THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 1, 5, 7, 9, 11, 13, 15, 17, 19, 21, 25 AND 27]

Proposed Adoption of Pa.R.A.P. 127 and Proposed Amendment of Pa.R.A.P. 123, 531, 552, 752, 910, 911, 1115, 1116, 1123, 1312, 1314, 1513, 1516, 1573, 1703, 1732, 1770, 1781, 1931, 1952, 2544, 2545 and 2751

The Appellate Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa.R.A.P. 127 governing the certification and filing of confidential information and confidential documents, and corollary amendments throughout the Pennsylvania Rules of Appellate Procedure.

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

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

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

Appellate Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave., Suite 6200
P.O. Box 62635
Harrisburg, Pennsylvania 17106-2635
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All communications in reference to the proposal should be received by September 12, 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 Appellate Court
Procedural Rules Committee

HONORABLE PATRICIA A. McCULLOUGH,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

DOCUMENTS GENERALLY

Rule 123. Application for Relief.

(a) *Contents of applications for relief.*—Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a written application for such order or relief with proof of service on all other parties. The application shall contain or be accompanied by any matter required by a specific provision of these rules governing such an application, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If an application is supported by briefs, verified statements**,** or other papers, they shall be served and filed with the application. An application may be made in the alternative and **[pray for] seek** such alternative relief or action by the court as may be appropriate. All grounds for relief demanded shall be stated in the application and failure to state a ground shall constitute a waiver thereof. Except as otherwise prescribed by these rules, a request for more than one type of relief may be combined in the same application.

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(e) *Power of single judge to entertain applications.*—In addition to the authority expressly conferred by these rules or by law or rule of court, a single judge of an appellate court may entertain and may grant or deny any request for relief which under these rules may properly be sought by application, except that an appellate court may provide by order or rule of court that any application or class of applications must be acted upon by the court. The action of a single judge may be reviewed by the court except for actions of a single judge under **[Rule] Pa.R.A.P.** 3102(c)(2) (relating to quorum in Commonwealth Court in any election matter).

(f) *Certificate of compliance with Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*.—An application or answer filed under this Rule shall contain the certificate of compliance required by Pa.R.A.P. 127.

***Official Note*:** The 1997 amendment precludes review by the Commonwealth Court of actions of a single judge in election matters.

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

Rule 127. Confidential Information and Confidential Documents. Certification.

(a) Unless constrained by applicable authority, any attorney or any unrepresented party who files a document pursuant to these rules shall comply with the requirements of Sections 7.0 and 8.0 of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy). Unless otherwise authorized by rule of court, any attorney or unrepresented party shall file a certificate of compliance with the Policy with every document filed with the court.

(b) Unless an appellate court orders otherwise, case records or documents that are sealed by a court, government unit, or other tribunal shall remain sealed on appeal.

Official Note: Paragraph (a)—"Applicable authority" includes but is not limited to statute, procedural rule, or court order. *The Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) can be found at http://www.pacourts.us/public-record-policies. Sections 7.0(D) and 8.0(D) of the Policy provide that the certification shall be in substantially the following form:

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial*

System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Appropriate forms can be found at http://www.pacourts.us/public-record-policies. Pursuant to Section 7.0(C) of the Policy and Pa.R.J.A. No. 103(c), a court may adopt a rule or order that permits in lieu of certification, the filing of a document in two versions, that is, a "Redacted Version" and an "Unredacted Version."

Paragraph (b)—Once a document is sealed, it shall remain sealed on appeal unless the appellate court orders, either *sua sponte* or on application, that the case record or document be opened.

CHAPTER 5. PERSONS WHO MAY TAKE OR PARTICIPATE IN APPEALS

AMICUS CURIAE

Rule 531. Participation by *Amicus Curiae*.

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(b) *Briefs*

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(2) *Content*.—An *amicus curiae* brief must contain a statement of the interest of *amicus curiae*. The statement of interest shall disclose the identity of any person or entity other than the *amicus curiae*, its members, or counsel who (i) paid in whole or in part for the preparation of the *amicus curiae* brief or (ii) authored in whole or in part the *amicus curiae* brief. It does not need to contain a Statement of the Case and does not need to address jurisdiction or the order or other determinations in question. **An *amicus curiae* brief shall contain the certificate of compliance required by Pa.R.A.P. 127.**

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FORMA PAUPERIS

Rule 552. Application to Lower Court for Leave to Appeal *In Forma Pauperis*.

(a) *General rule*.—A party who is not eligible to file a verified statement under **[Rule] Pa.R.A.P.** 551 (continuation of in forma pauperis status for purposes of appeal) may apply to the lower court for leave to proceed on appeal *in forma pauperis*. The application may be filed before or after the taking of the appeal, but if filed before the taking of the appeal, the application shall not extend the time for the taking of the appeal.

(b) *Accompanying verified statement*.—Except as prescribed in **[Subdivision] paragraph** (d) of this rule, the application shall be accompanied by a verified statement substantially conforming to the requirements of **[Rule] Pa.R.A.P.** 561 (form of IFP verified statement) showing in detail the inability of the party to pay the fees and costs provided for in Chapter 27 (fees and costs in appellate courts and on appeal).

(c) *No filing fee required*.—The clerk of the lower court shall file an application under this rule without the payment of any filing fee.

(d) *Automatic approval in certain cases*.—If the applicant is represented by counsel who certifies on the application or by separate document that the applicant is indigent and that such counsel is providing free legal service to the applicant, the clerk of the lower court shall forthwith enter an order granting the application. The clerk may accept and act on an application under this **[subdivision] paragraph** without an accompanying verified statement by the party.

(e) *Consideration and action by the court*.—Except as prescribed in **[Subdivision] paragraph** (d) of this rule, the application and verified statement shall be submitted to the court, which shall enter its order thereon within 20 days from the date of the filing of the application. If the application is denied, in whole or in part, the court shall briefly state its reasons.

(f) *Certificate of compliance with Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*.—An application filed under this Rule shall contain the certificate of compliance required by Pa.R.A.P. 127.

***Official Note*:** Extends the substance of former Supreme Court Rule 61(b) (part) and 61(c) (part) to the Superior and Commonwealth Courts and provides for action by the clerk in lieu of the court. It is anticipated that an application under this rule ordinarily would be acted upon prior to the docketing of the appeal in the appellate court and the transmission of the record.

Relief from requirements for posting a supersedeas bond in civil matters must be sought under **[Rule] Pa.R.A.P.** 1732 (application for stay or injunction pending appeal) and relief from bail requirements in criminal matters must be sought as prescribed by **[Rule] Pa.R.A.P.** 1762 (release in criminal matters), but under **[Rule] Pa.R.A.P.** 123 (applications for relief) the applications under **[Rule] Pa.R.A.P.** 552 (or 553) and other rules may be combined into a single document.

CHAPTER 7. COURTS TO WHICH APPEALS SHALL BE TAKEN

TRANSFERS OF CASES

Rule 752. Transfers Between Superior and Commonwealth Courts.

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(b) *Content of application; answer*.—The application shall contain a statement of the facts necessary to an understanding of the same or related questions of fact, law, or discretion; a statement of the questions themselves; and a statement of the reasons why joint consideration of the appeals would be desirable. The application shall be served on all other parties to all appeals or other matters involved, and shall include or have annexed thereto a copy of each order from which any appeals involved were taken and any findings of fact, conclusions of law**,** and opinions relating thereto. Any other party to any appeal or other matter involved may file an answer in opposition in accordance with **[Rule] Pa.R.A.P.** 123(b). **An application or answer filed under this Rule shall contain the certificate of compliance required by Pa.R.A.P. 127.** The application and answer shall be submitted without oral argument unless otherwise ordered.

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ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 910. Jurisdictional Statement. Content. Form.

(a) *General rule*.**—**The jurisdictional statement required by **[Rule] Pa.R.A.P. 909** shall contain the following in the order set forth:

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(b) *Matters of form*.**—**The jurisdictional statement need not be set forth in numbered paragraphs in the manner of

a pleading. It shall be as short as possible and shall not exceed 1000 words, excluding the appendix.

(c) *Certificate of compliance*.

(1) *Word count*.—A jurisdictional statement that does not exceed five pages when produced on a word processor or typewriter shall be deemed to meet the requirements of **[subdivision] paragraph** (b) of this rule. In all other cases, the attorney or the unrepresented filing party shall include a certification that the statement complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the statement.

(2) *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*.—A jurisdictional statement shall contain the certificate of compliance required by Pa.R.A.P. 127.

(d) *Nonconforming statements*.—The Prothonotary of the Supreme Court shall not accept for filing any statement that does not comply with this rule. **[He shall return it] The Prothonotary shall return the statement** to the appellant, and inform all parties in which respect the statement does not comply with the rule. The prompt filing and service of a new and correct statement within seven days after return by the Prothonotary shall constitute a timely filing of the jurisdictional statement.

Rule 911. Answer to Jurisdictional Statement. Content. Form.

(a) *General rule*.—An answer to a jurisdictional statement shall set forth any procedural, substantive**,** or other argument or ground why the order appealed from is not reviewable as of right and why the Supreme Court should not grant an appeal by allowance. The answer need not be set forth in numbered paragraphs in the manner of a pleading and shall not exceed 1000 words.

(b) *Certificate of compliance*.

(1) *Word count*.—An answer to a jurisdictional statement that does not exceed five pages when produced on a word processor or typewriter shall be deemed to meet the requirements of **[subdivision] paragraph** (a) of this rule. In all other cases, the attorney or the unrepresented filing party shall include a certification that the statement complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the statement.

(2) *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*.—An answer to a jurisdictional statement shall contain the certificate of compliance required by Pa.R.A.P. 127.

***Official Note*:** The Supreme Court has, in a number of cases, determined that a party has no right of appeal, but has treated the notice of appeal as a petition for allowance of appeal and granted review. *See Gossman v. Lower Chanceford Tp. Bd. of Supervisors*, **[503 Pa. 392,]** 469 A.2d 996 (**Pa.** 1983); *Xpress Truck Lines, Inc. v. Pennsylvania Liquor Control Board*, **[503 Pa. 399,]** 469 A.2d 1000 (**Pa.** 1983); *O'Brien v. State Employment Retirement Board*, **[503 Pa. 414,]** 469 A.2d 1008 (**Pa.** 1983). *See also* Pa.R.A.P. 1102. Accordingly, a party opposing a jurisdictional statement shall set forth why the order appealed from is not reviewable on direct appeal and why the Court should not grant an appeal by allowance.

CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1115. Content of the Petition for Allowance of Appeal.

(a) *General rule*.—The petition for allowance of appeal need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

[1.] (1) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported. Any such opinions shall be appended as provided in item 6 of paragraph (a) of this rule.

[2.] (2) The text of the order in question, or the portions thereof sought to be reviewed, and the date of its entry in the appellate court below. If the order is voluminous, it may, if more convenient, be appended to the petition.

[3.] (3) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of questions presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition, or fairly comprised therein, will ordinarily be considered by the court in the event an appeal is allowed.

[4.] (4) A concise statement of the case containing the facts material to a consideration of the questions presented.

[5.] (5) A concise statement of the reasons relied upon for allowance of an appeal. *See* Pa.R.A.P. 1114.

[6.] (6) There shall be appended to the petition a copy of any opinions delivered relating to the order sought to be reviewed, as well as all opinions of government units or lower courts in the case, and, if reference thereto is necessary to ascertain the grounds of the order, opinions in companion cases. If an application for reargument was filed in the Superior Court or Commonwealth Court, there also shall be appended to the petition a copy of any order granting or denying the application for reargument. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

[7.] (7) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations, or other similar enactments which the case involves, and the citation to the volume and page where they are published, including the official edition, if any.

(8) The certificate of compliance required by Pa.R.A.P. 127.

(b) *Caption and parties*.—All parties to the proceeding in the appellate court below shall be deemed parties in the Supreme Court, unless the petitioner shall notify the Prothonotary of the Supreme Court of the belief of the petitioner that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the matter in the lower court, and a party noted as no longer interested may remain a party in the Supreme Court by filing a notice that he has an interest in the petition with the Prothonotary of the Supreme Court. All parties in the Supreme Court other than petitioner shall be named as

respondents, but respondents who support the position of the petitioner shall meet the time schedule for filing papers which is provided in this chapter for the petitioner, except that any response by such respondents to the petition shall be filed as promptly as possible after receipt of the petition.

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Rule 1116. Answer to the Petition for Allowance of Appeal.

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(d) *Supplementary matter*.—The cover of the answer, pages containing the table of contents, table of citations, proof of service, signature block and anything appended to the answer shall not count against the word count limitations of this rule.

(e) *Certificate of compliance with Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*.—An answer to a petition for allowance of appeal shall contain the certificate of compliance required by Pa.R.A.P. 127.

***Official Note*:** This rule and Pa.R.A.P. 1115 contemplate that the petition and answer will address themselves to the heart of the issue, such as whether the Supreme Court ought to exercise its discretion to allow an appeal, without the need to comply with the formalistic pattern of numbered averments in the petition and correspondingly numbered admissions and denials in the response. While such a formalistic format is appropriate when factual issues are being framed in a trial court (as in the petition for review under Chapter 15) such a format interferes with the clear narrative exposition necessary to outline succinctly the case for the Supreme Court in the allocatur context.

Rule 1123. Denial of Appeal; Reconsideration.

(a) *Denial*. If the petition for allowance of appeal is denied the Prothonotary of the Supreme Court shall immediately give written notice in person or by first class mail of the entry of the order denying the appeal to each party who has appeared in the Supreme Court. After the expiration of the time allowed by **[Subdivision] paragraph** (b) of this rule for the filing of an application for reconsideration of denial of a petition for allowance of appeal, if no application for reconsideration is filed, the Prothonotary of the Supreme Court shall notify the prothonotary of the appellate court below of the denial of the petition.

(b) *Reconsideration*. Applications for reconsideration of denial of allowance of appeal are not favored and will be considered only in the most extraordinary circumstances. An application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within fourteen days after entry of the order denying the petition for allowance of appeal. In a children's fast track appeal, the application for reconsideration of denial of a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 7 days after entry of the order denying the petition for allowance of appeal. Any application filed under this **[subdivision must] paragraph must comport with the following**:

(1) Briefly and distinctly state grounds which are confined to intervening circumstances of substantial or controlling effect.

(2) Be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. Counsel must also certify that the application is restricted to the grounds specified **[in Paragraph (1) of this subdivision] under subparagraph (b)(1)**.

(3) Contain the certificate of compliance required by Pa.R.A.P. 127.

No answer to an application for reconsideration will be received unless requested by the Supreme Court. Second or subsequent applications for reconsideration, and applications for reconsideration which are out of time under this rule, will not be received.

(c) *Manner of filing*. If the application for reconsideration is transmitted to the prothonotary of the appellate court by means of first class, express, or priority United States Postal Service mail, the application shall be deemed received by the prothonotary for the purposes of **[Rule] Pa.R.A.P.** 121(a) (filing) on the date deposited in the United States mail as shown on a United States Postal Service Form 3817 Certificate of Mailing, or other similar United States Postal Service form from which the date of deposit can be verified. The certificate of mailing or other similar Postal Service form from which the date of deposit can be verified shall be cancelled by the Postal Service, shall show the docket number of the matter in the court in which reconsideration is sought and shall be enclosed with the application or separately mailed to the prothonotary. Upon actual receipt of the application, the prothonotary shall immediately stamp it with the date of actual receipt. That date, or the date of earlier deposit in the United States mail as prescribed in this **[subdivision] paragraph**, shall constitute the date when application was sought, which date shall be shown on the docket.

CHAPTER 13. INTERLOCUTORY APPEALS BY PERMISSION

Rule 1312. Content of the Petition for Permission to Appeal.

(a) *General rule*.—The petition for permission to appeal need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

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(7) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations**,** or other similar enactments which the case involves, and the citation to the volume and page where they are published, including the official edition, if any.

(8) The certificate of compliance required by Pa.R.A.P. 127.

(b) *Caption and parties*.—All parties to the proceeding in the lower court or other government unit other than petitioner shall be named as respondents, but respondents who support the position of the petitioner shall meet the time schedule for filing papers which is prescribed in this chapter for the petitioner, except that any response by such respondents to the petition shall be filed as promptly as possible after receipt of the petition.

(c) *No supporting brief*.—All contentions in support of a petition for permission to appeal shall be set forth in the body of the petition as prescribed **[by Paragraph (a)(5) of this rule] under subparagraph (a)(5)**. Neither the

briefs below nor any separate brief in support of a petition for permission to appeal will be received, and the prothonotary of the appellate court will refuse to file any petition for permission to appeal to which is annexed or appended any brief below or supporting brief.

(d) *Essential requisites of petition*.—The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

(e) *Multiple petitioners*.—Where permitted by **[Rule] Pa.R.A.P.** 512 (joint appeals) a single petition for permission to appeal may be filed.

***Official Note*:** Based on former Commonwealth Court Rule 114. **[Subdivision] subparagraph** (a)(2) of this rule makes clear that the order of the tribunal below must contain a statement that the order involves a controlling question of law as to which there is a difference of opinion.

Interlocutory appeals as of right may be taken by filing a notice of appeal under Chapter 9 (appeals from lower courts), rather than by petition under this rule. *See* **[Rule] Pa.R.A.P.** 311 (interlocutory appeals as of right).

Rule 1314. Answer to the Petition for Permission to Appeal.

Within 14 days after service of a petition for permission to appeal an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading, shall set forth any procedural, substantive or other argument or ground why the interlocutory order involved should not be reviewed by the appellate court and shall comply with **[Rule] Pa.R.A.P.** 1312(a)(7) (content of petition for permission to appeal). **An answer to a petition for permission to appeal shall contain the certificate of compliance required by Pa.R.A.P. 127.** No separate motion to dismiss a petition for permission to appeal will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the petition for permission to appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for permission to appeal.

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1513. Petition for Review.

(a) *Caption and parties on appeal*.—In an appellate jurisdiction petition for review, the aggrieved party or person shall be named as the petitioner and, unless the government unit is disinterested, the government unit and no one else shall be named as the respondent. If the government unit is disinterested, all real parties in interest, and not the government unit, shall be named as respondents.

(b) *Caption and parties in original jurisdiction actions*.—The government unit and any other indispensable party shall be named as respondents. Where a public act or duty is required to be performed by a government unit, it is sufficient to name the government unit, and not its individual members, as respondent.

(c) *Form*.—Any petition for review shall be divided into consecutively numbered paragraphs. Each paragraph shall contain, as nearly as possible, a single allegation of fact or other statement. When petitioner seeks review of an order refusing to certify an interlocutory order for immediate appeal, numbered paragraphs need not be used.

(d) *Content of appellate jurisdiction petition for review*.—An appellate jurisdiction petition for review shall contain **the following**:

[1.] (1) a statement of the basis for the jurisdiction of the court;

[2.] (2) the name of the party or person seeking review;

[3.] (3) the name of the government unit that made the order or other determination sought to be reviewed;

[4.] (4) reference to the order or other determination sought to be reviewed, including the date the order or other determination was entered;

[5.] (5) a general statement of the objections to the order or other determination, but the omission of an issue from the statement shall not be the basis for a finding of waiver if the court is able to address the issue based on the certified record;

[6.] (6) a short statement of the relief sought; **[and]**

[7.] (7) a copy of the order or other determination to be reviewed, which shall be attached to the petition for review as an exhibit**[.]; and**

(8) the certificate of compliance required by Pa.R.A.P. 127.

No notice to plead or verification is necessary.

Where there were other parties to the proceedings conducted by the government unit, and such parties are not named in the caption of the petition for review, the petition for review shall also contain a notice to participate, which shall provide substantially as follows:

> If you intend to participate in this proceeding in the (Supreme, Superior or Commonwealth, as appropriate) Court, you must serve and file a notice of intervention under Pa.R.A.P. 1531 of the Pennsylvania Rules of Appellate Procedure within 30 days.

(e) *Content of original jurisdiction petition for review*.—A petition for review addressed to an appellate court's original jurisdiction shall contain **the following**:

[1.] (1) a statement of the basis for the jurisdiction of the court;

[2.] (2) the name of the person or party seeking relief;

[3.] (3) the name of the government unit whose action or inaction is in issue and any other indispensable party;

[4.] (4) a general statement of the material facts upon which the cause of action is based;

[5.] (5) a short statement of the relief sought; **[and]**

[6.] (6) a notice to plead and verification either by oath or affirmation or by verified statement**[.]; and**

(7) the certificate of compliance required by Pa.R.A.P. 127.

(f) *Alternative objections*.—Objections to a determination of a government unit and the related relief sought may be stated in the alternative, and relief of several different types may be requested.

***Official Note*:** The 2004 amendments to this rule clarify what must be included in a petition for review addressed to an appellate court's appellate jurisdiction and what must be included in a petition for review addressed to an appellate court's original jurisdiction. Where it is not readily apparent whether a "determination" (defined in Pa.R.A.P. 102 as "[a]ction or inaction by a government unit") is reviewable in the court's appellate or original jurisdiction, compliance with the requirements of paragraphs (d) and (e) is appropriate.

Paragraphs (a) and (b) reflect the provisions of Pa.R.A.P. 501, Pa.R.A.P. 503, Section 702 of the Administrative Agency Law, 2 Pa.C.S. § 702 (Appeals), and Pa.R.C.P. **[No.]** 1094 (regarding parties defendant in mandamus actions).

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Rule 1516. Other Pleadings Allowed.

(a) *Appellate jurisdiction petitions for review*.—No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for review is filed pursuant to the Notes to **[Rules] Pa.R.A.P.** 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), **[Rule] Pa.R.A.P.** 1573 (review of orders finding an assertion of double jeopardy frivolous), **[Rule] Pa.R.A.P.** 1762 (regarding release in criminal matters), **[Rule] Pa.R.A.P.** 1770 (regarding placement in juvenile delinquency matters), **[Rule] Pa.R.A.P.** 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or **[Rule] Pa.R.A.P.** 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in **[Rule 123(b)] Pa.R.A.P. 123(b), and the answer shall contain the certificate of compliance required by Pa.R.A.P. 127**.

(b) *Original jurisdiction petitions for review*.—Where an action is commenced by filing a petition for review addressed to the appellate court's original jurisdiction, the pleadings are limited to the petition for review, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a counterclaim contains new matter, a preliminary objection, and an answer thereto. **A pleading shall contain the certificate of compliance required by Pa.R.A.P. 127.** Every pleading filed after an original jurisdiction petition for review shall be filed within 30 days after service of the preceding pleading, but no pleading need be filed unless the preceding pleading is endorsed with a notice to plead.

***Official Note*:** The 2004, 2012, and 2013 amendments made clear that, with limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court's appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing. Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party. *See* **[Rule] Pa.R.A.P.** 1762(b)(2) regarding bail applications. *See* **[Rule] Pa.R.A.P.** 1770 regarding placement in juvenile delinquency matters.

