

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 9 AND 19]

Order Amending Rules 906 and 1911 of the Rules of Appellate Procedure; No. 265 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 2nd day of December, 2016, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a) in the interest of efficient administration:

It is *Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 906 and 1911 of the Pennsylvania Rules of Appellate Procedure are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2017.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 906. Service of Notice of Appeal.

(a) *General rule.* Concurrently with the filing of the notice of appeal under [**Rule 905 (filing of notice of appeal)**] **Pa.R.A.P. 905**, the appellant shall serve copies thereof, and of any [**order**] **request** for transcript, and copies of a proof of service showing compliance with this rule, upon:

(1) All parties to the matter in the trial court including parties previously dismissed pursuant to an interlocutory order unless; (i) the interlocutory order of dismissal was reviewed by an appellate court and affirmed; or (ii) the interlocutory order of dismissal was made final under [**Rule**] **Pa.R.A.P. 341(c)** and no party appealed from that date;

(2) The judge of the court below, whether or not the reasons for the order appealed from already appear of record;

(3) The official court reporter of the trial court, whether or not [**an order**] a **request** for transcript accompanies the papers; and

(4) The district court administrator or other person designated by the administrator pursuant to Rule [**5000.5(a)(3)**] **4007(B)(3)** of the Pennsylvania Rules of Judicial Administration [**(requests and orders for transcripts)**].

(b) *Appeals to the Supreme Court.* In addition to the requirements of [**subdivision**] **paragraph** (a), the appellant shall serve copies of the jurisdictional statement

required by [**Rule**] **Pa.R.A.P. 909** upon all parties to the matter in the trial court. The proof of service shall show compliance with this [**subdivision**] **paragraph**.

Official Note: [See Rule 908 (Parties on Appeal).] See Pa.R.A.P. 908.

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1911. Request for Transcript.

(a) *General rule.* The appellant shall request any transcript required under this chapter in the manner and make any necessary payment or deposit therefor in the amount and within the time prescribed by Rules [**5000.1**] **4001 et seq.** of the Pennsylvania Rules of Judicial Administration [**(court reporters)**].

(b) [**Cross appeals.**] *Cross-appeals.* Where a [**cross appeal**] **cross-appeal** has been taken the [**cross appellant**] **cross-appellant** shall also have a duty to pay for and cause the transcript to be filed and shall share the initial expense equally with all other appellants.

(c) *Form.* The [**order**] **request** for transcript may be endorsed on, incorporated into or attached to the notice of appeal or other document and shall be in substantially the following form:

(Caption)

A (notice of appeal) (petition for review) (other appellate paper, as appropriate) having been filed in this matter, the official court reporter is hereby [**ordered**] **requested** to produce, certify and file the transcript in this matter in conformity with Rule 1922 of the Pennsylvania Rules of Appellate Procedure.

Signature _____

(d) *Effect of failure to comply.* If the appellant fails to take the action required by these rules and the Pennsylvania Rules of Judicial Administration for the preparation of the transcript, the appellate court may take such action as it deems appropriate, which may include dismissal of the appeal.

Official Note: [**The 1997 amendment changes the word “order” to “request” in order to clarify that an order of court is not necessary. See Pa.R.J.A. 5000.5 and 1997 amendment to Rule 904(c). If a request for a transcript on appeal is made in open court the appellant must nevertheless prepare and serve a written order for transcript, so that the district court administrator and the appellate court are aware of the order. Local rules contemplated by Pa.R.J.A. 5000.6 should be consulted as to the officer or other person who is to receive and hold any security deposit (up to one-half the estimated charge) required by the court reporter. It is the responsibility of the appellant to contact the court reporter to ascertain whether a deposit will be required and the amount thereof, and to make the deposit. The court reporter is under no obligation to proceed in the absence of a required deposit, and under Pa.R.J.A. 5000.11(b) is under no obligation to**

certify and file the transcript in the absence of full payment or adequate security therefor. While delay in payment, and any resulting delay in certification and filing of the transcript, does not automatically affect the validity of the appeal, under Subdivision (d) the appellate court may impose other sanctions in an appropriate case. Compare Rule 902 (manner of taking appeal) and Rule 2101 (conformance with requirements). This rule and Rule 1922 are “another arrangement for delivery” under Pa.R.J.A. 5000.11(a), since it is undesirable for the official appellate transcript to pass outside of the control of court officials.] For the Uniform Rules Governing Court Reporting and Transcripts, see Pa.R.J.A. No. 4001–4016. Local rules should also be consulted as to deposit requirements, fees, and additional procedures.

[Pa.B. Doc. No. 16-2183. Filed for public inspection December 16, 2016, 9:00 a.m.]

PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CHS. 9 AND 19]

Proposed Amendments to Pa.R.A.P. 905, 1922 and 1925

In September 2016, the Committee published for comment proposed amendments to Pa.R.A.P. 1925 and 1922 to address waiver concerns related to the statement of errors complained of on appeal (“Statement”). Comments received have persuaded the Committee to modify the proposal on two of the four proposed amendments, resulting in this second publication for comments.

First, the Committee has revised its proposal to amend Pa.R.A.P. 1925(b)(4)(vii). In *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998) and its progeny, the Supreme Court of Pennsylvania adopted a bright-line rule requiring a finding of waiver for a deficient Statement. The Committee proposes to recommend that the rule revert to the prior standard for waiver—i.e., that waiver will be found only if a Statement “interferes with or effectively precludes appellate review.” As originally proposed in September 2016, the rule revision would have applied to all cases except criminal. Based on comments received, the Committee now proposes that the revised standard apply in all cases, including criminal.

Second, the Committee has revised its proposal to amend Pa.R.A.P. 1925(b). In September 2016, the Committee proposed to eliminate the requirement that a Statement be served on the trial judge, leaving only the requirement that the Statement be filed of record. Based on comments received, the Committee continues to propose to eliminate the service on the trial judge requirement, but now has added a provision (a) permitting the trial judge to direct that the Statement be served on the trial judge and (b) stating that failure to effectuate such service will not result in waiver.

The Committee has retained unchanged its September 2016 proposals to amend Pa.R.A.P. 1925(b) and 1922 to address waiver problems related to transcript preparation delays. Pa.R.A.P. 1925(b) would be amended to provide that in cases where a party has been ordered to file a Statement but cannot do so accurately because a transcript has not been prepared despite the party’s timely and proper request for its preparation, that party can secure an extension to file the Statement until the

transcript is entered on the docket by filing a single request for an extension. Pa.R.A.P. 1922 would be amended to require that transcripts be entered on the docket as soon as completed and paid for, with notice of that entry sent to all parties. Corollary amendments to Pa.R.A.P. 905, originally proposed in September 2016, likewise remain the same as proposed in September 2016.

All of the proposed recommendations to amend procedures for the preparation and filing of Pa.R.A.P. 1925 Statements arise from the Committee’s ongoing monitoring of case law and attention to comments from the bench and bar following significant amendments to Pa.R.A.P. 1925 in 2007.

The Committee again invites all interested persons to submit comments, suggestions, or objections.

Comments should be provided to:

Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
Harrisburg, Pennsylvania 17106-2635
FAX: (717) 231-9551
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All communications in reference to the proposal should be received by January 20, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any emailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

An Explanatory Comment precedes the proposed amendments and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

By the Appellate Court
Procedural Rules Committee

KEVIN J. McKEON,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 905. Filing of Notice of Appeal.

(a) *Filing with clerk.*

(1) Two copies of the notice of appeal, the order for transcript, if any, and the proof of service required by [**Rule 906 (service of notice of appeal)**] Pa.R.A.P. 906, shall be filed with the clerk of the trial court. If the appeal is to the Supreme Court, the jurisdictional statement required by [**Rule**] Pa.R.A.P. 909 shall also be filed with the clerk of the trial court.

(2) If the appeal is a children’s fast track appeal, [**the**] a concise statement of errors complained of on appeal as described in [**Rule**] Pa.R.A.P. 1925(a)(2) shall be filed with the notice of appeal and served on the trial judge in accordance with [**Rule 1925(b)(1)**] Pa.R.A.P. 906(a)(2).

(3) Upon receipt of the notice of appeal, the clerk shall immediately stamp it with the date of receipt, and that

date shall constitute the date when the appeal was taken, which date shall be shown on the docket.

(4) If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.

(5) A notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof.

(b) *Transmission to appellate court.*—The clerk shall immediately transmit to the prothonotary of the appellate court named in the notice of appeal a copy of the notice of appeal [**showing the date of receipt, the related proof of service**] and all attachments, as well as a receipt showing collection of any docketing fee in the appellate court required under [**Subdivision**] **paragraph (c)**. If the appeal is a children's fast track appeal, the clerk shall stamp the notice of appeal with a "Children's Fast Track" designation in red ink, advising the appellate court that the appeal is a children's fast track appeal, and the clerk shall also transmit to the prothonotary of the appellate court named in the notice of appeal the concise statement of errors complained of on appeal required by [**Subdivision**] **subparagraph (a)(2)** of this rule. The clerk shall also transmit with such papers:

1. [**a copy of any order for transcript;] copies of all orders for transcripts relating to orders on appeal;**

2. a copy of any verified statement, application, or other document filed under [**Rule 551 through Rule 561**] **Pa.R.A.P. 551—561** relating to *in forma pauperis*; and

3. if the appeal is to the Supreme Court, the jurisdictional statement required by [**Rule**] **Pa.R.A.P. 909**.

