

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Damages for Delay

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

Rule 238. Damages for Delay in an Action for Bodily Injury, Death or Property Damage.

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Addendum to Explanatory Comment (2017)

The prime rate as set forth in the first edition of the *Wall Street Journal* for a particular year is the basis for calculating damages for delay under Pa.R.C.P. No. 238 as revised November 7, 1988. The prime rate published in the first edition of the *Wall Street Journal* for each of the years specified is as follows:

<i>Date of Publication</i>	<i>Prime Rate Percentage</i>
January 3, 2017	3 3/4
January 4, 2016	3 1/2
January 2, 2015	3 1/4
January 2, 2014	3 1/4
January 2, 2013	3 1/4
January 3, 2012	3 1/4
January 3, 2011	3 1/4
January 4, 2010	3 1/4
January 2, 2009	3 1/4
January 2, 2008	7 1/4
January 2, 2007	8 1/4
January 3, 2006	7 1/4
January 3, 2005	5 1/4
January 2, 2004	4
January 2, 2003	4 1/4
January 2, 2002	4 3/4
January 2, 2001	9 1/2
January 3, 2000	8 1/2
January 4, 1999	7 3/4
January 2, 1998	8 1/2

Official Note: The prime rate for the years 1980 through 1997 may be found in the Addendum to the Explanatory Comment published in the *Pennsylvania*

Bulletin, volume 33, page 634 (2/1/03) and on the web site of the Civil Procedural Rules Committee at <http://www.pacourts.us>.

By the Civil Procedural Rules Committee

WILLIAM S. STICKMAN, IV,
Chair

[Pa.B. Doc. No. 17-42. Filed for public inspection January 13, 2017, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 400 AND 1000]

Order Amending Rules 410, 430, 1064 and 1065 of the Rules of Civil Procedure; No. 656 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 30th day of December, 2016, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a):

It is *Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 410, 430, 1064, and 1065 of the Pennsylvania Rules of Civil 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 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 400. SERVICE OF ORIGINAL PROCESS

SERVICE IN PARTICULAR ACTIONS

Rule 410. Real Property Actions.

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(c) If service is made pursuant to an order of court under Rule 430(a), the court shall direct one or more of the following methods of service:

(1) publication as provided by Rule 430(b),

Official Note: See Rule 1064 for additional requirements for service of original process by publication for actions to quiet title involving subsurface mineral, oil, or natural gas rights.

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SERVICE PURSUANT TO SPECIAL ORDER OF COURT

Rule 430. Service Pursuant to Special Order of Court. Publication.

(a) If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made.

Official Note: A sheriff's return of "not found" or the fact that a defendant has moved without leaving a new forwarding address is insufficient evidence of concealment. *Gonzales v. Polis*, 357 A.2d 580 (Pa. Super. 1976). Notice of intended adoption mailed to last known address requires a "good faith effort" to discover the correct address. *Adoption of Walker*, 360 A.2d 603 (Pa. 1976).

An illustration of a good faith effort to locate the defendant includes (1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 C.F.R. Part 265, (2) inquiries of relatives, neighbors, friends, and employers of the defendant, (3) examinations of local telephone directories, courthouse records, voter registration records, local tax records, and motor vehicle records, and (4) a reasonable internet search.

See Rule 1064 for additional requirements for service of original process by publication for actions to quiet title involving subsurface mineral, **oil, or natural gas** rights.

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CHAPTER 1000. ACTIONS

Subchapter D. ACTION TO QUIET TITLE

Rule 1064. Service.

In actions involving subsurface mineral, **oil, or natural gas** rights, if the plaintiff seeks to serve original process by publication pursuant to Rule 430 and obtains actual knowledge of a last known address of the defendant outside the county in which the property is located, the plaintiff shall explain in the affidavit required by Rule 430(a) the search for the defendant in that locale.

Official Note: For service of original process, see Rule 410 governing service in actions involving real property. See Rule 430 for additional requirements for service of original process by publication.

Rule 1065. Specific Avertisments.

(a) Except as provided in subdivision (b), the plaintiff shall describe the land in the complaint.

(b) In an action to quiet title involving subsurface mineral, **oil, or natural gas** rights, the complaint shall describe the land by attaching:

(1) a summary of the abstract of the mineral, **oil, or natural gas** title, or the full abstract of the mineral, **oil, or natural gas** title if the title documents are not available in the courthouse records, and

(2) a statement of acreage involved that includes a metes and bounds description, if available, or other description sufficient to identify the subject land.

EXPLANATORY COMMENT

Recent amendments to Rules 410, 430, 1064, and 1065 updated the requirements for the service by publication authorized by special order of court for actions to quiet

title of subsurface mineral rights. These rules have been further amended to clarify that this procedure specifically applies to actions to quiet title of oil and natural gas rights.

By the Civil Procedural Rules Committee

WILLIAM S. STICKMAN, IV,
Chair

[Pa.B. Doc. No. 17-43. Filed for public inspection January 13, 2017, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Proposed Rescission of Rule 107 and Adoption of New Rule 107

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the rescission of current Rule 107 (Contents of Subpoenas) and the adoption of new Rule 107 (Subpoenas) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

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

All communications in reference to the proposal should be received by no later than Friday, February 24, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee

CHARLES A. EHRlich,
Chair

Annex A

**TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 1. SCOPE OF RULES, CONSTRUCTION
AND DEFINITIONS, LOCAL RULES**

PART A. Business of the Courts

Rule 107. [Contents of Subpoena] (Reserved).

[A subpoena in a criminal case shall order the witness named to appear before the court at the

date, time, and place specified, and to bring any items identified or described. The subpoena shall also state on whose behalf the witness is being ordered to testify and the identity, address, and phone number of the attorney, if any, who applied for the subpoena.

Comment

The form of subpoena was deleted in 1985 because it is no longer necessary to control the specific form of subpoena by rule.

It is intended that the subpoena shall be used not only for trial but also for any other stage of the proceedings when a subpoena is issuable, including preliminary hearings, hearings in connection with pretrial and post-trial motions, etc.

When the subpoena is for the production of documents, records, or things, these should be specified.]

Official Note: Previous Rule 9016 adopted January 28, 1983, effective July 1, 1983; rescinded November 9, 1984, effective January 2, 1985. Present Rule 9016 adopted November 9, 1984, effective January 2, 1985; renumbered Rule 107 and amended March 1, 2000, effective April 1, 2001; rescinded , 2017, effective , 2017, and replaced by new Rule 107.

Committee Explanatory Reports:

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

Report explaining the rescission of Rule 107 and the adoption of new Rule 107 establishing procedures for the issuance, service, and content of subpoenas published for comment at 47 Pa.B. 181 (January 14, 2017).

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

Rule 107. Service and Contents of Subpoenas.

(A) ISSUANCE OF SUBPOENA BY MINOR JUDICIARY

Upon the request of a party, the issuing authority may issue a subpoena.

(1) The individual requesting the subpoena shall provide the issuing authority with the information required in paragraph (C).

(2) If the subpoena is to be issued, the issuing authority shall fill in the information provided.

(3) The subpoena shall be signed by and under the seal of the issuing authority.

(B) SERVICE OF SUBPOENA

(1) Subpoenas in criminal proceedings shall be served:

(a) by a competent adult personally delivering the subpoena to a witness; or

(b) by certified, registered, or first class mail to a witness; or

(c) by carrier service delivering the subpoena to a witness; or

(d) when the witness is an officer of a law enforcement agency that has filed the statement of consent provide in paragraph (B)(2), by electronically transmitting a copy of the subpoena, acknowledgement of receipt requested, to the electronic address designated for receipt of electronic

service of subpoenas by the law enforcement agency to which the officer is assigned.

(2) In order to utilize electronic service of subpoenas for its officers as permitted under paragraph (B)(1)(d), a law enforcement agency shall file a statement of consent to this form of service with the clerk of courts and the issuing authorities from which the agency consents to accept this form of service. The consent shall include the electronic address to be used for service of subpoenas.

(3) If a subpoenaed witness is under the age of 18, a parent or guardian of the witness shall be served a copy of the subpoena. A subpoena may be served on a witness under the age of 18 without the requirement of serving a parent or guardian if permitted by the judge for good cause shown.

(4) The party requesting the subpoena shall be responsible for the service of the subpoena.

(C) CONTENTS OF SUBPOENA

(1) A subpoena in a criminal proceeding shall:

(a) order the witness named to appear before the court at the date, time, and place specified to give testimony and to bring any records, books, papers, documents, data, or other items identified or described in the subpoena;

(b) state on whose behalf the witness is being ordered to testify;

(c) state the name, address, and phone number of the individual who applies for the subpoena; and

(d) inform the witness that the failure to comply with the subpoena may be considered by the court as grounds for contempt and that a bench warrant may be issued for the witness' arrest.

(2) The contents of a subpoena, including the identity of the subpoenaed person, are not public records.

Comment

It is intended that the subpoena will be used not only for summary trials or trials in the courts of common pleas and the Philadelphia Municipal Court, but also for any other stage of the proceedings before the minor judiciary, Philadelphia Municipal Court, or common pleas court when a subpoena is issuable, including preliminary hearings, hearings in connection with pretrial and post-trial motions, etc. For the procedures governing investigating grand jury subpoenas, see 42 Pa.C.S. § 4548.

Paragraph (A) provides the procedures for the issuance of subpoenas by the minor judiciary. Nothing in this rule is intended to change the current subpoena practice for the issuance of subpoenas by the courts of common pleas.

When issuing a subpoena, the issuing authority may limit the scope of the subpoena to persons, documents, or things that are relevant to the cause of action before the issuing authority.

A subpoena is not to be used for the production of materials or information required or requested to be produced pursuant to rules 573 or 574.

All issued subpoenas must be signed by a judge of the court issuing the subpoena. The signature may be in any of the forms of signature authorized in the Rule 103 definition of "signature."

The service provisions in paragraph (B) apply to subpoenas issued by the judges of the courts of common pleas, the magisterial district courts, the Philadelphia Municipal Court, and the Pittsburgh Municipal Court.

Paragraph (B)(1)(d) permits service by electronic means when the witness is a law enforcement officer. This method of service may be utilized for subpoenas issued by a judge of the court of common pleas or the minor judiciary. When a law enforcement agency files the certification in paragraph (B)(2) consenting to electronic service, the agency is assuming the responsibility of accepting electronically-served subpoenas and ensuring that the correct member of the agency is notified to appear as required by subpoenas.