REVIEW OF DETERMINATIONS OF THE BOARD OF FINANCE AND REVENUE

Rule 1571. Determinations of the Board of Finance and Revenue.

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(c) *Form*.—The petition for review shall contain a statement of the basis for the jurisdiction of the court; the name of the party seeking review; a statement that the Board of Finance and Revenue made the determination sought to be reviewed; reference to the order or other determination sought to be reviewed; and a general statement of the objections to the order or other determination. The petition for review need not be verified and shall not contain or have endorsed upon it notice to plead. A petition for review of a taxpayer or similar party shall name the "Commonwealth of Pennsylvania" as respondent and a petition for review filed by the Commonwealth of Pennsylvania shall name all real parties in interest before the Board as respondents. **The petition for review shall contain the certificate of compliance required by Pa.R.A.P. 127.**

(d) *Service*.—In the case of a petition for review by a taxpayer or similar party, a copy of the petition shall be served on the Board of Finance and Revenue and on the Attorney General by the petitioner in accordance with **[Rule] Pa.R.A.P.** 1514(c). All other parties before the Board shall be served as prescribed by **[Rule] Pa.R.A.P.** 121(b) (service of all papers required).

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(h) *Scope of review*.—**[Rule] Pa.R.A.P.** 1551(a) (appellate jurisdiction petitions for review) shall be applicable to review of a determination of the Board of Finance and Revenue except that:

(1) A question will be heard and considered by the court if it was raised at any stage of the proceedings below and thereafter preserved.

(2) To the extent provided by the applicable law, the questions raised by the petition for review shall be determined on the record made before the court. *See* **[Subdivision] paragraph** (f) of this rule.

(i) *Exceptions*.—Any party may file exceptions to an initial determination by the court under this rule within 30 days after the entry of the order to which exception is taken. Such timely exceptions shall have the effect, for the purposes of **[Rule] Pa.R.A.P.** 1701(b)(3) (authority of lower court or agency after appeal) of an order expressly granting reconsideration of the determination previously entered by the court. Issues not raised on exceptions are waived and cannot be raised on appeal.

***Official Note*: [Subdivision] Paragraph** (b) represents an exercise of the power conferred by 42 Pa.C.S. § 5105(a) (right to appellate review) to define final orders by general rule. The following statutes expressly require the Board of Finance and Revenue to act within six months in certain cases:

* * * * *

The basis of jurisdiction of the court under this rule will ordinarily be 42 Pa.C.S. § 763 (direct appeals from government agencies). **[Subdivision] Paragraph** (c) is not intended to change the practice in connection with the review of orders of the Board of Finance and Revenue

insofar as the amount of detail in the pleadings is concerned. What is required is that the petitioner raise every legal issue in the petition for review which the petitioner wishes the court to consider. The legal issues raised need only be specific enough to apprise the respondent of the legal issues being contested (e.g. "valuation," "manufacturing," "sale for resale," etc.). *See generally House of Pasta, Inc. v. Commonwealth*, **[37 Pa. Cmwlth. Ct. 317,]** 390 A.2d 341 (**Pa. Cmwlth.** 1978).

[Subdivision] Paragraph (e) is based on Section 1104(e) of The Fiscal Code, which was suspended absolutely by these rules, and subsequently repealed.

[Subdivision] Paragraph (f) is based on 2 Pa.C.S. § 501(b)(1) (scope of subchapter) and 2 Pa.C.S. § 701(b)(1) (scope of subchapter), which exclude tax matters from the on-the-record review requirements of 2 Pa.C.S. § 704 (disposition of appeal).

[Subdivision] Paragraph (h) is based on Section 1104(d) of The Fiscal Code, which was suspended absolutely by these rules and subsequently repealed, and is intended as a continuation of the prior law, except, of course, that the separate specification of objections has been abolished by these rules.

[Subdivision] Paragraph (i) is intended to make clear that the failure to file exceptions will result in waiver by a petitioner of any issues previously presented to the Commonwealth Court.

See also **[Rule] Pa.R.A.P.** 1782 (security on review in tax matters).

REVIEW OF DETERMINATIONS BY A COURT OF COMMON PLEAS THAT A CLAIM OF DOUBLE JEOPARDY IS FRIVOLOUS

Rule 1573. Review of Orders in Which the Court Finds an Assertion of Double Jeopardy Frivolous.

* * * * *

(b) *Contents*.—The contents of the petition for review are not governed by Pa.R.A.P. 1513. Instead, the petition for review need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

[(i)] (1) A statement of the basis for the jurisdiction of the appellate court.

[(ii)] (2) The text of the order in question, and the date of its entry in the trial court. If the order is voluminous, it may, if more convenient, be appended to the petition.

[(iii)] (3) A concise statement of the case containing the facts necessary to an understanding of the frivolousness issue(s) presented.

[(iv)] (4) The question(s) presented, expressed in the terms and circumstances of the case but without unnecessary detail.

[(v)] (5) A concise statement of the reasons why the trial court erred in its determination of frivolousness.

[(vi)] (6) There shall be appended to the petition a copy of any opinions relating to the order sought to be reviewed, including findings of fact and conclusions of law in support of the frivolousness determination, as well as a copy of any transcripts or other record documents necessary to the appellate court's review.

[(vii)] (7) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations or other similar enactments which the case involves.

[(viii)] (8) There shall be appended to the petition any briefs filed in the trial court in support of the motion to dismiss.

(9) The certificate of compliance required by Pa.R.A.P. 127.

(c) *Caption and parties*.—The parties in the trial court shall be named as parties in the appellate court. If there are multiple defendants but the order for which review is sought adjudicates the motion of only a single defendant, only that defendant may file a petition for review.

* * * * *

(g) *Answer to petition for review*.—If the Commonwealth does not intend to file an answer under this rule, it shall, within the time fixed by these rules for filing an answer, file a letter stating that it does not intend to file an answer to the petition for review. The failure to file an answer will not be construed as concurrence in the petition for review. The appellate court may, however, direct the Commonwealth to file an answer. **An answer to a petition for review shall contain the certificate of compliance required by Pa.R.A.P. 127.**

* * * * *

***Official Note*:** The trial court's determination and the procedure for determining a motion to dismiss on double jeopardy grounds is set forth in Pa.R.Crim.P. 587. If a trial court denies such a motion without expressly finding that the motion is frivolous, the order is immediately appealable by means of a notice of appeal under Pa.R.A.P. 313. If, however, the trial court finds the motion to be frivolous, appellate review can be secured only if the appellate court grants a petition for review. *See Commonwealth v. Orie*, 22 A.3d 1021 (Pa. 2011); *Commonwealth v. Brady*, **[510 Pa. 336,]** 508 A.2d 286 (**Pa.** 1986). If the Superior Court does not grant the petition for review, the defendant may file a petition for allowance of appeal with the Supreme Court.

* * * * *

CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

IN GENERAL

Rule 1703. Contents of Application for Stay.

In addition to the requirements set forth in **[Rule] Pa.R.A.P.** 123 (Application for Relief), an application for stay pursuant to this chapter shall set forth the procedural posture of the case, including the result of any application for relief in any court below or federal court, the specific rule under which a stay or supersedeas is sought, grounds for relief, and, if expedited relief is sought, the nature of the emergency. The application shall also identify and set forth the procedural posture of all related proceedings. **The application shall contain the certificate of compliance required by Pa.R.A.P. 127.**

STAY OR INJUNCTION IN CIVIL MATTERS

Rule 1732. Application for Stay or Injunction Pending Appeal.

(a) *Application to lower court*.—Application for a stay of an order of a lower court pending appeal, or for approval of or modification of the terms of any supersedeas, or for an order suspending, modifying, re-

storing**,** or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, must ordinarily be made in the first instance to the lower court, except where a prior order under this chapter has been entered in the matter by the appellate court or a judge thereof.

(b) *Contents of application for stay*.—An application for stay of an order of a lower court pending appeal, or for approval of or modification of the terms of any supersedeas, or for an order suspending, modifying, restoring**,** or granting an injunction during the pendency of an appeal, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the lower court for the relief sought is not practicable, or that the lower court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the lower court for its action. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts of the record as are relevant. Where practicable, the application should be accompanied by the briefs, if any, used in the lower court. **The application shall contain the certificate of compliance required by Pa.R.A.P. 127.**

(c) *Number of copies*.—Seven copies of applications under this rule in the Supreme Court or the Superior Court, and three copies of applications under this rule in the Commonwealth Court, shall be filed with the original.

***Official Note*: The subject matter of this rule was covered by former Supreme Court Rule 62, former Superior Court Rule 53, and former Commonwealth Court Rule 112. The flat seven day period for answer of former Supreme Court Rule 62 (which presumably was principally directed at allocatur practice) has been omitted in favor of the more flexible provisions of [Rule] Pa.R.A.P.** 123(b).

REVIEW OF DISPOSITIONAL ORDER FOR OUT OF HOME PLACEMENT IN JUVENILE DELINQUENCY MATTERS

Rule 1770. Review of Out of Home Placement in Juvenile Delinquency Matters.

(a) *General rule*.—If a court under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, enters an order after an adjudication of delinquency of a juvenile pursuant to Rules of Juvenile Court Procedure 409(A)(2) and 515, which places the juvenile in an out of home overnight placement in any agency or institution that shall provide care, treatment, supervision**,** or rehabilitation of the juvenile ("Out of Home Placement"), the juvenile may seek review of that order pursuant to a petition for review under Chapter 15 (judicial review of governmental determinations). The petition shall be filed within ten days of the said order.

(b) *Content*.—A petition for review under subdivision (a) shall contain **the following**:

[(i)] (1) a specific description of any determinations made by the juvenile court;

[(ii)] (2) the matters complained of;

[(iii)] (3) a concise statement of the reasons why the juvenile court abused its discretion in ordering the Out of Home Placement;

[(iv)] (4) the proposed terms and conditions of an alternative disposition for the juvenile; and

[(v)] (5) a request that the official court reporter for the juvenile court transcribe the notes of testimony as required by **[subdivision] paragraph** (g) of this Rule.

Any order(s) and opinion(s) relating to the Out of Home Placement and the transcript of the juvenile court's findings shall be attached as appendices. The petition shall be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay. **The petition shall contain the certificate of compliance required by Pa.R.A.P. 127.**

(c) *Objection to specific agency or institution, or underlying adjudication of delinquency, is not permitted*.

(1) A petition for review under **[subdivision] paragraph** (a) shall not challenge the specific agency or specific institution that is the site of the Out of Home Placement and instead shall be limited to the Out of Home Placement itself.

(2) A petition for review under **[subdivision] paragraph** (a) shall not challenge the underlying adjudication of delinquency.

(d) *Answer*.—Any answer shall be filed within ten days of service of the petition, and no other pleading is authorized. **Any answer shall contain the certificate of compliance required by Pa.R.A.P. 127. [Rule] Pa.R.A.P.** 1517 (applicable rules of pleading) and **[Rule] Pa.R.A.P.** 1531 (intervention) through 1551 (scope of review) shall not be applicable to a petition for review filed under **[subdivision] paragraph** (a).

(e) *Service*.—A copy of the petition for review and any answer thereto shall be served on the judge of the juvenile court and the official court reporter for the juvenile court. All parties in the juvenile court shall be served in accordance with **[Rule] Pa.R.A.P.** 121(b) (service of all papers required). The Attorney General of Pennsylvania need not be served in accordance with **[Rule] Pa.R.A.P.** 1514(c) (service), unless the Attorney General is a party in the juvenile court.

(f) *Opinion of juvenile court*.—Upon receipt of a copy of a petition for review under **[subdivision] paragraph** (a), if the judge who made the disposition of the Out of Home Placement did not state the reasons for such placement on the record at the time of disposition pursuant to Rule of Juvenile Court Procedure 512 (D), the judge shall file of record a brief statement of the reasons for the determination or where in the record such reasons may be found, within five days of service of the petition for review.

(g) *Transcription of Notes of Testimony*.—Upon receipt of a copy of a petition for review under **[subdivision] paragraph** (a), the court reporter shall transcribe the notes of testimony and deliver the transcript to the juvenile court within five business days. If the transcript is not prepared and delivered in a timely fashion, the juvenile court shall order the court reporter to transcribe the notes and deliver the notes to the juvenile court, and may impose sanctions for violation of such an order. If the juvenile is proceeding *in forma pauperis*, the juvenile shall not be charged for the cost of the transcript. Chapter 19 of the Rules of Appellate Procedure shall not otherwise apply to petitions for review filed under this Rule.

(h) *Non-waiver of objection to placement*.—A failure to seek review under this rule of the Out of Home Placement shall not constitute a waiver of the juvenile's right

to seek review of the placement in a notice of appeal filed by the juvenile from a disposition after an adjudication of delinquency.

***Official Note*:** This Rule provides a mechanism for the expedited review of an order of Out of Home Placement entered pursuant to Rule of Juvenile Court Procedure 515. Rule of Juvenile Court Procedure 512(D) requires the judge who made the disposition of an Out of Home Placement to place the reasons for an Out of Home Placement on the record at the time of the disposition, and **[subdivision] paragraph** (f) of this Rule is only applicable in the exceptional circumstance where the judge who made the disposition of an Out of Home Placement fails to comply with Rule of Juvenile Court Procedure 512(D). The Juvenile Act, 42 Pa.C.S. § 6352, sets forth the considerations for a dispositional order following an adjudication of delinquency and the alternatives for disposition. The standard for review of a dispositional order is an abuse of discretion. *See In the Interest of A.D.*, 771 A.2d 45 (Pa. Super. 2001) (*en banc*).

STAY PENDING ACTION ON PETITION FOR REVIEW

Rule 1781. Stay Pending Action on Petition for Review.

* * * * *

(b) *Contents of application for stay or supersedeas*.—An application for stay or supersedeas of an order or other determination of a government unit, or for an order granting an injunction pending review, or for relief in the nature of peremptory mandamus, may be made to the appellate court or to a judge thereof, but the application shall show that application to the government unit for the relief sought is not practicable, or that application has been made to the government unit and denied, with the reasons given by it for the denial, or that the action of the government unit did not afford the relief which the applicant had requested. The application shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by sworn or verified statements or copies thereof. With the application shall be filed such parts, if any, of the record as are relevant to the relief sought. **The application shall contain the certificate of compliance required by Pa.R.A.P. 127.**

(c) *Notice and action by court*.—Upon such notice to the government unit as is required by **[Rule] Pa.R.A.P.** 123 (applications for relief) the appellate court, or a judge thereof, may grant an order of stay or supersedeas, including the grant of an injunction pending review or relief in the nature of peremptory mandamus, upon such terms and conditions, including the filing of security, as the court or the judge thereof may prescribe. Where a statute requires that security be filed as a condition to obtaining a supersedeas, the court shall require adequate security.

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

RECORD ON APPEAL FROM LOWER COURT

Rule 1931. Transmission of the Record.

(a) *Time for transmission*.

(1) *General rule*.—Except as otherwise prescribed by this rule, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 60 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by **[Rule] Pa.R.A.P.** 1122 (allowance of appeal and transmission of record) or by **[Rule] Pa.R.A.P.** 1322 (permission to appeal and transmission of record), as the case may be. The appellate court may shorten or extend the time prescribed by this subdivision for a class or classes of cases.

(2) *Children's fast track appeals*.—In a children's fast track appeal, the record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the appellate court within 30 days after the filing of the notice of appeal. If an appeal has been allowed or if permission to appeal has been granted, the record shall be transmitted as provided by **[Rule] Pa.R.A.P.** 1122 (allowance of appeal and transmission of record) or by **[Rule] Pa.R.A.P.** 1322 (permission to appeal and transmission of record), as the case may be.

(b) *Duty of lower court*.—After a notice of appeal has been filed the judge who entered the order appealed from shall comply with **[Rule] Pa.R.A.P.** 1925 (opinion in support of order), shall cause the official court reporter to comply with **[Rule] Pa.R.A.P.** 1922 (transcription of notes of testimony) or shall otherwise settle a statement of the evidence or proceedings as prescribed by this chapter, and shall take any other action necessary to enable the clerk to assemble and transmit the record as prescribed by this rule.

(c) *Duty of clerk to transmit the record*.—When the record is complete for purposes of the appeal, the clerk of the lower court shall transmit it to the prothonotary of the appellate court. The clerk of the lower court shall number the documents comprising the record and shall transmit with the record a list of the documents correspondingly numbered and identified with sufficient specificity to allow the parties on appeal to identify each document and to determine whether the record on appeal is complete. **If any case records or documents were sealed in the lower court, the list of documents comprising the record shall specifically identify such records or documents as having been sealed in the lower court.** Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted by the clerk unless he or she is directed to do so by a party or by the prothonotary of the appellate court. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. Transmission of the record is effected when the clerk of the lower court mails or otherwise forwards the record to the prothonotary of the appellate court. The clerk of the lower court shall indicate, by endorsement on the face of the record or otherwise, the date upon which the record is transmitted to the appellate court.

(d) *Service of the list of record documents*.—The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

(e) *Multiple appeals*.—Where more than one appeal is taken from the same order, it shall be sufficient to transmit a single record, without duplication.

(f) *Inconsistency between list of record documents and documents actually transmitted*.—If the clerk of the lower court fails to transmit to the appellate court all of the documents identified in the list of record documents, such failure shall be deemed a breakdown in processes of the court. Any omission shall be corrected promptly pursuant to **[Rule] Pa.R.A.P.** 1926 (correction or modification of the record) and shall not be the basis for any penalty against a party.

***Official Note*: [Rule] Pa.R.A.P.** 1926 (correction or modification of the record) provides the means to resolve any disagreement between the parties as to what should be included in the record on appeal.

RECORD ON PETITION FOR REVIEW OF ORDERS OF GOVERNMENT UNITS OTHER THAN COURTS

Rule 1952. Filing of Record in Response to Petition for Review.

* * * * *

(b) *Certificate of record*.—The government unit shall certify the contents of the record and a list of all documents, transcripts of testimony, exhibits and other material comprising the record. The government unit shall (1) arrange the documents to be certified in chronological order, (2) number them, and (3) affix to the right or bottom edge of the first page of each document a tab showing the number of that document. These shall be bound and shall contain a table of contents identifying each document in the record. **If any case records or documents were sealed in the government unit, the list of documents comprising the record shall specifically identify such records or documents as having been sealed in the government unit.** The certificate shall be made by the head, chairman, deputy**,** or secretary of the government unit. The government unit may file the entire record or such parts thereof as the parties may designate by stipulation filed with the government unit. The original papers in the government unit or certified copies thereof may be filed. Instead of filing the record or designated parts thereof, the government unit may file a certified list of all documents, transcripts of testimony, exhibits**,** and other material comprising the record, or a certified list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. **If any case records or documents were sealed in the government unit, the certified list of documents comprising the record shall specifically identify such records or documents as having been sealed in the government unit.** The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the prothonotary of the court, and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a certified list be filed, the government unit shall retain the record or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the government unit shall be a part of the record on review for all purposes.

(c) *Notice to counsel of contents of certified record*.—At the time of transmission of the record to the appellate court, the government unit shall send a copy of the list of the contents of the certified record to all counsel of record, or, if a party is unrepresented by counsel, to that party at the address provided to the government unit.

***Official Note*:** The addition of **[subdivision] paragraph** (c) in 2012 requires government units other than courts to notify counsel of the contents of the certified record. This is an extension of the requirement in **[Rule] Pa.R.A.P.** 1931 (transmission of the record) that trial courts give such notice.

CHAPTER 21. BRIEFS AND REPRODUCED RECORD

CONTENT OF BRIEFS

Rule 2111. Brief of the Appellant.

(a) *General rule*.—The brief of the appellant, except as otherwise prescribed by these rules, shall consist of the following matters, separately and distinctly entitled and in the following order:

* * * * *

(10) The opinions and pleadings specified in **[Subdivisions] paragraphs** (b) and (c) of this rule.

(11) In the Superior Court, a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to **[Rule] Pa.R.A.P.** 1925(b), or an averment that no order requiring a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered.

(12) The certificates of compliance required by Pa.R.A.P. 127 and 2135(d).

(b) *Opinions below*.—There shall be appended to the brief a copy of any opinions delivered by any court or other government unit below relating to the order or other determination under review, if pertinent to the questions involved. If an opinion has been reported, that fact and the appropriate citation shall also be set forth.

(c) *Pleadings*.—When pursuant to **[Rule] Pa.R.A.P.** 2151(c) (original hearing cases) the parties are not required to reproduce the record, and the questions presented involve an issue raised by the pleadings, a copy of the relevant pleadings in the case shall be appended to the brief.

(d) *Brief of the Appellant*.—In the Superior Court, there shall be appended to the brief of the appellant a copy of the statement of errors complained of on appeal, filed with the trial court pursuant to Pa.R.A.P. 1925(b). If the trial court has not entered an order directing the filing of such a statement, the brief shall contain an averment that no order to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) was entered by the trial court.

***Official Note*:** The 1999 amendment requires a statement of the scope and standard of review. "'Scope of review' refers to 'the confines within which an appellate court must conduct its examination.' (Citation omitted.) In other words, it refers to the matters (or 'what') the appellate court is permitted to examine. In contrast, 'standard of review' refers to the manner in which (or 'how') that examination is conducted." *Morrison v. Commonwealth, Dept. of Public Welfare*, **[538 Pa. 122, 131,]** 646 A.2d 565, 570 (**Pa.** 1994). This amendment incorporates the prior practice of the Superior Court pursuant to Pa.R.A.P. 3518 which required such statements. Accordingly, **[Rule] Pa.R.A.P.** 3518 has been rescinded as its requirement is now subsumed under paragraph (a)(2) of this Rule.

* * * * *

Rule 2112. Brief of the Appellee.

The brief of the appellee, except as otherwise prescribed by these rules, need contain only a summary of argument and the complete argument for appellee**,** and may also include counter-statements of any of the matters required in the appellant's brief as stated in Pa.R.A.P. 2111(a). Unless the appellee does so, or the brief of the appellee otherwise challenges the matters set forth in the appellant's brief, it will be assumed the appellee is satisfied with them, or with such parts of them as remain unchallenged. **The brief of the appellee shall contain the certificates of compliance required by Pa.R.A.P. 127 and 2135(d).**

* * * * *

Rule 2113. Reply Brief.

(a) *General rule*.—In accordance with **[Rule] Pa.R.A.P.** 2185(a) (time for serving and filing briefs), the appellant may file a brief in reply to matters raised by appellee's brief or in any amicus curiae brief and not previously addressed in appellant's brief. If the appellee has cross appealed, the appellee may file a similarly limited reply brief. **A reply brief shall contain the certificates of compliance required by Pa.R.A.P. 127 and 2135(d).**

(b) *Response to draft or plan*.—A reply brief may be filed as prescribed in **[Rule] Pa.R.A.P.** 2134 (drafts or plans).