(c) *Fees.*—The appellant upon filing the notice of appeal shall pay any fees therefor (including docketing fees in the appellate court) prescribed by Chapter 27 [**(fees and costs in appellate courts and on appeal)**].

Official Note: Insofar as the clerk or prothonotary of the [**lower**] trial court is concerned, the notice of appeal is for all intents and purposes a writ in the nature of *certiorari* in the usual form issued out of the appellate court named therein and returnable thereto within the time prescribed by Chapter 19 [**(preparation and transmission of record and related matters)**].

To preserve a mailing date as the filing date for an appeal as of right from an order of the Commonwealth Court, see [**Rule**] **Pa.R.A.P. 1101(b)**.

As to number of copies, see [**note to Rule 124 (form of papers; number of copies)**] **Pa.R.A.P. 124, note**. The appellate court portion of the filing fee will be transmitted pursuant to regulations adopted under 42 Pa.C.S. § 3502 [**(financial regulations)**].

[**Pending adoption of such rules the subject is regulated by Paragraph 4 of the Order amending this rule, which provides as follows:**

"4. Pending adoption of initial regulations under 42 Pa.C.S. § 3502 (financial regulations), the docketing fee (currently \$12 in the Supreme Court and the Superior Court and \$25 in the Commonwealth Court) paid through the clerk or prothonotary of the lower court pursuant to Rule 905(c) (fees) of the Pennsylvania Rules of Appellate Procedure shall be transmitted as follows:

(a) If the docketing fee is tendered by check payable to the appellate prothonotary, the clerk or prothonotary of the lower court shall transmit the check pursuant to Rule 905(b).

(b) If the docketing fee is tendered by check payable to the clerk of prothonotary of the lower court he or she shall endorse it without recourse to the appropriate appellate prothonotary and transmit the check pursuant to Rule 905(b).

(c) If the docketing fee is tendered in cash the clerk or prothonotary of the lower court shall draw a check in like amount on the account of such clerk or prothonotary to the order of such clerk or prothonotary to the order of the appropriate appellate prothonotary and transmit the check pursuant to Rule 905(b).

(d) In matters arising under 42 Pa.C.S. § 723 (appeals from the Commonwealth Court), the appellant shall tender the docketing fee in the Supreme Court to the Prothonotary of the Commonwealth Court by check payable to the order of the Prothonotary of the Supreme Court, which shall be transmitted pursuant to Rule 905(b)."

The better practice will be to pay the fee for filing the notice of appeal in the [**lower**] trial court and the docketing fee in the appellate court by separate checks payable to the respective clerks or prothonotaries.

[**The 1982 amendment to Subdivision (a) corrects deficiencies in previous practice which were illustrated in *State Farm Mutual Auto. Ins. Co. v. Schultz*, 281 Pa. Super. 212, 421 A.2d 1224 (1980).**

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1922. Transcription of Notes of Testimony.

[**(a) General rule.**—Upon receipt of the order for transcript and any required deposit to secure the payment of transcript fees the official court reporter shall proceed to have his notes transcribed, and not later than 14 days after receipt of such order and any required deposit shall lodge the transcript (with proof of service of notice of such lodgment on all parties to the matter) with the clerk of the trial court. Such notice by the court reporter shall state that if no objections are made to the text of the transcript within five days after such notice, the transcript will become a part of the record. If objections are made the difference shall be submitted to and settled by the trial court. The trial court or the appellate court may on application or upon its own motion shorten the time prescribed in this subdivision.

(b) *Diminution of transcription.*

(1) In civil cases, an application for an order providing that less than the entire proceedings shall be transcribed may be made to the trial court by any party within two days after the order for transcript is filed. A party shall have the right to require that any specified part of the notes of testimony or recordings be transcribed, subject to the applicable requirements for the payment of transcript fees.

(2) In criminal cases, diminution of transcription shall be in accordance with Rule 115 of the Pennsylvania Rules of Criminal Procedure (recording and transcribing court proceedings).

(3) In any case, untranscribed notes or recordings shall not be part of the record on appeal for any purpose.

(c) *Certification and filing.*—The trial judge shall examine any part of the transcript as to which an objection is made pursuant to subdivision (a) of this rule or which contains the charge to the jury in a criminal proceeding, and may examine any other part of the transcript, and after such examination and notice to the parties and opportunity for objection (unless previously given) shall correct such transcript. If the trial judge examines any portion of the transcript, he shall certify thereon, by reference to the page and line numbers or the equivalent, which portions thereof he has read and corrected. If no objections are filed to the transcript as lodged, or after any differences have been settled or other corrections have been made by the court, the official court reporter shall certify the transcript, and cause it to be filed with the clerk of the lower court.]

(a) *Request for Transcripts.*—An appellant may file a request for transcripts under Pennsylvania Rule of Judicial Administration 4007 prior to or concurrent with the notice of appeal. If a deposit is required, the appellant shall make the deposit at the time of the request for the transcript unless the appellant is requesting a waiver of the cost because of economic hardship. Unless another Rule of Appellate Procedure provides a shorter time, the court reporter shall provide the trial judge with the transcript within 14 days of the request for transcript. When the appellant receives notice under Rule of Judicial Administration 4007(D)(3) that the transcript has been prepared, the appellant has 14 days to pay the final balance in compliance with that rule.

(b) *Filing of the Transcript.*—When the transcript is delivered to the filing office and the parties under Pennsylvania Rule of Judicial Administration 4007(D)(4), the transcript shall be entered on the docket.

(c) *Corrections to Transcript.*—If a transcript contains an error or is an incomplete representation of the proceedings, the omission or misstatement may be corrected by the following means:

(1) By objection. A party may file a written objection to the filed transcript. Any party may answer the objection. The trial court shall resolve the objections and then direct that the transcript as corrected be made a part of the record and transmitted to the appellate court.

(2) By stipulation of the parties filed in the trial court. If the trial court clerk has already certified the record, the parties shall file in the appellate court a copy of any stipulation filed pursuant to this rule, and the trial court shall direct that the transcript as corrected be made a part of the record and transmitted to the appellate court.

(3) By the trial court or, if the record has already been transmitted to the appellate court by the appellate court or trial court on remand, with notice to all parties and an opportunity to respond.

(d) *Emergency appeals.*—Where the exigency of the case is such as to impel immediate consideration in the appellate court, the trial judge shall take all action necessary to expedite the preparation and transmission of the record notwithstanding the usual procedures prescribed in this chapter or in the Rules of Judicial Administration. [Pending action by the lower court under this subdivision any party may proceed in the appellate court under Rule 1923 (statement in absence of transcript) and may append to any filing in the appellate court as much of the record below as the party desires to bring to the attention of the appellate court.

Official Note: Based in part upon former Supreme Court Rule 56, former Superior Court Rule 46, and former Commonwealth Court Rule 25 and the act of May 11, 1911 (P.L. 279, No. 179), § 4 (12 P.S. § 1199). The 14 day requirement is designed to fix an objective standard to guide the official court reporter and the lower court, so as to permit the settling of any objections by the lower court and the physical preparation and transmission by the clerk of the record within the 40 day period fixed by Rule 1931 (transmission of the record). Although under these rules a writ of certiorari is no longer issued, the requirements of these rules have the effect of a Supreme Court order, and the lower court is expected to give the transcription of notes of testimony under this rule priority over unappealed matters in the lower court.

The certification requirement of subdivision (c) recognizes that in practice the trial judge ordinarily will not actually read the transcript prior to certification unless objection is made by one of the parties. However, the rule requires the judge to review and correct the charge in criminal cases, to avoid the problems which arise when a later attempt is made by the trial judge under Rule 1926 (correction and modification of the record) to conform the transcript to his recollection of events.]

Official Note: Depending on the order issued by the trial court a party may wish to seek appellate review of an order under paragraph (c) by application or in the merits brief. The 2016 amendments addressed changes in the Rules of Judicial Administration. In addition, the amendment eliminated time limits for objections to or requests for correction of the transcript. An objection to a transcript must be raised if, for example, a critical portion of the proceedings was not transcribed.

Rule 1925. Opinion in Support of Order.

(a) *Opinion in support of order.*

(1) *General rule.*—Except as otherwise prescribed by this rule, upon receipt of the notice of appeal, the judge who entered the order giving rise to the notice of appeal,

if the reasons for the order do not already appear of record, shall [**forthwith**] **within the 60-day period set forth in Pa.R.A.P. 1931(a)(1)** file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, or shall specify in writing the place in the record where such reasons may be found.

If the case appealed involves a ruling issued by a judge who was not the judge entering the order giving rise to the notice of appeal, the judge entering the order giving rise to the notice of appeal may request that the judge who made the earlier ruling provide an opinion to be filed in accordance with the standards above to explain the reasons for that ruling.

(2) *Children's fast track appeals.*—In a children's fast track appeal:

(i) The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal [**required by Rule 905**]. [*See Pa.R.A.P. 905(a)(2)*.]

(ii) Upon receipt of the notice of appeal and the concise statement of errors complained of on appeal required by [**Rule**] **Pa.R.A.P. 905(a)(2)**, the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, shall within 30 days file of record at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, which may, but need not, refer to the transcript of the proceedings.

(3) *Appeals arising under the Pennsylvania Code of Military Justice.*—In an appeal arising under the Pennsylvania Code of Military Justice, the concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. *See Pa.R.A.P. 4004(b)*.

