or a digitally reproduced or created copy of, the signature of the filing party, will not be accepted for filing or acted upon by the Court.

*Note:* For signature requirements for legal papers submitted for filing using the Electronic Filing System, see B.C.R.C.P. No. 205.4(f)(3).

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

*By the Court*

JEFFREY L. FINLEY,  
*President Judge*

[Pa.B. Doc. No. 16-1160. Filed for public inspection July 8, 2016, 9:00 a.m.]

## DELAWARE COUNTY

### Local Rule 1012; Doc. No. MD-12-540

*And Now*, this 21st day of June, 2016, It is hereby Ordered and Decreed that the existing Rule 1012 is amended and shall be entirely replaced by New Rule 1012 in accordance with the following language effective 30 days after publication in the *Pennsylvania Bulletin*.

#### **Rule \*1012. Limited Entry of Appearance. Withdrawal of Appearance. Notice.**

(a)(1) An attorney whose representation is pro bono and through Legal Aid of Southeastern Pennsylvania shall be permitted to enter a written limited entry of appearance which shall state an address at which pleadings and other legal papers may be served in the manner provided by Rule Pa.R.C.P. 440(a)(1), a telephone number and clearly express the limitation of the attorney's representation. This written notice of limited entry of appearance shall be given forthwith to all parties. This limited entry of appearance shall also be accompanied by a Praeceptum to proceed In Forma Pauperis including an appropriate certification under rule Pa.R.C.P. 240(d)(1) and any fee for the limited entry of appearance or any filing made at the same time as the limited entry of appearance shall be waived.

(a)(2) The limited entry of appearance under subsection (a)(1) shall be substantially in the following form:

#### CAPTION

#### PRAECEPTUM FOR ENTRY OF LIMITED APPEARANCE

To the Office of Judicial Support:

Kindly enter my appearance on behalf of \_\_\_\_\_, in the above-captioned matter. I hereby certify that I have accepted the representation of \_\_\_\_\_ through Legal Aid of Southeastern Pennsylvania, I am accepting no fee for my services and my appearance is limited to the performance of the following responsibilities:

\_\_\_\_\_ Representation through \_\_\_\_\_ custody Master's conferences.

\_\_\_\_\_ Representation through all custody Master's conferences in the \_\_\_\_\_ months following the filing of this entry of limited appearance.

\_\_\_\_ Representation through one custody trial before a judge in the court of Common Pleas.

Other: \_\_\_\_\_

Upon completion of the above delineated duties and consistent with rule 1012(a)(3), I may withdraw my appearance without further petition or order of this court.

\_\_\_\_\_  
Signature

(a)(3) An attorney may withdraw his or her appearance without leave of court if the attorney has previously entered his or her appearance under subscription (a)(1) and has completed all of his or her responsibilities as enumerated in the form completed under subsection (a)(2). This written notice of withdrawal of appearance shall be given forthwith to all parties and the court (assigned Judge) and any fee for the withdrawal of the limited entry of appearance shall be waived.

(a)(4) The withdrawal of appearance under subsection (a)(3) shall be substantially in the following form:

**CAPTION**

**PRAECIPE FOR THE WITHDRAWAL OF LIMITED APPEARANCE**

To the Office of Judicial Support:

Kindly withdraw my appearance on behalf of \_\_\_\_\_, in the above-captioned matter. I hereby certify that I have completed all duties as delineated in my limited entry of appearance filed on \_\_\_\_\_.

I further certify that I notified the Plaintiff/Defendant and the court (assigned judge) on \_\_\_\_\_ of my withdrawal.

(Date)

Consistent with local rule 1012(a)(3), I am authorized to withdraw my appearance without further petition or order of this Court.

All further notices or communications shall be sent directly to the Plaintiff/Defendant at the following address.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Respectfully submitted:

\_\_\_\_\_, Esquire  
Former Counsel for (Plaintiff/Defendant)

By the Court

CHAD F. KENNEY,  
President Judge

[Pa.B. Doc. No. 16-1161. Filed for public inspection July 8, 2016, 9:00 a.m.]

**DELAWARE COUNTY**

**Local Rule 1915.3; Doc. No. MD-12-540**

And Now, this 21st day of June, 2016, It is hereby Ordered and Decreed that the existing Rule 1915.3 is amended and shall be entirely replaced by New Rule 1915.3 in accordance with the following language effective 30 days after publication in the *Pennsylvania Bulletin*.