(c) *Other briefs*.—No further briefs may be filed except with leave of court.

***Official Note*: An appellant now has a general right to file a reply brief. The scope of the reply brief is limited, however, in that such brief may only address matters raised by appellee and not previously addressed in appellant's brief. No subsequent brief may be filed unless authorized by the court.

The length of a reply brief is set by **[Rule] Pa.R.A.P.** 2135 (length of briefs). The due date for a reply brief is found in **[Rule] Pa.R.A.P.** 2185(a) (service and filing of briefs).

Where there are cross appeals, the deemed or designated appellee may file a similarly limited reply brief addressing issues in the cross appeal. *See also* **[Rule] Pa.R.A.P.** 2136 (briefs in cases involving cross appeals).

The 2011 amendment to **[subdivision] paragraph** (a) authorized an appellant to address in a reply brief matters raised in amicus curiae briefs. Before the 2011 amendment, the rule permitted the appellant to address in its reply brief only matters raised in the appellee's brief. The 2011 amendment did not change the requirement that the reply brief must not address matters previously addressed in the appellant's principal brief.

CONTENT OF REPRODUCED RECORD

Rule 2152. Content and Effect of Reproduced Record.

(a) *General rule*.—The reproduced record shall contain **the following**:

(1) The relevant docket entries and any relevant related matter (*see* **[Rule] Pa.R.A.P.** 2153 (docket entries and related matter)).

(2) Any relevant portions of the pleadings, charge or findings (*see* **[Rule] Pa.R.A.P.** 2175(b) (order and opinions) which provides for a cross reference note only to orders and opinions reproduced as part of the brief of appellant).

(3) Any other parts of the record to which the parties wish to direct the particular attention of the appellate court.

(4) The certificate of compliance required by Pa.R.A.P. 127.

(b) *Immaterial formal matters*.—Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) shall be omitted.

(c) *Effect of reproduction of record*.—The fact that parts of the record are not included in the reproduced record shall not prevent the parties or the appellate court from relying on such parts.

***Official Note*: The general rule has long been that evidence which has no relation to or connection with the questions involved must not be reproduced. *See* former Supreme Court Rule 44, former Superior Court Rule 36 and former Commonwealth Court Rule 88. *See also*, *e.g.*, *Shapiro v. Malarkey*, 278 Pa. 78, 84, 122 Atl. 341, 342, 29 A.L.R. 1358 (1923); *Sims v. Pennsylvania R.R. Co.*, 279 Pa. 111, 117, 123 Atl. 676, 679 (1924).

See **[Rule] Pa.R.A.P.** 2189 for procedure in cases involving the death penalty.

Rule 2156. Supplemental Reproduced Record.

When, because of exceptional circumstances, the parties are not able to cooperate on the preparation of the reproduced record as a single document, the appellee may, in lieu of proceeding as otherwise provided in this chapter, prepare, serve**,** and file a **[Supplemental Reproduced Record] supplemental reproduced record** setting forth the portions of the record designated by the appellee. **A supplemental reproduced record shall contain the certificate of compliance required by Pa.R.A.P. 127.**

***Official Note*: Former Supreme Court Rules 36, 38**,** and 57, former Superior Court Rules 28, 30**,** and 47 and former Commonwealth Court Rules 32A, 82**,** and 84 all inferentially recognized that a supplemental record might be prepared by the appellee, but the former rules were silent on the occasion for such a filing. The preparation of a single reproduced record has obvious advantages, especially where one party designates one portion of the testimony, and the other party designates immediately following testimony on the same subject. However, because of emergent circumstances or otherwise, agreement on the mechanics of a joint printing effort may collapse, without affording sufficient time for the filing and determination of an application for enforcement of the usual procedures. In that case an appellee may directly present the relevant portions of the record to the appellate court.

* * * * *

CHAPTER 25. POST-SUBMISSION PROCEEDINGS

APPLICATION FOR REARGUMENT

Rule 2544. Contents of Application for Reargument.

(a) *General rule*.—The application for reargument need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

* * * * *

(3) A concise statement of the reasons relied upon for allowance of reargument. *See* **[Rule] Pa.R.A.P.** 2543 (considerations governing allowance of reargument).

* * * * *

(d) *Certificate of compliance.***[—]**

(1) *Word count.*—An application for reargument that does not exceed 8 pages when produced on a word processor or typewriter shall be deemed to meet the limitation in **[subdivision] paragraph** (c) of this rule. In all other cases, the attorney or unrepresented filing party shall include a certification that the application for reargument complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the application for reargument.

(2) *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*.—An application for reargument shall contain the certificate of compliance required by Pa.R.A.P. 127.

(e) *Essential requisites of application*.—The failure of an applicant to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring reconsideration will be a sufficient reason for denying the application.

(f) *Multiple applicants*.—Where permitted by **[Rule] Pa.R.A.P.** 512 (joint appeals) a single application for reargument may be filed.

Rule 2545. Answer to Application for Reargument.

(a) *General rule*.—Except as otherwise prescribed by this rule, within 14 days after service of an application for reargument, an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading. The answer shall set forth any procedural, substantive or other argument or ground why the court should not grant reargument. **The answer shall contain the certificate of compliance required by Pa.R.A.P. 127.** No separate motion to dismiss an application for reargument will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the application for reargument will not be filed. The failure to file an answer will not be construed as concurrence in the request for reargument.

(b) *Children's fast track appeals*.—In a children's fast track appeal, within 7 days after service of an application for reargument, an adverse party may file an answer. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. The answer need not be set forth in numbered paragraphs in the manner of a pleading. The answer shall set forth any procedural, substantive or other argument or ground why the court should not grant reargument. **The answer shall contain the certificate of compliance required by Pa.R.A.P. 127.** No separate motion to dismiss an application for reargument will be received. A party entitled to file an answer under this rule who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the application for reargument will not be filed. The failure to file an answer will not be construed as concurrence in the request for reargument.

CHAPTER 27. FEES AND COSTS IN APPELLATE COURTS AND ON APPEAL

COSTS

Rule 2751. Applications for Further Costs and Damages.

An application for further costs and damages must be made before the record is remanded, unless the appellate court, for cause shown, shall otherwise direct. Such an application must set forth specifically the reasons why it should be granted, and shall be accompanied by the opinion of the court and the briefs used therein. **An application for further costs and damages shall contain the certificate of compliance required by Pa.R.A.P. 127.**

* * * * *

Explanatory Comment

On January 6, 2017, the Supreme Court of Pennsylvania adopted the *Public Access Policy: Case Records of the Appellate and Trial Courts* (Policy), which will become effective January 6, 2018. In anticipation of the implementation of the Policy, the Appellate Court Procedural Rules Committee is proposing new Pa.R.A.P. 127, which provides that absent any applicable authority that constrains public access, all appellate court filings must comply with the Policy. Of particular importance are the requirements of Sections 7.0 and 8.0 governing confidential information and confidential documents. In addition, the rule provides that all practitioners and unrepresented parties must certify that a filing is compliant with the Policy. Reference to the requirements of Pa.R.A.P. 127 have been inserted through the Rules pertaining to filings.

The Committee is also proposing amendment of Pa.R.A.P. 1931 and 1952 to provide for the identification of sealed case records or documents in the lower court or government unit. These amendments, in conjunction with Pa.R.A.P. 127(b), will provide that documents previously sealed will remain sealed on appeal unless an appellate court orders otherwise.

[Pa.B. Doc. No. 17-1328. Filed for public inspection August 11, 2017, 9:00 a.m.]

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 7, 9, 15, 17, 19, 21, 25 AND 33]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 8 AND 9]

Proposed Adoption of New Pa.Rs.Crim.P. 850—862, Amendment of Pa.Rs.Crim.P. 113, 119 and 909 and Revision of the Comments to Pa.Rs.Crim.P. 120, 800 and 904; Proposed Adoption of Pa.R.A.P. 3311—3316 and 3319, Rescission of Pa.R.A.P. 1704, 1941, 3315 and 3316, Amendment of Pa.Rs.A.P. 702, 901, 909, 1501, 1702, 1761, 2189, 2521 and 2572 and Revision of the Official Notes to Pa.Rs.A.P. 2151, 2152, 2154, 2155 and 2187

The Supreme Court of Pennsylvania is considering the adoption of new Pa.Rs.Crim.P. 850—862, amendment of

Pa.Rs.Crim.P. 113, 119, 909, and revision of the Comments to Pa.Rs.Crim.P. 120, 800, and 904, and the adoption of Pa.R.A.P. 3311—3316, and 3319, the rescission of Pa.R.A.P. 1704, 1941, 3315, 3316, the amendment of Pa.R.A.P. 702, 901, 909, 1501, 1702, 1761, 2189, 2521, 2572, 3313, and the revision of the *Official Notes* to Pa.R.A.P. 2151, 2152, 2154, 2155, and 2187 for the reasons set forth in the accompanying explanatory report. This would result in the replacement of Pa.R.A.P. 3315 and 3316 with entirely new rules, and it would have the effect of consolidating all of the rules for capital appeals into the chapter dedicated to Supreme Court procedure. These amendments do not reflect proposed revisions to the Rules of Appellate Procedure that have been published for consideration to address other matters that the Appellate Court Procedural Rules Committee is currently considering. 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 adoption by the Supreme Court.

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

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

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

All communications in reference to the proposal should be received by no later than Thursday, October 12, 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.

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 113. Criminal Case File and Docket Entries.

* * * * *

(C) The docket entries shall include at a minimum the following information:

(1) the defendant's name;

(2) the names and addresses of all attorneys who have appeared or entered an appearance, the date of the entry of appearance, **[and]** the date of any withdrawal of appearance**, and a notation when an attorney is appointed or enters an appearance pursuant to Rule 854**;

* * * * *

Rule 119. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

(A) The court or issuing authority may use two-way simultaneous audio-visual communication at any criminal proceeding except:

* * * * *

(6) parole, probation, and intermediate punishment revocation hearings; **[and]**

(7) proceedings pursuant to Part C of Chapter 8 (Procedures for Determining and Challenging the Defendant's Competency to be Executed) when the defendant's presence is mandated by rule; and

[(7)] (8) any proceeding in which the defendant has a constitutional or statutory right to be physically present.

* * * * *

Comment

This rule was adopted in 2003 to make it clear that unless the case comes within one of the exceptions in paragraph (A), the court or issuing authority may use two-way simultaneous audio-visual communication in any criminal proceeding. Two-way simultaneous audio-visual communication is a type of advanced communication technology as defined in Rule 103.

[Nothing] Except in cases in which the defendant's presence is mandated pursuant to Part C of Chapter 8, nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may waive other rights. *See*, *e.g.*, Rule 602 Comment.

In proceedings under Part C of Chapter 8, the defendant is required to appear in person for examinations and hearings conducted under Rules 861 and 862. The defendant is not required to appear for pre-hearing conferences.

Negotiated guilty pleas when the defendant has agreed to the sentence, probation revocation hearings, and hearings held pursuant to Rule 908(C) and the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541 *et seq*., are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings, bench warrant hearings, extradition hearings, and *Gagnon* I hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

* * * * *

The paragraph **[(A)(5)] (A)(6)** reference to revocation hearings addresses *Gagnon* II-type probation (*Gagnon v. Scarpelli*, 411 U.S. 778 (1973)) and parole (*Morrissey v. Brewer*, 408 U.S. 471 (1972)) revocation hearings, and is not intended to prohibit the use of two-way simultaneous audio-visual communication in hearings to determine probable cause (*Gagnon* I).

* * * * *

PART B. Counsel

Rule 120. Attorneys—Appearances and Withdrawals.

* * * * *

Comment

* * * * *

Under paragraph (B)(2), counsel must file a motion to withdraw in all cases, and counsel's obligation to represent the defendant, whether as retained or appointed counsel, remains until leave to withdraw is granted by the court. *See, e.g., Commonwealth v. Librizzi,* 810 A.2d 692 (Pa. Super. **[Ct.]** 2002). The court must make a

determination of the status of a case before permitting counsel to withdraw. Although there are many factors considered by the court in determining whether there is good cause to permit the withdrawal of counsel, when granting leave, the court should determine whether new counsel will be stepping in or the defendant is proceeding without counsel, and that the change in attorneys will not delay the proceedings or prejudice the defendant, particularly concerning time limits. In addition, case law suggests other factors the court should consider, such as whether (1) the defendant has failed to meet his or her financial obligations to pay for the attorney's services and (2) there is a written contractual agreement between counsel and the defendant terminating representation at a specified stage in the proceedings such as sentencing. *See, e.g., Commonwealth v. Roman* **[** ***. Appeal of Zaiser*** **]**, 549 A.2d 1320 (Pa. Super. **[Ct.]** 1988).

If a post-sentence motion is filed, trial counsel would normally be expected to stay in the case until disposition of the motion under the post-sentence procedures adopted in 1993. *See* Rules 704 and 720. Traditionally, trial counsel stayed in a case through post-verdict motions and sentencing.

For the filing and service procedures, see Rules 575-576.

For waiver of counsel, see Rule 121.

For the procedures for appointment of counsel, see Rule 122.

***See* Rule 854(B) that requires an attorney who has been retained to represent a defendant in proceedings under Part C of Chapter 8 to file a written entry of appearance.**

See Rule 904(A) that requires an attorney who has been retained to represent a defendant during post-conviction collateral proceedings to file a written entry of appearance.

* * * * *

CHAPTER 8. SPECIAL RULES FOR CASES IN WHICH DEATH SENTENCE IS AUTHORIZED

PART A. Guilt and Penalty Determination Procedures

Rule 800. Applicability of Part A.

* * * * *

Comment

The 1990 amendment to this rule made it clear that Part A of Chapter 8 applies to both the guilt determination and sentencing phases of cases in which the death penalty is authorized. The chapter was amended in 2013 by the addition of Part B providing special procedures for seeking to preclude imposition of a sentence of death by reason of the defendant's mental retardation. **The chapter was amended in (DATE) by the addition of Part C providing procedures for determining and challenging the defendant's competency to be executed.**

* * * * *

(*Editor's Note*: Part C is proposed to be added and printed in regular type to enhance readability.)

PART C. PROCEDURES FOR DETERMINING AND CHALLENGING THE DEFENDANT'S COMPETENCY TO BE EXECUTED

Explanatory Comment to Part C—(DATE)

The rules in Part C provide the procedures for resolving issues of competency to be executed.

After a death sentence is affirmed, the Supreme Court transmits a copy of the record to the Governor. 42 Pa.C.S. § 9711(i). Within 90 days of receipt, unless a pardon or commutation has issued, the Governor issues a warrant of execution directed to the Secretary of Corrections, fixing a date of execution within 60 days. 61 Pa.C.S. § 4302(a)(1), (b). If a reprieve or judicial stay causes the warrant period to lapse, the Governor reissues a warrant within 30 days after termination of the reprieve or stay, again fixing a date for execution within 60 days. *Id*. § 4302(a)(2). Execution warrants typically issue after a defendant is denied relief on direct appeal, on a collateral attack arising under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541—9546, on federal habeas corpus review, and after the expiration of any ensuing stay or reprieve.

Pursuant to the Eighth Amendment to the United States Constitution, the Commonwealth cannot execute a defendant who does not meet minimal competency standards. *See Ford v. Wainwright*, 477 U.S. 399, 409-10 (1986). A defendant is incompetent to be executed if he or she suffers from a mental illness preventing a factual awareness and a rational understanding of the punishment to be imposed and the reasons for its imposition. *See Panetti v. Quarterman*, 551 U.S. 930, 958-59 (2007); *Commonwealth v. Banks,* 29 A.3d 1129, 1144 (Pa. 2011) ("*Banks II*"). If the defendant makes a substantial threshold showing of incompetency, due process requires a judicial procedure to resolve the issue. *See Panetti*, 551 U.S. at 934-35, 949-50. *Panetti* did not set forth "precise limits" of the process required; at a minimum, due process requires a fair hearing, an opportunity to be heard in a procedure that may be far less formal than a trial, and an opportunity to present argument and submit evidence, including expert mental health evidence. *See id*. at 949—51 (discussing *Ford*, 477 U.S. at 424, 426-27 (Powell, J., concurring and concurring in judgment)).

There is no point in entertaining *Ford* execution competency claims whenever an execution warrant issues; absent a valid waiver of further review, for example, a warrant issued after direct appeal will be stayed to allow for PCRA review. Moreover, a defendant's mental condition can improve or deteriorate over time. Thus, it is better to defer *Ford* claims until there is a reasonable likelihood that execution is imminent; in the ordinary case, this means deferral at least until state and federal avenues of collateral review as of right have been exhausted or waived. *See Panetti*, 551 U.S. at 946 (noting the "empty formality in requiring prisoners to file unripe *Ford* claims").

In 2007, the Supreme Court, presented with a ripe *Ford* claim, noted the absence of existing procedures for the timely consideration of the claim. *Commonwealth v. Banks*, 943 A.2d 230, 234-35 n.7 (Pa. 2007) (*Banks I*). The Court directed its criminal and appellate procedural rules committees to consider a protocol. The rules in Part C establish those procedures applicable in the lower court, and a related revision of the Rules of Appellate Procedure establishes the procedures on appeal. *See* Pa.R.A.P. 3315 (Review of Orders Determining Competency to be Executed).

The committees' proposal deemed a *Ford* claim ripe whenever an execution warrant issued: counsel would be appointed if the defendant was unrepresented and counsel's motion challenging competency would initiate the *Ford* claim. The committees also believed it was unrealistic to attempt to resolve a *Ford* claim within the 60-day term of an execution warrant. The proposal further

envisioned that, if the defendant made a substantial threshold showing of incompetency, requiring a hearing, a 210-day stay of execution would follow.

The Court had reservations with the lengthy stay of execution, which could be secured by untested expert opinions and supporting documents, as well as the absence of a mechanism to resolve a meritless *Ford* claim before an execution warrant expired. The Court was also concerned with the prospect of serial challenges and stays, and the resulting effect upon executive administration of the scheme of capital punishment designed by the General Assembly.

Accordingly, in May 2014, the Court transmitted to the Governor and legislative leaders a status report on these potential procedural developments. The Court outlined its concerns and advised that, before implementing procedures affecting administration of capital punishment, it was inviting the input of the executive and legislative branches. The Court received no response.

The Court then revised the committees' proposals to allow for (1) a more timely identification of ripe *Ford* claims, and (2) the prospect of resolving cases posing no colorable *Ford* issue before expiration of an execution warrant. The rules in Part C recognize that if there is a reasonable likelihood that execution is imminent, there is no reason to await the execution warrant before beginning the process of identifying a colorable *Ford* claim. The Commonwealth knows or should know the status of the case, including when each stage of review becomes final and a reprieve or stay expires, and may project when a warrant will issue and the likelihood execution will proceed. The Department of Corrections likewise can track the case and can monitor the defendant's mental condition in anticipation of an execution warrant.

The rules thus establish a procedure tied to the expectation that the prosecutor will monitor the case and the Department will monitor the defendant. To secure the accelerated consideration necessary to timely resolve the preliminary issue of entitlement to a hearing, the rules require the prosecutor to determine, in advance of the issuance of a warrant, when there is a reasonable likelihood both that a warrant will issue and execution will occur. In such cases, the prosecutor must then seek a competency certification from the Secretary of Corrections. If the Secretary certifies that the defendant is competent, the rules establish an accelerated procedure to timely resolve any challenge to the certification. If the Secretary does not certify that the defendant is competent, a stay will issue and the rules provide the procedures for an expeditious determination of any ensuing challenge, but do not contemplate a final decision before the warrant expires.

In further recognition of the time constraints when execution is imminent, the rules require that *Ford* claims be litigated in the judicial district where the defendant is confined. Centralization also facilitates the defendant's presence if a hearing is required, and should create greater expertise in those judicial districts passing upon *Ford* claims.

The new criminal and appellate rules addressing competency require coordination and cooperation among counsel, the lower court, the lower court clerk, the Department of Corrections, and the Prothonotary of the Supreme Court to facilitate the timely litigation of *Ford* claims, including expedited review.

PART C(1). Preliminary provisions

Rule 850. Scope.

The rules in Part C provide the procedures for determining a defendant's competency to be executed.

Rule 851. Definitions.

The following words and phrases, as used in Part C, shall have the following meanings:

(1) "Competency" means competency to be executed.

(2) "Department" means the Department of Corrections.

(3) "Judge" includes the judge of the court of common pleas in the county in which the defendant was convicted and sentenced, or the judge in the judicial district in which a competency challenge is being litigated.

(4) "Mental Health Expert" includes a psychiatrist, a licensed psychologist, a physician, or any other expert in the field of mental health who will be of substantial value in the determination of the defendant's competency to be executed.

(5) "Prosecutor" means the Attorney General or the county district attorney responsible for the prosecution of the defendant.

(6) "Prothonotary" means the Prothonotary of the Supreme Court of Pennsylvania.

(7) "Secretary" means the Secretary of Corrections.

Rule 852. General Provisions.

(A) *Place of Filing*

Unless otherwise directed by the judge, all motions, certifications, responses, answers and other filings shall be filed with the clerk of courts in the judicial district in which the defendant is presently confined.

(B) *Service; Time of Essence*

(1) Copies of motions, responses, answers and other pleadings shall be promptly served on the opposing party's counsel, the Department, the Governor, and the Prothonotary. Because competency certification motions under Rule 855 precede the appointment of counsel, the prosecutor shall promptly serve a copy of any Rule 855 motion upon the defendant, the defendant's most recent attorney of record, the Department, the Governor, and the Prothonotary, and shall promptly serve any attorney subsequently retained or appointed to represent the defendant once the identity of counsel is known.

(2) The Secretary shall provide copies of any competency certification and supporting mental health expert report to the attorney for the Commonwealth, the defendant's attorney, the Governor, and the Prothonotary.

(3) All motions, certifications, responses, answers and other pleadings shall include a certificate of service.

(4) The judge, the clerk, the parties' counsel, and the Department shall maintain lines of communication to ensure the prompt filing and contemporaneous service of all motions, certifications, responses, answers and other pleadings.

(C) *Verification*

If an initial motion filed under Rules 857, 858, 859 or 862 sets forth facts not already of record, the motion shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written state-

ment of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities. *See* 18 Pa.C.S. § 4904.

(D) *Second or Subsequent Competency Determination*

If a prior competency determination has been made under Part C, any motion seeking a contrary determination shall allege with specificity a material change of circumstances sufficient to support the assertion that the defendant's mental condition has substantially deteriorated or improved.