(b) *Direction to file statement of errors complained of on appeal; instructions to the appellant and the trial court.*—If the judge entering the order giving rise to the notice of appeal ("judge") desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court [**and serve on the judge**] a concise statement of the errors complained of on appeal ("Statement"). **The Court may include direction as to how to provide a copy to the judge. Failure to serve the trial judge will not result in waiver.**

(1) *Filing and service.*—**The Appellant shall file [of record] the Statement [and concurrently shall serve the judge] of record. [Filing of record and service on the judge shall be in person or] If the Statement is filed by mail as provided in Pa.R.A.P. 121(a) [and shall be] filing is complete on mailing if appellant obtains a United States Postal Service Form 3817, Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified in compliance with the requirements set forth in Pa.R.A.P. 1112(c). Service on parties shall be concurrent with filing and shall be by any means of service specified under Pa.R.A.P. 121(c).**

(2) *Time for filing [and service].*—

(i) The judge shall allow the appellant at least 21 days from the date of the order's entry on the docket for the filing [**and service**] of the Statement. Upon application of the appellant **or cross-appellant** and for good cause shown, the judge may enlarge the time period initially specified or permit an amended or supplemental State-

ment to be filed. Good cause includes, but is not limited to, delay in the production of a transcript necessary to develop the Statement so long as the delay is not attributable to a lack of diligence in ordering or paying for such transcript by the party or counsel on appeal. In extraordinary circumstances, the judge may allow for the filing of a Statement or amended or supplemental Statement *nunc pro tunc*.

(ii) **If the appellant or cross-appellant has ordered but not received a transcript necessary to develop the Statement, that party may request an extension of the deadline to file the Statement until 21 days following the date of entry on the docket of the transcript in accordance with Pa.R.A.P. 1922(b). The party must attach the transcript purchase order to the motion for the extension. If the motion is filed at least five days before the Statement is due but the trial court does not rule on the motion prior to the original due date, the motion will be deemed to have been granted.**

(3) *Contents of order.*—The judge's order directing the filing [**and service**] of a Statement shall specify:

(i) the number of days after the date of entry of the judge's order within which the appellant must file [**and serve**] the Statement;

(ii) that the Statement shall be filed of record;

[**(iii) that the Statement shall be served on the judge pursuant to paragraph (b)(1);**

(iv) that any issue not properly included in the Statement timely filed and served pursuant to subdivision (b) shall be deemed waived.]

(iii) that any issue not properly included in a timely Statement pursuant to paragraph (b) may be considered waived.

(4) *Requirements; waiver.*

(i) The Statement shall set forth only those [**rulings or**] errors that the appellant intends to challenge.

(ii) The Statement shall concisely identify each [**ruling or**] error that the appellant intends to [**challenge**] **assert** with sufficient detail to identify [**all pertinent issues**] **the issue to be raised** for the judge. The judge shall not require the citation to authorities **or the record**; however, appellant may choose to include pertinent authorities **and record citations** in the Statement.

(iii) The judge shall not require [**appellant or appellee**] **any party** to file a brief, memorandum of law, or response as part of or in conjunction with the Statement.

(iv) The Statement should not be redundant or provide lengthy explanations as to any error. Where non-redundant, non-frivolous issues are set forth in an appropriately concise manner, the number of errors raised will not alone be grounds for finding waiver.

(v) Each error identified in the Statement will be deemed to include every subsidiary issue [**contained therein which**] **that** was raised in the trial court; this provision does not in any way limit the obligation of a criminal appellant to delineate clearly the scope of claimed constitutional errors on appeal.

(vi) If the appellant **or cross-appellant** in a civil case cannot readily discern the basis for the judge's decision, the appellant **or cross-appellant** shall preface the State-

ment with an explanation as to why the Statement has identified the errors in only general terms. In such a case, the generality of the Statement will not be grounds for finding waiver.

(vii) **[Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived.] In all appeals, a deficiency in a Statement will not result in waiver unless the deficiency interferes with or effectively precludes appellate review.**

(c) *Remand.*

(1) An appellate court may remand in either a civil or criminal case for a determination as to whether a Statement had been filed **[and/or served]** or timely filed **[and/or served]**.

(2) Upon application of the appellant and for good cause shown, an appellate court may remand in a civil case for the filing *nunc pro tunc* of a Statement or for amendment or supplementation of a timely filed **[and served]** Statement and for a concurrent supplemental opinion.

(3) If an appellant in a criminal case was ordered to file a Statement and failed to do so, such that the appellate court is convinced that counsel has been *per se* ineffective, the appellate court shall remand for the filing of a Statement *nunc pro tunc* and for the preparation and filing of an opinion by the judge.

(4) In a criminal case, counsel may file of record **[and serve on the judge]** a statement of intent to file an *Anders*/**[McClendon]** *Santiago* brief in lieu of filing a Statement. If, upon review of the *Anders*/**[McClendon]** *Santiago* brief, the appellate court believes that there are arguably meritorious issues for review, those issues will not be waived; instead, the appellate court may remand for the filing of a Statement, a supplemental opinion pursuant to **[Rule] Pa.R.A.P. 1925(a)**, or both. Upon remand, the trial court may, but is not required to, replace appellant's counsel.

(d) *Opinions in matters on petition for allowance of appeal.*—Upon receipt of notice of the filing of a petition for allowance of appeal under **[Rule 1112(c) (appeals by allowance)] Pa.R.A.P. 1112(c)**, the **intermediate** appellate court **[below which]** that entered the order sought to be reviewed, if the reasons for the order do not already appear of record, shall forthwith file of record at least a brief statement, in the form of an opinion, of the reasons for the order.

Official Note: [Subdivision (a)] Paragraph (a)—The 2007 amendments clarify that a judge whose order gave rise to the notice of appeal may ask a prior judge who made a ruling in question for the reasons for that judge's decision. In such cases, more than one judge may issue separate **[Rule] Pa.R.A.P. 1925(a)** opinions for a single case. It may be particularly important for a judge to author a separate opinion if credibility was at issue in the pretrial ruling in question. *See, e.g., Commonwealth v. Yogel, [307 Pa. Super. 241, 243-44,] 453 A.2d 15, 16 (Pa. Super. 1982).* At the same time, the basis for some pre-trial rulings will be clear from the order and/or opinion issued by the judge at the time the ruling was made, and there will then be no reason to seek a separate opinion from that judge under this rule. *See, e.g., Pa.R.Crim.P. 581(I).* Likewise, there will be times when

the prior judge may explain the ruling to the judge whose order has given rise to the notice of appeal in sufficient detail that there will be only one opinion under **[Rule] Pa.R.A.P. 1925(a)**, even though there are multiple rulings at issue. The time period for transmission of the record is specified in Pa.R.A.P. 1931, and that rule was concurrently amended to expand the time period for the preparation of the opinion and transmission of the record.

[Subdivision (b)] Paragraph (b)—This **[subdivision]** paragraph permits the judge whose order gave rise to the notice of appeal (“judge”) to ask for a statement of errors complained of on appeal (“Statement”) if the record is inadequate and the judge needs to clarify the errors complained of. The term “errors” is meant to encourage appellants to use the Statement as an opportunity to winnow the issues, recognizing that they will ultimately need to be refined to a statement that will comply with the requirements of Pa.R.A.P. 2116. Nonetheless, the term “errors” is intended in this context to be expansive, and it encompasses all of the reasons the trial court should not have reached its decision or judgment, including, for example, those that may not have been decisions of the judge, such as challenges to jurisdiction.

[Paragraph (b)(1) This paragraph maintains the requirement that the Statement be both filed of record in the trial court and served on the judge. Service on the judge may be accomplished by mail or by personal service. The date of mailing will be considered the date of filing and of service upon the judge only if counsel obtains a United States Postal Service form from which the date of mailing can be verified, as specified in Pa.R.A.P. 1112(c). Counsel is advised to retain date-stamped copies of the postal forms (or pleadings if served by hand), in case questions arise later as to whether the Statement was timely filed or served on the judge.

Paragraph (b)(2) This paragraph] Subparagraph (b)(2)—This subparagraph extends the time period for drafting the Statement from 14 days to at least 21 days, with the trial court permitted to enlarge the time period or to allow the filing of an amended or supplemental Statement upon good cause shown. In *Commonwealth v. Mitchell, [588 Pa. 19, 41,] 902 A.2d 430, 444 (Pa. 2006)*, the Court expressly observed that a Statement filed “after several extensions of time” was timely. An enlargement of time upon timely application might be warranted if, for example, there was a serious delay in the transcription of the notes of testimony or in the delivery of the order to appellate counsel. **The 2016 amendments to the rule provide the opportunity to obtain an extension of time to file the Statement until 21 days after the transcript is filed pursuant to Pa.R.A.P. 1922(b). The appellant may file a motion for an extension of time, which, if filed in accordance with the rule, will be deemed granted if not expressly denied before the Statement is due.**

A trial court should **also** enlarge the time or allow for an amended or supplemental Statement when new counsel is retained or appointed. A supplemental Statement may also be appropriate when the ruling challenged was so non-specific—*e.g.*, “Motion Denied”—that counsel could not be sufficiently definite in the initial Statement.