It is intended under paragraph (B)(3) that parties subpoenaing witnesses under the age of 18 are responsible for any additional costs for the service of the subpoena on a parent or guardian.

Nothing in paragraph (B)(3) gives the parent or guardian of a witness under the age of 18 legal standing in the matter being heard or creates a right for the minor witness to have his or her parent or guardian present. In addition, lack of required notice to a parent or guardian does not prevent the minor witness from appearing and testifying.

As noted in paragraph (B)(4), service is the responsibility of the party requesting the subpoena not the court.

Concerning service of subpoenas by first class mail and proof of service, see 42 Pa.C.S. § 5904.

Paragraph (C) sets forth the mandatory contents of the subpoena. Although this paragraph does not require that the address of the person being subpoenaed be included on the subpoena, this is not intended to prohibit inclusion of the address on the subpoena for purposes of service. When the subpoena is for the production of records, books, papers, documents, photographs, data, or other items, these must be specified in the subpoena. Concerning subpoenas for medical records, see 42 Pa.C.S. §§ 6151–6160.

Although paragraph (C)(1)(a) requires the name of the witness to be included in the subpoena, in cases in which a specific name is not known, for example when the subpoena is for records from a hospital and the name of the record keeper is not available at the time the subpoena is issued, this requirement may be satisfied by providing a description of the person to receive the subpoena such as “records custodian.”

Pursuant to paragraph (C)(2), the contents of subpoenas are not public records and not accessible by the public.

Before issuing a bench warrant for failure to obey the subpoena, the judge or issuing authority must ensure that the subpoenaed person has received sufficient notice of the proceeding. The requesting party has the burden of presenting proof of service. If the judge determines the person did not have sufficient notice, the judge may grant a continuance and order that the person be served the subpoena either in person or by certified mail, return receipt requested.

For the procedures following the execution of a bench warrant, see Rules 150 and 151.

The scope of an issuing authority’s authority to enforce a subpoena is limited by statute. See 42 Pa.C.S. § 4137(d), that provides, *inter alia*, issuing authorities “shall have the power to issue an attachment by means of a warrant” to have the witness brought before the issuing authority for a hearing on the failure to comply with the subpoena. See also, Rule 140(B)(1).

Official Note: Previous Rule 9016 adopted January 28, 1983, effective July 1, 1983; rescinded November 9, 1984, effective January 2, 1985. Present Rule 9016 adopted November 9, 1984, effective January 2, 1985; renumbered Rule 107 and amended March 1, 2000, effective April 1, 2001; rescinded , 2017, effective , 2017, and replaced by new Rule 107. New Rule 107 adopted , 2017, effective , 2017.

Committee Explanatory Reports:

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

Report explaining the rescission of Rule 107 and the adoption of new Rule 107 establishing procedures for the issuance, service, and content of subpoenas published for comment at 47 Pa.B. 181 (January 14, 2017).

REPORT

Proposed Rescission of Pa.R.Crim.P. 107 and Adoption of New Pa.R.Crim.P. 107

Procedures for Issuance and Service of Subpoenas

Background

The Committee at various times since 2004 has worked on developing procedures that would govern subpoenas. After extensive study into the different procedures governing subpoenas in Pennsylvania, including the formulation of a subcommittee, study of the various rules and statutes governing subpoenas in other forums,¹ and the publication of several prior versions of this proposal,² as well as discussion with the Court regarding the proposal, the Committee concluded that the rules would benefit from providing more clarity as to the procedures for the issuance and service of subpoenas, particularly in the magisterial district courts. The proposed rule changes would create a new Rule 107 that would set forth the procedures for the issuance and service of subpoenas in addition to the provisions contained in current Rule 107 regarding content.

A. Issuance

Paragraph (A) would provide the procedures for the issuance of a subpoena in cases pending before the minor judiciary. The issuing authority would be given some discretion in paragraph (A) comparable to the discretion given magisterial district judges in civil cases pursuant to MDJ Rule 214. Additionally, the requesting individual would be required to provide the information required by paragraph (C) for the contents of the subpoena, and the issuing authority is required to fill in the subpoena with this information. All subpoenas issued by a member of the minor judiciary must be signed by the issuing authority. Given the diversity of practice in the courts of common pleas, the proposed rule does not provide specific procedures for the issuance of subpoenas by the courts of common pleas but language would be added to the Comment to the new rule that no change to existing practice is intended.

¹ See, e.g., the Rules of Criminal Procedure (Criminal Rules) (Rule 107), the Rules of Civil Procedure (Civil Rules) (Rules 234.1, 234.2, 234.5, and 234.6), and the Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges (MDJ Rules) (Rules 213 and 214), and 42 Pa.C.S. §§ 5904 (Subpoena of Witnesses) and 5905 (Subpoenas).

² See 35 Pa.B. 1556 (March 5, 2005), 35 Pa.B. 5676 (October 15, 2005), and 45 Pa.B. 2140 (May 2, 2015).

B. Service

Paragraph (B) would set forth the requirements for service of the subpoena. The proposed service provisions in paragraph (B) are a combination of provisions from Rule 576(B) and from Minor Court Rule 214, and provide for personal service by a competent adult; service by certified, registered, or first class mail; or service by a carrier service.

In response to the most recent prior publication, the Committee received a suggestion that a provision be added permitting the electronic service of subpoenas to law enforcement agencies due to the large number of subpoenas issued to these entities. It was suggested that this practice is already in place in many jurisdictions and that it has resulted in significant savings of time, money and labor for prosecutors' offices. The Committee therefore incorporated this suggestion into paragraph (B)(1)(d) and (B)(2) of the new rule. In order to utilize this form of service, a written consent to be served with subpoenas electronically must be filed by the law enforcement agency with the clerk of courts and any issuing authorities from whom the agency is willing to accept e-service. Language would be added to the Comment that explains, when a law enforcement agency files a consent to be served electronically, the agency assumes the responsibility of accepting electronically-served subpoenas and ensuring the correct member of the agency is notified to appear as required by the subpoena.

Provisions concerning parental notification when the subpoenaed witness is under the age of 18 are included in paragraph (B)(3). The Committee recognized that not all individuals under the age of 18 are under the supervision or control of a parent or guardian and some are emancipated. In view of this, a provision similar to Juvenile Rule 123(E)(2) that would provide an exception to the service requirement when permitted by a judge for good cause shown has been added as the second sentence of paragraph (B)(2). Additionally, the Comment explains that the party subpoenaing the minor bears the responsibility for the costs of service on the parent, that the service provision does not provide legal standing or give the parent or guardian any right to be present, and that lack of the required notice does not prevent the minor witness from appearing and testifying.

Paragraph (B)(4) would provide that the party requesting the subpoena shall be responsible for the service of the subpoena. This provision was added in response to the report of the practice in some jurisdictions that the police were insisting that MDJs be responsible for serving subpoenas requested by the police.

C. Contents

Paragraph (C) sets forth the contents of the subpoena, incorporating the provisions in current Rule 107. Additionally, paragraph (C)(1)(c) requires that the subpoena include the name and address for service on the person applying for the subpoena. Paragraph (C)(1)(d) provides that the subpoena shall "inform the witness that the failure to comply with the subpoena may be considered by the court as grounds for contempt and that a bench warrant may be issued for the witness' arrest."

The Committee considered the concern that as a judicially signed document, a subpoena would be part of the public record. There was a concern such disclosure potentially could expose the witness to privacy invasion or intimidation or retribution. The Committee concluded that such concerns were valid and agreed that the rule should state that the contents of the subpoena, including

to whom the subpoena was issued, should be not be considered a public record. This provision would be contained in the new rule as paragraph (C)(2).

D. Comment Provisions

In addition to the provisions noted above, the Comment to new Rule 107 would include an explanation that subpoenas issued by Philadelphia Municipal Court judges are to be issued as provided in this rule. In addition, the Comment emphasizes that the subpoenas must be signed by a judge of the issuing court (common pleas court, Philadelphia Municipal, or magisterial district courts), and includes a cross-reference to the Criminal Rule 103 definition of "signature" to make it clear that the subpoena may be signed using any of the forms of signature set forth in Rule 103. The Comment also includes cross-references to 42 Pa.C.S. § 4137 and Pa.R.Crim. P. 140 to make it clear that subpoenas issued pursuant to paragraph (A) are subject to the minor court contempt powers.

[Pa.B. Doc. No. 17-44. Filed for public inspection January 13, 2017, 9:00 a.m.]

[234 PA. CODE CHS. 2 AND 5]

Proposed Amendment of Pa.Rs.Crim.P. 203 and 513

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendments of Rule 203 (Requirements for Issuance.) and Rule 513 (Requirements for Issuance; Dissemination of Arrest Warrant Information) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

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

All communications in reference to the proposal should be received by no later than Friday, February 24, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural
Rules Committee*

CHARLES A. EHRlich,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 203. Requirements for Issuance.

* * * * *

(C) Immediately prior to submitting a search warrant application and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority by telephone, or by any device which, at a minimum, allows for simultaneous [audio-visual] audio communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant. In any telephonic communication, if the issuing authority has a concern regarding the identity of the affiant, the issuing authority has the discretion to require the affiant to communicate by a device allowing for two-way simultaneous communication or may require the affiant to appear in person.

* * * * *

Comment

* * * * *

When advanced communication technology is used, the issuing authority is required by this rule to (1) determine that the evidence contained in the affidavit(s) establishes probable cause, and (2) verify the identity of the affiant.

[The "visual" requirement in paragraph (C) must allow, at a minimum, the issuing authority to see the affiant at the time the oath is administered and the information received.]

Verification methods include, but are not limited to: a "call back" system, in which the issuing authority would call the law enforcement agency or police department that the affiant indicates is the entity seeking the warrant; a "signature comparison" system whereby the issuing authority would keep a list of the signatures of the law enforcement officers whose departments have advanced communication technology systems in place, and compare the signature on the transmitted information with the signature on the list; or an established "password" system.

Paragraph (F) was added to the rule in 2005 to provide for anticipatory search warrants. The rule incorporates the definition of anticipatory search warrants set forth in Commonwealth v. Glass, 562 Pa. 187, 754 A.2d 655 (2000).