(E) *Effect of Stay Issued by Another Court*

If a warrant of execution is stayed by the order of a judge presiding over a collateral proceeding in state or federal court, that order shall stay proceedings under Part C, and the obligations of the defendant's attorney will be terminated once the warrant of execution expires.

(F) *Clerk of Courts; Docketing, Notice, and Transmittal*

(1) The clerk of courts immediately shall time stamp, docket and transmit to the assigned judge all motions, certifications, responses, answers, other pleadings, and entries of appearance. If the judge is unavailable, the clerk shall transmit the material to the president judge, or the president judge's designee, who promptly shall assign and transmit the material to another judge.

(2) The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any order entered.

(3) The clerk of courts immediately shall serve a copy of any order entered by the judge upon the attorney for the Commonwealth, the defendant's attorney, the Department, the Governor, and the Prothonotary. A copy of any order appointing counsel under Rule 854(A) shall also be served upon the defendant and the defendant's most recent counsel of record.

Comment

Given the time constraints when execution is imminent, the time periods in Part C generally are measured from the point of filing, rather than service. Rule 852(B)(4) is intended to ensure that service of motions, certifications, pleadings, and orders will be contemporaneous with filings. It is imperative that the judge, the clerk, the parties, and the Department take measures, including electronic transmission, to ensure prompt filing and contemporaneous service.

Service upon the Prothonotary assists in discharging the Prothonotary's duty to monitor capital cases. *See* Rule 853.

"Collateral proceeding" as used in paragraph (E) includes proceedings under the PCRA and federal habeas corpus review.

Rule 853. Supreme Court Prothonotary.

(A) The Prothonotary shall monitor all Pennsylvania capital cases pending on collateral review in state and federal court, and provide the Supreme Court with status reports as necessary or directed.

(B) Whenever the Commonwealth files a competency certification motion under Rule 855, or a warrant of execution is issued in the absence of a certification motion, the Prothonotary shall establish communications with the parties and relevant state and federal courts to facilitate the Supreme Court's timely resolution of issues relating to the execution process.

Comment

This rule formalizes the role of the Prothonotary in monitoring capital cases and is in aid of the Supreme Court's jurisdiction over capital appeals, including applications to review competency determinations. *See* Pa.R.A.P. 3315. The Prothonotary's monitoring role also protects the right to a timely review of a competency determination.

Rule 854. Counsel; *In Forma Pauperis*.

(A) *Appointment of Counsel*

Within five days of the Commonwealth's filing of a competency certification motion under Rule 855, or within five days of the issuance of a warrant of execution if no such motion has been filed, the judge shall appoint an attorney to represent the defendant for purposes of proceedings under Part C, unless an attorney has already entered an appearance to represent the defendant. The appointment order shall indicate the attorney's name, address, and phone number, and shall include as an attachment any filings in the matter. In instances where a warrant has been issued but no certification motion has been filed, the prosecutor shall apprise the clerk of courts of the issuance of the warrant.

(B) *Retained Counsel*

When an attorney is retained, the attorney shall promptly file a written entry of appearance with the clerk of courts, and shall serve a copy on the defendant, the attorney for the Commonwealth, the Department, and the Prothonotary. The entry of appearance shall include the attorney's address, phone number, attorney identification number, and a statement that the attorney meets the criteria set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

(C) *Qualifications*

No attorney may be appointed or enter an appearance without meeting the criteria set forth in Rule 801.

(D) *Duration of Obligation*

The attorney's representation under Part C shall continue until:

(1) a stay of execution or reprieve is granted for reasons other than to determine competency and causes the execution warrant to expire;

(2) the judge permits the attorney to withdraw; or

(3) the defendant is deceased.

(E) *Withdrawal of Counsel*

(1) Counsel seeking to withdraw must file a written withdrawal motion. A copy shall also be promptly served upon the defendant.

(2) The judge shall not grant permission to withdraw until the judge appoints new counsel or new counsel enters an appearance.

(F) *In Forma Pauperis*

If the defendant proves an inability to pay the costs of the competency proceedings, the judge shall permit the defendant to proceed *in forma pauperis.*

Comment

This rule ensures that the defendant is represented by counsel for purposes of Part C. In cases initiated by a certification motion under Rule 855, representation before a warrant of execution issues provides counsel with additional time to assess a potential claim under *Ford v. Wainwright*, 477 U.S. 399 (1986). In other cases, ensuring

representation when an execution warrant issues is a failsafe if execution proves to be imminent. Counsel can assess the availability of collateral review from the underlying conviction and the likelihood of a stay being granted on grounds other than incompetency. If the defendant files a *Ford* motion in a case where execution appears imminent and the Commonwealth has not sought a competency certification, a stay of execution shall issue. *See* Rule 858(A)(3).

Because the issue is competency, the rule does not permit waiver of counsel. *See Indiana v. Edwards,* 554 U.S. 164, 177-78 (2008).

To the extent this rule differs from the procedures in Rules 120, 122, and 123, this rule take precedence.

Before appointing counsel, the judge must consider whether the attorney is able to handle the case within the time limitations of Part C.

The filing of an order appointing counsel enters counsel's appearance. Counsel does not have to file a separate entry of appearance.

Counsel's appointment or entry of appearance does not affect the appointment or entry of appearance of the same attorney for other purposes or for the appointment or entry of appearance of different attorneys for different purposes. However, counsel's obligations under this rule are separate and distinct.

The docket entry by the clerk of courts must include a notation that the appointment or entry of appearance is only for purposes of proceedings under Part C.

PART C(2). Competency certification by Secretary of Corrections

Rule 855. Commonwealth's Motion for Certification.

(A) *Motion; Timing; Party Respondent*

(1) If the prosecutor determines that there is a reasonable likelihood that execution is imminent, the prosecutor shall file a motion requesting that the Secretary be ordered to produce a verified certification whether the defendant is presently competent to be executed.

(2) If the basis for the prosecutor's determination that execution is imminent is an order or event giving rise to the requirement to issue an execution warrant under 61 Pa.C.S. § 4302, the motion shall be filed no later than five days after that order or event.

(3) The defendant shall be named the party respondent, but is not required to file an answer, nor must the judge await an answer before disposing of the motion.

(B) *Contents*

The motion shall set forth the following information:

(1) the name of the defendant;

(2) the caption, county of conviction, number, and court term of the case or cases at issue;

(3) the date on which the defendant was sentenced;

(4) the place where the defendant is presently confined;

(5) the review status of the case, including whether any direct or collateral challenges to the underlying conviction are pending, and, if so, in what courts, and whether any applications for a stay of execution have been filed, and, if so, in what court and the status of the application;

(6) the basis for the prosecutor's determination that there is a reasonable likelihood that execution is imminent;

(7) the outcome of any previous proceeding in which competency was determined; and

(8) the name of the defendant's most recent attorney of record.

(C) *Disposition*

Within five days of the filing of the motion, the judge shall issue an order directing the Secretary to produce, within 10 days of the order, a verified certification of whether the defendant is presently competent to be executed.

Comment

This rule does not require an answer from the defendant or appointment of counsel in advance of an order directing a competency certification. Certification merely requires the Secretary to timely state the executive branch's position on competency. Other provisions in Part C establish a procedure for the defendant to raise a timely claim under *Ford v. Wainwright*, 477 U.S. 399 (1986), when the Secretary issues a competency certification, and Rule 854 assures counsel will be available for the investigation and litigation of a colorable *Ford* claim.

This rule does not require the prosecutor to await an order or event triggering the requirement for reissuance of an execution warrant before seeking a competency certification. There may be instances where, for example, a court entertaining a serial PCRA petition identifies in advance a time frame for decision. The main concern is that the competency determination be made reasonably close in time to any date for execution ultimately specified.

If the prosecutor's motion is untimely under paragraph (A)(2), there is no requirement that the matter be accelerated so that any *Ford* issue may be finally resolved before the warrant of execution expires.

Rule 856. Certification by the Secretary of Corrections.

(A) *Certification; Timing*

Within 10 days of the issuance of an order under Rule 855(C), the Secretary shall provide a certification, under oath or affirmation, accompanied by a written mental health expert's report and opinion supporting the certification. The certification shall consist of a representation that:

(1) the defendant is competent to be executed; or

(2) the defendant is incompetent to be executed; or

(3) there are substantial grounds to believe the defendant's competency cannot be determined without further examination and a hearing.

(B) *Effect of Certification; Action by Judge*

(1) If the Secretary certifies that the defendant is competent, no immediate action is required of the judge. Any motion by counsel for the defendant challenging the certification shall proceed under Rule 857.

(2) If the Secretary certifies that the defendant is incompetent, the judge shall promptly issue an order staying the execution.

(a) Any motion by the Commonwealth challenging the certification shall proceed under Rule 859.

(b) If the Commonwealth does not challenge the certification, the judge shall issue an order directing the Department to:

(i) monitor the defendant's mental health;

(ii) provide appropriate mental health treatment; and

(iii) provide periodic certifications respecting the defendant's continuing competency status in accordance with Rule 862.

(c) The judge may issue any supplemental orders necessary or appropriate to the disposition.

(3) If the Secretary certifies that there are substantial grounds to believe the defendant's competency cannot be determined without further examination and a hearing, the judge shall promptly issue an order staying the execution and providing for a competency examination of the defendant.

(4) If the Secretary fails to provide a certification within the requisite time frame, the judge shall issue an order staying the execution and providing for a competency examination of the defendant.

Comment

See Rule 860 for the contents of an order directing a competency examination.

Paragraph (B)(2)(b)(ii) does not address any question about the defendant's right to object to or refuse treatment. Any such question is a substantive matter for the court. *See* Rule 862 for further monitoring and review procedures if a certification of incompetency is not challenged by the Commonwealth.

Under paragraph (B)(3), the Secretary's certification that further examination and a hearing are necessary is sufficient to satisfy the *Ford v. Wainwright*, 477 U.S. 399 (1986) threshold burden and require a hearing under Rules 860 and 861. Under paragraph (B)(4), the Secretary's failure to provide a certification likewise is sufficient to satisfy that threshold burden.

An order entered under paragraph (B)(2), (B)(3), or (B)(4) is not a final order subject to immediate review.

PART C(3). Defendant's challenge to certification of competency

Rule 857. Motion; Response; Disposition.

(A) *Motion; Timing; Request for Stay of Execution*

(1) Any motion challenging the Secretary's certification of competency shall be filed within seven days of the date of certification. The motion shall request an order staying the execution and scheduling a competency examination and a hearing. Prior notice of the intent to challenge the certification of competency shall be provided to the clerk of courts with service upon all parties no later than two days before the filing. Notice may be given by electronic or facsimile transmission.

(2) The motion shall be signed by the defendant's attorney. The signature of the attorney shall constitute a certification that the attorney has read the motion, to the best of the attorney's knowledge, information, and belief there are good grounds to support the motion, and the motion is not interposed for delay.

(B) *Contents*

The motion shall set forth substantially the following information:

(1) whether any challenges to the underlying conviction are pending; if so, in what court and the status of the challenge;

(2) whether any other applications for a stay of execution have been filed; if so, in what court and the status of the application;

(3) a statement of the facts alleged in support of the assertion that the defendant is presently incompetent;

(4) any affidavits, records, and other evidence supporting the assertion of incompetency or a statement why such information is not available; and

(5) the name and address of one mental health expert who has examined, or will examine, the defendant to determine competency.

(C) *Commonwealth's Response*

Within seven days of the filing of the motion, the Commonwealth shall file a response indicating whether it opposes the motion, the request for a stay, and the request for a competency examination and hearing. If the Commonwealth opposes the motion, the response shall also include the name and address of one mental health expert who has examined, or will examine, the defendant to determine competency.

(D) *Defendant's Answer*

Within three days of the filing of the Commonwealth's response, the defendant's attorney may file an answer.

(E) *Disposition*

Within seven days of the filing of the defendant's answer or the expiration of the time for the answer, the judge shall issue an order determining whether the defendant has made a substantial threshold showing of incompetency to be executed. The order shall state the reasons supporting the determination.

(1) If the judge finds that the defendant has not made a substantial threshold showing of incompetency, the order shall deny the motion and the request for a stay of execution without a hearing.

(a) The order denying the motion shall be a final order for purposes of appeal. The order shall advise the defendant of the right to seek expedited review in the Pennsylvania Supreme Court and of the time within which such review must be sought. *See* Pa.R.A.P. 3315(b)(1) (application for review of an order determining competency where execution warrant is not stayed must be filed within 10 days of entry of the order).

(b) Upon entry of the order, the clerk of courts immediately shall transmit the record of the proceeding to the Prothonotary.

(2) If the judge finds that the defendant has made a substantial threshold showing of incompetency, the order shall stay the execution and provide for a competency examination of the defendant pursuant to Rule 860, and the case shall proceed under Rules 860 and 861.

Comment

The time limitations in this rule must be strictly followed, given the exigencies. The limitations recognize that the certification process affords additional time for the parties to prepare. Moreover, the question is narrow: has the defendant made a substantial threshold showing of incompetency.

The rule requires the Commonwealth to affirmatively take a position. The term "response" is used because the rule requires more information than ordinarily appears in an "answer." In all other respects, "response" is the same as "answer" for purposes of determining the contents

requirements, *see* Rule 575(B), format requirements, *see* Rule 575(C), and procedures for filing and service, *see* Rule 576.

See Rule 860 for the contents of an order directing a competency examination. *See* Rule 861 for the procedures governing a competency hearing.

See Pa.R.A.P. 3315 for the expedited procedures governing an application for review of an order entered under paragraph (E)(1), denying the motion and request for a stay of execution.

An order entered under paragraph (E)(2) is not a final order subject to immediate review.

PART C(4). Defendant's challenge to competency in the absence of certification

Rule 858. Motion; Response; Disposition.

(A) *Motion; Timing; Stay of Execution*

(1) If a warrant of execution is issued, but no competency certification motion under Rule 855 has been filed, any motion challenging the defendant's competency shall be filed within 30 days of the issuance of the warrant. The motion shall request an order staying the execution and scheduling a competency examination and a hearing.

(2) The motion shall be signed by the defendant's attorney. The signature of the attorney shall constitute a certification that the attorney has read the motion and, to the best of the attorney's knowledge, information, and belief there are good grounds to support the motion.

(3) The Commonwealth's failure to seek a competency certification shall be deemed sufficient to require a stay of execution, which shall remain in place until the decision of the motion becomes final, including proceedings on appeal.

(B) *Contents*

The motion shall set forth the following information:

(1) the name of the defendant;

(2) the caption, county of conviction, number, and court term of the case or cases at issue;

(3) the date on which the defendant was sentenced;

(4) the place where the defendant is presently confined;

(5) the date the warrant of execution was issued and the scheduled date for execution;

(6) the review status of the case, including whether any challenges to the underlying conviction are pending; if so, in what court and the status of the challenge;

(7) whether any other applications for a stay of execution have been filed; if so, in what court and the status of the application;

(8) a statement of the facts alleged in support of the assertion that the defendant is presently incompetent;

(9) any affidavits, records, and other evidence supporting the assertion of incompetency or a statement why such information is not available;

(10) the name and address of one mental health expert who has examined, or will examine, the defendant to determine competency; and

(11) information concerning the outcome of any previous proceeding in which competency was determined.

(C) *Commonwealth's Response*

Within 20 days of the filing of the motion, the Commonwealth shall file a response indicating whether it opposes the motion and the request for a competency examination and a hearing. If the Commonwealth opposes the motion, the response shall also include the name and address of one mental health expert who has examined, or will examine, the defendant to determine competency.

(D) *Defendant's Answer*

Within 10 days of the Commonwealth's response, the defendant may file an answer.

(E) *Disposition*

Within 20 days of the filing of the defendant's answer or the expiration of the time for the answer, the judge shall issue an order determining whether the defendant has made a substantial threshold showing of incompetency to be executed. The order shall state the reasons supporting the determination.

(1) If the judge finds that the defendant has not made a substantial threshold showing of incompetency, the order shall deny the motion without a hearing.

(a) The order denying the motion shall be a final order for purposes of appeal. The order shall advise the defendant of the right to seek expedited review in the Pennsylvania Supreme Court and of the time within which such review must be sought. *See* Pa.R.A.P. 3315(b)(2) (application for review of an order determining competency where no execution warrant is pending, or warrant is stayed, must be filed within 21 days of the entry of the order).

(b) Upon entry of the order, the clerk of courts immediately shall transmit the record of the proceeding to the Prothonotary.

(2) If the judge finds that the defendant has made a substantial threshold showing of incompetency, the order shall provide for a competency examination of the defendant pursuant to Rule 860, and the case shall proceed under Rules 860 and 861.

Comment

This rule addresses the circumstance where an execution warrant is issued and execution appears imminent, but the Commonwealth did not invoke the accelerated competency certification procedure contemplated under Rule 855. Upon the filing of a motion challenging the defendant's competency, a stay must issue, and the competency question, including the threshold question of entitlement to a hearing, should be resolved expeditiously, with the case proceeding as otherwise provided in Part C.

See Pa.R.A.P. 3315 for the procedures governing an application for review of an order entered under paragraph (E)(1), denying the motion.

An order entered under paragraph (E)(2) is not a final order subject to immediate review.

PART C(5). Commonwealth's challenge to certification of incompetency

Rule 859. Motion; Response; Disposition.

(A) *Motion; Timing*

(1) Any motion challenging the Secretary's certification of incompetency shall be filed by the Commonwealth within 30 days of the certification. The motion shall request an order scheduling a competency examination and a hearing.

(B) *Contents*

The motion shall set forth substantially the following information:

(1) a statement of the facts alleged in support of the assertion that the defendant is presently competent;

(2) any affidavits, records, and other evidence supporting the assertion of competency or a statement why such information is not available; and

(3) the name and address of one mental health expert who has examined, or will examine, the defendant to determine competency.

(C) *Defendant's Response*

Within 20 days of the filing of the motion, the attorney for the defendant shall file a response. If the defendant opposes the motion, the response shall include the name and address of one mental health expert who has examined, or will examine, the defendant to determine competency.

(D) *Commonwealth's Answer*

Within 10 days of the filing of the defendant's response, the Commonwealth may file an answer.

(E) *Disposition*

Within 20 days of the filing of the Commonwealth's answer or the expiration of the time for the answer, the judge shall issue an order determining whether the Commonwealth has shown reasonable grounds to question the certification of incompetency. The order shall state the reasons supporting the determination.

(1) If the judge finds that the Commonwealth has not demonstrated reasonable grounds to question the certification of incompetency, the order shall deny the motion without a hearing and continue the stay of execution.

(a) The order denying the motion shall be a final order for purposes of appeal, and is subject to expedited review in the Supreme Court. *See* Pa.R.A.P. 3315(b)(2) (application for review of an order determining competency where no execution warrant is pending, or warrant is stayed, must be filed within 21 days of the entry of the order).

(b) If the Commonwealth does not seek further review, the judge shall enter an order directing the Department to:

(i) monitor the defendant's mental health;

(ii) provide appropriate mental health treatment; and

(iii) provide periodic certifications respecting the defendant's continuing competency status in accordance with Rule 862.

(2) If the judge finds that the Commonwealth has demonstrated reasonable grounds to question the certification of incompetency, the order shall provide for a competency examination of the defendant pursuant to Rule 860, and the case shall proceed under Rules 860 and 861.

Comment

Under Rule 856(B)(2), the Secretary's certification of incompetency requires the trial court to issue a stay of execution. The rules do not require resolving a Commonwealth challenge to the certification before the execution warrant expires. The claim still should be resolved expeditiously, however, proceeding as otherwise provided in Part C.

See Pa.R.A.P. 3315 for the procedures governing an application for review of an order entered under paragraph (E)(1), denying the motion and continuing the stay of execution.

Paragraph (E)(1)(b)(ii) does not address any question about the defendant's right to object to or refuse treatment. Any such question is a substantive matter for the court. *See* Rule 862 for further monitoring and review procedures.

An order entered under paragraph (E)(2) is not a final order subject to immediate review.

PART C(6). Competency hearings

Rule 860. Preliminary Matters.

(A) *Order Directing Competency Examinations of the Defendant*

(1) Whenever the judge orders a competency examination, the order shall:

(a) direct the defendant to submit to examinations by the mental health experts specified by the defendant and the Commonwealth;

(b) inform the defendant of the purpose of the examinations and that the results of the examinations may be used at a competency hearing;

(c) inform the defendant of the potential consequences of failing to cooperate with the examinations;

(d) specify who may be present at the examinations; and

(e) specify the time within which the examinations must be conducted and the mental health experts must submit their written reports.

(2) The judge may also order the defendant to submit to a competency examination by one or more mental health experts designated by the judge.

(B) *Evidentiary Material; Reciprocal Disclosure*

(1) Upon request of the defendant or the Commonwealth, the judge shall order the Department and other entities identified as having possession of evidentiary material relevant to the defendant's present competency status to promptly provide the parties with copies of the material.

(2) The parties shall promptly exchange copies of relevant evidentiary material in their possession, including written expert reports. Issues concerning disclosure, including claims of privilege, shall be presented to and resolved by the judge.

(3) Evidentiary material secured under this rule shall not be of public record and shall not be disclosed beyond the parties and their experts without leave of the judge.

(C) *Mental Health Expert Reports*

(1) The examinations shall be completed, and the mental health experts' written reports shall be submitted to the court and provided to the parties, within 60 days of the order directing the examinations. In cases proceeding under Rule 862 (monitoring and review after incompetency finding), the judge may grant an extension of no more than 30 days for submission of the expert reports.

(2) The expert reports shall address the nature of the defendant's mental disorder, if any; the disorder's relationship to competency; the expert's opinion of the defendant's competency expressed within a reasonable degree of medical, psychiatric, or psychological certainty; and the grounds supporting that opinion.

(3) The expert reports shall not be of public record, and shall not be disclosed beyond the parties and the parties' experts without leave of the judge.

(D) *Status Report*

Within 30 days of the order directing examinations, the parties shall report to the judge the status of the examinations and expert reports, and any other pertinent matters. In cases proceeding under Rule 862 (monitoring and review after incompetency finding), status reports are not required, but may be ordered by the judge.

(E) *Pre-hearing Conference; Scheduling Hearing*

Within 60 days of the order directing examinations, the judge shall hold a pre-hearing conference to review the status of the case and determine if a hearing is necessary. Any hearing shall commence no later than 60 days after completion of the examinations unless, upon good cause shown, the judge orders a continuance, which shall not exceed 30 days. In cases proceeding under Rule 862 (monitoring and review after incompetency finding), a pre-hearing conference is not required, but may be ordered by the judge. Competency hearings conducted under Rule 862 shall be concluded as soon as reasonably practicable.

Comment

Before ordering additional examinations, the judge must consider, among other factors, the need for additional experts and the costs.