In general, *nunc pro tunc* relief is allowed only when there has been a breakdown in the process constituting extraordinary circumstances. *See, e.g., In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election, [577 Pa.*

231, 248-49,] 843 A.2d 1223, 1234 (Pa. 2004) (“We have held that fraud or the wrongful or negligent act of a court official may be a proper reason for holding that a statutory appeal period does not run and that the wrong may be corrected by means of a petition filed *nunc pro tunc*.”) Courts have also allowed *nunc pro tunc* relief when “non-negligent circumstances, either as they relate to appellant or his counsel” occasion delay. *McKeown v. Bailey*, 731 A.2d 628, 630 (Pa. Super. 1999). However, even when there is a breakdown in the process, the appellant must attempt to remedy it within a “very short duration” of time. *Id.*[; *Amicone v. Rok*, 839 A.2d 1109, 1113 (Pa. Super. 2003) (recognizing a breakdown in process, but finding the delay too long to justify *nunc pro tunc* relief).

Paragraph (b)(3) This paragraph specifies what the judge must advise appellants when ordering a Statement.

Paragraph (b)(4) This paragraph sets forth the parameters for the Statement and explains what constitutes waiver. It should help counsel to comply with the concise-yet-sufficiently-detailed requirement and avoid waiver under either *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006) or *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). The paragraph] **Subparagraph (b)(4)**—This subparagraph sets forth the parameters for the Statement and explains that the Statement should be sufficiently specific to allow the judge to draft the opinion required under Pa.R.A.P. 1925(a)[, and it]. It provides that the number of issues alone will not constitute waiver—so long as the issues set forth are non-redundant and non-frivolous. It allows appellants and cross-appellants to rely on the fact that subsidiary issues will be deemed included if the overarching issue is identified and if all of the issues have been properly preserved in the trial court. This provision has been taken from the United States Supreme Court rules. See Sup. Ct. R. 14(1). This [paragraph] subparagraph does not in any way excuse the responsibility of an appellant who is raising claims of constitutional error to raise those claims with the requisite degree of specificity. This [paragraph] subparagraph also allows—but does not require—an appellant to state the authority upon which the appellant challenges the ruling in question[, but it expressly recognizes that a Statement is not a brief and that an appellant shall not file a brief with the Statement] and to identify the place in the record where the basis for the challenge may be found. [This paragraph also recognizes that there may be times that a civil appellant cannot be specific in the Statement because of the non-specificity of the ruling complained of on appeal. In such instances, civil appellants may seek leave to file a supplemental Statement to clarify their position in response to the judge’s more specific Rule 1925(a) opinion.]

Neither the number of issues raised nor the length of the Statement alone is enough to find that a Statement is vague or non-concise enough to constitute waiver. See *Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006). The more carefully the appellant frames the Statement, the more likely it will be that the judge will be able to articulate the rationale underlying the decision

and provide a basis for counsel to determine the advisability of appealing that issue. Thus, counsel should begin the winnowing process when preparing the Statement and should articulate specific rulings with which the appellant takes issue and why. Nothing in the rule requires an appellant to articulate the arguments within a Statement. It is enough for an appellant—except where constitutional error must be raised with greater specificity—to have identified the rulings and issues that comprise the putative trial court errors.

Waiver of issues on appeal because of deficiencies in the Statement that do not interfere with or effectively preclude appellate review is an unnecessary and harsh result. Accordingly, the 2016 amendment revives the case-by-case discretionary review by the appellate court and allows the determination that deficiencies in a Statement do not preclude effective appellate review and thus do not result in waiver.

[Subdivision (c)] **Paragraph (c)**—The appellate courts have the right under the Judicial Code to “affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances.” 42 Pa.C.S. § 706. [The following additions to the rule are based upon this statutory authorization.]

[Paragraph (c)(1) This paragraph] **Subparagraph (c)(1)**—This subparagraph applies to both civil and criminal cases and allows an appellate court to seek additional information—whether by supplementation of the record or additional briefing—if it is not apparent whether an initial or supplemental Statement was filed [and/or served] or timely filed [and/or served].

[Paragraph (c)(2) This paragraph] **Subparagraph (c)(2)**—This subparagraph allows an appellate court to remand a civil case to allow an initial, amended, or supplemental Statement and/or a supplemental opinion. See also 42 Pa.C.S. § 706.

[Paragraph (c)(3) This paragraph] **Subparagraph (c)(3)**—This subparagraph allows an appellate court to remand in criminal cases only when the appellant has completely failed to respond to an order to file a Statement. It is thus narrower than subparagraph (c)(2), above. Prior to [these] amendments of this rule, the appeal was quashed if no timely Statement was filed or served; however, because the failure to file [and serve] a timely Statement is a failure to perfect the appeal, it is presumptively prejudicial and “clear” ineffectiveness. See, e.g., *Commonwealth v. Halley*, [582 Pa. 164, 172,] 870 A.2d 795, 801 (Pa. 2005); *Commonwealth v. West*, 883 A.2d 654, 657 (Pa. Super. 2005). *Per se* ineffectiveness does not apply in situations in which, for example, counsel files a deficient brief; in such cases, prejudice must be proven. See, e.g., *Commonwealth v. Reed*, 971 A.2d 1216, 1227 (Pa. 2009). Direct appeal rights have typically been restored through a post-conviction relief process, but when the ineffectiveness is apparent and *per se*, the court in *West* recognized that the more effective way to resolve such *per se* ineffectiveness is to remand for the filing of a Statement and opinion. See *West*, 883 A.2d at 657. The procedure set forth in *West* is codified in [paragraph]

subparagraph (c)(3). As the *West* court recognized, this rationale does not apply when waiver occurs due to the improper filing of a Statement. In such circumstances, relief may occur only through the post-conviction relief process and only upon demonstration by the appellant that, but for the deficiency of counsel, it was reasonably probable that the appeal would have been successful. An appellant must be able to identify *per se* ineffectiveness to secure a remand under this section, and any appellant who is able to demonstrate *per se* ineffectiveness is entitled to a remand. Accordingly, this paragraph does not raise the concerns addressed in *Johnson v. Mississippi*, 486 U.S. 578, 588-89 (1988) (observing that where a rule has not been consistently or regularly applied, it is not—under federal law—an adequate and independent state ground for affirming petitioner’s conviction).

[Paragraph (c)(4)] **Subparagraph (c)(4)**—This [paragraph] subparagraph clarifies the special expectations and duties of a criminal lawyer. Even lawyers seeking to withdraw pursuant to the procedures set forth in *Anders v. California*, 386 U.S. 738 (1967) and [*Commonwealth v. McClendon*, 495 Pa. 467, 434 A.2d 1185 (1981)] *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009), are obligated to comply with all rules [, including the filing of a Statement]. [See *Commonwealth v. Myers*, 897 A.2d 493, 494-96 (Pa. Super. 2006); *Commonwealth v. Ladamus*, 896 A.2d 592, 594 (Pa. Super. 2006).] However, because a lawyer will not file an *Anders*/[*McClendon*] *Santiago* brief without concluding that there are no non-frivolous issues to raise on appeal, this amendment allows a lawyer to file, in lieu of a Statement, a representation that no errors [**have been raised**] **are asserted** because the lawyer is (or intends to be) seeking to withdraw under *Anders*/[*McClendon*] *Santiago*. At that point, the appellate court will reverse or remand for a supplemental Statement and/or opinion if it finds potentially non-frivolous issues during its constitutionally required review of the record.

[Subdivision] **Paragraph (d)** was formerly (c). [The text has not been] **When the rule was amended in 2007, the text was not revised**, except to update the reference to Pa.R.A.P. 1112(c).

[The 2007 amendments attempt to address the concerns of the bar raised by cases in which courts found waiver: (a) because the Statement was too vague; or (b) because the Statement was so repetitive and voluminous that it did not enable the judge to focus on the issues likely to be raised on appeal. See, e.g., *Lineberger v. Wyeth*, 894 A.2d 141, 148-49 (Pa. Super. 2006); *Kanter v. Epstein*, 866 A.2d 394, 400-03 (Pa. Super. 2004), allowance of appeal denied, 584 Pa. 678, 880 A.2d 1239 (2005), cert. denied sub nom. *Spector Gadon & Rosen, P.C. v. Kanter*, 546 U.S. 1092 (2006). Courts have also cautioned, however, “against being too quick to find waiver, claiming that Rule 1925(b) statements are either too vague or not specific enough.” *Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006).

While conciseness and vagueness are very case-specific inquiries, certain observations may be helpful. First, the Statement is only the first step in framing the issues to be raised on appeal, and the requirements of Pa.R.A.P. 2116 are even more strin-

gent. Thus, the Statement should be viewed as an initial winnowing. Second, when appellate courts have been critical of sparse or vague Statements, they have not criticized the number of issues raised but the paucity of useful information contained in the Statement. Neither the number of issues raised nor the length of the Statement alone is enough to find that a Statement is vague or non-concise enough to constitute waiver. See *Astorino v. New Jersey Transit Corp.*, 912 A.2d 308, 309 (Pa. Super. 2006). The more carefully the appellant frames the Statement, the more likely it will be that the judge will be able to articulate the rationale underlying the decision and provide a basis for counsel to determine the advisability of appealing that issue. Thus, counsel should begin the winnowing process when preparing the Statement and should articulate specific rulings with which the appellant takes issue and why. Nothing in the rule requires an appellant to articulate the arguments within a Statement. It is enough for an appellant—except where constitutional error must be raised with greater specificity—to have identified the rulings and issues that comprise the putative trial court errors.]