Paragraph (G) was added to clarify who must retain possession of the original of the search warrant. When the search warrant is issued using advanced communication technology, the version delivered to the police officer is considered the original for purposes of this rule.

Official Note: Rule 203 adopted March 28, 1973, effective for warrants issued 60 days hence; renumbered Rule 203 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006; amended October 22, 2013, effective January 1, 2014; amended , 2017, effective , 2017.

Committee Explanatory Reports:

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Final Report explaining the October 22, 2013 amendments regarding the original search warrants published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Report explaining the proposed amendments regarding electronic technology for swearing affidavits published for comment at 47 Pa.B. 184 (January 14, 2017).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(3). Arrest Procedures in Court Cases

(a) Arrest Warrants

Rule 513. Requirements for Issuance; Dissemination of Arrest Warrant Information.

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(B) ISSUANCE OF ARREST WARRANT

(1) In the discretion of the issuing authority, advanced communication technology may be used to submit a complaint and affidavit(s) for an arrest warrant and to issue an arrest warrant.

(2) No arrest warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

(3) Immediately prior to submitting a complaint and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority by telephone, or by any device which, at a minimum, allows for simultaneous [audio-visual] audio communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant. In any telephonic communication, if the issuing authority has a concern regarding the identity of the affiant, the issuing authority has the discretion to require the affiant to communicate by a device allowing for two-way simultaneous communication or may require the affiant to appear in person.

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Comment

This rule was amended in 2013 to add provisions concerning the delay in inspection and dissemination of arrest warrant information. Paragraph (A) provides a definition of the term "arrest warrant information" that is used throughout the rule. Paragraph (B) retains the existing requirements for the issuance of arrest warrants. Paragraph (C) establishes the procedures for a temporary delay in the inspection and dissemination of arrest warrant information prior to the execution of the warrant.

ISSUANCE OF ARREST WARRANTS

Paragraph (B)(1) recognizes that an issuing authority either may issue an arrest warrant using advanced communication technology or order that the law enforcement officer appear in person to apply for an arrest warrant.

This rule does not preclude oral testimony before the issuing authority, but it requires that such testimony be

reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for an arrest warrant must be sworn to before the issuing authority prior to the issuance of the warrant. The language “sworn to before the issuing authority” contemplates, when advanced communication technology is used, that the affiant would not be in the physical presence of the issuing authority. *See* paragraph (B)(3).

This rule carries over to the arrest warrant the requirement that the evidence presented to the issuing authority be reduced to writing and sworn to, and that only the writing is subsequently admissible to establish that there was probable cause. In these respects, the procedure is similar to that applicable to search warrants. *See* Rule 203. For a discussion of the requirement of probable cause for the issuance of an arrest warrant, see *Commonwealth v. Flowers*, [24 Pa.Super. 198,] 369 A.2d 362 (Pa. Super. 1976).

The affidavit requirements of this rule are not intended to apply when an arrest warrant is to be issued for noncompliance with a citation, with a summons, or with a court order.

An affiant seeking the issuance of an arrest warrant, when permitted by the issuing authority, may use advanced communication technology as defined in Rule 103.

When advanced communication technology is used, the issuing authority is required by this rule to (1) determine that the evidence contained in the affidavit(s) establishes probable cause, and (2) verify the identity of the affiant.

[The “visual” requirement in paragraph (B)(3) must allow, at a minimum, the issuing authority to see the affiant at the time the oath is administered and the information received.]

Verification methods include, but are not limited to: a “call back” system, in which the issuing authority would call the law enforcement agency or police department that the affiant indicates is the entity seeking the warrant; a “signature comparison” system whereby the issuing authority would keep a list of the signatures of the law enforcement officers whose departments have advanced communication technology systems in place, and compare the signature on the transmitted information with the signature on the list; or an established “password” system.

Under Rule 540, the defendant receives a copy of the warrant and supporting affidavit at the time of the preliminary arraignment.

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Official Note: Rule 119 adopted April 26, 1979, effective as to arrest warrants issued on or after July 1, 1979; Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 513 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended December 23, 2013, effective March 1, 2014; **amended** , **2017, effective** , **2107.**

Committee Explanatory Reports:

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Final Report explaining the December 23, 2013 amendments providing procedures for delay in dissemination and sealing of arrest warrant information published with the Court’s Order at 44 Pa.B. 243 (January 11, 2014).

Report explaining the proposed amendments regarding electronic technology for swearing affidavits published for comment at 47 Pa.B. 184 (January 14, 2017).

REPORT

Proposed Amendments of Pa.Rs.Crim.P. 203 and 513
Face-to-Face Requirement for Verification of Affidavits

The Committee has recently received a suggestion to amend the provisions of Rule 203 concerning the use of advanced communications technology for submitting search warrant affidavits. The suggestion was to eliminate the “face-to-face” requirement for the swearing of an affidavit in support of a search warrant application and permit the swearing to be done telephonically. Rule 203(C) provides:

(C) Immediately prior to submitting a search warrant application and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority by any device which, at a minimum, allows for simultaneous audio-visual communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant.

Additionally, the Comment states that “[t]he ‘visual’ requirement in paragraph (C) must allow, at a minimum, the issuing authority to see the affiant at the time the oath is administered and the information received.”

It was suggested that the face-to-face requirement of the rule can present significant impediments to using advance communication technology to obtain search warrants. This is especially critical when time is of the essence, such as in DUI cases, where ethanol or other intoxicants dissipate quickly. Officers who seek to obtain search warrants face significant obstacles if they must travel to a site with audio-visual conferencing equipment or to an issuing authority’s office to have a face-to-face appearance. These obstacles are more onerous at nighttime and in the more remote parts of the Commonwealth. Furthermore, it was noted that the federal courts have permitted telephonic submissions for many years. *See* Federal Rules of Criminal Procedure 4.1 and 41.

The current “face-to-face” requirement was added as part of the 2002 rule changes that first permitted the use of advanced communications technology (ACT) in the application process for search and arrest warrants. At that time, the Committee explained this change as follows:

In devising the new ACT procedures, the Committee agreed that the rules should continue to require the ‘written’ affidavits, yet allow for the writing to be submitted using ACT equipment. In addition, we agreed that an important concept for the new procedure would be to require the issuing authority to verify the identity of the affiant, and to maintain the requirement that the issuing authority administer an oath to the affiant. Under the new procedure, the issuing authority and the affiant may communicate from separate locations, and the issuing authority will be able to use ACT to verify the identity of the affiant and administer the oath before the required documentation is transmitted... Unlike the provisions in Federal Rule 41 that permit oral requests for warrants without the requirement of a “face-to-face” encounter, Rules 203 (Requirements for Issuance) and

513 (Requirements for Issuance) do not permit a warrant to issue based on oral testimony alone, and require that the issuing authority using ACT must be able to see the affiant when the oath is administered. 32 Pa.B. 2591 (May 25, 2002).

The Committee noted that when the original proposal was developed, the Committee had published a version of this proposal that included telephonic administration of the oath. See 29 Pa.B. 4426 (August 21, 1999). At that time, the Committee did not distinguish between telephonic and two-way simultaneous audio-visual communication for warrant affidavit verification but rather discussed the issue in terms of advance communications technology that includes both. The Committee was satisfied that any form of ACT was sufficient for the constitutional requirements of warrant issuance. Subsequently, the face-to-face requirement was incorporated into the amendments approved in 2002. The face-to-face requirement appears to have been added as a means of guaranteeing the identity of the affiant. Since this provision was added at the time that ACT first was going to be permitted, there may have been unease with the new technology without this additional guarantee of the affiant's identity.

In examining this issue, the Committee studied federal practice in this area at some length. As noted above, the federal system has permitted the use of "reliable electronic means" for search applications for some time. Originally formulated as part of F.R.Crim.P. 41, the procedures for the use of this type of technology currently are contained in F.R.Crim.P. 41. The Notes to F.R.Crim.P. 41 from the time when these provisions were added discuss the concept of "reliable electronic means":

The term "electronic" is used to provide some flexibility to the rule and make allowance for further technological advances in transmitting data. Although facsimile transmissions are not specifically identified, the Committee envisions that facsimile transmissions would fall within the meaning of "electronic means."

While the rule does not impose any special requirements on use of facsimile transmissions, neither does it presume that those transmissions are reliable. The rule treats all electronic transmissions in a similar fashion. Whatever the mode, the means used must be "reliable." While the rule does not further define that term, the Committee envisions that a court or magistrate judge would make that determination as a local matter. In deciding whether a particular electronic means, or media, would be reliable, the court might consider first, the expected quality and clarity of the transmission. For example, is it possible to read the contents of the warrant in its entirety, as though it were the original or a clean photocopy? Second, the court may consider whether security measures are available to insure that the transmission is not compromised. In this regard, most courts are now equipped to require that certain documents contain a digital signature, or some other similar system for restricting access. Third, the court may consider whether there are reliable means of preserving the document for later use.

Pennsylvania has had over a decade of experience with remote submission of warrant applications with little problem, easing some of the apprehension that may have existed when use of this technology was first introduced in 2002. The Committee also noted that telephonic verification appears to have worked with little problem in the

federal system. While there is potential for telephonic submissions to be abused, the Committee has concluded that this potential problem could be addressed by means other than requiring video-conferencing in every case. The Committee is therefore proposing an amendment to Rule 213 similar to that proposed in 1999 that would permit telephonic verification.

Although the rule already provides for issuing authority discretion in using ACT at all, the Committee concluded that a direct statement regarding telephonic verification would be helpful. Therefore, an additional provision would be added to paragraph (C) that would permit an issuing authority to refuse a telephonic application if there is a question regarding the applicant's identity. This would be consistent with the federal system that permits such assurance as a "local matter."

Although the original suggestion related only to search warrant applications, the Committee's 1999 proposal included arrest warrant submissions and would have permitted telephonic submission there as well. As with Rule 203, Rule 513 (Requirements for Issuance; Dissemination of Arrest Warrant Information) contains similar language regarding face-to-face verification of the affidavit of probable cause. The Committee concluded that the same concerns and rationale applied to arrest warrant applications as well. Therefore similar amendments are being proposed for Rule 513.

[Pa.B. Doc. No. 17-45. Filed for public inspection January 13, 2017, 9:00 a.m.]