As used in paragraph (B), "evidentiary material" is information directly relevant to the question of competency to be executed. Paragraph (B) is intended to ensure the prompt collection of materials relevant to competency at an early stage of the proceedings.

If the defendant fails to cooperate in an examination, before imposing a sanction, the judge shall consider whether: (1) the failure was intentional; (2) the failure resulted from mental illness; and (3) ordering the defendant to resubmit to the examination would result in cooperation. Sanctions for failure to cooperate include, but are not limited to, the judge declining to consider expert mental health evidence proffered by the defendant.

The pre-hearing conference serves the same purpose as a pretrial conference in criminal cases. *See* Rule 570. The judge and counsel should consider: (1) simplification or stipulation of factual issues; (2) adopting measures to avoid cumulative testimony; (3) qualification of exhibits as evidence; and (4) such other matters as may aid in the timely determination of competency.

The judge may schedule an earlier date for the hearing when appropriate. A hearing may be unnecessary where, for example, the experts and the parties are in agreement on the competency question.

In cases proceeding under Rule 862, the question of whether there has been a material change in circumstances is narrow, but the time constraints are not the same as when an execution warrant is pending. Thus, the rule offers greater flexibility. Matters arising under Rule 862 should still be decided expeditiously.

Rule 861. Hearing; Disposition.

(A) *Hearing*

(1) The hearing shall be limited to the issue of the defendant's present competency to be executed.

(2) The defendant shall appear in person with counsel.

(3) The parties may introduce evidence, including expert reports and testimony, cross-examine witnesses, and present argument or, by stipulation, may submit the matter for the judge's determination on the basis of expert reports and other evidence. The judge may call and question witnesses as provided by law.

(B) *Disposition*

Within 30 days of the conclusion of the hearing, the judge shall issue an order determining whether the defendant is competent. The order shall include specific findings of fact concerning the relevant factors for determining competency. In cases proceeding under Rule 862 (monitoring and review after incompetency finding), the judge's order shall be issued as soon as reasonably practicable.

(1) If the judge finds that the defendant is competent, the order shall vacate any existing order staying execution. The order shall advise the defendant of the right to seek expedited review in the Pennsylvania Supreme Court and of the time within which such review must be sought. *See* Pa.R.A.P. 3315(b)(2) (application for review of an order determining competency where no execution warrant is pending, or warrant is stayed, must be filed within 21 days of the entry of the order).

(2) If the judge finds that the defendant is incompetent, the order shall stay the execution until such time as the defendant is determined to be competent.

(a) The order shall direct the Department to:

(i) monitor the defendant's mental health;

(ii) provide appropriate mental health treatment; and

(iii) provide periodic certifications respecting the defendant's continuing competency status in accordance with Rule 862.

(b) The judge may issue any supplemental orders necessary or appropriate to the disposition.

(3) The order determining competency issued under paragraph (B)(1) or (2) shall be a final order subject to expedited review in the Supreme Court. *See* Pa.R.A.P. 3315(b)(2) (application for review of an order determining competency where no execution warrant is pending, or warrant is stayed, must be filed within 21 days of the entry of the order).

Comment

This rule provides the due process hearing required by *Panetti v. Quarterman*, 551 U.S. 930, 934-35, 949-50 (2007), once a substantial threshold showing of incompetency has been made. The rule also addresses subsequent competency hearings held pursuant to Rule 862.

Paragraph (A)(2) requires the defendant's presence. Advanced communication technology may not be utilized. *See* Rule 119. However, the judge may exclude a disruptive defendant. *See, e.g., Illinois v. Allen,* 397 U.S. 337, 342-43 (1970). *See also Commonwealth v. Basemore,* 582 A.2d 861, 867-68 (Pa. 1990).

The defendant ordinarily has the burden of going forward and proving incompetency by a preponderance of evidence. *See Commonwealth v. Banks,* 29 A.3d 1129, 1135 (Pa. 2011). Under the certification procedure in Part C, however, there may be instances where the Commonwealth is the moving party. *See* Rule 859 (Commonwealth motion challenging certification of incompetency); Rule 862 (Commonwealth motion alleging a change in circumstances following a finding of incompetency). Assignment of the burden depends upon the identity of the moving party and the prior decisional status of the competency question.

Evidence to be considered by the judge, including mental health expert reports, must be introduced by the parties at the hearing and made part of the record.

Paragraph (B)(2)(a)(ii) does not address any question about the defendant's right to object to or refuse treatment. Any such question is a substantive matter for the court. *See* Rule 862 for further monitoring and review procedures.

In requiring the vacatur of an existing stay of execution if the defendant is found competent under paragraph (B)(1), the rule recognizes that any warrant of execution will have expired by the time a hearing has been conducted and a final order is entered.

See Pa.R.A.P. 3315 for the procedures governing an application for review of an order determining competency under paragraph (B)(1) or (B)(2).

PART C(7). Monitoring and review of incompetency

Rule 862. Monitoring; Review; Hearing; Disposition.

(A) *Monitoring; Periodic Certifications*

(1) The Department shall monitor the defendant's competency whenever so ordered by the judge.

(2) Unless otherwise ordered by the judge, the Secretary shall provide the judge with a competency certification every six months. The certification shall be under oath or affirmation and accompanied by a written mental health expert's report in support of the certification.

(B) *Certification of Continued Incompetency; Commonwealth Challenge*

(1) If the Secretary certifies that the defendant remains incompetent, the judge shall take no further action unless the Commonwealth challenges the certification.

(2) Any motion challenging a certification of continued incompetency shall be filed by the Commonwealth within 21 days of the certification.

(a) The motion shall state with specificity the facts alleged to support the assertion that the Secretary's certification is erroneous. The motion shall include a supporting mental health expert's affidavit and any other relevant evidence.

(b) Counsel for the defendant shall file a response to the motion within 21 days.

(c) Within 10 days of the filing of the defendant's response, the Commonwealth may file an answer.

(d) Within 30 days of the filing of the Commonwealth's answer or the expiration of the time for the answer, the judge shall order a competency examination and a hearing only if the Commonwealth establishes substantial grounds to question the certification of continued incompetency, and the matter shall proceed under Rules 860 and 861.

(C) *Certification of Competency; Defendant's Challenge*

(1) If the Secretary certifies that the defendant has become competent, any motion challenging the certification shall be filed by the defendant's counsel within 21 days of the certification.

(a) The motion shall state with specificity the facts alleged to support the assertion that the Secretary's certification is erroneous. The motion shall include a supporting mental health expert's affidavit and any other relevant evidence.

(b) Counsel for the Commonwealth shall respond to the motion within 21 days.

(c) Within 10 days of the filing of the Commonwealth's response, the defendant may file an answer.

(d) Within 30 days of the filing of the defendant's answer or the expiration of the time for the answer, the judge shall order a competency examination and a hearing only if the defendant establishes substantial grounds to question the certification of competency, and the matter shall proceed under Rules 860 and 861.

(2) If the defendant fails to file a timely challenge to the certification of competency, the judge shall vacate any existing order staying execution.

(D) *Commonwealth Challenge in the Absence of Certification*

At any time following a determination that the defendant is incompetent, the Commonwealth may move for a further competency examination by alleging a material change in the defendant's mental health status. The motion shall state with specificity the facts alleged in support of the assertion that the defendant is presently competent, and shall include a supporting mental health expert's affidavit and any other relevant evidence. Counsel for the defendant shall respond as directed by the judge. Within 10 days of the filing of the defendant's response, the Commonwealth may file an answer. Within 30 days of the filing of the Commonwealth's answer or the expiration of the time for the answer, the judge shall order a competency examination only if the Commonwealth establishes substantial grounds to conclude that, due to a material change in circumstances, the defendant is presently competent.

(E) *Examination; Hearing; Determination*

Unless otherwise ordered by the judge, examinations and hearings ordered under this Rule shall proceed under Rules 860 and 861.

Comment

In instances where the determination of incompetency followed upon a full-blown hearing under Rule 861, paragraph (E) authorizes the judge to resolve a further competency challenge in a less formal manner than that contemplated under Rules 860 and 861.

If an application for review of a prior competency determination pursuant to Pa.R.A.P. 3315 has been filed and remains pending, the judge shall not take any action under this rule until the application has been decided.

CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 904. Entry of Appearance and Appointment of Counsel; *In Forma Pauperis*.

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Comment

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Pursuant to paragraphs (F)(2) and (H)(2)(b), appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must (1) consult with his or her client, and (2) review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. If the decision is made to file a petition, counsel must carry through with that decision. *See Commonwealth v. Liebel*, **[573 Pa. 375,]** 825 A.2d 630 (**Pa.** 2003). Concerning counsel's obligations as appointed counsel, see

Jones v. Barnes, 463 U.S. 745 (1983). *See also Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. **[Ct.]** 2001).

Paragraph (H) was added in 2000 to provide for the appointment of counsel for the first petition for post-conviction collateral relief in a death penalty case at the conclusion of direct review.

Paragraph (H)(1)(a) recognizes that a defendant may proceed *pro se* if the judge finds the defendant competent, and that the defendant's election is knowing, intelligent, and voluntary. In *Indiana v. Edwards,* **554 U.S. 164, 178** (2008)**,** the Supreme Court recognized that, when a defendant is not mentally competent to conduct his or her own defense, the U.S. Constitution permits the judge to require the defendant to be represented by counsel.

***See* Rule 854(B) that requires an attorney who has been retained to represent a defendant in proceedings under Part C of Chapter 8 to file a written entry of appearance.**

An attorney may not represent a defendant in a capital case unless the attorney meets the educational and experiential requirements set forth in Rule 801 (Qualifications for Defense Counsel in Capital Cases).

* * * * *

Rule 909. Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition.

(A) *Stays of Execution*

(1) In a case in which the defendant has received a sentence of death, any request for a stay of execution of sentence should be made in the petition for post-conviction collateral relief.

(2) The judge shall grant a stay of execution if the petition is a timely first petition under the PCRA. In cases involving a second or subsequent PCRA petition, the judge shall grant a stay of execution only if the petition meets the requirements of the PCRA and there has been a strong showing of a likelihood of success on the merits.

[(2)] (3) In all cases in which a stay of execution has been properly granted, the stay shall remain in effect through the conclusion of all PCRA proceedings, including review in the Supreme Court of Pennsylvania, or the expiration of time for seeking such review.

* * * * *

Comment

Paragraph (A)(1) was added in 1999 to provide the avenue by which a defendant in a death penalty case may request a stay of execution. Failure to include a request for a stay in the petition for post-conviction collateral relief may not be construed as a waiver, and the defendant may file a separate request for the stay. In cases involving second or subsequent petitions when an application for a stay is filed separately from the PCRA petition, *Commonwealth v. Morris*, **[565 Pa. 1, 33-34,]** 771 A.2d 721, 740-741 (**Pa.** 2001) **(*"Morris I"*)** provides that the separate stay application "must set forth: a statement of jurisdiction; if necessary, a statement that a petition is currently pending before the court; and a statement showing the likelihood of prevailing on the merits."

Paragraph (A)(2) was added in (DATE) to make clear that the defendant may pursue a timely first PCRA petition as of right, and therefore is entitled to a stay of execution during the pendency of the petition. *Accord* Pa.R.A.P. 3314 & *Note*. Stay requests associated with second or subsequent PCRA petitions are subject to 42 Pa.C.S. § 9545(c) (the petition must be pending, must meet all requirements of the PCRA, and the petitioner must make a strong showing of a likelihood of success on the merits). *See Commonwealth v. Morris*, 822 A.2d 684, 693 (Pa. 2003) (*"Morris II"*). The PCRA court lacks jurisdiction to grant a stay ancillary to an untimely petition. *See Commonwealth v. Morris*, 771 A.2d 721, 734-35 & n.14, 742 (Pa. 2001) (*"Morris I"*); 42 Pa.C.S. § 9545(c).

Paragraph **[(A)(2)] (A)(3)** provides, if a stay of execution is properly granted, that the stay will remain in effect throughout the PCRA proceedings in the trial court and during the appeal to the Pennsylvania Supreme Court. Nothing in this rule is intended to preclude a party from seeking review of an order granting or denying a stay of execution **in an appropriate case**. *See* Pa.R.A.P. **[1702(d) (Stay of Execution) and Pa.R.A.P. 3316 (Review of Stay of Execution Orders in Capital Cases)] 3314 (Stays of Execution)**.

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TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 7. COURTS TO WHICH APPEALS SHALL BE TAKEN

IN GENERAL

Rule 702. Final Orders.

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(b) *Matters tried with capital offenses*.—If an appeal is taken to the Supreme Court **[under Rule 1941 (review of death sentences)] from a sentence of death under Pa.R.A.P. 3311(a)**, any other appeals relating to sentences for lesser offenses imposed on **[a] the** defendant as a result of the same criminal episode or transaction and tried with the capital offense shall be taken to the Supreme Court.

(c) *Supervision of special prosecutions or investigations*.—All petitions for review under **[Rule] Pa.R.A.P.** 3331 (review of special prosecutions or investigations) shall be filed in the Supreme Court.

***Official Note*:** Because of frequent legislative modifications it is not desirable to attempt at this time to restate appellate court jurisdiction in these rules. However, the Administrative Office of Pennsylvania Courts publishes from time to time at 204 Pa. Code § 201.2 an unofficial chart of the Unified Judicial System showing the appellate jurisdiction of the several courts of this Commonwealth, and it is expected that the several publishers of these rules will include a copy of the current version of such chart in their respective publications.

[Subdivisions] Paragraphs (b) and (c) are based upon 42 Pa.C.S. § 722(1) (direct appeals from courts of common pleas). Under **[Rule] Pa.R.A.P.** 751 (transfer of erroneously filed cases) an appeal from a lesser offense improvidently taken to the Superior Court or the Commonwealth Court will be transferred to the Supreme Court for consideration and decision with the capital offense.

The Supreme Court conducts a limited direct review of death sentences even if no appeal is taken. *See* Pa.R.A.P. 3312. Under paragraph (b), if an appeal is taken from a sentence of death, review of sentences imposed for lesser offenses is also available. *See Commonwealth v. Parrish*, 77 A.3d 557, 561 (Pa. 2013) (if the defendant fails to file an appeal from a death sentence, claims unassociated with automatic review are not preserved).

Under **[Rule 701 (interlocutory orders)] Pa.R.A.P. 701** the jurisdiction described in **[Subdivision] paragraph** (c) extends also to interlocutory orders. *See* **[Rule 102 (definitions)] Pa.R.A.P. 102** where the term "appeal" includes proceedings on petition for review. Ordinarily **[Rule] Pa.R.A.P.** 701 will have no application to matters within the scope of **[Subdivision] paragraph** (b), since that **[subdivision] paragraph** is contingent upon entry of a final order in the form of a sentence of death; the mere possibility of such a sentence is not intended to give the Supreme Court direct appellate jurisdiction over interlocutory orders in homicide and related cases since generally a death sentence is not imposed.

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 901. Scope of Chapter.

This chapter applies to all appeals from a trial court to an appellate court except:

(1) An appeal by allowance taken under 42 Pa.C.S. § 724 (allowance of appeals from Superior and Commonwealth Courts). *See* **[Rule] Pa.R.A.P.** 1112 (appeals by allowance).

(2) An appeal by permission taken under 42 Pa.C.S. § 702(b) (interlocutory appeals by permission). *See* **[Rule] Pa.R.A.P.** 1311 (interlocutory appeals by permission).

(3) An appeal which may be taken by petition for review pursuant to **[Rule] Pa.R.A.P.** 1762(b)(2), which governs applications relating to bail when no appeal is pending.

(4) An appeal which may be taken by petition for review pursuant to **[Rule] Pa.R.A.P.** 1770, which governs out of home placement in juvenile delinquency matters.

(5) Automatic review of sentences pursuant to 42 Pa.C.S. § 9711(h) (review of death sentence). *See* **[Rule 1941 (review of death sentences)] Pa.R.A.P. 3312**.

(6) An appeal which may be taken by petition for review pursuant to **[Rule] Pa.R.A.P.** 3331 (review of special prosecutions or investigations).

(7) An appeal which may be taken only by a petition for review pursuant to **[Rule] Pa.R.A.P.** 1573, which governs review when a trial court has denied a motion to dismiss on the basis of double jeopardy as frivolous.

***Official Note*: Paragraph 5 addresses cases involving automatic review of a death sentence and does not affect direct appeals and post-conviction appeals in death penalty cases, which are generally subject to this chapter. *See* Pa.R.A.P. 3311 and 3313.**

Rule 909. Appeals to the Supreme Court. Jurisdictional Statement. Sanctions.

(a) *General rule*—Upon filing a notice of appeal to the Supreme Court, the appellant shall file with the prothonotary or clerk of the trial court an original and **[8] eight** copies of a jurisdictional statement. The statement shall be in the form prescribed by **[Rule] Pa.R.A.P.** 910(a) and (b). No statement need be filed in cases **[arising under Pa.R.A.P. 1941 (Review of Death Sentences)] involving review of a sentence of death under Pa.R.A.P. 3311 (direct review) or 3312 (automatic review)**.

(b) *Answer*.—Within 14 days after service of a jurisdictional statement, an adverse party may file with the Prothonotary of the Supreme Court an original and eight copies of an answer thereto in the form prescribed by **[Rule] Pa.R.A.P.** 911. The answer shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized. No separate motion to dismiss a jurisdictional statement will be received. A party entitled to file an answer who does not intend to do so shall, within the time fixed by these rules for filing an answer, file a letter stating that an answer to the jurisdictional statement will not be filed. The failure to file an answer will not be construed as concurrence in the jurisdictional statement.

(c) *Action by the Supreme Court*.—After consideration of the jurisdictional statement and the brief in opposition thereto, if any, the Court will enter an appropriate order which may include summary dismissal for lack of subject matter jurisdiction. If the Supreme Court in its order notes probable jurisdiction or postpones consideration of jurisdiction to the hearing on the merits, the Prothonotary of the Supreme Court forthwith shall notify the court below and the attorneys of record of the noting or postponement, and the case will then stand for briefing and oral argument. In such case, the parties shall address the question of jurisdiction at the outset of their briefs and oral arguments.

(d) *Sanctions*.—If the court finds that the parties have not complied with **[Rules] Pa.R.A.P.** 909 through 911, it may impose appropriate sanctions including but not limited to dismissal of the action, imposition of costs or disciplinary sanction upon the attorneys.

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

IN GENERAL

Rule 1501. Scope of Chapter.

(a) *General rule*.—Except as otherwise prescribed by **[Subdivisions] paragraphs** (b) and (c) of this rule, this chapter applies to:

(1) Appeals from an administrative agency (within the meaning of Section 9 of Article V of the Constitution of Pennsylvania) to an appellate court.

(2) Appeals to an appellate court pursuant to 2 Pa.C.S. § 702 **[(appeals)]**, 42 Pa.C.S. § 5105 **[(right to appellate review)],** or any other statute providing for judicial review of a determination of a government unit.

(3) Original jurisdiction actions heretofore cognizable in an appellate court by actions in the nature of equity, replevin, mandamus or quo warranto or for declaratory judgment, or upon writs of *certiorari* or prohibition.

(4) Matters designated by general rule, **[e.g.] for example**, review of orders refusing to certify interlocutory orders for immediate appeal, release prior to sentence, appeals under Section 17(d) of Article II of the Constitution of Pennsylvania**,** and review of special prosecutions or investigations.

(b) *Appeals governed by other provisions of rules*.—This chapter does not apply to any appeal within the scope of:

(1) Chapter 9 **[(appeals from lower courts)]**.

(2) Chapter 11 **[(appeals from Commonwealth Court and Superior Court)]**.

(3) Chapter 13 **[(interlocutory appeals by permission)]**, except that the provisions of this chapter and ancillary provisions of these rules applicable to practice and procedure on petition for review, so far as they may be applied, shall be applicable: (a) where required by the **[Note to Rule 341 and the Note to Rule] note to Pa.R.A.P. 341 and the note to Pa.R.A.P.** 1311; and (b) after permission to appeal has been granted from a determination which, if final, would be subject to judicial review pursuant to this chapter.

(4) **[Rule 1941 (review of death sentences).] Pa.R.A.P. 3312 (automatic review of death sentence).**

(c) *Unsuspended statutory procedures*.—This chapter does not apply to any appeal pursuant to the following statutory provisions, which are not suspended by these rules:

(1) Section 137 of Title 15 of the *Pennsylvania Consolidated Statutes* (Court to pass upon rejection of documents by Department of State).

(2) The Pennsylvania Election Code.

(d) *Jurisdiction of courts unaffected*.—This chapter does not enlarge or otherwise modify the jurisdiction and powers of the Commonwealth Court or any other court.

***Official Note*:** This chapter applies to review of any "determination" of a "government unit" as defined in **[Rule] Pa.R.A.P.** 102**,** assuming, of course, that the subject matter of the case is within the jurisdiction of a court subject to these rules (see **[Subdivision] paragraph** (d) of this rule). A "determination" means "action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise. The term includes an order entered by a government unit." The term "government unit" is all inclusive and means "the Governor and the departments, boards, commissions, officers, authorities and other agencies of the Commonwealth, including the General Assembly and its officers and agencies and any court or other officer or agency of the unified judicial system, and any political subdivision or municipal or other local authority or any officer or agency of any such political subdivision or local authority. The term includes a board of arbitrators whose determination is subject to review under 42 Pa.C.S. § 763(b) (awards of arbitrators)." The term "administrative agency" is not defined in these rules, although the term is used in these rules as a result of its appearance in Section 9 of Article V of the Constitution of Pennsylvania.

[Subdivision] Subparagraph (a)(4) was added in 2004 to recognize the references in various appellate rules and accompanying notes to petition for review practice. For example, the **[Notes to Rules] notes to Pa.R.A.P.** 341 and 1311 direct counsel to file a petition for review of a trial court or government agency order refusing to certify an interlocutory order for immediate appeal. Similarly, **[Rule] Pa.R.A.P.** 1762 directs the filing of a petition for review when a party seeks release on bail before judgment of sentence is rendered, *see* **[Rule] Pa.R.A.P.** 1762(b), and **[Rule] Pa.R.A.P.** 1770 directs the filing of a petition for review when a juvenile seeks review of placement in a juvenile delinquency matter. A petition for review is also the proper method by which to seek judicial review pursuant to **[Rule] Pa.R.A.P.** 3321 (regarding legislative reapportionment commission) and **[Rule] Pa.R.A.P.** 3331 (regarding special prosecutions or investigations). The 2004 and 2012 amendments clarify the use of petitions for review in these special situations.

[Subdivision] Paragraph (b) of this rule is necessary because otherwise conventional appeals from a court (which is included in the scope of the term "government unit") to an appellate court would fall within the scope of this chapter under the provisions of **[Paragraph] subparagraph** (a)(2) of this rule.