EXPLANATORY COMMENT

Pa.R.A.P. 1925 requires the trial court, upon receipt of a notice of appeal, to provide the appellate court the reasons for its decision. The rule authorizes the trial court to direct the appellant to provide a statement of errors complained of on appeal (“Statement”). The Statement process has given rise to waiver concerns that the Committee is proposing to address with three amendments to Pa.R.A.P. 1925, related amendments to Pa.R.A.P. 1922, and conforming amendments to Pa.R.A.P. 905.

The first waiver concern relates to difficulties experienced in filing a timely and accurate Statement when the trial transcript is not yet available. In order for a Statement to be of assistance to a trial judge, the party authoring the Statement needs to be able to identify errors with specificity, something that is frequently difficult or impossible unless and until counsel (or a party proceeding *pro se*) can review the transcripts associated with the orders in question. Currently, the practice in absence of a transcript varies widely. In some cases, a party files an initial Statement, and then moves to amend or supplement when the transcript(s) become available. In others, a party seeks multiple extensions. In yet others, a party asks for an extension until the transcript is received—although under the current rules, the date that an appellant receives a transcript is not reflected on the docket and thus cannot be readily verified by the trial or appellate courts. In each instance, a party risks waiver of appellate issues for lack of strict compliance. The Committee proposes to modify current practice by amending (1) Pa.R.A.P. 1922 to require entry of the transcript on the docket when transcribed, with notice to be sent to the parties; and (2) Pa.R.A.P. 1925(b) to permit a party to secure an extension to file the Statement until 21 days after the entry of the transcript on the docket, by completing two steps. The first step is for the party to make a timely request the transcript, complying with all necessary requirements. The second is for the party to file a timely (i.e., more than five days prior to the time the Statement is due) request for an extension, explaining that an extension is needed because the transcript has not yet been prepared and attaching the transcript purchase order form. If the trial court does not rule on

the extension request by the original Statement due date, the extension will be deemed granted. The Committee proposes corollary changes to Pa.R.A.P. 905. In addition, the Committee proposes amending Pa.R.A.P. 1922 to reflect the new Rules of Judicial Administration and to set forth a process for correcting the transcript, in addition to modifying the process for filing objections to a transcript. The original proposal, published at 46 Pa.B. 38 (September 17, 2016), contained these recommendations, and the Committee has not revised its proposal in these regards at all.

The second waiver concern relates to the current rule's requirement that the appellant file the Statement with the trial court and also serve it directly on the trial judge. The courts have found waiver in cases in which both requirements have not been met, even though the record reveals that the appellant attempted to serve the trial judge or the trial judge had actual access to the Statement. The Committee believes that in most circumstances filing is sufficient to assure that the trial judge has access to the Statement, but it has amended the proposal to clarify that the rule will allow the Court in its order requiring a 1925(b) Statement to direct the appellant to serve the Statement in a manner specified in the order. Failure to do so concurrently with filing would, however, not result in waiver. The Committee hopes that this revision will permit trial courts to provide guidance to counsel as to the means to get the Statement to the judge in a timely manner, whether through an email or facsimile to chambers, mail, or having it placed in a court-assigned mailbox. In cases such as Children's Fast Track appeals where the Statement is required to be attached to the notice of appeal a Statement will be concurrently served on the trial judge automatically pursuant to Pa.R.A.P. 906.

The third waiver concern relates to the harshness of enforcing a bright-line rule that failure to file a timely Statement, or failure to include an issue in a timely-filed Statement, will result in waiver. The bright-line waiver rule began in criminal cases, but it was quickly applied to all cases. The Committee originally distinguished between criminal and other appeals, but in response to the comments received, the Committee now is proposing to reimplement the prior standard, which found waiver appropriate if, and only if, a deficiency in a Statement "interferes with or effectively precludes appellate review," in all appeals. Adoption of the proposal would result in a rule that would supersede *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998).

[Pa.B. Doc. No. 16-2184. Filed for public inspection December 16, 2016, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Order Amending Rule 540 of the Rules of Criminal Procedure; No. 483 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 30th day of November, 2016, upon the recommendation of the Criminal Procedural Rules Com-

mittee; the proposal having been published before adoption at 45 Pa.B. 5915 (October 3, 2015), and a Final Report to be published with this Order:

It is *Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the amendments to Pennsylvania Rule of Criminal Procedure 540 are adopted, in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective April 1, 2017.

Annex A

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

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

* * * * *

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

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

[(a) extended for cause shown; or

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

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

* * * * *

Comment

* * * * *

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

* * * * *

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

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

Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter

being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.

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

See Chapter 5, Part H, Rules 595, 596, 597, and 598, for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended June 21, 2012, effective in 180 days; amended July 31, 2012, effective November 1, 2012; amended May 2, 2013, effective June 1, 2013; Comment revised December 23, 2013, effective March 1, 2014; **amended November 30, 2016, effective April 1, 2017.**

Committee Explanatory Reports:

* * * * *

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

Final Report explaining the amendments concerning the scheduling of the preliminary hearing published with the Court’s Order at 46 Pa.B. 7810 (December 17, 2016).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 540

Scheduling of Preliminary Hearings for Incarcerated Defendants

On November 30, 2016, effective April 1, 2017, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 540 (Preliminary Arraignment) to (1) clarify the definition of an in-custody defendant for purposes of scheduling the preliminary hearing, and (2) state that the practice of scheduling the preliminary hearing within the time-period required by the rule but then automatically continuing the preliminary hearing is inconsistent with the intent of the rule.

The Committee had been presented with a question regarding the interpretation of the Rule 540(G)(1) requirement for scheduling the preliminary hearing no later than 14 days after the preliminary arraignment if the defendant is in custody and no later than 21 days if the

defendant was not in custody.² The question was whether the defendant had to be in custody for the current case or for any matter, even one unrelated to the current case, for the shorter time-period to be applicable.

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

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

During the development of these 2012 changes, the Committee also noted that the 3/10 day time limitation was more honored in the breach in most jurisdictions and felt that the extended time limitations would be helpful in all cases, not just those which were being considered for presentation to an indicting grand jury.

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

The Committee also noted that there was an omission when the time limitation language was changed in 2012. Paragraph (G)(1)(b) states that the preliminary hearing will be scheduled in the listed time periods unless “(b) the issuing authority fixes an earlier date upon request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth.” Since the 2012 changes altered the language of the paragraph to read “fix a day and hour for a preliminary hearing which shall not be later than 14 days after the

² The practice in Philadelphia is different from the rest of the Commonwealth due to the different procedures in the Philadelphia Municipal Court. Preliminary arraignment procedures, including the provisions for the scheduling of the preliminary hearing, which are generally held only in felony cases, are governed by Rule 1003. Rule 1003(D)(3)(d)(iii) provides that the preliminary hearing “shall not be less than 14 nor more than 21 days after the preliminary arraignment. . .” without making a distinction between defendants who are in custody and those who are not.

³ Rule 540 was amended again later in 2012 and then-paragraph (F) was re-lettered to paragraph (G).

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.

preliminary arraignment if the defendant is in custody and no later than 21 days if not in custody” there is no “earlier date” unlike in the “3 to 10 days” in the former rule. Therefore this language is no longer necessary and has been removed.

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

[Pa.B. Doc. No. 16-2185. Filed for public inspection December 16, 2016, 9:00 a.m.]

Title 25—LOCAL COURT RULES

CUMBERLAND COUNTY

Orphans’ Court Fee Schedule; 21-16-1253

And now, by Order of Court this 23rd Day of November 2016, the following fee schedule is established pursuant to 42 P.S. Section 21032.1. This Order is effective the 1st day of January 2017.

SURCHARGES

Automation Fee	\$9.50
JCS Fee (increased by Act 113 & 126 of 2014)	\$35.50

ACCOUNTS—Gross Value* not over \$100,000

Account	\$50.00
Petition for Adjudication	\$20.00
Advertising	\$200.00
Receipt and Release	\$5.00
Objections	\$15.00
For Each Additional \$100,000 or Fraction Thereof	\$50.00

ADOPTION (ONE CHILD PER DOCUMENT**)

Petition for Adoption	\$60.00
Report of Intention to Adopt	\$15.00
Report of Intermediary	\$15.00
Petition for Termination of Rights or Relinquishment (Vol. or Invol.)	\$20.00
Petition to Confirm Consent to Adopt	\$20.00
Act 34 Fund	\$75.00
Home Study Fee (per family)	\$320.00
Investigation (non-identifying)	\$50.00
Investigation (identifying)	\$150.00

GUARDIANSHIP

Annual Report of Guardian	\$15.00
Bond, filing and approval	\$15.00
Guardian Inventory	\$15.00

Petition for Appointment, filing	\$20.00
Petition for Discharge, filing	\$20.00
Petition for Successor Guardian, filing	\$20.00

MARRIAGE LICENSE

Certified Marriage Certificate	\$5.00
Custodial Parental Consent	\$20.00
Judicial Waiver of Waiting Period	\$20.00
Marriage License (Cash Only—Includes Surcharge)	\$50.00
Military Waiver	no charge
Replacement Marriage License—(before Marriage takes place)	\$10.00
Video Conferencing (by Court Order)	\$100.00

ORPHANS’ COURT—MISCELLANEOUS

Answer & Answer with New Matter	\$15.00
Appeal to Appellate Court	\$75.00
Certified Copy of Instruments	\$5.00
Certified docket entries	\$10.00
Citation, issued by Clerk of Orphan’s Court	\$20.00
Commissions on monies paid into, held or controlled by the court (including CDs, bonds and Escrow Accounts)	5% per year
Decree awarding real estate	\$10.00
Decree, issuing	\$5.00
Disclaimer	\$5.00
Family settlement agreement	\$20.00
Motion	\$20.00
Petitions	\$20.00
Photocopies	
Per page	\$0.50
Digital, \$.50 PP, NTE \$75	\$75.00
Praecepte	\$5.00
Preliminary Objections	\$15.00
Release	\$5.00
Research, initial 15 minutes (per name)	\$10.00
Research, per hour after initial 15 min	\$25.00
Return Check Charge	\$20.00
Satisfaction of Claim/Award	\$10.00
Stipulation	\$15.00
Trust	\$15.00

*Gross Value = the taxable estate assets plus income generated by the estate. If there is a testamentary trust, then the gross value shall be only the income generated by the trust.