[234 PA. CODE CH. 5]

Order Amending Rule 564 of the Rules of Criminal Procedure; No. 484 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 21st day of December, 2016, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 45 Pa.B. 7287 (December 26, 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 564 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 December 21, 2017.

Annex A

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

PART F. Procedures Following a Case Held for Court

Rule 564. Amendment of Information.

The court may allow an information to be amended [**when there is a defect in form, the description of the offense(s), the description of any person or any property, or the date charged, provided the information as amended does not charge an additional**

or different offense], provided that the information as amended does not charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge that the defendant would be unfairly prejudiced. Upon amendment, the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

Comment

The rule was amended in 2016 to more accurately reflect the interpretation of this rule that has developed since it first was adopted in 1974. See *Commonwealth v. Brown*, 727 A.2d 541 (Pa. 1999). See also *Commonwealth v. Beck*, 78 A.3d 656 (Pa. Super 2013); *Commonwealth v. Page*, 965 A.2d 1212 (Pa. Super. 2009); *Commonwealth v. Sinclair*, 897 A.2d 1218 (Pa. Super. 2006).

Official Note: Rule 229 adopted February 15, 1974, effective immediately; renumbered Rule 564 and amended March 1, 2000, effective April 1, 2001; amended December 21, 2016, effective December 21, 2017.

Committee Explanatory Reports:

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

Final Report explaining the December 21, 2016 amendment regarding the standard for amendment published with the Court's Order at 47 Pa.B. 186 (January 14, 2017).

FINAL REPORT¹

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

Addition of Offenses to the Criminal Information

On December 21, 2016, effective December 21, 2017, upon the recommendation of the Criminal Procedural Rules Committee, the Court approved the amendment of Rule 564 (Amendment of Information) to more accurately reflect the interpretation of this rule that has developed since it first was adopted in 1974. Rule 564 provides that the court may allow an information to be amended as long as the amended information "does not charge an additional or different offense." It was suggested by one of the Committee members that case law has interpreted the rule more broadly than a plain reading of the language would indicate.

Rule 564 was adopted as Rule 229 in 1974. Except for renumbering as part of the general reorganization of the Rules of Criminal Procedure in 2000, the language of the rule has remained virtually unchanged since its initial adoption. There has been a considerable body of case law interpreting whether amendments that add new offenses are permissible under the rule. As defined in these cases, the purpose of Rule 564 (or then-Rule 229) is to ensure that a defendant is fully apprised of the charges, and to avoid prejudice to the defendant by prohibiting the last minute addition of alleged criminal acts of which the defendant is uninformed. See, e.g. *Commonwealth v. Lawton*, 414 A.2d 658 (Pa. Super. 1979). Courts apply the rule allowing amendment of a defective information with an eye toward its underlying purposes and with a commitment to do justice rather than be bound by a literal or narrow reading of the procedural rules. *Commonwealth v. Roser*, 914 A.2d 447 (Pa. Super. 2006), *appeal denied* 927

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.

A.2d 624 (Pa. 2007). In effecting this purpose, the courts employ the test of whether the crimes specified in the original information involved the same basic elements and evolved out of the same factual situation as the crimes specified in the amended information. If so, the defendant is deemed to have been placed on notice regarding the alleged criminal conduct. However, if the amended provision alleges a different set of events, or the elements or defense to the amended crime are materially different from the elements or defense to the crime originally charged, so that the defendant would be prejudiced by the change, then amendment is not permissible. *Commonwealth v. Page*, 965 A.2d 1212 (Pa. Super. 2009). See also, *Commonwealth v. Beck*, 78 A.3d 656 (Pa. Super 2013). Factors that the trial court must consider in determining whether a defendant was prejudiced by an amendment include: (1) whether the amendment changes the factual scenario supporting the charges; (2) whether the amendment adds new facts previously unknown to the defendant; (3) whether the entire factual scenario was developed during a preliminary hearing; (4) whether the description of the charges changed with the amendment; (5) whether a change in defense strategy was necessitated by the amendment; and (6) whether the timing of the Commonwealth's request for amendment allowed for ample notice and preparation. *Commonwealth v. Sinclair*, 897 A.2d 1218 (Pa. Super. 2006), *citing Commonwealth v. Grekis*, 601 A.2d 1284 (Pa. Super. 1992).

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

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

[Pa.B. Doc. No. 17-46. Filed for public inspection January 13, 2017, 9:00 a.m.]

[234 PA. CODE CH. 10]

Proposed Amendment to Pa.R.Crim.P. 1006

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 1006 (Notice of Right to Appeal or to Petition for *Certiorari*; Guilty Plea Challenge Procedure.)

for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

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

All communications in reference to the proposal should be received by no later than Friday, February 24, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural
Rules Committee*

CHARLES A. EHRlich,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA MUNICIPAL COURT TRAFFIC DIVISION

PART A. Philadelphia Municipal Court Procedures

Rule 1006. Notice of Right to Appeal or to Petition for *Certiorari*; Guilty Plea Challenge Procedure.

(A) Immediately after the imposition of sentence, the judge shall inform the defendant:

* * * * *

(3) in any case, of the right to counsel to represent the defendant on appeal and of the right to have counsel appointed to represent the defendant on appeal in the event the defendant is unable to afford counsel.

(B) After a petition for writ of *certiorari* or notice of appeal for trial *de novo* is filed, the Municipal Court shall take no further action in the case, unless otherwise provided in these Rules.

Comment

For the right to file a petition for a writ of *certiorari* to the court of common pleas, see Article V, Section 26 of the Pennsylvania Constitution, and the Judicial Code, 42 Pa.C.S. § 934. See also *Commonwealth v. Speights*, 509 A.2d 1263 (Pa. Super. 1986) (petition challenging sufficiency of the evidence), and *Commonwealth v. Frazier*, 471 A.2d 866 (Pa. Super. 1984) (petition alleging that judge erred in denying motion to suppress). *Certiorari* is available in non-summary cases only. Compare Rule 460.

Official Note: Rule 6006 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective

August 1, 1980; amended February 21, 1996, effective July 1, 1996; renumbered Rule 1006 and amended March 1, 2000, effective April 1, 2001; **amended** , **2017**, **effective** , **2017**.

Committee Explanatory Reports:

Final Report explaining the February 21, 1996 amendments published with the Court's Order at 26 Pa.B. 991 (March 9, 1996).

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

Report explaining the proposed amendment regarding the effect that taking an appeal has on the ability of the Municipal Court to take further action in a case published for comment at 47 Pa.B. 187 (January 14, 2017).

REPORT

Proposed Amendments to Pa.R.Crim.P. 1006

Writs of *Certiorari* and Appeals for Trial *De Novo* in the Philadelphia Municipal Court

The Committee recently considered the opinion of the Pennsylvania Superior Court in the case of *Commonwealth v. Richards*, 128 A.3d 786 (Pa. Super. 2015), *appeal denied*, 145 A.3d 164 (Pa. 2016). *Richards* involved a defendant charged with DUI of a controlled substance. The Philadelphia Municipal Court granted defendant's motion to suppress and the Commonwealth petitioned for writ of *certiorari* to the Court of Common Pleas. After the petition had been filed, the Commonwealth withdrew the charges at a status hearing in the Municipal Court, apparently by mistake. The Court of Common Pleas subsequently dismissed the appeal as moot. The Commonwealth appealed to the Superior Court on the basis that the Municipal Court should not have approved the withdrawal since Rule of Appellate Procedure 1701 bars a lower court from conducting proceedings when a case is on appeal. The Superior Court held that the Rules of Appellate Procedure do not apply to a court of common pleas acting in its role as an appellate court deciding a petition for writ of *certiorari* unless that court expressly adopted such Rules. This finding was based on a plain reading of Rule of Appellate Procedure 103 that limits the applicability of those rules to the Supreme, Superior and Commonwealth Courts.

Rule 1006 provides the procedures for appeal from the Philadelphia Municipal Court. Rule 1006 provides two options for taking an appeal from a Municipal Court judgment: (1) to request a trial *de novo* before the Common Pleas Court; or (2) to file a petition for writ of *certiorari*, asking the Philadelphia Court of Common Pleas, sitting as an appellate court, to review the record made in the Municipal Court. See *Commonwealth v. Williams*, 125 A.3d 425 (Pa. Super. 2015). A trial *de novo* gives the defendant a new trial without reference to the Municipal Court record while a petition for writ of *certiorari* asks the Common Pleas Court to review the record made in the Municipal Court. Generally, a defendant is required to raise all claims in a writ of *certiorari* pertaining to the proceedings in the municipal court, or they will be considered waived on appeal. *Commonwealth v. Coleman*, 19 A.3d 1111 (Pa. Super. 2011).

The specific provision in Rule 1006 related to the filing of a writ of *certiorari* as an option for appeals from the Municipal Court was added in 1996. The Committee provided the rationale for this addition in the Final Report from that amendment:

Several members noted that, although the Philadelphia Public Defender's office utilized petitions for writs of *certiorari* fairly frequently, many members of the private bar apparently were not aware of the continued availability of *certiorari* as an alternative to an appeal for a trial de novo in the court of common pleas. We therefore agreed that the rules should expressly provide for this procedure. Final Report, 26 Pa.B. 989 (March 9, 1996).

This provision merely codifies the right contained in Article V, Section 26 of the Pennsylvania Constitution, and the Judicial Code, 42 Pa.C.S. § 934.¹

Rule of Appellate Procedure 1701 describes the effects on a case when an appeal has been filed. The general rule contained in Rule 1701(A) states, "Except as otherwise prescribed by these rules, after an appeal is taken or review of a quasi-judicial order is sought, the trial court or other government unit may no longer proceed further in the matter." As the *Richards* case holds, the Rules of Appellate Procedure do not apply to appeal to the court of common pleas.

Therefore, the Committee concluded that the principle that the Municipal Court cannot act in a matter once a petition for writ of *certiorari* has been filed with the Court of Common Pleas would have to be specifically added to the rules to be effective. The Committee concluded that such a provision prohibiting action by the Municipal Court once an appeal was filed would be advisable to prevent confusion such as occurred in *Richards* where two courts were acting at the same time on the case to cross purposes.

This provision also would be consistent with other rules which prevent cases from moving back and forth between courts of common pleas and the minor judiciary. See e.g. Rule 541 (if the right to preliminary hearing is reinstated after defendant waived preliminary hearing, the preliminary hearing must be in common pleas court, unless the parties and judge agree that the issuing authority conduct the preliminary hearing) and Rule 543(G) (once a case is bound over to the court of common pleas, the case shall not be remanded to the issuing authority.) It would also be consistent with the general principle that an appeal moves the case from one court to another.