[Subdivision] Paragraph (c) expressly recognizes that some statutory procedures are not replaced by petition for review practice. Thus, matters brought pursuant to Section 137 of the Associations Code governing judicial review of documents rejected by the Department of State or pursuant to the Election Code are controlled by the applicable statutory provisions and not by the rules in Chapter 15. *See* 15 Pa.C.S. § 137; Act of June 3, 1937, P.L. 1333, as amended**,** 25 P.S. §§ 2600—3591.

In light of **[Subdivision] paragraph** (d), where the court in which a petition for review is filed lacks subject matter jurisdiction (**[e.g.] for example**, a petition for review of a local government question filed in the Commonwealth Court), **[Rules] Pa.R.A.P.** 741 (waiver of objections to jurisdiction), 751 (transfer of erroneously filed cases)**,** and 1504 (improvident petitions for review) will be applicable. *See also* 42 Pa.C.S. § 5103.

The 2004 amendments are made to petition for review practice to address the evolution of judicial responses to governmental actions. As indicated in the **[Note to Rule] note to Pa.R.A.P.** 1502, when the Rules of Appellate Procedure were initially adopted, there was a "long history in the Commonwealth . . . of relatively complete exercise of the judicial review function under the traditional labels of equity, mandamus, *certiorari***,** and prohibition." While such original jurisdiction forms of action are still available, their proper usage is now the exception rather than the rule because appellate proceedings have become the norm. Thus, the need to rely on **[Rule] Pa.R.A.P.** 1503 to convert an appellate proceeding to an original jurisdiction action and *vice versa* arises less often. Moreover, the emphasis on a petition for review as a generic pleading that permits the court to simultaneously consider all aspects of the controversy is diminished. The primary concern became making the practice for appellate proceedings more apparent to the occasional appellate practitioner. Accordingly, the rules have been amended to more clearly separate procedures for appellate proceedings from those applicable to original jurisdiction proceedings.

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CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

IN GENERAL

Rule 1702. Stay Ancillary to Appeal.

(a) *General rule*.—Applications for relief under this chapter will not be entertained by an appellate court or a judge thereof until after a notice of appeal has been filed in the **[lower] trial** court and docketed in the appellate court or a petition for review has been filed.

(b) *Proceedings on petition for allowance of or permission to appeal*.—Applications for relief under this chapter may be made without the prior filing of a petition for allowance of appeal or petition for permission to appeal, but the failure to effect timely filing of such a petition, or the denial of such a petition, shall automatically vacate any ancillary order entered under this chapter. In such a case**,** the clerk of the court in which the ancillary order was entered shall, on *praecipe* of any party to the matter, enter a formal order under this rule vacating such ancillary order.

(c) *Supreme Court review of appellate court supersedeas and stay determinations*.—No appeal, petition for allowance of appeal**,** or petition for review need be filed in the Supreme Court in connection with a reapplication under **[Rule 3315] Pa.R.A.P. 3319** (review of stay orders of appellate courts).

***Official Note*: [Based on former Superior Court Rule 53 and Commonwealth Court Rule 112A, which required the taking of an appeal prior to an application for supersedeas or other interlocutory order. Subdivision (b) is new and is] Paragraph (b) was** added in recognition of the fact that the drafting of a petition for allowance of appeal or a petition for permission to appeal in the form required by these rules may not be possible prior to the time when an application for *supersedeas* may have to be made in the appellate court in order to avoid substantial harm.

Rule 1704. **[Application in a Capital Case for a Stay of Execution or for Review of an Order Granting or Denying a Stay of Execution.] Rescinded by Order of (DATE)).**

[Prior notice of the intent to file an application in a capital case for a stay or review of an order granting or denying a stay of execution shall be provided to the Prothonotary of the Pennsylvania Supreme Court, if prior notice is practicable.

The application for stay or review shall set forth the following:

1. The date the warrant issued; the date and nature of the order that prompted the issuance of the warrant; and the date the execution is scheduled, if a date has been set;

2. Whether any direct or collateral challenges to the underlying conviction are pending, and, if so, in what court(s) or tribunal(s);

3. Whether any other applications for a stay of the pending execution have been filed, and, if so, in what court(s) or tribunal(s), when, and the status of the application(s);

4. The grounds for relief and the showing made to the trial court of entitlement to a stay under 42 Pa.C.S. § 9545(c), if applicable;

5. A statement certifying that emergency action is required and setting forth a description of the emergency.

All dockets, pleadings, and orders that are referred to in 1—5 above must be attached to the application. If any of the information provided in the application changes while the motion is pending, the party seeking the stay or review must file with the Pennsylvania Supreme Court written notice of the change within 24 hours.

No notice of appeal or petition for review needs to be filed in order to file an application under this rule.]

***Official Note*: The Supreme Court rescinded this rule on (DATE), as part of its consolidation of the rules relating to capital appeals. Pa.R.A.P. 3314 now provides the procedures governing applications for a stay of execution or for review of an order granting or denying a stay of execution.**

STAY IN CRIMINAL MATTERS

Rule 1761. Capital Cases.

[The pendency of proceedings under Rule 1941 (review of sentence of death) shall stay execution of sentence of death.

***Official Note*: Based on 42 Pa.C.S. § 9711(h) (review of death sentence).]**

Stays of execution in death penalty cases are governed by Pa.R.A.P. 3314.

CHAPTER 19. PREPARATION AND TRANSMISSION OF RECORD AND RELATED MATTERS

[REVIEW OF DEATH SENTENCES]

Rule 1941. **[Review of Sufficiency of the Evidence and the Propriety of the Penalty in Death Penalty Appeals.] Rescinded by Order of (DATE).**

[(a) Procedure in trial court. Upon the entry of a sentence subject to 42 Pa.C.S. § 9711(h) (review of death sentence) the court shall direct the official court reporter and the clerk to proceed under this chapter as if a notice of appeal had been filed 20 days after the date of entry of the sentence of death, and the clerk shall immediately give written notice of the entry of the sentence to the Administrative Office and to the Supreme Court Prothonotary's Office. The clerk shall insert at the head of the list of documents required by Pa.R.A.P. 1931(c) a statement to the effect that the papers are transmitted under this rule from a sentence of death.

(b) Filing and docketing in the Supreme Court. Upon receipt by the Prothonotary of the Supreme Court of the record of a matter subject to this rule, the Prothonotary shall immediately:

(1) Enter the matter upon the docket as an appeal, with the defendant indicated as the appellant and the Commonwealth indicated as the appellee.

(2) File the record in the Supreme Court.

(3) Give written notice of the docket number assignment in person or by first class mail to the clerk of the trial court.

(4) Give notice to all parties and the Administrative Office of the docket number assignment and

the date on which the record was filed in the Supreme Court, and give notice to all parties of the date, if any, specially fixed by the Prothonotary pursuant to Pa.R.A.P. 2185(b) for the filing of the brief of the appellant.

(c) Further proceedings. Except as required by Pa.R.A.P. 2189 or by statute, a matter subject to this rule shall proceed after docketing in the same manner as other appeals in the Supreme Court.

***Official Note*: Formerly the Act of February 15, 1870 (P.L. 15, No. 6) required the appellate court to review the sufficiency of the evidence in certain homicide cases regardless of the failure of the appellant to challenge the matter. See, e.g., Commonwealth v. Santiago, 382 A.2d 1200 (Pa. 1978). Pa.R.A.P. 302 now provides otherwise with respect to homicide cases generally. However, under paragraph (c) of this rule the procedure for automatic review of capital cases provided by 42 Pa.C.S. § 9711(h) (review of death sentence) will permit an independent review of the sufficiency of the evidence in such cases. In capital cases, the Supreme Court has jurisdiction to hear a direct appeal and will automatically review (1) the sufficiency of the evidence "to sustain a conviction for first-degree murder in every case in which the death penalty has been imposed;" (2) the sufficiency of the evidence to support the finding of at least one aggravating circumstance set forth in 42 Pa.C.S. § 9711(d); and (3) the imposition of the sentence of death to ensure that it was not the product of passion, prejudice, or any other arbitrary factor. Commonwealth v. Mitchell, 902 A.2d 430, 444, 468 (Pa. 2006); 42 Pa.C.S. § 722; 42 Pa.C.S. § 9711(h)(1), (3). Any other issues from the proceedings that resulted in the sentence of death may be reviewed only if they have been preserved and if the defendant files a timely notice of appeal.**

Likewise, although Pa.R.A.P. 702(b) vests jurisdiction in the Supreme Court over appeals from sentences imposed on a defendant for lesser offenses as a result of the same criminal episode or transaction where the offense is tried with the capital offense, the appeal from the lesser offenses is not automatic. Thus the right to appeal the judgment of sentence on a lesser offense will be lost unless all requisite steps are taken, including preservation of issues (such as by filing post-trial motions) and filing a timely notice of appeal.

See Pa.R.A.P. 2189 for provisions specific to the production of a reproduced record in cases involving the death penalty.

Explanatory Comment—1979

The clerk is required to "flag" capital cases by appropriate notation on the face of the record certification. The rule is revised to reflect the fact that the requirement of Rule 302 that an issue be raised below in order to be available on appeal may not be applicable in cases of automatic statutory review of death sentences.]

***Official Note*: The Supreme Court rescinded this rule on (DATE) as part of its consolidation of the rules relating to capital appeals. The revised content of former Pa.R.A.P. 1941 is now found in Pa.R.A.P. 3311 and 3312.**

CHAPTER 21. BRIEFS AND REPRODUCED RECORD

CONTENT OF REPRODUCED RECORD

Rule 2151. Consideration of Matters on the Original Record without the Necessity of Reproduction.

(a) *General rule*.—An appellate court may by rule of court applicable to all cases, or to classes of cases, or by order in specific cases under **[Subdivision] paragraph** (d) of this rule, dispense with the requirement of a reproduced record and permit appeals and other matters to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

(b) *In forma pauperis*.—If leave to proceed *in forma pauperis* has been granted to a party, such party shall not be required to reproduce the record.

(c) *Original hearing cases*.—When**,** under the applicable law**,** the questions presented may be determined in whole or in part upon the record made before the appellate court, a party shall not be required to reproduce the record.

(d) *On application to the court*.—Any appellant may within 14 days after taking an appeal file an application to be excused from reproducing the record for the reason that the cost thereof is out of proportion to the amount involved, or for any other sufficient reason. Ordinarily leave to omit reproduction of the record will not be granted in any case where the amount collaterally involved in the appeal is not out of proportion to the reproduction costs.

***Official Note*: [Based on former Supreme Court Rules 35D, 35E and 61(f), former Superior Court Rules 51 (last sentence) and 52, and former Commonwealth Court Rules 81, 110B and 111A. Subdivision (a) is new and is included in recognition of the developing trend toward sole reliance on the original record.**

See Rule 2189 for procedure in cases involving the death penalty.]

Paragraph (a) is included in recognition of the developing trend toward sole reliance on the original record.

***See* Pa.R.A.P. 3311(d) and 3313(b) for provisions specific to the production of a reproduced record in cases involving the death penalty.**

Rule 2152. Content and Effect of Reproduced Record.

(a) *General rule*.—The reproduced record shall contain:

(1) The relevant docket entries and any relevant related matter (*see* Rule 2153 (docket entries and related matter)).

(2) Any relevant portions of the pleadings, charge**,** or findings *see* Rule 2175(b) (order and opinions)**,** which provides for a **[cross reference] cross-reference** note only to orders and opinions reproduced as part of the brief of appellant).

(3) Any other parts of the record to which the parties wish to direct the particular attention of the appellate court.

(b) *Immaterial formal matters*.—Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) shall be omitted.

(c) *Effect of reproduction of record*.—The fact that parts of the record are not included in the reproduced record shall not prevent the parties or the appellate court from relying on such parts

***Official Note*: The general rule has long been that evidence which has no relation to or connection with the questions involved must not be reproduced. [See former Supreme Court Rule 44, former Superior Court Rule 36 and former Commonwealth Court Rule 88. See also, e.g., *Shapiro v. Malarkey*, 278 Pa. 78, 84, 122 Atl. 341, 342, 29 A.L.R. 1358 (1923); *Sims v. Pennsylvania R.R. Co*., 279 Pa. 111, 117, 123 Atl. 676, 679 (1924).] *See Shapiro v. Malarkey*, 122 A. 341, 342 (Pa. 1923); *Sims v. Pennsylvania R.R. Co.*, 123 A. 676, 679 (Pa. 1924).**

[See Rule 2189 for procedure in cases involving the death penalty.]

***See* Pa.R.A.P. 3311(d) and 3313(b) for provisions specific to the production of a reproduced record in cases involving the death penalty.**

Rule 2154. Designation of Contents of Reproduced Record.

(a) *General rule*.—Except when the appellant has elected to proceed under **[Subdivision] paragraph** (b) of this rule, or as otherwise provided in **[Subdivision] paragraph** (c) of this rule, the appellant shall**,** not later than 30 days before the date fixed by or pursuant to **[Rule 2185 (service and filing of briefs)] Pa.R.A.P. 2185** for the filing of his or her brief, serve and file a designation of the parts of the record which he or she intends to reproduce and a brief statement of issues which he or she intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within ten days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(b) *Large records*.—If the appellant shall so elect, or if the appellate court has prescribed by rule of court for classes of matters or by order in specific matters, preparation of the reproduced record may be deferred until after the briefs have been served. Where the appellant desires thus to defer preparation of the reproduced record, the appellant shall, not later than the date on which his or her designations would otherwise be due under **[Subdivision] paragraph** (a), serve and file notice that he or she intends to proceed under this **[subdivision] paragraph**. The provisions of **[Subdivision] paragraph** (a) shall then apply, except that the designations referred to therein shall be made by each party at the time his or her brief is served, and a statement of the issues presented shall be unnecessary.

(c) *Children's fast track appeals*.

(1) In a children's fast track appeal, the appellant shall not later than 23 days before the date fixed by or pursuant to **[Rule 2185 (service and filing of briefs)] Pa.R.A.P. 2185** for the filing of his or her brief, serve and file a designation of the parts of the record which he or she intends to reproduce and a brief statement of issues which he or she intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 7 days after receipt of the designations of the appellant, serve and file a designation of those parts. The appellant shall include in the reproduced record the parts thus designated. In designating parts of the record for reproduction, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation.

(2) In a children's fast track appeal, the provisions of **[Subdivision] paragraph** (b) shall not apply.

***Official Note*: [Based in part upon former Supreme Court Rule 44, former Superior Court Rule 36 and former Commonwealth Court Rule 88. The prior statutory practice required the lower court or the appellate court to resolve disputes concerning the contents of the reproduced record prior to reproduction. The statutory practice was generally recognized as wholly unsatisfactory and has been abandoned in favor of deferral of the issue to the taxation of costs phase. The uncertainty of the ultimate result on the merits provides each party with a significant incentive to be reasonable, thus creating a self-policing procedure.**

Of course, parties] Parties proceeding under either procedure may by agreement omit the formal designations and accelerate the preparation of a reproduced record containing the material which the parties have agreed should be reproduced.

[See Rule 2189 for procedure in cases involving the death penalty.]

***See* Pa.R.A.P. 3311(d) and 3313(b) for provisions specific to the production of a reproduced record in cases involving the death penalty.**

* * * * *

Rule 2155. Allocation of Cost of Reproduced Record.

(a) *General rule*.—Unless the parties otherwise agree**,** the cost of reproducing the record shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for a determination of the issues presented**,** the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. If the appellee fails to advance such costs within ten days after written demand therefor, the appellant may proceed without reproduction of the parts of the record designated by appellee which the appellant considered to be unnecessary.

(b) *Allocation by court*.—The cost of reproducing the record shall be taxed as costs in the case pursuant to Chapter 27 **[(fees and costs in appellate courts and on appeal)]**, but if either party shall cause material to be included in the reproduced record unnecessarily, the appellate court may on application filed within ten days after the last brief is filed, in its order disposing of the appeal**,** impose the cost of reproducing such parts on the designating party.

***Official Note*: This rule reflects the fact that the appellate judge to whom a case is assigned for prepara-

tion of an opinion will ordinarily be in the best position to determine whether an excessive amount of the record has been included in the reproduced record by a party.

[See Rule 2189 for procedure in cases involving the death penalty.]

***See* Pa.R.A.P. 3311(d) and 3313(b) for provisions specific to the production of a reproduced record in cases involving the death penalty.**

FILING AND SERVICE

Rule 2187. Number of Copies to be Served and Filed.

* * * * *

(b) *Advance text of briefs.*—If the record is being reproduced pursuant to **[Rule] Pa.R.A.P.** 2154(b) (large records)**,** two copies of each brief without definitive reproduced record pagination shall be served on each party separately represented. Proof of service showing compliance with this rule (but not including the advance text of the brief) shall be filed with the prothonotary of the appellate court.

* * * * *

***Official Note*: [See Rule 2189 for procedure in cases involving the death penalty.] *See* Pa.R.A.P. 3311(d) and 3313(b) for provisions specific to the production of a reproduced record in cases involving the death penalty.**

Rule 2189. **[Reproduced Record in Cases Involving the Death Penalty.] Rescinded by Order of (DATE).**

[(a) *Number of Copies.*—Any provisions of these rules to the contrary notwithstanding, in all cases involving the death penalty, eight copies of the entire record shall be reproduced and filed with the prothonotary of the Supreme Court, unless the Supreme Court shall by order in a particular case direct filing of a lesser number.

(b) *Costs of Reproduction.*—Appellant, or, in cases where appellant has been permitted to proceed in *forma pauperis*, the county where the prosecution was commenced, shall bear the cost of reproduction.

(c) *Prior Rules Superseded.*—To the extent that this rule conflicts with provisions of Rule 2151(a), (b) (relating to necessity of reproduction of records); Rule 2152 (relating to content of reproduced records); Rule 2154(a) (relating to designation of contents of reproduced records); Rule 2155 (allocating costs of reproduction of records); and Rule 2187(a), (prescribing numbers of copies of reproduced record to be filed), the same are superseded.

***Official Note*: The death penalty statute, 42 Pa.C.S. § 9711, provides that the Supreme Court Prothonotary must send a copy of the lower court record to the Governor after the Supreme Court affirms a sentence of death. The statute does not state who is responsible for preparing the copy. This amendment provides for preparation of the Governor's copy of the record before the record is sent to the Supreme Court.]**

***Official Note*: The Supreme Court rescinded Pa.R.A.P. 2189 on (DATE) as part of its consolidation of the rules relating to capital appeals. The revised content of former Pa.R.A.P. 2189 is now found in Pa.R.A.P. 3311(d) and 3313(b).**

CHAPTER 25. POST-SUBMISSION PROCEEDINGS

IN GENERAL

Rule 2521. Entry of Judgment or Other Orders.

(a) *General Rule*—Subject to the provisions of **[Rule] Pa.R.A.P.** 108 (date of entry of orders), the notation of a judgment or other order of an appellate court **[in] on** the docket constitutes entry of the judgment or other order. The prothonotary of the appellate court shall prepare, sign**,** and enter the judgment following receipt of the opinion of the court unless the opinion is accompanied by an order signed by the court, or unless the opinion directs settlement of the form of the judgment, in which event the prothonotary shall prepare, sign**,** and enter the judgment following settlement by the court. If a judgment is rendered without an opinion or an order signed by the court, the prothonotary shall prepare, sign and enter the judgment following instruction from the court. The prothonotary shall, on the date a judgment or other order is entered, send by first class mail to all parties a copy of the opinion, if any, or of the judgment or other order if no opinion was written, and notice of the date of entry of the judgment or other order.

[(b) *Notice in Death Penalty Cases.* Pursuant to Pa.R.Crim.P. 900(B), in all death penalty cases upon the Supreme Court's affirmance of the judgment of a death sentence, the prothonotary shall include in the mailing required by subdivision (a) of this Rule the following information concerning the Post Conviction Relief Act and the procedures under Chapter 9 of the Rules of Criminal Procedure. For the purposes of this notice, the term "parties" in subdivision (a) shall include the defendant, the defendant's counsel, and the attorney for the Commonwealth.

(1) A petition for post-conviction collateral relief must be filed within one year of the date the judgment becomes final, except as otherwise provided by statute.

(2) As provided in 42 Pa.C.S. § 9545(b)(3), a judgment becomes final at the conclusion of direct review, which includes discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review.

(3)(A) If the defendant fails to file a petition within the one-year limit, the action may be barred. *See* 42 Pa.C.S. § 9545(b).

(B) Any issues that could have been raised in the post-conviction proceeding, but were not, may be waived. *See* 42 Pa.C.S. § 9544(b).

(4) Pursuant to Rule 904 (Appointment of Counsel; In Forma Pauperis), the trial judge will appoint new counsel for the purpose of post-conviction collateral review, unless:

(A) the defendant has elected to proceed pro se or waive post-conviction collateral proceedings, and the judge finds, after a colloquy on the record, that the defendant is competent and the defendant's election is knowing, intelligent and voluntary;

(B) the defendant requests continued representation by original trial counsel or direct appeal coun-

sel, and the judge finds, after a colloquy on the record, that the petitioner's election constitutes a knowing, intelligent and voluntary waiver of a claim that counsel was ineffective; or

(C) the judge finds, after a colloquy on the record, that the defendant has engaged counsel who has entered, or will promptly enter, an appearance for the collateral review proceedings.

***Official Note*: See Pa.R.Crim.P. 900(B), which also includes the identical requirement in death penalty cases that notice of the information concerning the statutory time limitations for filing petitions for post-conviction collateral relief and the right to counsel enumerated in subdivision (b) of this rule be sent by the prothonotary with the order or opinion sent pursuant to subdivision (a) of this rule. Because of the importance of this notice requirement to judges, attorneys and defendants, the requirement that the Supreme Court Prothonotary mail the aforesaid notice has been included in both the Rules of Criminal Procedure and the Rules of Appellate Procedure.]**

***Official Note*: The Supreme Court rescinded former paragraph (b) on (DATE) as part of its consolidation of the rules relating to capital appeals. The revised content of former Pa.R.A.P. 2521 (b) is now found in Pa.R.A.P. 3311(e).**

REMAND OF RECORD

Rule 2572. Time for Remand of Record.

(a) *General rule.*—Except as provided in paragraphs (b) or (c), the record shall be remanded after the entry of the judgment or other final order of the appellate court possessed of the record.

(1) *Supreme Court orders.* **[The time for the remand of the record pursuant to subdivision (a) following orders of the Supreme Court shall be] In Supreme Court appeals, the record shall be remanded at the expiration of 14 days after the entry of the judgment or other final order.**

[(1) 7 days after expiration of the time for appeal or petition for writ of certiorari to the United States Supreme Court in cases in which the death penalty has been imposed, and

(2) 14 days in all other cases.