**Rule \*1915.3. Custody Proceedings, Appointment of Conciliator.**

(d) A Custody Conciliator shall be appointed by the Board of Judges. All custody proceedings shall be listed for a conference before the Conciliator prior to being assigned to a judge. The parties to the case and if represented, their counsel, shall attend

(e) Agreements reached as a result of the conference shall be submitted in form of stipulation and proposed order to the Custody Conciliator, who will present the stipulation and order to the court with a recommendation.

(f) Cases not resolved at the initial conciliation conference may be continued and relisted by the Custody Conciliator for further conferencing, or may be forwarded to the court for hearing on the merits. When cases are forwarded for court hearing the Conciliator will submit a brief synopsis of the case as part of a letter of transmittal.

(g) If, after proper service and/or notification, a party fails to appear at a conciliation conference, the Conciliator will report to the court and may recommend that the court impose appropriate sanctions.

(h) A party may offer into evidence without further proof the following items:

(1) Reports and correspondence and records from physical health providers, educators, law enforcement departments and related officials if said documents are provided to opposing counsel or pro se party at least twenty (20) days before the scheduled hearing. If the moving party receives no written objection thereto not less than ten (10) days prior to the trial date, this evidence shall be admitted without the necessity of testimony from the scrivener. If objection is made, the party requesting the admission of said evidence may submit a specific written request for an evidentiary ruling to the Court Administrator for referral to the appropriate Judge. In no event shall the scheduled hearing be delayed as a result of the application of this rule.

(2) Reports and correspondence from mental health providers and custody evaluators if said documents are provided to opposing counsel or pro se party at least twenty (20) days before the scheduled hearing. If the moving party receives no written objection thereto, not less than ten (10) days prior to the trial date, this evidence shall be admitted without the necessity of testimony from the scrivener. If objection is made, the party requesting the admission of said evidence must be prepared to present the person whose testimony is waived by this Rule. In no event shall the scheduled hearing be delayed as a result of the application of this Rule.

(i) No child shall attend any custody proceeding unless:

(1) Ordered to attend by the Court, or;

(2) Required to attend by the Custody Conciliator, or;

(3) The party wishing to bring a child or children to the hearing or conference provides at least seven (7) days written notice to all involved parties, or, if represented, their counsel.

By the Court

CHAD F. KENNEY,  
President Judge

[Pa.B. Doc. No. 16-1162. Filed for public inspection July 8, 2016, 9:00 a.m.]



## DELAWARE COUNTY

## Local Rule 1930.4(d); Doc. No. MD-12-540

And Now, this 21st day of June, 2016, It is hereby Ordered and Decreed that Rule 1930.4(d) is hereby adopted in accordance with the following language effective 30 days after publication in the *Pennsylvania Bulletin*.

**Rule 1930.4. Service of Original Process in Domestic Relations Matters.**

(d) *Acceptance of Service.* In lieu of service pursuant to this rule, the defendant or the defendant's authorized agent may accept service of original process by filing with the prothonotary a separate notarized document which shall be in substantially the following form:

Case Caption

ACCEPTANCE OF SERVICE

I \_\_\_\_\_ (Defendant or Authorized agent) accept service of the Divorce complaint or \_\_\_\_\_ (Name of the document). I certify that I am authorized to accept service on behalf of the defendant.

Date

Defendant or Authorized Agent

Mailing Address

On this \_\_\_\_\_ day of \_\_\_\_\_, before me a notary public personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledge that he/she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal. \_\_\_\_\_

Notary Public

*Note:* If the defendant accepts service personally, the second sentence of the affidavit should be deleted.

In all Divorce actions in which Defendant is a Self-Represented Party, and in which the only proof of service/method of service of the complaint is the Defendant's acceptance of service, the Defendant's (or Authorized Agent's) acceptance of service of the complaint shall be notarized (or) Counsel for Plaintiff may file a certification of service of the complaint noting Defendant's/Authorized Agent's acceptance of service (or) the plaintiff, if represented by counsel, may file an Affidavit/Verification of Signature attesting to the Defendant's signature on the Acceptance of Service of the Divorce Complaint.

By the Court

CHAD F. KENNEY,  
President Judge

[Pa.B. Doc. No. 16-1163. Filed for public inspection July 8, 2016, 9:00 a.m.]

## LANCASTER COUNTY

## Adoption of Local Rule; AD 14-2016

**Order Pursuant to Pa.R.J.A. No. 103(c), 42 Pa.C.S.A.**

And Now, this 13th day of June, 2016, it is Ordered that the following Local Rule of Judicial Administration No. 1907.2, of the Court of Common Pleas of the 2nd

Judicial District of Pennsylvania, Lancaster County, be adopted as indicated, to be effective thirty (30) days after the publication in the *Pennsylvania Bulletin*.