In a case in which an appeal for trial *de novo* has been filed, it is much clearer that any action must be taken by the Court of Common Pleas. The Committee concluded that these appeals should also be included in the new provision for clarity. A new paragraph (B) would be added to Rule 1006 stating that once case has been appealed from the Municipal Court to the Philadelphia Court of Common Pleas, the Municipal Court may no longer take action on that case.

[Pa.B. Doc. No. 17-47. Filed for public inspection January 13, 2017, 9:00 a.m.]

¹ Article V, Section 26 provides:

§ 26. Writs of *certiorari*.

Unless and until changed by rule of the Supreme Court, in addition to the right of appeal under section 9 of this article, the judges of the courts of common pleas, within their respective judicial districts, shall have power to issue writs of *certiorari* to the municipal court in the City of Philadelphia, justices of the peace and inferior courts not of record and to cause their proceedings to be brought before them, and right and justice to be done.

42 Pa.C.S. § 934 provides:

Unless and until changed by general rule, the judges of the courts of common pleas, within their respective judicial districts, shall have power, in addition to the right of appeal under section 9 of Article V of the Constitution of Pennsylvania, to issue writs of *certiorari* to the minor judiciary.

Title 255—LOCAL COURT RULES

BUTLER COUNTY

Custody Evaluation Fees; 16-40329

Administrative Order

And Now, the 22nd day of December, 2016, *It Is Hereby Ordered and Decreed* that all Orders of Court directing parties to undertake custody evaluations shall have attached thereto the most recent fee schedule of the appointed evaluator. The fee schedule, which shall include evaluation and testimony fees, as well as refund policies, shall be incorporated in and made a part of the Order of Court appointing said evaluator. The fees to be paid and the terms for payment shall be as set forth in that schedule and shall not be modified until the pleading(s) currently before the Court are resolved. Evaluators may only amend their fee schedule upon providing a copy of the amended fee schedule to the Conciliator.

THOMAS J. DOERR,
President Judge

[Pa.B. Doc. No. 17-48. Filed for public inspection January 13, 2017, 9:00 a.m.]

BUTLER COUNTY

Local Rule of Judicial Administration; MsD No. 16-40327

Administrative Order of Court

And Now, this 23rd day of December, 2016, it is hereby Ordered and Decreed, that effective January 1, 2017, or thirty (30) days after publication in the *Pennsylvania Bulletin*, whichever is later, the Butler County Court of Common Pleas adopts the following local rules, L4002, L4007, L4008, and L4014, governing court reporting and transcripts for the 50th Judicial District.

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

1. File one (1) copy with the Administrative Office of Pennsylvania Courts via e-mail to adminrules@pacourts.us.
2. File two (2) paper copies and one (1) electronic copy in 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 Butler County Court Services website.
4. Incorporate this rule into the set of Butler County local rules within thirty days after the publication of the rule in the *Pennsylvania Bulletin*.
5. File one (1) copy of the local rule in the appropriate filing office for public inspection and copying.
6. Deliver one (1) copy to the *Butler County Legal Journal* for publication at their discretion.

By the Court

THOMAS J. DOERR,
President Judge

Local Rules Governing Court Reporting and Transcripts

Rule L4002. Definitions.

Court Administrator means the Court Administrator of Pennsylvania

District Court Administrator means the County Court Administrator

Rule L4007. Requests for Transcripts.

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

(B) The party requesting a full or partial transcript of a trial or other proceeding shall file the original request with the District Court Administrator of the Court of Common Pleas of Butler County who will immediately note in their intake log that the filing has been made. The requesting party shall also serve copies of the formal request to:

- (1) the judge presiding over the matter; and
- (2) opposing counsel, but if not represented, the opposing party.
- (3) the District Court Administrator shall determine which Court Reporter is responsible for information requested and deliver a copy of the request to that reporter.

(C) Requests for daily, expedited or same day requests for these transcripts shall be filed in writing in the Butler County District Court Administrator's office at least 10 days prior to the proceeding. Copies of the written request shall be delivered as required by subsection (B) above. In the event of an emergency, a party may request by oral motion a daily, expedited or same day transcript. These requests must be approved by the trial Judge and are subject to the availability of the Court Reporter.

(D) When counsel, or the litigant when proceeding pro se, requests a transcript:

(1) The requester shall make partial payment of 90% of the estimated transcript cost upon notification by the Court Reporter of the estimated total cost of preparing the transcript. Litigants will be directed by the Court Reporter to the proper filing office where payment may be made. Deposit checks are to be made payable to the filing office in which the transcript will be or has been filed.

(2) Upon payment of the deposit the filing office will notify the District Court Administrator who in turn will notify the Court Reporter that the deposit has been received and that preparation of the desired transcript may proceed.

(3) Upon completion of the transcript, the Court Reporter shall notify the individual who requested the transcript that it is ready for delivery. The Court Reporter shall notify the requester of the balance due. The Court Reporter shall then serve an electronic copy on the trial Judge and the transcript shall be filed of record with the appropriate filing office. Upon payment of any balance owed, the filing office shall deliver a copy of the transcript to the litigant who ordered it. Electronic delivery by e-mail is preferred. Checks or Money Orders for the final balance are to be made payable to the filing office in which the transcript has been filed. Transcripts of all hearings or portions thereof, once transcribed by the Court Reporter, shall be filed of record in the proper recording office.

(4) A "Request for Transcript" must also be submitted for individuals seeking to obtain copies of transcripts that have previously been filed of record. Upon payment of the appropriate fee, the recording office may provide a copy of the transcript to the individual requesting it. Distribution of electronic copies by e-mail is preferred.

(5) A copy of the "Request for Transcript" form shall be made available in the District Court Administrator's office, the recording offices and on the Butler County Court of Common Pleas website.

Rule L4008. Transcript Costs Payable by a Requesting Party Other Than the Commonwealth or a Subdivision Thereof.

(A) Costs

(1) The costs payable by a requesting party, other than those entities described in section 4 below, for production and filing of a transcript in an electronic format shall be:

- (a) for an ordinary transcript, \$2.50 per page;
- (b) for an expedited transcript, \$3.50 per page, expedited transcripts are only available if the court reporter is able to accommodate;
- (c) for a daily transcript, \$4.50 per page, daily transcripts are only available if the court reporter is able to accommodate; and

(d) for same day delivery, \$6.50 per page, same day delivery transcripts are only available if the court reporter is able to accommodate.

(2) When the transcript is prepared in paper format, the costs shall be in accordance with paragraph (1) relating to electronic format plus a surcharge of \$0.25 per page.

(3) When the requesting party represents a Commonwealth or federal agency (for example but not limited to: Office of the Attorney General, Penn Dot, FBI other state or federal investigative agency) the costs payable to the County of Butler shall be equivalent to that which is charged to any outside, private party or litigant. A request for transcript under this section must be made on the form prescribed by the Court Administrator.

(4) When the requesting party is a Judge, the Butler County District Attorney's office, the Butler County Public Defender's Office or any other County office or agency there will be no charge for a transcript provided the transcript is being used in the furtherance of litigation. A request for transcript under this section must be made on the form prescribed by the Court Administrator. All transcripts under this section will be delivered to the requester in electronic format only.

(5) Nothing in this rule shall authorize delivery of an original transcript, or copy thereof, in a proceeding where the record is sealed or where the record is not generally available to the public to any person or entity not otherwise entitled to the same.

(B) Economic hardship—minimum standards

(4) The application to waive all or a portion of costs for ordinary transcripts shall be supported by an affidavit substantially in the form required by Rule 240(h) of the Pennsylvania Rules of Civil Procedure. Such application should be prepared in the form of a Petition to Proceed In Forma Pauperis to waive all or a portion of the transcript costs and filed in the appropriate filing office. A copy of the Order of Court granting a person the privilege of proceeding In Forma Pauperis, or at a reduced rate, must

accompany the "Request for Transcript" form. A sample Petition to Proceed In Forma Pauperis shall be made available in the recording offices, the Court Administrator's office and on line on the Butler County Courts web page.

(D) *Copies of transcript*

A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided by the appropriate filing office upon completion of a "Request for Transcript" and payment of the appropriate fee according to the following schedule:

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

(E) *Additional Costs*

A trial judge may impose a reasonable surcharge in cases such as mass tort, medical malpractice or other unusually complex litigation, where there is a need for court reporters to significantly expand their dictionary. Such surcharges, not to exceed \$1.00 per page, are at the discretion of the trial judge.

Rule L4014. Redaction of Personal Identifiers.

(A) As a rule, social security numbers and financial institution account numbers shall be redacted from any transcript that is filed of record. Only the last four numbers of the social security number or financial institution account number shall appear in a transcript. Other confidential, personal and/or financial data and other identifiers may be redacted upon the Court's own motion or upon motion of any party and subsequent Order of Court. Redacted information may be made available to the parties upon motion presented to and ordered by the Court.

(B) Names of all minor children shall be identified by initial only. The transcript of any proceeding which is not open to the public may be released only with the approval of the presiding judge.

(C) In the instance when information in a transcript is to be redacted, the Court Reporter shall file of record only the redacted transcript noting on the face page that portions of the transcription have been redacted. The Court Reporter shall maintain an un-redacted copy in their personal electronic files. Should an un-redacted copy of the transcript be requested, the Court may, at its own discretion or upon motion of either one or all of the parties, direct that an un-redacted copy of the transcript be created by the Court Reporter and delivered by the proper filing office to the party as directed by the Court.

[Pa.B. Doc. No. 17-49. Filed for public inspection January 13, 2017, 9:00 a.m.]

ERIE COUNTY

Rules of Judicial Administration; 90074-16

Adopting Order

And Now, to wit, this 15th day of December, 2016 it is hereby *Ordered* that Erie County Rules of Judicial Administration 4001, 4007 and 4008, governing court reporting and transcripts, are hereby adopted as rules of this Court. This Order shall be processed in accordance with

Pa.R.J.A. 103(c). The adopted rules shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*, whichever is later.

JOHN J. TRUCILLA,
President Judge

Rule 4001. Scope of Rules.