***Official Note*: The amendment provides for remand seven days after expiration of the time for appeal or petition for writ of certiorari to the United States Supreme Court in cases in which the death penalty has been imposed. This keeps the movement of the record to a minimum and decreases any risks associated with the physical movement of the record.]**

(b) *Effect of pending post-decision applications on remand.*—Remand is stayed until disposition of: (1) an application for reargument; (2) any other application affecting the order; or (3) a petition for allowance of appeal from the order. The court possessed of the record shall remand 30 days after either the entry of a final order or the disposition of all post-decision applications, whichever is later.

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ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 33. BUSINESS OF THE SUPREME COURT

SPECIAL RULES APPLICABLE IN DEATH PENALTY CASES

(*Editor's Note*: Rules 3311—3314 are proposed to be added and printed in regular type to enhance readability.)

Rule 3311. Review of Death Sentence; Reproduced Record; PCRA Notice; Remand of Record; Copy of Record to Governor.

(a) *Direct Review.*—Except as otherwise provided in this rule, an appeal from a sentence of death shall proceed in the same manner as other appeals in the Supreme Court.

(1) Lesser offenses tried with capital offenses: appeals from sentences imposed on the defendant for lesser offenses tried with the offense(s) resulting in a sentence of death shall be briefed along with the related capital appeal. *See* Pa.R.A.P. 702(b).

(b) *Automatic Review of Sufficiency of the Evidence and Propriety of the Penalty.* If the defendant fails to file a timely appeal from a sentence of death, limited automatic review shall proceed in the Supreme Court pursuant to Pa.R.A.P. 3312.

(c) *Jurisdictional statement.*—A jurisdictional statement is not required in appeals involving direct or automatic review of a death sentence.

(d) *Reproduced Records in Cases Involving Direct or Automatic Review of a Death Sentence.*

(1) Number of Copies: Four copies of the entire record shall be reproduced and filed with the Supreme Court Prothonotary, unless the Court shall by order direct the filing of a different number.

(2) Cost of Reproduction: The appellant, or, in cases where the appellant has been permitted to proceed *in forma pauperis*, the county where the prosecution was commenced, shall bear the cost of reproduction.

(3) Other Rules Superseded: To the extent paragraph (d) conflicts with provisions of Pa.R.A.P. 2151, 2152, 2154(a), 2155, and 2187(a), paragraph (d) controls.

(e) *PCRA Notice if Death Sentence is Affirmed.* When the Supreme Court affirms a sentence of death, the Prothonotary shall include in the mailing required by Pa.R.A.P. 2521(a) the following information concerning post-conviction rights:

1. The appellant has the right to seek further review by way of a petition for relief under the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S. §§ 9541—9546.

2. A PCRA petition must be filed within one year of the date the judgment becomes final, except as otherwise provided in the statute. *See* 42 Pa.C.S. § 9545(b).

3. A judgment becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States, or at the expiration of the time for seeking that review, if review is not sought. *See* 42 Pa.C.S. § 9545(b)(3).

4. If the appellant fails to file the PCRA petition within the one-year time limit, the action may be barred. *See* 42 Pa.C.S. § 9545(b).

5. Issues that could have been raised prior to the PCRA proceeding, but were not, may be deemed waived. *See* 42 Pa.C.S. § 9544(b).

6. Pursuant to Pa.R.Crim.P. 904(H), the trial judge will appoint new counsel for the purpose of PCRA review, unless:

(i) the appellant elects to proceed without counsel or to waive PCRA review, and the judge finds, after a colloquy on the record, that the appellant is competent and the appellant's election is knowing, intelligent, and voluntary;

(ii) the appellant requests continued representation by trial counsel or direct appeal counsel, and the judge finds, after a colloquy on the record, that the appellant's election constitutes a knowing, intelligent, and voluntary waiver of claims sounding in that attorney's ineffectiveness; or

(iii) the judge finds, after a colloquy on the record, that the appellant has engaged counsel who has entered, or will promptly enter, an appearance for the PCRA proceedings.

For purposes of this notice, the term "parties" in Pa.R.A.P. 2521(a) includes the appellant, the appellant's counsel, and the attorney for the Commonwealth.

(f) *Remand of Record.* Following entry of the judgment on direct or automatic review, the Supreme Court Prothonotary shall remand the record to the court of common pleas at the expiration of seven days from the later of the date of:

1. the expiration of the time for filing a petition for a writ of *certiorari* to the Supreme Court of the United States;

2. the denial of a petition for a writ of *certiorari*; or

3. remand from the Supreme Court of the United States, if that Court grants the petition for a writ of *certiorari*.

(g) *Copy of Record to Governor if Death Sentence is Affirmed.* When the Supreme Court affirms a judgment of sentence of death the Supreme Court Prothonotary shall transmit to the Governor a complete copy of the record, and provide notice of that transmission to the Secretary of Corrections, within 30 days after the date the record is ready for remand. *See* 42 Pa.C.S. § 9711(i).

***Official Note*:** Pa.R.A.P. 3311 includes provisions found in former Pa.R.A.P. 1941, 2189, 2521(b), and 2572(b).

Death sentences are subject to automatic review by the Supreme Court. *See* 42 Pa.C.S. §§ 722(4); 9711(h); Pa.R.A.P. 3312. Automatic review is generally limited to: (1) the sufficiency of the evidence to sustain the first-degree murder conviction; (2) the sufficiency of the evidence to support at least one of the aggravating circumstances set forth in 42 Pa.C.S. § 9711(d) and found by the fact finder; and (3) review to determine if the death sentence was the product of passion, prejudice, or any other arbitrary factor. *See, e.g.*, *Commonwealth v. Mitchell*, 902 A.2d 430, 444, 468 (Pa. 2006); 42 Pa.C.S. § 9711(h)(3). These issues are examined, on direct or automatic appeal, whether the appellant raises them or not.

It is imperative that the defendant and counsel recognize that other issues are generally reviewable only if preserved and if a timely notice of appeal is filed. *See* Pa.R.A.P. 302(a) (issues not raised in the lower court are waived); *Commonwealth v. Freeman*, 827 A.2d 385, 402-03 (Pa. 2003) (reflecting curtailment of the relaxed waiver doctrine in capital direct appeals); *Commonwealth v. Parrish*, 77 A.3d 557, 561 (Pa. 2013) (claims unassociated with automatic review are not preserved if the defendant fails to file an appeal from a death sentence).

Although Pa.R.A.P. 702(b) vests jurisdiction in the Supreme Court over appeals from sentences imposed for lesser offenses tried together with capital offenses, the appeal is not automatic. To secure review, the defendant must take all requisite steps, including the preservation of issues below and filing a timely notice of appeal encompassing the lesser offenses.

The Supreme Court Prothonotary must transmit a copy of the record to the Governor after a sentence of death is affirmed, but the death penalty statute does not assign responsibility for preparing the copy. *See* 42 Pa.C.S. § 9711(i). Paragraph (d) reduces the number of copies of the record ordinarily required and addresses responsibility for reproduction.

Paragraph (e) is intended to ensure that the appellant's PCRA rights are not inadvertently defaulted.

Rule 3312. Automatic Review of Death Sentence.

(a) *Procedure in trial court.*—Upon the entry of a judgment of sentence of death, the trial court shall direct the official court reporter and the clerk to proceed as if a timely notice of appeal will be filed by the defendant. The clerk shall promptly give written notice of the entry of the death sentence to the Administrative Office and to the Supreme Court Prothonotary. If a timely appeal is not filed from the death sentence, the clerk shall insert at the head of the list of documents required by Pa.R.A.P. 1931(c) a statement that the papers are transmitted under this rule for automatic review of a death sentence.

(b) *Filing and docketing in the Supreme Court.*—Upon receipt of the record in a case where a death sentence has been entered but no appeal has been filed, the Supreme Court Prothonotary shall:

1. Enter the matter upon the docket as an appeal, with the defendant indicated as the appellant and the Commonwealth indicated as the appellee.

2. File the record in the Supreme Court.

3. Provide written notice of the docket number assignment to the clerk of the trial court.

4. Provide notice to the parties and the Administrative Office of the docket number assignment and the date on which the record was filed in the Supreme Court, and provide notice to the parties of the date, if any, fixed by the Prothonotary for the filing of the brief of the appellant.

5. Except as required by Pa.R.A.P. 3311(d) (reproduced record), (f) (remand of record), and (g) (copy of record to Governor), a matter subject to automatic review under this rule shall proceed after docketing in the same manner as other appeals in the Supreme Court.

***Official Note*:** The rule incorporates and revises provisions in former Pa.R.A.P. 1941, 2189, and 2521(b) and implements the automatic review of death sentences required by statute. *See* 42 Pa.C.S. §§ 722(4), 9711(h).

A notice of appeal triggers (1) the duty of the court reporter to transcribe the notes of testimony, (2) the duty of the clerk of the trial court to prepare and transmit the record, and (3) various duties of the appellate court prothonotary. The rule governs cases where no appeal is filed and automatic review is implicated.

Rule 3313. PCRA Appeals; Reproduced Record; Remand of Record; Copy of Record to Governor.

(a) *General Rule.*—Except as otherwise provided in this rule, an appeal from a final order disposing of a PCRA

petition in a death penalty case shall proceed in the same manner as other appeals in the Supreme Court.

(b) *Reproduced Record.*

1. Number of Copies: Four copies of the entire record shall be reproduced and filed with the Supreme Court Prothonotary, unless the Court shall by order direct the filing of a different number.

2. Cost of Reproduction: The appellant shall bear the cost of reproduction unless the defendant is the appellant and has been permitted to proceed in *forma pauperis*, in which case the county where the prosecution was commenced shall bear the cost of reproduction.

3. Other Rules Superseded: To the extent paragraph (b) conflicts with provisions of Pa.R.A.P. 2151, 2152, 2154(a), 2155, and 2187(a), this paragraph (b) controls.

(c) *Remand of Record.*—Following entry of the judgment, the Supreme Court Prothonotary shall remand the record to the court of common pleas at the expiration of seven days from the later of the date of:

1. the expiration of the time for filing a petition for a writ of *certiorari* to the Supreme Court of the United States;

2. the denial of a petition for a writ of *certiorari*; or

3. remand from the Supreme Court of the United States, if that Court grants the petition for a writ of *certiorari*.

(d) *Copy of Record to Governor.*—Whenever a PCRA appeal results in the denial of relief to the defendant, the Supreme Court Prothonotary shall transmit to the Governor a complete copy of the record, and provide notice of that transmission to the Secretary of Corrections, within 30 days after the date the record is ready for remand. *See* 42 Pa.C.S. § 9711(i).

***Official Note*:** Under 42 Pa.C.S. § 9546(d), as amended in 1988, the Supreme Court has exclusive jurisdiction over appeals from final orders in death penalty cases litigated under the PCRA. Later amendments to Section 9546(d) were suspended by the Supreme Court's order dated August 11, 1997, thus reviving the 1988 provision. *See Commonwealth v. Morris*, 771 A.2d 721, 743 n.1 (Pa. 2001) (Castille, J., concurring) (explaining effect of suspension).

Rule 3314. Stays of Execution.

(a) *Automatic Stays*.

(1) Direct Review: Execution of a sentence of death shall be stayed by the pendency of an appeal from that sentence, or by the pendency of automatic review under Pa.R.A.P. 3312.

(2) PCRA Review: Execution of a sentence of death shall be stayed by the pendency of an appeal from the disposition of a timely first petition for PCRA relief.

(b) *Other Cases; Application for Stay or Review*. Except in matters arising under Pa.R.A.P. 3315, an application for a stay of execution or for review of an order granting or denying a stay of execution shall be reviewable by the Supreme Court in the manner prescribed by this paragraph (b).

(1) Advance Notice to Court: Prior notice of the intention to seek a stay of execution or review of an order granting or denying a stay shall be promptly provided to the Supreme Court Prothonotary.

(2) Form of Pleading: No notice of appeal or petition for review needs to be filed in order to file the application for stay or review.

(3) Content: The application shall set forth the following:

(i) The name of the defendant.

(ii) The place where the defendant is presently confined.

(iii) The date the warrant of execution issued; the date and nature of the order that prompted the warrant; and the date execution is scheduled.

(iv) Whether any challenge to the underlying conviction is pending, and if so, in what court.

(v) Whether any other application for stay of the execution has been filed; if so, in what court; and the status of that application.

(vi) A statement briefly setting forth the procedural history.

(vii) The text of the trial court order ruling upon the stay, if any, and an account of the trial court's reasoning in granting or denying the stay.

(viii) A statement setting forth the facts alleged in support of the application.

(ix) The grounds for relief and the showing made to the trial court of entitlement to a stay under 42 Pa.C.S. § 9545(c), if applicable.

(x) A statement certifying that emergency action is required and setting forth a description of the emergency.

All relevant materials shall be attached to the application. If any of the information provided in the application changes while the application is pending, the applicant must file written notice of the change with the Supreme Court within 24 hours.

(4) Answer: The respondent shall file an answer, or a no-answer letter, according to a timeframe established by the Supreme Court Prothonotary, bearing in mind the imminence of execution.

(5) Filing and Copies: The original application and seven copies, along with a certificate of service, shall be filed with the Supreme Court Prothonotary in person or by first class, express, or priority United States Postal Service mail. If execution appears imminent, the application shall be filed in coordination with the Prothonotary in a manner, electronic or otherwise, ensuring receipt by the Court on the date of transmission. Any answer shall be filed in similar number and fashion.

(6) Service: A copy of the application shall be served in person or by first class, express, or priority United States Postal Service mail upon the respondent, the Governor, and the Secretary of Corrections. A copy of the answer or no-answer letter shall be served upon the petitioner, the Governor, and the Secretary of Corrections in a similar fashion. If execution appears imminent, the application and answer shall also be served in a manner, electronic or otherwise, ensuring receipt on the date of transmission.

(7) Entry and Notice of Judgment: The Supreme Court Prothonotary shall prepare and enter the judgment of the Supreme Court immediately following receipt of the decision. The Prothonotary shall immediately inform the parties of the decision and shall send by first class mail to the parties, the Governor, and the Secretary of Corrections a copy of the opinion, if any, or of the judgment or other order if no opinion was written, and notice of the

date of the entry of the judgment. If execution appears imminent, the Prothonotary shall provide the above notice in a manner, electronic or otherwise, ensuring receipt on the date of transmission.

(8) Remand of record: Following entry of the judgment, the Supreme Court Prothonotary shall remand the record, if any, to the court of common pleas at the expiration of seven days from the later of the date of:

(i) the expiration of the time for filing a petition for a writ of *certiorari* to the Supreme Court of the United States;

(ii) the denial of a petition for a writ of *certiorari*; or

(iii) remand from the Supreme Court of the United States, if that Court grants the petition for a writ of *certiorari*.

***Official Note*:** The rule revises provisions found in former Pa.R.A.P. 1704 and 3316.

Subparagraph (a)(1) recognizes that an execution warrant cannot be issued unless review of a death sentence results in affirmance. *See* 42 Pa.C.S. § 9711(i) (record to Governor where death sentence is upheld)); 61 Pa.C.S. § 4302 (issuance of warrant of execution). The effect of the statutory scheme is that the death sentence is stayed pending completion of direct review.

Subparagraph (a)(2) recognizes that the defendant has a right to pursue a timely first petition for PCRA relief and a right to appeal if denied relief. A stay of execution allows for the vindication of those rights when timely asserted.

Paragraph (b) addresses stays in other contexts, and derives from former Pa.R.A.P. 3316. Stay issues often arise ancillary to a second or subsequent PCRA petition; those issues are subject to 42 Pa.C.S. § 9545(c) (the petition must be pending and meet all requirements of the PCRA, and the petitioner must make a strong showing of a likelihood of success on the merits). *See Commonwealth v. Morris*, 822 A.2d 684, 693 (Pa. 2003) ("*Morris II*"). The PCRA trial court lacks jurisdiction to grant a stay ancillary to an untimely petition. *See Commonwealth v. Morris*, 771 A.2d 721, 734-35 & n.14, 742 (Pa. 2001) ("*Morris I*"); 42 Pa.C.S. § 9545(c).

Pa.R.Crim.P. 909(A)(3) provides that a stay of execution properly granted by the PCRA court remains in effect through the conclusion of the proceedings, including appeal. The Commonwealth may seek immediate review under Pa.R.A.P. 3314 to challenge whether a stay was properly granted in the serial petition context, while the defendant may seek immediate review of the denial of a stay request forwarded ancillary to a serial petition. In permitting immediate review, the rule recognizes the exigencies and that the stay issue may require resolution in advance of an appeal from the decision on the PCRA petition, or even in advance of the decision itself. In addition, there may be instances where the PCRA court denies the underlying petition, but grants a stay; the Commonwealth is potentially aggrieved only by the stay.

The *Morris* cases left open a question of whether scenarios outside the context of the PCRA might exist in which courts would maintain authority to grant a stay of execution, and whether the standard in Section 9545(c) of the PCRA should apply. *See Morris II*, 822 A.2d at 693-94. The Supreme Court has not issued a "wholesale resolution of this residual question," *Commonwealth v. Michael*, 56 A.3d 899, 903 (Pa. 2012) (*per curiam*), but it has addressed discrete circumstances. *See id.*, 56 A.3d at 903-04 (denying deemed applications for relief seeking review of denial of stay of execution requested in connection with clemency process; lower courts lacked authority to issue a stay under Section 9545(c)); *Commonwealth v. Banks*, 943 A.2d 230, 234-35 n.7 (Pa. 2007) (*per curiam*) (noting the absence of a rules-based process for determining a motion to stay execution based upon a claim of incompetency to be executed).

In the wake of *Banks*, the Supreme Court has adopted specific rules addressing stay of execution issues arising in conjunction with execution competency claims. *See* Pa.R.Crim.P. 850—862; Pa.R.A.P. 3315.

The rule does not expand or diminish any inherent powers of the Supreme Court to grant a stay of execution. *See Morris II*, 822 A.2d at 691.

Subparagraph (b)(2) recognizes that stay of execution issues require streamlined treatment falling outside the appeal or petition for review process.

[SUPERSEDEAS AND STAYS]

Rule 3315. **[Review of Stay Orders of Appellate Courts.] (Renumbered).**

[Where the Superior Court or the Commonwealth Court in the exercise of its appellate jurisdiction has entered an order under Chapter 17 (effect of appeals; supersedeas and stays), such order may be further reviewed by any justice of the Supreme Court in the manner prescribed by Chapter 17 with respect to appellate review of supersedeas and stay determinations of lower courts.

***Official Note*: After a party has applied for a stay, etc., in the trial court, and a further application has been acted on by the Superior Court or the Commonwealth Court, or by a judge thereof, a further application may be made under this rule to the Supreme Court or to a justice thereof. Under the prior practice a petition for allowance of appeal was required in the Supreme Court under Rule 1702(b) in order to maintain the validity of the Supreme Court action on the stay, etc. Rule 1702(c) (Supreme Court review of appellate court supersedeas and stay determinations) now provides that no appeal or petition need be filed to support jurisdiction under this rule. However, this rule does not invite routine reapplications in the Supreme Court, but only clarifies the procedure when the Court exercises its inherent supervisory powers in cases of egregious error below. See 42 Pa.C.S. § 726 (extraordinary jurisdiction).**

Explanatory Comment—1979

The stay and supersedeas procedure in the Supreme Court is clarified in King's Bench matters and in cases where the Superior Court or the Commonwealth Court (in its appellate capacity) has acted on a stay or supersedeas application.]

Former Pa.R.A.P. 3315 (Review of Stay Orders of Appellate Courts) has been renumbered Pa.R.A.P. 3319 to accommodate the consolidation of the special rules relating to capital cases.

(*Editor's Note*: Rule 3315 is proposed to be added and printed in regular type to enhance readability.)

Rule 3315. Review of Orders Determining Competency to be Executed.

(a) *General Rule*.—A trial court's determination of competency to be executed, issued under Part C of Chapter 8

of the Rules of Criminal Procedure, is subject to review by application filed in the Supreme Court in the manner prescribed by this rule.

(1) Advance Notice to Court: Prior notice of the intention to file the application for review shall be provided to the Supreme Court Prothonotary no later than two days before a filing under subparagraph (b)(1) (execution warrant pending) and no later than five days before a filing under subparagraph (b)(2) (no execution warrant pending).

(b) *Timing; Answer*.

(1) Execution Warrant Active (Expedited Review): An application for review of an order entered under Pa.R.Crim.P. 857(E)(1), denying a challenge to a certification of competency to be executed and denying a stay of execution, shall be filed in the Supreme Court within 10 days of the entry of the order.

(i) The Commonwealth shall file an answer within seven days of the filing of the application, unless the Supreme Court Prothonotary directs that the answer be filed sooner.

(2) No Active Execution Warrant: An application for review of an order entered under Pa.R.Crim.P. 858(E)(1), 859(E)(1), or 861(B), resolving the issue of competency to be executed where no execution warrant is pending or a pending warrant has been stayed, shall be filed within 21 days of the entry of the order.

(i) The respondent shall file an answer within 14 days of the filing of the application.

(c) *Form of Pleading*.—No notice of appeal or separate petition for review needs to be filed in order to file an application under this rule.

(d) *Content*.—The application shall set forth the following:

1. The name of the defendant.

2. The place where the defendant is presently confined.

3. If a warrant of execution is pending, the date the warrant issued and the date execution is scheduled.

4. Whether any challenge to the underlying conviction is pending, and if so, in what court.

5. If a warrant of execution is pending, whether any other application for a stay of the execution has been filed; if so, in what court; and the status of that application.

6. A statement briefly setting forth the procedural history.

7. The text of the order below, and an account of the lower court's reasoning in support of the order.

8. A statement setting forth the facts alleged in support of the application, including citations to the record.

9. A concise legal argument on the question of competency to be executed.

All relevant materials shall be attached to the application. If any of the information provided in the application changes while the application is pending, the applicant must file written notice of the change with the Supreme Court within 24 hours.

(e) *Filing; Copies*.—The original application and seven copies, along with a certificate of service, shall be filed with the Supreme Court Prothonotary in person or by first class, express, or priority United States Postal Service mail. The answer to the petition shall be filed in similar number and fashion. If an execution warrant is pending, the application and answer shall also be filed in coordination with the Supreme Court Prothonotary in a manner, electronic or otherwise, ensuring receipt by the Court on the date of transmission.

(f) *Service*.—A copy of the application for review shall be served in person or by first class, express, or priority United States Postal Service mail upon the respondent, the Governor, and the Secretary of Corrections. The answer to the petition shall be served upon the petitioner, the Governor, and the Secretary of Corrections in similar fashion. If an execution warrant is pending, the application and answer shall also be served in a manner, electronic or otherwise, ensuring receipt on the date of transmission.