**For confidentiality reasons, each child is assigned a separate docket number; therefore, each document filed should reference only one child.

- Services not specifically scheduled shall be charged based on like services.

- The Register of Wills (Clerk of Orphans’ Court) requests that each motion/petition filed seek only one

type of relief and reference only one docket-number. If a party files a single motion/petition seeking multiple forms of relief, then that party shall be charged as if it had filed a separate motion/petition for each requested matter of relief. If a party files a single motion/petition referencing multiple docket numbers, then that party shall be charged as if it had filed a separate motion/petition for each docket number referenced.

By the Court

EDWARD E. GUIDO,
President Judge

[Pa.B. Doc. No. 16-2186. Filed for public inspection December 16, 2016, 9:00 a.m.]

CUMBERLAND COUNTY

Register of Wills Fee Schedule; 21-16-1253

And now, by Order of Court this 23rd Day of November, 2016, the following fee schedule is established pursuant to 42 P.S. Section 21022.1. This Order is effective the 1st day of January 2017.

SURCHARGES

Automation Fee*	\$9.50
JCS Fee (increased by Act 113 & 126 of 2014)*	\$35.50

LETTERS TESTAMENTARY, LETTERS OF ADMINISTRATION AND LETTERS OF ADMINISTRATION C.T.A.

Not exceeding \$2,000	\$20.00
\$2,001 to \$5,000	\$30.00
\$5,001 to \$10,000	\$45.00
\$10,001 to \$25,000	\$60.00
\$25,001 to \$50,000	\$90.00
\$50,001 to \$75,000	\$135.00
\$75,001 to \$100,000	\$210.00
For each additional \$100,000 or fraction thereof	\$50.00
Probate without issuance of letters	\$20.00

ALL OTHER LETTERS OF ADMINISTRATION: D.B.N., D.B.N.C.T.A., PENDENTE LITE, DURANTE ABSENTIA OR DURANTE MINORITATE*

Letters	\$20.00
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MISCELLANEOUS

Affidavit or Oath, executing (per person) includes Subscribing & Non-Subscribing Witness	\$5.00
Answer and Answer with New Matter	\$15.00
Appeal from the Register	\$25.00
Bonds	\$15.00
Caveat	\$20.00
Certified Copies of Instruments	\$5.00
Certified Docket Entries	\$10.00
Citation, issued by the Register of Wills	\$20.00
Claim against the estate	\$10.00

Codicil	\$15.00
Commissions to take Oath or Testimony	\$20.00
Death Certificate, filing	\$15.00
Election to take under or against the will	\$20.00
Exemplified Copies	
Exemplified Copy, filing	\$15.00
Single instrument, issuing	\$15.00
Probate Record, issuing	\$40.00
Inheritance Tax Return*	\$15.00
Inheritance Tax Return—Supplemental*	\$15.00
Inventory or Affidavit in lieu of Inventory *	\$15.00
Objections	\$15.00
Petitions	\$20.00
Photocopies	
Per page	.50
Digital, \$.50 PP, NTE \$75	\$75.00
Powers of Attorney, filing	\$20.00
Praecipe	\$5.00
Preliminary Objections	\$15.00
Renunciation (per person)	\$5.00
Research,	
Initial 15 minutes, (per name)	\$10.00
Per hour after initial 15 minutes	\$25.00
Response	\$15.00
Return Check Charges	\$20.00
Satisfaction of Claim/Award	\$10.00
Short Certificate	\$5.00
Small Estate Affidavit (for insurance proceeds under \$11,000)	\$20.00
Stipulation	\$15.00
Subpoena	\$15.00
Tax Certificate, issuing or filing	\$20.00
Will	\$15.00

* Payable at time of probate.

- Where the gross value has been underestimated on the, probate fees will be adjusted and charged on the actual value. All fees must be paid in full before final confirmation and settlement of estate.

- Services not specifically scheduled shall be charged based on like services.

- Where the gross value of an estate has been overpaid, such overpayment will not be refunded.

- Overpayment of less than ten (10) dollars not be refunded.

By the Court

EDWARD E. GUIDO,
President Judge

[Pa.B. Doc. No. 16-2187. Filed for public inspection December 16, 2016, 9:00 a.m.]

FAYETTE COUNTY

Criminal Rule; Arraignment; No. MD 370-2016

Order

And Now, this 29th day of November, 2016, pursuant to Pennsylvania Rule of Judicial Administration 103(d), it is hereby ordered that Fayette County Criminal Rule 303, Arraignment, is renumbered Criminal Rule 571, and is amended as follows.

The Clerk of Courts is directed as follows:

(1) Two copies and CD-ROM of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

(2) One copy of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.

(3) One copy of the Local Rule shall be sent to the Fayette County Law Library and the Editor of the Fayette Legal Journal.

The Administrative Office of Fayette County Courts is directed as follows:

(1) Publish a copy of the Local Rule on the website of the Administrative Office of Fayette County Courts.

(2) Thereafter, compile the Local Rule within the complete set of local rules no later than 30 days following the publication in the Pennsylvania Bulletin.

The renumbering and amendment of the previously listed Local Rule shall become effective thirty (30) days after publication in the Pennsylvania Bulletin.

By the Court

JOHN F. WAGNER, Jr.,
President Judge

Rule 571. Arraignment.

(A) Arraignment shall be held on the third Thursday of each month before an assigned Judge.

(B) At the arraignment, the defendant shall be advised of:

(1) The right to be represented by counsel;

(2) The nature of the charges contained in the information; and

(3) The right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, a motion requesting Transfer from Criminal Proceedings to Juvenile Proceedings and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed.

(4) If the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including trial, that the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.

If the defendant or counsel has not received a copy of the Information(s) pursuant to Pa.R.Crim. 562, a copy thereof shall be provided.

(C) A defendant may waive appearance at arraignment if the following requirements are met:

(1) The defendant is represented by counsel of record and counsel concurs in the waiver; and

(2) The defendant and counsel sign and file with the Clerk of Courts a waiver of appearance at arraignment, which acknowledges that the defendant:

(a) Understands the nature of the charges;

(b) Understands the rights and requirements set forth in Pa.R.Crim.P. 571(C) and

(c) Waives his or her right to appear for arraignment.

(D) The waiver of appearance at arraignment shall be in substantially the following form:

YOU MUST BE REPRESENTED BY COUNSEL TO WAIVE THE APPEARANCE AT ARRAIGNMENT
(Pa. Rule of Criminal Procedure 571(D))

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

v.

No. _____ of 20____

OTN: _____

Arraignment Date: _____

Defendant.

ENTRY OF APPEARANCE

Enter my appearance for the above-named Defendant.

INTERPRETER NEEDED

Attorney for Defendant [PRINTED]

Date

Attorney I.D. #

Address of Attorney

Attorney Phone #

Email Address of Attorney

Attorney's SIGNATURE

WAIVER OF APPEARANCE AT ARRAIGNMENT

I hereby waive my appearance at arraignment and I stand mute with respect to my plea. I have been advised by my attorney of the charges against me and that my attorney will receive copies of the Criminal Information filed in this case. I know I have the right:

1. to file a request in writing for a Bill of Particulars with the Clerk of Courts and a copy to be served on the District Attorney within seven (7) days following the above listed arraignment date (Pa. Rule of Criminal Procedure 572);

2. to file a motion with the Court in writing, requesting pretrial Discovery and Inspection and a copy to be served on the District Attorney within fourteen (14) days after the above listed arraignment date (Pa. Rule of Criminal Procedure 573);

3. to file an Omnibus motion with the Court in writing requesting all other kinds of pretrial relief and a copy to be served on the District Attorney within thirty (30) days after the above listed arraignment date (Pa. Rules of Criminal Procedure 578 & 579).

THE TIME LIMITS SET FORTH TO EXERCISE THESE RIGHTS WILL BE STRICTLY ENFORCED!

4. If I fail to appear without cause at any proceeding for which my presence is required, including trial, my absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in my absence. (Pa. Rule of Criminal Procedure 571).

I am hereby notified that, as a condition of bail, I am required to notify in writing the Clerk of Courts' office, the District Attorney's office, and my bondsman of any change of address and/or telephone number within forty-eight (48) hours after any change by mail or delivering in person said notice to each of the above (Pa. Rule of Criminal Procedure 117).

IF I FAIL TO APPEAR FOR ANY SCHEDULED COURT DATE, THE HEARING OR TRIAL WILL CONTINUE IN MY ABSENCE AND A BENCH WARRANT WILL BE ISSUED FOR MY ARREST, WITH AN ADDED CONTEMPT PENALTY OF UP TO SIX MONTHS INCARCERATION.

Signature of Defendant

Date

Signature of Attorney

[Pa.B. Doc. No. 16-2188. Filed for public inspection December 16, 2016, 9:00 a.m.]