These rules shall govern the process for the request, payment and receipt of transcripts of record proceedings before the Erie County Court of Common Pleas. These rules shall be read in conjunction with and supplement the Uniform Rules Governing Court Reporting and Transcripts, as set forth in the Pennsylvania Rules of Judicial Administration, Nos. 4001—4016. In the event of any conflict between these rules and the state rules, the Pennsylvania Rules shall control.

Rule 4007. Requests for Transcripts.

(A) The original transcript request shall be on a standardized form ("Transcript Request Form") provided by the Administrative Office of Pennsylvania Courts and shall be filed with the appropriate filing office for the case docket. The form is available on The Unified Judicial System's Web Portal, the website for the Erie County Court of Common Pleas or by contacting the District Court Administrator for the Erie County Court of Common Pleas. In order for the request to be processed, a copy of the request must be served on the District Court Administrator, as well as on all other individuals designated by Pa.R.J.A. 4007. For purposes of service on the District Court Administrator, the request may be hand delivered to Room 210 of the Erie County Courthouse, e-mailed to the District Court Administrator, or mailed to: District Court Administrator, Erie County Courthouse, 140 West 6th Street, Room 210, Erie, PA 16501.

(B) The District Court Administrator will not direct the court reporter to proceed with transcription until either (1) receipt of partial payment in the amount of one-half of the estimated cost of the transcript; or (2) receipt of an order granting permission to proceed in forma pauperis or waiving costs in accordance with Pa.R.J.A. 4008(B) and Erie County Rule of Judicial Administration 4008(B). The party ordering the transcript is responsible for contacting the court reporter to determine the amount of deposit required. Deposit checks shall be made payable to the County of Erie and delivered to the District Court Administrator.

(C) Upon receipt of notification from the court reporter of the completion of the transcript and the amount of the balance owed, the party ordering the transcript shall forward to the District Court Administrator a check in the amount of the balance due. The check shall be made payable to the County of Erie. Upon receipt of final payment, the District Court Administrator will direct the court reporter to file and deliver the transcript in accordance with Pa.R.J.A. 4007(D)(4).

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

(A) The per page cost for a transcript in electronic format shall be as follows:

- (1) \$2.50 per page for an ordinary transcript;
- (2) \$3.50 per page for an expedited transcript;
- (3) \$4.50 per page for a daily transcript; and
- (4) \$6.50 per page for same day delivery.

(5) If the transcript is requested in bound paper format, the costs shall be as stated above, plus a surcharge of \$0.25 per page.

(6) The trial judge may impose a reasonable surcharge in cases such as mass tort, medical malpractice or other unusually complex litigation where the judge determines that the surcharge is necessary because of the need for the court reporter to significantly expand his/her dictionary.

(7) Costs for a copy of any transcript previously ordered, transcribed and filed of record shall be in accordance with Pa.R.J.A. 4008(D). Copy requests may be directed to the District Court Administrator in person in Room 210 of the Erie County Courthouse, e-mailed to the District Court Administrator, or mailed to: District Court Administrator, Erie County Courthouse, 140 West 6th Street, Room 210, Erie, PA 16501. The District Court Administrator will inform the requesting individual of the total amount due for copying. The full copying fee shall be paid prior to receipt of the copy. Checks shall be made payable to the County of Erie and delivered to the District Court Administrator.

(B) *Economic hardship*

(1) In accordance with Pa.R.J.A. 4008(B)(1), a litigant who has already been permitted to proceed with the commencement of the underlying action or with the taking of the appeal in forma pauperis will, in matters under appeal or where the transcript is necessary to advance the litigation, receive waiver of transcript costs. The order granting the litigant in forma pauperis status shall be attached to the Transcript Request Form which is filed and served in accordance with Pa.R.J.A. 4007 and Erie County Rule of Judicial Administration 4007. In addition to attaching the order to the request, the litigant should also attach a verified statement indicating that the party is aware of his or her continuing obligation to inform the court of improvement in his or her financial circumstances and that no such improvement has occurred since entry of the order granting permission to proceed in forma pauperis. A litigant's failure to attach the in forma pauperis order to the transcript request may result in delayed transcription.

(2) Any litigant who has not already been granted in forma pauperis status, but who wishes to pursue waiver of or reduction in transcript costs, shall file a petition requesting waiver of or reduction in transcript costs under the docket of the case. The petition must include:

- (a) the caption and docket number of the case;
- (b) a statement indicating whether or not the transcript is in a matter which is currently under appeal;
- (c) a statement indicating whether or not the transcript is necessary to advance pending litigation; and
- (d) a fully completed and executed affidavit substantially in the form required by Pennsylvania Rule of Civil Procedure 240(h).

Upon filing the petition and affidavit, the party requesting waiver of or reduction in transcript costs shall also serve a copy of the same on the judge assigned to the case for disposition. The petitioner shall be responsible for forwarding a copy of the resulting order to the District Court Administrator. Failure to serve the order may result in delayed transcription.

[Pa.B. Doc. No. 17-50. Filed for public inspection January 13, 2017, 9:00 a.m.]

FRANKLIN AND FULTON COUNTIES

Adoption of New Local Rules of Judicial Administration Governing Court Reporting and Transcripts; No. AD 7-2016; No. Misc. 2016-4570; No. Misc. 20-2016

Order of Court

And Now, December 28, 2016, the Court hereby adopts the following new Local Rules of Judicial Administration governing court reporting and transcripts for the 39th Judicial District.

Rule 4002. Definitions.

(A) Commonwealth or subdivision thereof includes any Pennsylvania state, county, regional, or municipal government entity, including any department, board, attorney, employee or agent acting on behalf of that entity.

(B) Transcript includes any electronic or paper record, including orders, prepared by a court reporter of any proceeding presided over by a judge, a magisterial district judge, or a master.

(C) All transcripts fall into one or two categories regarding need and purpose:

(1) An ordinary transcript is either:

- (a) required by rule because notice of appeal has been filed; or
- (b) required by order or rule to advance litigation in a matter currently before the court.

(2) A non-ordinary transcript is any transcript requested or prepared for any reason other than ordinary as defined in section (C)(1) above.

(D) The terms expedited, daily, and same day delivery refer to variations in the delivery deadline and cost for non-ordinary transcripts.

Rule 4007. Requests for Transcripts.

(A) All requests for transcripts shall be set forth on a standardized Request for Transcript form provided by the Court Administrator of Pennsylvania. The Request for Transcript form can be downloaded from the Franklin County website at www.franklincountypa.gov or the Fulton County website at www.co.fulton.pa.us or copy can be obtained at the district court administrator's office.

(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 district court administrator. The requesting party shall also serve copies of the formal request to:

- (1) the judge presiding over the matter;
- (2) the court reporter assigned to the proceeding;
- (3) opposing counsel, but if not represented, the opposing party.

(C) Expedited, daily, and same day transcripts are generally not available. If a party wishes to request a non-ordinary transcript, said request shall be filed in writing with the district court administrator at least 10 days prior to the proceeding. Court approval will be required.

(D) When a litigant requests a transcript,

- (1) the litigant ordering the transcript shall make a non-refundable, partial payment of 90% of the estimated total cost of the transcript. The payment deposit shall be paid by cash, money order, certified check, or law firm

check made payable to Franklin County and shall be delivered to the district court administrator.

(2) Upon receipt of the 90% deposit, the court reporter(s) assigned to the proceeding shall be directed by the district court administrator to prepare the transcript.

(3) The court reporter shall notify the ordering party and the district court administrator upon completion of the transcript and shall indicate the balance due.

(4) Final payment shall be paid by cash, money order, certified check, or law firm check made payable to Franklin County and shall be delivered to the district court administrator. Upon payment of any balance owed, the court reporter(s) shall deliver the original transcript to the appropriate filing office and copies to the parties.

(E) Any requests by a litigant for a transcript pursuant to Pa.R.J.A. 4007(E) alleging inability to pay due to economic hardship must be directed to the presiding judge for determination as provided in 4008(B).

(F) When a transcript is requested for which the court or county is responsible for the cost, the court reporter shall prepare the transcript at the direction of the district court administrator after approval by the judge presiding over the matter who will determine the priority of the request.

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

(A) *Costs*

(1) *Electronic Format.* The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, 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, with Court approval;
- (c) for daily transcript, \$4.50 per page, with Court approval;
- (d) for same day delivery, \$6.50 per page, with Court approval.

(2) *Paper Format.* When the transcript is prepared in bound paper format, the costs shall be in accordance with paragraph (1) relating to electronic format plus a surcharge of \$0.25 per page.

(B) *Economic hardship—minimum standards*

The application to waive all or a portion of costs for ordinary transcripts shall be supported by an affidavit substantially in the form required by Pa.R.C.P. 240(h). Such application shall be prepared in the form of a Petition to Waive All or a Portion of the Transcript Costs and submitted with the request for transcript. No reduction or waiver of costs shall be requested or granted for any non-ordinary transcript unless the requesting party demonstrates extraordinary need.

(C) *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, not to exceed \$50.00.

(D) *Additional Costs*

A trial judge may impose a reasonable surcharge in cases such as mass tort, medical malpractice or other unusually complex litigation, where there is a need for court reporters to significantly expand their dictionary. Such surcharges are at the discretion of the trial judge.

Said Local Rules of Judicial Administration shall be effective in the 39th Judicial District of the Commonwealth of Pennsylvania thirty (30) days after publication in the *Pennsylvania Bulletin* and upon publication on the Franklin and Fulton Counties websites.

By the Court

CAROL L. VAN HORN,
President Judge

[Pa.B. Doc. No. 17-51. Filed for public inspection January 13, 2017, 9:00 a.m.]

INDIANA COUNTY

Local Rules of Judicial Administration Governing Court Reporting and Transcripts; 514 MD 2016

Order of Court

And Now, this 22nd day of December 2016, it is hereby Ordered and Directed that the Court adopts the following Local Rules of Judicial Administration Governing Court Reporting and Transcripts for use in the 40th Judicial District. The Rules are effective January 1, 2017.

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

1. File one (1) copy with the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us.
2. File two (2) paper copies and one (1) electronic copy in Microsoft Word format to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish these Rules on the Indiana County website at www.countyofindiana.org and incorporate them into the set of local rules.
4. File one (1) copy in each filing office for public inspection and copying.

By the Court

WILLIAM J. MARTIN,
President Judge

Local Rules of Judicial Administration

Rule 4001. Interpretation of Rules.