It is further Ordered that the District Court Administrator shall:

1. File one certified copy of the rule with the Administrative Office of the Pennsylvania Courts (AOPC).

2. Distribute two certified paper copies of the rule and a copy of the rule on a computer diskette or CD-ROM that complies with the requirements of 1 Pa. Code § 13.11(b) to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Keep such local rule continuously available for public inspection and copying in the office of the Prothonotary and Clerk of Courts. Upon request and payment of reasonable costs and reproduction and mailing, the Prothonotary and Clerk of Courts shall furnish to any person a copy of any rule.

4. Arrange to have the local rule published on the Lancaster County Court website at <http://www.court.co.lancaster.pa.us/135/Local-Rules-of-Court>.

By the Court

HONORABLE DENNIS E. REINAKER,  
President Judge

**Rule 1907.2. Constables—Service of Warrants.**

1. All bench warrants and warrants of arrest shall be processed through a centralized warrant control located and operated by the Lancaster County Sheriff's Office as follows:

a. All Criminal Warrants shall be issued to the Police Department of origin with a copy of the warrant being sent to the Sheriff's Office.

b. Any warrant issued in a Summary Case shall be issued to the Sheriff's Office.

c. Any warrant not previously issued to the Sheriff's Office shall be provided immediately to the Lancaster County Sheriff's Office upon request.

2. The Lancaster County Sheriff's Office has exclusive authority to forward for service a copy of any bench warrant or warrant of arrest to any Constable.

3. The Constable shall be in possession of the hard copy of the warrant to initiate contact with the subject of the warrant.

4. The Lancaster County Sheriff's Office shall be designated as the sole authority to approve payments to any Constable for any warrant served.

5. If a Constable contacts any Magisterial District Court or appears in any Magisterial District Court with a defendant in custody, without a warrant "in hand" and who has not been authorized by the Sheriff's Office to serve warrants, the Lancaster County Sheriff's Office must be contacted immediately.

6. In the event that a defendant has been arrested on more than one warrant issued by different Magisterial District Judges, the Constable may take the defendant before any Magisterial District Judge who issued a warrant. That Magisterial District Judge is authorized to conduct a hearing on all of the warrants on which the defendant was arrested. The Constable shall first contact the Magisterial District Court with the most issued warrants to process all the warrants for the defendant. If that Magisterial District Judge cannot process the warrants within one hour from the time he/she was con-

tacted, the Constable shall contact the Magisterial District Judge with the next most issued warrants for the defendant. In the event that no Magisterial District Judge who issued a warrant is available, the on call duty Magisterial District Judge for the sector of the Magisterial District Judge with the most issued warrants shall process all outstanding warrants against the defendant.

[Pa.B. Doc. No. 16-1164. Filed for public inspection July 8, 2016, 9:00 a.m.]

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**MONTGOMERY COUNTY**

**Mortgage Foreclosure Conciliation Program—  
Masters; Administrative Order 2016-00004**

**Memorandum and Order**

The Montgomery County Mortgage Foreclosure Conciliation Program (the “Program”) was initiated to promote discussion and facilitate resolution between lenders and owners of certain residential properties subject to foreclosure proceedings. Since the inception of the Program, it has been administered and presided over by Judges of the Court. The Court has determined that it is necessary and appropriate to delegate certain aspects of the Program to

the authority of court appointed Masters. This will permit the Court to continue to address the large number of cases and to better serve the interests of the parties involved.

The Masters will be granted the authority to preside over all Program proceedings, as well as to act as facilitators in the exchange of documentation, the modification of terms, or, some other resolution of the litigation. The Masters may authorize the continuance of matters to allow for additional time for appropriate reasons. When appropriate, the Masters may prepare recommendations on the form of proposed Orders for review by the Judge or Judges assigned to preside over the Program.

*And Now*, this 20th day of June, 2016, following a review of qualifications, it is *Ordered* that the following individuals are appointed as Masters to act in accordance with the provisions set forth previously and to serve until resignation or further Order of this Court: Alfred M. Abel, Esq., Edward J. DiDonato, Esq., Samantha A. Fagnan, Esq., Mark S. Harris, Esq.

*By the Court*

WILLIAM J. FURBER, Jr.,  
*President Judge*

[Pa.B. Doc. No. 16-1165. Filed for public inspection July 8, 2016, 9:00 a.m.]

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