LANCASTER COUNTY

Adoption of Rule 112 of Local Rules of Criminal Procedure; No. 25 AD 2016

Administrative Order

And Now, this 30th day of November 2016, it is hereby

Ordered, that effective January 9, 2017, the Lancaster County Court of Common Pleas adopts the following local rule 112 governing photography, recording, broadcasting and electronic equipment for the 2nd Judicial District.

The Lancaster County District Court Administrator is Ordered to do the following:

1. File one (1) copy to the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us.

2. File two (2) paper copies and one (1) electronic copy in a Microsoft Word format only to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish these Rules on the Lancaster County Court website at www.court.co.lancaster.pa.us.

4. Incorporation of the local rule into the set of local rules on www.court.co.lancaster.pa.us within thirty (30) days after the publication of the local rule in the *Pennsylvania Bulletin*.

5. File one (1) copy of the local rule in the appropriate filing office for public inspection and copying.

By the Court

DENNIS E. REINAKER,
President Judge

L.C.R.Crim.P. No. 112. Photography, Recording, Broadcasting and Electronic Equipment.

A. The taking of photographs, including video pictures and recording, and the use of audio and video broadcast and audio recording equipment and any other device capable of capturing or transmitting sound or images, in a courtroom or hearing room or its environs during the progress of or in connection with any action, whether or not court is actually in session, is prohibited.

B. *Environs Defined:* Environs of a courtroom or hearing room shall include the entire floor on which is located any courtroom, hearing room, jury room, grand jury room, sheriff's office or station, Prothonotary's or Clerk of Courts office, office of the District Attorney, or any lockup or prisoner holding area. Environs also includes the corridor or lobby on the main floor or street floor, any elevator area and any area constituting an interior entrance area to the building of any courtroom, hearing room or grand jury room.

C. *Recording Devices and Cellular Telephones Prohibited:* Cameras, cellular telephones, portable electronic data devices and any other device capable of capturing or transmitting images or sound are prohibited inside of the Lancaster County Courthouse (hereafter "Courthouse"), Adult Probation and Parole offices (40 East King Street), Domestic Relations lobby and offices, and inside a Magisterial District Court office at the discretion of the Magisterial District Judge.

1. *Employee Exception:* The prohibition in Section C above shall not apply to those individuals employed by the Court or County in the Courthouse, a Magisterial District Court, Adult Probation and Parole offices, or Domestic Relations lobby and offices, who clearly display an identification badge issued by the County of Lancaster, provided, however, that the device shall be in a "silent" or "vibrate only" mode when the employee enters a courtroom, hearing room, or grand jury room.

2. *Attorney Exception:* The prohibition to those facilities enumerated in Section C above shall not apply to an attorney at law who enters the Courthouse or a Magisterial District Court on business related to the representation of a client, provided, however, that the device shall have the power switched "off" when the attorney enters a courtroom, hearing room, or grand jury room.

3. *Emergency Responder Exception:* The prohibition to those facilities enumerated in Section C above shall not apply to emergency medical or other personnel responding to a call within the Courthouse, Office of Adult Probation, or Magisterial District Court.

4. *Juror Exception:* The prohibition in Section C above shall not apply to jurors summoned by Court Administration during their period of service as a juror.

5. *Evidence Exception*: The prohibition in Section C above shall not apply to the use of such devices for the purpose of presenting evidence in any court proceeding.

6. *Law Enforcement Exception*: The prohibition to those facilities enumerated in Section C above shall not apply to a member of law enforcement who provides proper identification and is on business related to a case before the court and/or a meeting with the Office of the District Attorney. However, the device shall have the power switched “off” when the member of law enforcement enters a courtroom, hearing room, or grand jury room.

D. *Special Proceedings*: In the discretion of the President Judge, photographing, making video or audio recordings, televising or broadcasting any special proceedings such as investiture, naturalization, or ceremonial proceedings, in a courtroom or its environs may be permitted under such conditions as the President Judge may prescribe.

E. *Stenographic Recordings*: Except as permitted by law or rule of court, the recording by any means of any judicial proceedings by anyone other than the official court stenographer in a court case, for any purpose, is prohibited.

F. *Special Permission*: The President Judge may, upon application, make exception to the prohibitions contained in this Rule under such circumstances and subject to such conditions as the President Judge may prescribe.

1. The application shall include the reason for the request, the type of electronic medium intended to be used, the locations at which the electronic medium is to be used, and the date and times of the day for which the exception is being sought.

2. If the exception is being sought in connection with any judicial proceeding, the caption and case number of the proceeding shall be included in the application.

G. *Special Cases*: The court may make such orders as may be necessary in connection with any specific case to protect the rights of all parties and the public

[Pa.B. Doc. No. 16-2189. Filed for public inspection December 16, 2016, 9:00 a.m.]

MONROE COUNTY

Local Rules of Judicial Administration; 5 AD 2016

Order Pursuant to Pa.R.J.A. 103(c)

And Now, this 2nd day of December, 2016, it is *Ordered* that the following Rules of the Court of Common Pleas of the 43rd Judicial District of Pennsylvania, Monroe County, are implemented, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It Is Further Ordered that the District Court Administrator shall:

1. File a copy of this order and copy of the local rules with the Administrative Office of Pennsylvania Courts (AOPC).

2. File with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* two (2) paper copies and one (1) computer diskette, CD-ROM, or other agreed upon alternate format copy which complies with 1 Pa. Code § 13.11(b) containing the text of the local rules.

3. Provide one (1) copy of the local rule changes to the Monroe County Law Library.

4. Keep such local rules, as well as all local rules, continuously available for public inspection and copying in the Office of the Prothonotary of Monroe County and on the website of the 43rd Judicial District of Pennsylvania, Monroe County, Court of Common Pleas at www.monroepacourts.us. Upon request and payment of reasonable cost of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

5. Arrange to have the local rules published on the Monroe County Bar Association website at www.monroebar.org.

By the Court

MARGHERITA PATTI-WORTHINGTON,
President Judge

Rules of Judicial Administration

Local Rules

Rule 4007. Requests for Transcripts.

(A) Rough draft transcripts shall not be available in this Court.

(B) Deposit or partial payment amounts shall be 95% of the total transcript cost estimated by the Office of Court Administration and ordered by the Judge of record. Deposit or partial payment amounts shall be made within fourteen (14) days of the date of the court order directing the deposit or partial payment amount. Orders directing deposit payments and ordering transcription will be vacated if deposit or partial payment amounts are not remitted within the stated timeframe.

(C) Upon completion of the transcript, the Court Reporter, Recorder or Transcriptionist shall file of record Form A—Notice of Completion of Transcript and serve a copy on the requesting party by regular mail and the District Court Administrator.

(D) All payments, including deposit and final payments, shall be made payable to the 43rd Judicial District, remitted at the appropriate filing office and accompanied by Form B—Notice of Payment. All payments shall be nonrefundable. Requesting parties shall file of record Form B—Notice of Payment and serve a copy on the District Court Administrator by hand delivery, by mail, by facsimile transmission or by email to transcripts@monroepacourts.us. The filing office shall place all payments in escrow on the case until such time as the District Court Administrator files of record Form C—Praecepte to Disburse Funds.

(E) The District Court Administrator shall file of record Form C—Praecepte to Disburse Funds, notifying the appropriate filing office to disburse funds deposited in escrow in accordance with these rules to the Controller's Office for payment to the transcriptionist, in the following instances:

a. Within thirty (30) days of delivery of the final transcript to the requesting party; and

b. When payment of the balance owed is not made within thirty (30) days from the date of filing of Form A—Notice of Completed Transcript.

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

(A) The reasonable surcharge in cases such as mass tort, medical malpractice or other unusually complex litigation, where there is a need for Court Reporters or Recorders to significantly expand their dictionary shall be the following:

- a. For an ordinary transcript, \$4.25 per page;
- b. For an expedited transcript, \$5.25 per page;
- c. For a daily transcript, \$6.25 per page;
- d. For same day delivery, \$8.25 per page; and
- e. In bound paper format, additional \$0.25 per page.

Rule 4009. Fees and Procedures.

(A) The fees to be paid for all court reporting products are as follows:

a. Transcripts requested in accordance with Pa.R.J.A. 4008(A) shall have costs assessed as noted therein.

b. Transcripts requested in accordance with Pa.R.J.A. 4008(B)(1) shall have costs waived for the requesting party and imputed to the Court for payment to the Transcriptionist. In accordance with Pa.R.J.A. 4007(F), no deposit shall be required.

c. Transcripts requested in accordance with Pa.R.J.A. 4008(B)(2) shall have costs assessed as follows:

- i. For an ordinary transcript, \$1.25 per page;
- ii. For an expedited transcript, \$1.75 per page;
- iii. For a daily transcript, \$2.25 per page;
- iv. For same day delivery, \$3.25 per page; and
- v. In bound paper format, additional \$0.13 per page.

d. Transcripts requested in accordance with Monroe Co.R.J.A. 4008(A) shall have costs assessed as noted therein.

e. Transcript costs payable by the Commonwealth or subdivision thereof shall have costs assessed as follows:

- i. For an ordinary transcript, \$2.00 per page;
- ii. For an expedited transcript, \$3.00 per page;
- iii. For a daily transcript, \$4.00 per page;
- iv. For same day delivery, \$6.00 per page; and
- v. In bound paper format, additional \$0.25 per page.

f. The fee for a Real-time feed shall be \$4.25 per page for the duration of the proceedings.

g. The fee for court orders shall be \$1.50 per order.

h. Transcripts prepared at the initiation of the Court shall have costs assessed in accordance with subsection (e) of this rule.