These Local Rules of Judicial Administration governing court reporting and transcripts shall be read and construed with the Pennsylvania Rules of Judicial Administration 4001—4016, pertaining to the same subject matter.

Rule 4004. Qualifications of Court Reporters and Court Recorders.

(A) The District Court Administrator shall be responsible for making the determination of whether a court reporter or court recorder first employed or utilized by the Court after January 1, 2017 meets the minimum criteria to serve in such capacity as set forth in the Pennsylvania Rules of Judicial Administration and shall report such information to the President Judge.

(B) The District Court Administrator shall be responsible for presenting pertinent information to the President Judge sufficient so as to permit the judge to determine if the requalification requirements as set forth in Pa.R.J.A. 4004 have been satisfied.

Rule 4007. Requests for Transcripts.

(A) In accordance with Pa.R.J.A. 4007, the party requesting a full or partial transcript of a trial or other proceeding or requesting a copy of an already filed transcript, shall file the original request with the District Court Administrator's Office at the Indiana County Courthouse, on the standardized form provided. The party requesting a transcript shall also serve a copy of the request upon the court reporter, the presiding judge, and opposing counsel, or in the event the opposing party is not represented, the opposing party.

(B) Upon receipt of the completed written request form, the District Court Administrator's Office shall obtain an estimate of the transcript cost and shall communicate the cost of the transcript to the requesting party. The requesting party shall make partial payment of seventy-five percent (75%) of the estimated cost, which shall be nonrefundable. Payments shall be made at the District Court Administrator's Office. Only checks or money orders made payable to "The County of Indiana" will be accepted. No down payment shall be required from the Commonwealth or a subdivision of the Commonwealth.

(C) The District Court Administrator's Office shall receive payment for the balance owed by check or money order made payable to "The County of Indiana." No transcript shall be delivered to private parties until 100% of the payment cost is received.

(D) In the event that a requestor seeks reduction or waiver of transcript fees, he or she shall complete the Request for Waiver or Reduction of Transcript Costs Petition and Affidavit and shall file the petition, affidavit, and proposed order in the District Court Administrator's Office at the time the request for transcript is filed.

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

(A) Costs payable by a requesting party other than the Commonwealth or a subdivision thereof for a transcript in bound paper format are as follows:

- | | |
|-----------------------|-----------------|
| (a) Ordinary | \$2.75 per page |
| (b) Expedited | \$3.75 per page |
| (c) Daily | \$4.75 per page |
| (d) Same day delivery | \$6.75 per page |

(B) *Economic Hardship.* Reduction based on economic hardship shall be in accordance with Pa.R.J.A. 4008(B).

(C) Allocation of costs shall be as set forth in Pa.R.J.A. 4008(C).

(D) A request for a copy of a transcript previously ordered, transcribed and filed of record shall be provided at the rate of \$0.75 per page bound, paper format. Such requests shall be filed at the District Court Administrator's Office on the standardized form provided.

(E) Pursuant to Pa.R.J.A. 4008(E), the presiding judge may impose a reasonable surcharge in cases such as mass tort, medical malpractice, or other unusually complex litigation.

[Pa.B. Doc. No. 17-52. Filed for public inspection January 13, 2017, 9:00 a.m.]

VENANGO COUNTY

Adoption of Local Rules; Court Reporters; CIV No. 1314-2016

Order of Court

And Now, December 28, 2016, the following rules are hereby *Adopted* as the Local Rules of Judicial Administration 4004, 4007, 4008, governing court reporting and transcripts for the 28th Judicial District to be effective thirty (30) days after publication. The Venango County District Court Administrator is Ordered and Directed to do the following:

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

(2) Forward two (2) paper copies and one (1) electronic copy in a Microsoft Word format only on a CD-ROM to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

(3) Publish the local rules on the Venango County website at www.co.venango.pa.us

(4) File one copy of the local rule in the appropriate filing offices for public inspection and copying.

By the Court

OLIVER J. LOBAUGH,
President Judge

Local Rules of Judicial Administration

Rule 4004. Qualifications of Court Reporters.

- (A) Reserved.
- (B) Reserved.
- (C) Reserved.

(D)(1) Every court reporter shall provide to the Lead Reporter, on or before January 15 of each year, documentation indicating the number of continuing professional education hours that the Court Reporter successfully completed for the preceding calendar year.

(a) On or before the 31st day of January each year, the Lead Reporter shall provide a report to the District Court Administrator of the hours of continuing professional education that every Court Reporter has completed during the three (3) year re-qualifying period.

(2) The District Court Administrator shall assure that the requirements set forth for court recorders in subdivision (C) are satisfactorily met by conducting a review of work products for accuracy, timeliness and quality.

- (E) Reserved.

Rule 4007. Requests for Transcripts.

(A) All original requests for transcripts shall be set forth on the standardized "Request for Transcript" form which may be downloaded from the Venango County website at www.co.venango.pa.us or a copy of which can be obtained at any filing office (Prothonotary, Clerk of Courts, Register of Wills/Clerk of Orphans' Court and/or Domestic Relations).

(B) The original request shall be filed in the appropriate filing office and the requesting party shall provide copies of the formal request to:

- (1) the judge presiding over the matter;
- (2) the court reporter;
- (3) the district court administrator; and

- (4) opposing counsel or party
- (C) Reserved.

(D) Upon receipt of a request for ordinary transcript, the Court Reporter assigned to the proceeding shall, within seven (7) calendar days of receipt of the Order to transcribe, calculate the estimated cost of the transcript using the price rates explicitly established by the Pennsylvania Rules of Judicial Administration or other rates approved pursuant thereto.

(1) A non-refundable deposit in the amount of 90% shall be made by the requestor within fourteen (14) calendar days after the Court Reporter has informed the requestor of the estimated cost. All deposits shall be made by cash, money order, certified check or law firm check made payable to the "County of Venango" and delivered to the Court Reporter. The Court Reporter will immediately forward the payment, along with the "Escrow Fund Deposit" form to the District Court Administrator who will deposit the check with the Venango County Treasurer. Orders directing transcription will be vacated if deposit amounts are not remitted within the stated timeframe.

(2) Upon receipt of the deposit, and Order to transcribe, the Court Reporter assigned to the proceeding shall prepare the transcript.

(3) The Court Reporter shall notify the requestor and the District Court Administrator upon completion of the transcript and shall advise the requestor of the balance due.

(4) Upon receipt of final invoice, payment for the balance due shall be paid by cash, money order, certified check or law firm check made payable to the County of Venango and delivered to the court reporter within seven (7) calendar days from the date the parties are notified. The Court Reporter will immediately forward the payment, along with the "Escrow Fund Final Payment" form to the District Court Administrator who will deposit payment with the Venango County Treasurer. Original transcripts will not be filed or copies distributed until the balance is paid in full.

(E) Reserved.

(F) The provisions of this Local Rule regarding deposits and final payments shall not apply to a request for a transcript where the Commonwealth or any subdivision thereof is the requestor, or where the requestor has been granted in forma pauperis status.

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

(A)(1)(2) *Costs.* The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, unless a waiver is granted, shall be as follows:

Ordinary:	\$2.75 (paper)	\$2.50 (electronically filed)
Expedited:	\$3.75 (paper)	\$3.50 (electronically filed)
Daily:	\$4.75 (paper)	\$4.50 (electronically filed)
Same Day:	\$6.75 (paper)	\$6.50 (electronically filed)
Complex Litigation/Medical Malpractice/Technical Testimony		+ .50 per page upon Order
Secure Realtime Feed		\$1.00 per page

Fee schedule for COPIES:	\$0.75 (paper)
	\$0.50 (electronic)
Uncertified Rough Draft: NO WAIVERS	\$1.00 (electronic)
	\$1.25 (paper)

The costs payable by the Commonwealth or a subdivision (to include any Pennsylvania state, county, regional or municipal government entity, including any department, board, attorney, employee or agent acting on behalf of that entity) shall be:

Ordinary:	\$2.00 (paper)	\$1.75 (electronically filed)
Expedited:	\$3.00 (paper)	\$2.75 (electronically filed)
Daily:	\$4.00 (paper)	\$3.75 (electronically filed)
Same Day:	\$6.00 (paper)	\$5.75 (electronically filed)

Fee schedule for COPIES:	\$.50 (paper)
	\$-0- (electronic)
Uncertified Rough Draft	\$1.00 (electronic)
	\$1.25 (paper)

A court reporter shall be paid by the County at the rate of \$1.50 per page for court orders.

(B) *Economic Hardship.*

- (1) Reserved.
- (2) Reserved.
- (3) Reserved.

(4) Litigants claiming economic hardship must attach a completed In Forma Pauperis affidavit, pursuant to PA Rule of Civil Procedure 240, to the Request for Transcript form. Proof of income must be supplied including pay stubs for the past three months, social security benefit statements for the past three months, DPW compass page, DPW Snap sheet for the past three months, Domestic Relations child support information, and/or unemployment benefit statements for the past three months.

(a) No reduction or waiver of costs shall be requested or granted for any non-ordinary transcript unless the requesting party demonstrates reasonable need.

(C) Reserved.

(D) *Copies of transcripts.*

Any requests for copies of transcripts filed of record shall be directed to the Court Reporter and shall be produced solely by the Court Reporter. Payment for copies of transcripts shall be paid by cash, money order, certified check or law firm check made payable to the County of Venango and delivered to the Court Reporter pursuant to the rates established in 4008(A)(1)(2).

[Pa.B. Doc. No. 17-53. Filed for public inspection January 13, 2017, 9:00 a.m.]

WARREN AND FOREST COUNTIES
Local Rules of Judicial Administration Governing Court Reporting and Transcripts; No. 50 of 2016 Misc.

Administrative Order

And Now, this 22nd day of December, 2016, it is hereby Ordered and Decreed that effective January 1, 2017, the prior Local Rules for Warren and Forest County governing court reporting and transcripts shall be rescinded.

The new Rules governing court reporting and transcripts shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator of the 37th Judicial District is directed to:

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 to bulletin@palrb.us with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish these Rules on the Warren/Forest County website at www.warrenforestcourt.org.

4. File one (1) copy with the Prothonotaries of the Court of the 37th Judicial District.

By the Court

MAUREEN A. SKERDA,
President Judge

Rule R.J.A.L4007. Requests for Transcripts.