(B) All requests for transcripts shall be filed of record in the appropriate filing office. Requests shall be in the form of a motion and shall include the case caption, the standardized form provided by the State Court Administrator in accordance with Pa.R.J.A. 4007(A) and verification. Service of the request shall be made in accordance with Pa.R.J.A. 4007(B).

(C) Requests for waiver or reduction of costs shall be made by motion to the Judge of record, filed of record in the appropriate filing office, and served in accordance with Pa.R.J.A. 4007(B).

Rule 4011. Deadline for Delivery of Transcript.

Transcription shall commence for cases under appeal upon remittance of the required deposit in accordance with Pa.R.A.P. 1911(a) and 1922(a) and in the manner prescribed in Monroe Co.R.J.A. 4007.

**COURT OF COMMON PLEAS OF
MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

20

Plaintiff :
:
:
v. :
:
:
Defendant :

Form A: NOTICE OF COMPLETION OF TRANSCRIPT

The transcript directed to be completed by Order of Court dated is complete. A copy has been provided to the Judge of record. The final balance due is . Upon payment of final balance in accordance with Monroe Co.R.J.A. 4007(D), the transcript will be delivered to the requesting party.

Transcriptionist

cc: , Requesting Party
Renee L. Danser, Esq., District Court Administrator

**COURT OF COMMON PLEAS OF
MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

20

Plaintiff :
:
:
v. :
:
:
Defendant :

Form B: NOTICE OF PAYMENT

Deposit payment Final payment is made in the amount of for the transcript directed to be completed by Order of Court dated .

Requestor

cc: Renee L. Danser, Esq., District Court Administrator

**COURT OF COMMON PLEAS OF
MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

20

Plaintiff :
:
:
v. :
:
:
Defendant :

**Form C: PRAECIPE TO DISBURSE FUNDS
TO THE FILING OFFICE:**

Please disburse funds held in escrow on the above-captioned case for transcription to the Office of the

Controller for purposes of payment to the following transcriptionist(s) in the amounts noted:

- 1. To disburse the amount of .
- 2. To disburse the amount of .
- 3. To disburse the amount of .

District Court Administrator

cc: Controller, County of Monroe

[Pa.B. Doc. No. 16-2190. Filed for public inspection December 16, 2016, 9:00 a.m.]

MONTGOMERY COUNTY

Amendment of Local Rules of Civil Procedure 1028(c), 1034(a) and 1035.2(a); No. 2016-00001

Order

And Now, this 1st day of December, 2016, the Court hereby Amends Montgomery County Local Rules of Civil Procedure 1028(c), 1034(a), and 1035.2(a). These Amended Local Rules shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in *The Legal Intelligencer*. In conformity with Pa.R.J.A. 103, one (1) certified copy of this Order shall be filed with the Administrative Office of Pennsylvania Courts. Two (2) certified copies and one (1) electronic copy shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. These amended Rules shall also be published on the Montgomery County Court website, and incorporated into the set of local rules on the Court's website within 30 days of publication in the *Pennsylvania Bulletin*.

By the Court

WILLIAM J. FURBER, Jr.,
President Judge

Rule 1028(c). Preliminary Objections.

- (1) * * *
- (2) * * *
- (3) * * *
- (4) * * *
- (a) * * *
- (b) * * *

(c) List the matter for argument, at which time only the complying party shall be heard; or

(d) Impose such other sanctions upon the non-complying party as the Judge shall deem proper.

Comments: * * *

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

- (1) * * *
- (2) * * *
- (3) * * *
- (4) * * *
- (a) * * *
- (b) * * *

(c) List the matter for argument, at which time only the complying party shall be heard; or

(d) Impose such other sanctions upon the non-complying party as the Judge shall deem proper.

Comments: * * *

Rule 1035.2(a). Motion for Summary Judgment.

- (1) * * *
- (2) * * *
- (3) * * *
- (4) * * *
- (a) * * *
- (b) * * *

(c) List the matter for argument, at which time only the complying party shall be heard; or

(d) Impose such other sanctions upon the non-complying party as the Judge shall deem proper.

Comment: * * *

[Pa.B. Doc. No. 16-2191. Filed for public inspection December 16, 2016, 9:00 a.m.]

SCHUYLKILL COUNTY

Adoption of Local Rule 4007 and 4008 of Judicial Administration; AD 90-2016

Order of Court

And Now, this 30th day of November, 2016, at 1:15 p.m., the Court hereby adopts the following new Local Rules of Judicial Administration for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective January 1, 2017.

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

1) File one (1) copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts via email to adminrules@pacourts.us.

2) File two (2) paper copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) Publish a copy of the local rule on the Schuylkill County Court website at www.co.schuylkill.pa.us.

4) Incorporate the local rule into the set of local rules on www.co.schuylkill.pa.us within thirty (30) days after publication in the *Pennsylvania Bulletin*.

5) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

6) File one (1) copy of the local rule in the Clerk of Courts Filing Office for public inspection and copying.

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Local Rules of Judicial Administration

Rule 4007. Requests for Transcripts.

(A) All requests for transcripts shall be set forth on a standardized form provided by the Court Administrator.

The form is available on the Schuylkill County website at www.co.schuylkill.pa.us or can be obtained from the Chief Court Reporter

(B) For an ordinary transcript, the party requesting a full or partial transcript of a trial or other proceeding shall file the original request with the Clerk of Courts, Prothonotary or Orphans' Court. The requesting party shall also serve copies of the formal request to:

- (1) the judge presiding over the matter;
- (2) the court reporter, court recorder;
- (3) the Chief Court Reporter
- (4) opposing counsel, but if not represented, the opposing party.

(C) Daily expedited or same day transcripts are available, requests for these transcripts shall be filed in writing in the appropriate filing office at least 10 days prior to the proceeding. Copies of the written request shall be delivered as required by subsection (B).

(D) When a litigant requests a transcript,

(1) the litigant ordering a transcript shall make partial payment in an amount of 50% of the estimated total cost of the transcripts. Deposit checks are to be made payable to the County of Schuylkill and shall be delivered to the Chief Court Reporter.

(2) upon receipt of the 50% deposit, the court reporter shall prepare the transcript upon direction of the Chief Court Reporter.

(3) the court reporter or court recorder shall notify the ordering party and the Chief Court Reporter of the completion of the transcript and shall indicate the balance due and deliver a copy of the transcript to the judge presiding over the matter. Checks for the final balance are to be made payable to the County of Schuylkill and delivered to the Chief Court Reporter.

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

(E) When a litigant requests a transcript, but cannot pay for the transcript because of alleged economic hardship, the court shall determine economic hardship pursuant to the procedure set forth in Schuylkill County R.J.A. 4008(B).

(F) When a transcript is requested for which the court or county is responsible for the cost, the court reporter or court recorder shall prepare the transcript without the necessity of a deposit.

Rule 4008. Transcript Costs Payable by a Requesting Party, other than the Commonwealth or a Subdivision Thereof.

(A) *Costs: Electronic Format*

(1) The costs payable by the initial ordering party, for a transcript in an electronic format shall not exceed:

- (a) For an ordinary transcript, \$2.50 per page;
- (b) For an expedited transcript, \$3.50 per page;
- (c) For a daily transcript, \$4.50 per page;
- (d) For same day delivery, \$6.50 per page;

(2) *Costs: Paper Format.* The costs payable by the initial ordering party for a transcript prepared in bound paper format shall not exceed:

- (a) For an ordinary transcript, \$2.75 per page;
- (b) For an expedited transcript, \$3.75 per page;
- (c) For a daily transcript, \$4.75 per page;
- (d) For same-day delivery, \$6.75 per page;

(B) *Economic hardship—minimum standards*

(1) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be waived for a litigant who has been permitted by the court to proceed in forma pauperis or whose income is less than 125 percent of the poverty line as defined by the U.S. Department of Health and Human Services (HHS) poverty guidelines for the current year.

(2) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be reduced by one-half for a litigant whose income is less than 200 percent of the poverty line as defined by the HHS poverty guidelines for the current year.

(3) Transcript costs for ordinary transcripts in matters that are not subject to an appeal, where the transcript is not necessary to advance the litigation, or for expedited, daily, rough draft or same day transcripts may be waived at the court's discretion for parties who qualify for economic hardship under subdivision (B)(1) or (B)(2) and upon good cause shown.

(4) The application to waive all or a portion of costs for ordinary transcripts shall be supported by an affidavit substantially in the In Forma Pauperis Petition required by Pennsylvania Rule of Civil Procedure 240(h).

Litigants who have been approved for representation by legal aid services are not required to prove economic hardship. Legal aid services must verify on the Transcript Request Form that the matter is under appeal or that the transcript being requested is necessary to advance current litigation.

(C) *Assignment and allocation of transcript costs*

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

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

(D) *Copies of transcript*

A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided according to the following schedule:

- (1) \$0.75 per page bound, paper format; and,
- (2) \$0.50 per page electronic copy.

All requests for copies of filed transcripts shall be directed to the Chief Court Reporter and produced solely by the Court Reporters' Office.

[Pa.B. Doc. No. 16-2192. Filed for public inspection December 16, 2016, 9:00 a.m.]