(A) All requests for transcripts shall be filed on a standardized form with the Court Administrator.

(B) Upon receipt of a request for an ordinary transcript, the Court Administrator shall contact the appropriate court reporter for an estimated cost using the price rates established by the Pennsylvania Rules of Judicial Administration or other rates approved pursuant thereto.

(D) *Private Litigant Requests and Payment of Costs*

(1) The litigant ordering the transcript shall make payment in the amount of 90% of the estimated total cost of the transcript. Deposit checks are to be made payable to County of Forest or County of Warren and shall be delivered to the District Court Administrator.

(2) Upon receipt of the 90% deposit, the court reporter(s) assigned to the proceeding shall be directed by the District Court Administrator to prepare the transcript.

(3) The court reporter(s) shall notify the District Court Administrator upon completion of the transcript. The District Court Administrator shall notify the ordering party of the completed transcript and shall indicate the balance due.

(4) Checks for the final balance are to be made payable to the County of Forest or County of Warren and shall be delivered to the District Court Administrator. The court reporter(s) shall deliver the original transcript and copies for the parties to the District Court Administrator who shall file the original transcript and deliver the copies to the parties.

(E) Any requests by a litigant for transcripts pursuant to R.J.A. 4007(E) alleging inability to pay due to economic hardship will be submitted to the District Court Administrator and will be directed to the Presiding Judge for determination as provided in R.J.A.L 4008(B).

Rule R.J.A.L4008. Transcript Costs Payable by a Requesting Party Other Than the Commonwealth or a Subdivision.

(A) *Costs*

(1) *Electronic Format.* The costs payable by the initial ordering party, other than the Commonwealth or a subdivision thereof, for a transcript delivered via 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
- (e) For realtime feed, \$1.00 per page
- (f) For complex litigation, \$3.00 per page
- (g) For rough drafts, \$1.00 per page

(2) *Paper Format.* The costs payable by the initial ordering party, other than the Commonwealth or a subdivision thereof, for a transcript via 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
- (e) For realtime feed, \$1.00 per page
- (f) For complex litigation, \$3.25 per page
- (g) For rough drafts, \$1.25 per page

(B) *Economic Hardship*

(4) Litigants claiming economic hardship must attach to their request for transcript a fully completed in Forma Pauperis Petition pursuant to Pennsylvania Rule of Civil Procedure 240.

(E) *Copies of Transcripts*

Any requests for copies of filed transcripts shall be directed to Court Administration. Copies shall thereafter be produced solely by the assigned Court Reporter. Payment for copies of transcripts shall be payable to the County of Forest or County of Warren and delivered to the Court Administrator according to the following fee schedule:

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

[Pa.B. Doc. No. 17-54. Filed for public inspection January 13, 2017, 9:00 a.m.]

WESTMORELAND COUNTY

Local Rules of Judicial Administration Governing Court Reporting and Transcripts; No. 3 of 2016

Administrative Order of Court

And Now, this 21st day of December, 2016, *It Is Hereby Ordered* that Westmoreland County Rules of Judicial Administration WJ5000.4, WJ5000.5, WJ5000.7 and WJ5000.13 are hereby rescinded and Rules WJ4007 and WJ4008 are hereby adopted.

By the Court

RICHARD E. McCORMICK, Jr.,
President Judge

Proposed Rule WJ4007. Requests for Transcripts.

(A) In accordance with Pa.R.J.A. 4007, the party requesting a full or partial transcript of a trial or other proceeding shall file the original request with Court Administration, in office M3 of the Westmoreland County

Courthouse, in the form provided at <http://www.co.westmoreland.pa.us/index.aspx?nid=1024> (Court Administration; Forms). The party requesting a transcript shall also serve a copy of the request upon the court reporter, the presiding judge and opposing counsel or, in the event the opposing party is not represented, the opposing party.

(B) Upon receipt of the completed written request form, Court Administration shall obtain an estimate of the transcript cost and shall communicate the cost of the transcript to the requesting party. The requesting party shall make partial payment of seventy five percent (75%) of the estimated cost, which shall be nonrefundable. Payments shall be made at the Westmoreland County Treasurer's office. No transcripts shall be delivered to private parties until 100% of the payment cost of the transcript is received. No down payment shall be required from the Commonwealth or a subdivision of the Commonwealth.

(C) *Requests based on economic hardship.*

(1) In the event that a requester seeks reduction or waiver of transcript fee, he or she shall complete the petition requesting reduction in or waiver of transcript costs found at <http://www.co.westmoreland.pa.us/index.aspx?nid=1024> (Court Administration; Forms). The petition shall be submitted to the presiding judge, who shall make a determination as soon as reasonably possible and shall provide a copy of the grant or denial of application to the assigned court reporter and court administrator's office. All payment shall be made to the Westmoreland County Treasurer.

(D) *Payment.*

All checks shall be made payable to "Westmoreland County Treasurer".

Proposed Rule WJ4008. Transcript Costs.

(A) *Costs.* Costs payable by a requesting party other than the Commonwealth or a subdivision thereof, for a transcript in an electronic format shall be as follows:

Private Pay Rates:

Ordinary	\$2.50 per page
Expedited	\$3.50 per page
Daily	\$4.50 per page
Same day delivery	\$6.50 per page

Transcripts in bound paper format are subject to a surcharge of \$0.25 per page, and copy rates apply.

In the event a condensed transcript is delivered, the page rates above apply regardless of the number of pages of transcript on the sheet.

(B) *Economic Hardship.* Reduction based on economic hardship shall be in accordance with Pa.R.J.A. 4008(B).

(C) *Allocation of Costs.* Allocation of costs shall be as set forth Pa.R.J.A. 4008(C).

(D) *Copies of Transcript.* A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided at the rate of \$0.75 per page bound, paper format; and \$0.50 per page electronic copy.

(E) *Additional Costs.* Pursuant to Pa.R.J.A. 4008(E), the presiding judge may impose a reasonable surcharge in

cases such as mass tort, medical malpractice or other unusually complex litigation.

A reasonable fee for a secure electronic feed may be imposed by the court reporter.

[Pa.B. Doc. No. 17-55. Filed for public inspection January 13, 2017, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Administrative Suspension

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated November 21, 2016, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective December 21, 2016 for Compliance Group 1.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

Ackerman, Joel Alan
Morris Plains, NJ

Bennett, Carla Michelle
Highlands Ranch, CO

Bennett, David Richard
West Palm Beach, FL

Bjornstad, Deborah Hollenbach
Mount Holly, NJ

Caplan, Darryl Scott
Moorestown, NJ

Corsi, Christopher
Marlton, NJ

Fisher, Karen S.
Washington, DC

Higgins, Laurie M.
Cherry Hill, NJ

Mellvaine, Mark Kirkpatrick
Superior, CO

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Supreme Court of Pennsylvania

[Pa.B. Doc. No. 17-56. Filed for public inspection January 13, 2017, 9:00 a.m.]

SUPREME COURT

Duty Assignment Schedule for Emergency Petitions in the Year 2017; No. 476 Judicial Administration Doc.

Order

Per Curiam:

And Now, this 21st day of December, 2016, the emergency duty assignment for the year 2017, is herewith adopted.

January	Justice Debra Todd Justice Kevin Dougherty	(Eastern District) (Western District)
February	Justice Max Baer Justice David Wecht	(Eastern District) (Western District)
March	Justice Christine Donohue Justice Sallie Updyke Mundy	(Eastern District) (Western District)
April	Justice Kevin Dougherty Justice Debra Todd	(Eastern District) (Western District)
May	Justice David Wecht Justice Max Baer	(Eastern District) (Western District)
June	Justice Sallie Updyke Mundy Justice Christine Donohue	(Eastern District) (Western District)
July	Justice Debra Todd Justice Kevin Dougherty	(Eastern District) (Western District)
August	Justice Max Baer Justice David Wecht	(Eastern District) (Western District)
September	Justice Christine Donohue Justice Sallie Updyke Mundy	(Eastern District) (Western District)
October	Justice Kevin Dougherty Justice Debra Todd	(Eastern District) (Western District)
November	Justice David Wecht Justice Max Baer	(Eastern District) (Western District)
December	Justice Sallie Updyke Mundy Justice Christine Donohue	(Eastern District) (Western District)

[Pa.B. Doc. No. 17-57. Filed for public inspection January 13, 2017, 9:00 a.m.]

Schedule of Holidays for Year 2018 for Staffs of the Appellate Courts and the Administrative Office of Pennsylvania Courts; No. 475 Judicial Administration Doc.

Order

Per Curiam:

And Now, this 21st day of December, 2016, it is hereby ordered that the following paid holidays for calendar year 2018 will be observed on the dates specified below by all employees of the appellate courts and the Administrative Office of Pennsylvania Courts:

January 01, 2018	New Year's Day
January 15, 2018	Martin Luther King, Jr. Day
February 19, 2018	Presidents' Day
March 30, 2018	Good Friday
May 28, 2018	Memorial Day
July 04, 2018	Independence Day
September 03, 2018	Labor Day
October 08, 2018	Columbus Day
November 06, 2018	Election Day**
November 12, 2018	Veterans' Day (Observed)

November 22, 2018	Thanksgiving Day
November 23, 2018	Day after Thanksgiving
December 25, 2018	Christmas Day

** AOPC only; Appellate courts will be open.

[Pa.B. Doc. No. 17-58. Filed for public inspection January 13, 2017, 9:00 a.m.]

Sessions of the Supreme Court of Pennsylvania for the Year 2018; No. 474 Judicial Administration Doc.

Order

Per Curiam:

And Now, this 21st day of December, 2016 it is ordered that the argument/administrative sessions of the Supreme Court of Pennsylvania shall be held in the year 2018 as follows:

Philadelphia (Administrative Session)	February 6th
Philadelphia	March 5th through March 9th
Harrisburg (Administrative Session)	March 27th
Pittsburgh	April 9th through April 13th
Harrisburg	May 14th through May 18th
Pittsburgh (Administrative Session)	June 5th
Philadelphia	September 24th through September 28th
Pittsburgh	October 22nd through October 26th
Harrisburg	December 3rd through the 7th

Additional argument/administrative sessions may be scheduled as the Court deems necessary.

[Pa.B. Doc. No. 17-59. Filed for public inspection January 13, 2017, 9:00 a.m.]