(g) *Entry and Notice of Judgment*.—The Supreme Court Prothonotary shall prepare and enter the judgment of the Court immediately following receipt of the decision. The Prothonotary shall immediately inform the parties of the decision and shall send by first class mail to the parties, the Governor, and the Secretary of Corrections a copy of the opinion, or order if no opinion was issued, and notice of the date of the entry of the judgment. In addition, if an execution warrant is pending, the Prothonotary shall provide the parties, the Governor, and the Secretary of Corrections with a copy of the opinion or order of judgment in a manner, electronic or otherwise, ensuring receipt on the date of transmission.

(h) *Remand of record*.—The Supreme Court Prothonotary shall remand the record to the court of common pleas at the expiration of seven days from the later of the date of:

1. the expiration of the time for filing a petition for a writ of *certiorari* to the Supreme Court of the United States;

2. the denial of a petition for a writ of *certiorari*; or

3. remand from the Supreme Court of the United States, if that Court grants the petition for a writ of *certiorari*.

The Prothonotary shall contemporaneously provide a copy of the final order and notice of the remand and transmittal to the parties, the Governor and the Secretary of Corrections.

***Official Note*:** The rule was adopted in conjunction with the rules of criminal procedure addressing execution competency. *See* Pa.R.Crim.P. 850—862.

Subparagraph (b)(1) governs review where the defendant is found competent below and execution appears imminent. Expedition on appeal is required.

Subparagraph (b)(2) governs review of other competency orders, where a stay of execution is in place or an execution warrant has expired. Some expedition is still required to ensure that the competency determination is not stale and the stay of execution is not excessive.

When competency is litigated in the trial court, the judge, the trial court clerk, the parties' counsel, and the Department of Corrections are to "maintain lines of communication to ensure the prompt filing and contemporaneous service of all motions, certifications, responses, answers and other pleadings." *See* Pa.R.Crim.P. 852(B)(4). The Supreme Court Prothonotary is also required to monitor capital cases and, when competency proceedings are initiated, to "establish communications with the parties and relevant state and federal courts to facilitate the Supreme Court's timely resolution of issues relating to

the execution process." *See* Pa.R.Crim.P. 853(C). Pa.R.A.P. 3315 likewise recognizes the exigencies and requires prompt filing and service and, in cases where execution is imminent, requires measures to ensure contemporaneous service.

Paragraph (c) recognizes that execution competency issues require streamlined treatment outside the normal appeal or petition for review process.

Rule 3316. **[Review of Stay of Execution Orders in Capital Cases.] (Rescinded).**

[When a trial court has entered an order granting or denying a stay of execution in a capital case, such order may be reviewed by the Supreme Court in the manner prescribed in Pa.R.A.P. 1704.

Explanatory Comment—2005

The promulgation of new Rule 3316 addresses a gap in the Rules of Appellate Procedure such that there was no immediate vehicle for review of stays of execution orders granted or denied ancillary to Post Conviction Relief Act ("PCRA") petitions in capital cases. See *Commonwealth v. Morris*, 565 Pa. 1, 771 A.2d 721 (2001) ("*Morris I*"). The new Rule permits an immediate appeal from an order granting or denying a stay pending a determination of the underlying PCRA petition. The new Rule also permits immediate review of a grant of a stay of execution without the filing of an appeal in situations in which the trial court grants a stay of execution but denies the PCRA petition.

There may be cases in which the PCRA court denies a stay of execution at the same time that it denies a timely PCRA petition. In such cases, the petitioner may take an immediate appeal from the denial of the stay of execution, even before the petitioner files an appeal from the denial of the PCRA petition. The PCRA court lacks jurisdiction to grant a stay of execution in connection with an untimely PCRA petition. See *Morris I*. However, the improper grant of a stay in connection with an untimely PCRA petition is also immediately reviewable under this Rule. See Pa.R.Crim.P. 909(A)(2).

Pa.R.Crim.P. 909(A)(2) only applies to properly granted stays of execution. Once a stay is properly granted, it is not reviewable until the conclusion of the PCRA proceedings, including appellate review. However, the Commonwealth may seek review under Rule 3316 to determine whether the PCRA court properly granted the stay.

The standard of review for stay applications under 42 Pa.C.S. § 9545(c) is a heightened standard, since there is a greater potential that second and subsequent PCRA applications have been filed merely for purposes of delaying the execution of sentence. See *Morris I* and *Commonwealth v. Morris*, 573 Pa. 157, 822 A.2d 684 (2003) ("*Morris II*"). Stays of execution in capital cases, however, are routinely granted in timely-filed, first PCRA petitions.

Nothing in this Rule or subdivision (d) of Rule 1702 is intended to abrogate the requirement in *Morris II* that any grant of a stay by the trial court while a PCRA petition is pending must comply with the PCRA, 42 Pa.C.S. § 9545(c)(1), nor do these rules expand or diminish any inherent powers of the Supreme Court to grant a stay of execution. See *Morris II*.]

(Former Pa.R.A.P. 3316 (Review of Execution Orders in Capital Cases) was rescinded by Order of (DATE). The subject matter of former Pa.R.A.P. 3316 is now part of Pa.R.A.P. 3314.)

Rule 3316. Miscellaneous.

(a) *Other Cases*.—Death penalty cases involving other issues, such as appeals from collateral orders or other interlocutory appeals, shall proceed in the same manner as other matters in the Supreme Court.

SUPERSEDEAS AND STAYS

Rule 3319. Review of Stay Orders of Appellate Courts.

Where the Superior Court or the Commonwealth Court in the exercise of its appellate jurisdiction has entered an order under Chapter 17 (effect of appeals; *supersedeas*, and stays), such order may be further reviewed by any justice of the Supreme Court in the manner prescribed by Chapter 17 with respect to appellate review of *supersedeas* and stay determinations of lower courts.

***Official Note*: After a party has applied for a stay, etc., in the trial court, and a further application has been acted on by the Superior Court or the Commonwealth Court, or by a judge thereof, a further application may be made under this rule to the Supreme Court or to a justice thereof. Under the prior practice, a petition for allowance of appeal was required in the Supreme Court under Pa.R.A.P. 1702(b) in order to maintain the validity of the Supreme Court action on the stay, etc. Pa.R.A.P. 1702(c) now provides that no appeal or petition need be filed to support jurisdiction under this rule. However, this rule does not invite routine reapplications in the Supreme Court, but only clarifies the procedure when the Court exercises its inherent supervisory powers in cases of egregious error below. *See* 42 Pa.C.S. § 726 (extraordinary jurisdiction).**

The rule was formerly Pa.R.A.P. 3315, but has been renumbered to accommodate the consolidation of the rules relating to capital cases. *See* Pa.R.A.P. 3311—3316.

Proposed Adoption of new Pa.Rs.Crim.P. 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, Amendment of Pa.Rs.Crim.P. 113, 119, 909 and Revision of the Comments to Pa.Rs.Crim.P. 120, 800, and 904

Proposed Adoption of Pa.Rs.A.P. 3311, 3312, 3314, 3315, 3316, 3319, Rescission of Pa.R.A.P. 1704, 1941, 3315, 3316, Amendment of Pa.R.A.P. 702, 901, 909, 1501, 1702, 1761, 2189, 2521, 2572, 3313 and Revision of the Official Notes to Pa.R.A.P. 2151, 2152, 2154, 2155, and 2187

Determination of Competency to be Executed

The Supreme Court of Pennsylvania is considering the adoption of new Pa.Rs.Crim.P. 850—862 that would establish the procedures for determining a defendant's competency to be executed. The Court is also considering the adoption of new Pa.R.A.P. 3311—3316, and 3319 and the rescission of Pa.R.A.P. 1704, 1941, 3315, 3316, that would establish the procedures for seeking review of a competency determination made under the proposed new Criminal Rules as well as a consolidation of the procedures for the review of capital matters generally. The

Court also is considering correlative changes to Pa.Rs.Crim.P. 113, 119, 120, 800, 904 and 909 and to Rules of Appellate Court Procedure 702, 901, 909, 1501, 1702, 1761, 2151, 2152, 2154, 2155, 2187, 2189, 2521, and 2572.

I. *Background*

Ford v. Wainwright, 477 U.S. 399 (1986) held that, pursuant to the Eighth Amendment to the United States Constitution, a defendant is incompetent to be executed when he or she suffers from a mental illness preventing a factual awareness and a rational understanding of the punishment to be imposed and the reasons for its imposition. In *Panetti v. Quarterman*, 551 U.S. 930 (2007), the United States Supreme Court held that, if the defendant makes a substantial threshold showing of incompetency, due process requires a judicial procedure to resolve the issue. *Panetti* did not set forth "precise limits" of the process required, but left to the states the procedures for challenging competency to be executed. *See also Commonwealth v. Banks*, 29 A.3d 1129, 1144 (Pa. 2011).

Pennsylvania does not have specific procedures in either statute or rule for the determination of competency to be executed. The current proposal originated in this Court's opinion in *Commonwealth v. Banks*, 943 A.2d 230 (2007). One of the issues raised in *Banks* regarded the procedures for an examination by a Commonwealth expert of the defendant's mental condition. As the Court observed in a footnote:

> There is not currently in place a specific procedure for the timely handling of *Ford v. Wainwright* claims—either under the PCRA or other legislation, or under this Court's rules. We had hoped that this case might be the proper vehicle for developing such a procedure, but the warrant for appellee's execution has expired and the parties do not address the propriety of the procedure employed here. Therefore, we will refer the matter to the Appellate Court Procedural Rules Committee and the Criminal Procedural Rules Committee to recommend a framework for the filing and disposition of motions for stay of execution based on a defendant's purported incompetence to be executed.

As directed by the Court, the Committees jointly developed a proposal that was published for comment on May 8, 2010.[1]

II. *Criminal Rules*

The 2010 proposal deemed a *Ford* claim ripe whenever an execution warrant issued: counsel would be appointed if the defendant was unrepresented and counsel's motion challenging competency would initiate the *Ford* claim. The proposal envisioned that, if the defendant made a substantial threshold showing of incompetency, requiring a hearing, a 210-day stay of execution would follow.

Following submission of the proposal, the Court has concluded that there is no point in entertaining *Ford* execution competency claims whenever an execution warrant issues; absent a valid waiver of further review, for example, a warrant issued after direct appeal will be stayed to allow for PCRA review. Moreover, a defendant's mental condition can improve or deteriorate over time. The Court believes it is better to defer *Ford* claims until there is a reasonable likelihood that execution is imminent.

The Court also has reservations with the lengthy stay of execution, which could be secured by untested expert opinions and supporting documents, as well as the absence of a mechanism to resolve a meritless *Ford* claim before an execution warrant expires.

The Court therefore has revised the proposal to allow for (1) a more timely identification of ripe *Ford* claims, and (2) the prospect of resolving cases posing no colorable *Ford* issue before expiration of an execution warrant. A new Part C to Chapter 8 of the Rules of Criminal Procedure, containing proposed new Rules 850—862, would be added to provide these procedures. The revised proposal envisions a competency certification by the Secretary of Corrections ("the Secretary"), triggered by the Commonwealth filing a certification motion.

The rules in Part C would recognize that if there is a reasonable likelihood that execution is imminent, the Commonwealth need not wait until the issuance of the execution warrant before beginning the process of identifying a colorable *Ford* claim. To avail itself of an accelerated determination of the preliminary issue of entitlement to a hearing, the Commonwealth would be required under new Rule 855 to track and identify cases posing a reasonable likelihood that execution is imminent (*e.g.*, due to exhaustion or waiver of direct and collateral avenues of challenge), and act in advance of an execution warrant. To facilitate the Department of Corrections' role, the rules require serving the Secretary with copies of all motions, pleadings, and orders. *See* proposed Rule 852(8). Proposed Rule 856 recognizes that the Secretary has access to qualified staff to monitor mental health issues and is positioned to produce an expert-supported certification in short order.

If the Secretary certifies that the prisoner is competent, the proposed rules make a trial court and appellate court level fast-track available to the prisoner, governed initially by Rule 857. If the prisoner makes the required substantial threshold showing of incompetency, a stay of execution issues and a hearing governed by Rules 860 and 861 will be held. The certification protocol should ensure that colorable competency issues are timely identified in all capital cases (and attendant stays of execution and hearings afforded), while meritless claims are identified and determined without unnecessary delay.

III. *Appellate Rules*

Complementary to the procedures applicable in the trial court, a related revision of the Rules of Appellate Procedure would establish the procedures on appeal. The 2010 proposal had recommended that the Petition for Review ("PFR") process govern execution competency appeals. Following submissions, the Court has determined it would be better to devise a procedure using an application as the initiating document. It would thus operate outside the current PFR process, as well as the Notice of Appeal process. This process is set forth in proposed new Pa.R.A.P. 3315.

In considering the appropriate placement of this rule, the Court noted that, over the years, the rules relating to capital matters have become scattered across the various chapters of appellate procedure and were in need of clarification and updating. Rather than address the competency review procedures in isolation, the Court is proposing to update, align, and consolidate all appellate rules governing capital review, and it would enact a new, self-contained rule governing execution competency review.

The placement of the new rules is in Chapter 33 (Business of the Supreme Court). The new rules related

[1] *See* 40 Pa.B. 2397 (May 8, 2010). The *Reports* also were posted on the Court's web page and published in the *Pennsylvania Reporter*, the *Legal Intelligencer*, and the *Pittsburgh Legal Journal*.

to capital review, proposed Rules 3311—3316,[2] would be placed after Rule 3309 (Applications for Extraordinary Relief) and would appear under a heading, "SPECIAL RULES APPLICABLE IN DEATH PENALTY CASES."

In addition, the new rules would address the interplay between automatic review of a death sentence and the more robust review available upon a direct appeal. Pa.R.A.P. 3311 would explain the two avenues of review, and it would provide that special procedures attending automatic review under Pa.R.A.P. 3312 are triggered only if no appeal is taken, and consolidate all other procedural rules relevant to both direct and automatic review. Pa.R.A.P. 3313 would explicitly address, for the first time, capital PCRA appeals, collecting those of the existing special rules that apply to such appeals. Pa.R.A.P. 3314 would consolidate and update the various rules and commentary addressing stays of execution, most importantly to state that execution is stayed not only during automatic review, as Pa.R.A.P. 1761 now states, but also during a direct appeal and an appeal involving a timely, first PCRA petition. The Court intends this approach to narrow contested issues to stays ancillary to serial PCRA petitions or extra-PCRA matters. The approach also aligns better with 42 Pa.C.S. § 9545(c)(2), the statutory stay of execution standard specifically governing serial petition cases.

IV. *Additional Questions*

While considerable study and analysis has already gone into the development of these proposed procedures, at least one Justice is interested in the experienced opinions of the bench and bar with regard to the practicalities of the proposal. Particularly, at least one Justice is interested in responses to the questions listed below.

(1) Are the timelines set forth in the proposals workable in actual practice in their current form?

(2) What should be the consequences of failure to adhere strictly to the timelines? For example, what should happen when the Secretary fails to certify within ten days that the defendant is competent or files a competency report late? What should be consequences if the defendant fails to file a Rule 857 motion within seven days—would he or she be procedurally barred from challenging the Secretary's competency determination?

(3) What mechanism, if any, should the rules provide for the appointment of an expert, including funding, to evaluate the defendant for his or her own purposes?

(4) Should the rules mandate specific requirements that counsel must take immediately upon being appointed to ensure a timely evaluation and preparation of the case. If so, what should those steps be and in what priority?

(5) Should the rules provide for discovery after the Secretary certifies that the defendant is competent or incompetent? If so, what would be appropriate the time frames for such discovery?

(6) Should the rules provide a definition of what constitutes a substantial threshold showing of incompetency or delineate factors or considerations are relevant to that determination? If so, what should they be?

[Pa.B. Doc. No. 17-1329. Filed for public inspection August 11, 2017, 9:00 a.m.]

[2] Current Pa.R.A.P. 3315 (Review of Stay Orders of Appellate Courts) would be renumbered as Pa.R.A.P. 3319.

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. IX]

Proposed Amendment of Comment to Pa.R.E. 901 and 902

Proposed amendment of Pa.R.E. 901 and 902 governing authentication is being published 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:

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Committee on Rules of Evidence
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All communications in reference to the proposal should be received by September 18, 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 Committee on
Rules of Evidence

MAUREEN MURPHY McBRIDE, Esq.,
Chair

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 901. Authenticating or Identifying Evidence.

(a) *In General.* **[To] Unless stipulated, to** satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) *Examples.* The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) *Testimony of a Witness with Knowledge.* Testimony that an item is what it is claimed to be.

(2) *Nonexpert Opinion about Handwriting.* A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) *Comparison by an Expert Witness or the Trier of Fact.* A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) *Distinctive Characteristics and the Like.* The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) *Opinion About a Voice.* An opinion identifying a person's voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) *Evidence About a Telephone Conversation.* For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) *Evidence About Public Records.* Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) *Evidence About Ancient Documents or Data Compilations.* For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 30 years old when offered.

(9) *Evidence About a Process or System.* Evidence describing a process or system and showing that it produces an accurate result.

(10) *Methods Provided by a Statute or a Rule.* Any method of authentication or identification allowed by a statute or a rule prescribed by the Supreme Court.

Comment

Pa.R.E. 901(a) is identical to F.R.E. 901(a) and consistent with Pennsylvania law. The authentication or identification requirement may be expressed as follows: When a party offers evidence contending either expressly or impliedly that the evidence is connected with a person, place, thing, or event, the party must provide evidence sufficient to support a finding of the contended connection. *See Commonwealth v. Hudson*, **[489 Pa. 620,]** 414 A.2d 1381 (**Pa.** 1980); *Commonwealth v. Pollock*, **[414 Pa. Super. 66,]** 606 A.2d 500 (**Pa. Super.** 1992). **The proponent may be relieved of this burden when all parties have stipulated the authenticity or identification of the evidence. *See, e.g.*, Pa.R.C.P. No. 212.3(a)(3) (Pretrial Conference); Pa.R.C.P. No. 4014 (Request for Admission); Pa.R.Crim.P. 570(A)(2) & (3) (Pretrial Conference).**

In some cases, real evidence may not be relevant unless its condition at the time of trial is similar to its condition at the time of the incident in question. In such cases, the party offering the evidence must also introduce evidence sufficient to support a finding that the condition is similar. Pennsylvania law treats this requirement as an aspect of authentication. *See Commonwealth v. Hudson*, **[489 Pa. 620,]** 414 A.2d 1381 (**Pa.** 1980).

Demonstrative evidence such as photographs, motion pictures, diagrams and models must be authenticated by evidence sufficient to support a finding that the demonstrative evidence fairly and accurately represents that which it purports to depict. *See Nyce v. Muffley*, **[384 Pa. 107,]** 119 A.2d 530 (**Pa.** 1956).

Pa.R.E. 901(b) is identical to F.R.E. 901(b).

Pa.R.E. 901(b)(1) is identical to F.R.E. 901(b)(1). It is consistent with Pennsylvania law in that the testimony of a witness with personal knowledge may be sufficient to authenticate or identify the evidence. *See Commonwealth v. Hudson*, **[489 Pa. 620,]** 414 A.2d 1381 (**Pa.** 1980).

Pa.R.E. 901(b)(2) is identical to F.R.E. 901(b)(2). It is consistent with 42 Pa.C.S. § 6111, which also deals with the admissibility of handwriting.

Pa.R.E. 901(b)(3) is identical to F.R.E. 901(b)(3). It is consistent with Pennsylvania law. When there is a question as to the authenticity of an exhibit, the trier of fact will have to resolve the issue. This may be done by comparing the exhibit to authenticated specimens. *See Commonwealth v. Gipe*, **[169 Pa. Super. 623,]** 84 A.2d 366 (**Pa. Super.** 1951) (comparison of typewritten document with authenticated specimen). Under this rule, the court must decide whether the specimen used for comparison to the exhibit is authentic. If the court determines that there is sufficient evidence to support a finding that the specimen is authentic, the trier of fact is then permitted to compare the exhibit to the authenticated specimen. Under Pennsylvania law, lay or expert testimony is admissible to assist the jury in resolving the question. *See, e.g.*, 42 Pa.C.S. § 6111.

Pa.R.E. 901(b)(4) is identical to F.R.E. 901(b)(4). Pennsylvania law has permitted evidence to be authenticated by circumstantial evidence similar to that discussed in this illustration. The evidence may take a variety of forms including: evidence establishing chain of custody, see *Commonwealth v. Melendez*, **[326 Pa. Super. 531,]** 474 A.2d 617 (**Pa. Super.** 1984); evidence that a letter is in reply to an earlier communication, see *Roe v. Dwelling House Ins. Co. of Boston*, **[149 Pa. 94,]** 23 A. 718 (**Pa.** 1892); testimony that an item of evidence was found in a place connected to a party, see *Commonwealth v. Bassi*, **[284 Pa. 81,]** 130 A. 311 (**Pa.** 1925); a phone call authenticated by evidence of party's conduct after the call, see *Commonwealth v. Gold*, **[123 Pa. Super. 128,]** 186 A. 208 (**Pa. Super.** 1936); and the identity of a speaker established by the content and circumstances of a conversation, see *Bonavitacola v. Cluver*, **[422 Pa. Super. 556,]** 619 A.2d 1363 (**Pa. Super.** 1993).

Pa.R.E. 901(b)(5) is identical to F.R.E. 901(b)(5). Pennsylvania law has permitted the identification of a voice to be made by a person familiar with the alleged speaker's voice. *See Commonwealth v. Carpenter*, **[472 Pa. 510,]** 372 A.2d 806 (**Pa.** 1977).

Pa.R.E. 901(b)(6) is identical to F.R.E. 901(b)(6). This paragraph appears to be consistent with Pennsylvania law. *See Smithers v. Light*, **[305 Pa. 141,]** 157 A. 489 (**Pa.** 1931); *Wahl v. State Workmen's Ins. Fund*, **[139 Pa. Super. 53,]** 11 A.2d 496 (**Pa. Super.** 1940).

Pa.R.E. 901(b)(7) is identical to F.R.E. 901(b)(7). This paragraph illustrates that public records and reports may be authenticated in the same manner as other writings. In addition, public records and reports may be self-authenticating as provided in Pa.R.E. 902. Public records

and reports may also be authenticated as otherwise provided by statute. *See* Pa.R.E. 901(b)(10) and its Comment.

Pa.R.E. 901(b)(8) differs from F.R.E. 901(b)(8), in that the Pennsylvania Rule requires thirty years, while the Federal Rule requires twenty years. This change makes the rule consistent with Pennsylvania law. *See Commonwealth ex rel. Ferguson v. Ball*, **[277 Pa. 301,]** 121 A. 191 (**Pa.** 1923).

Pa.R.E. 901(b)(9) is identical to F.R.E. 901(b)(9). There is very little authority in Pennsylvania discussing authentication of evidence as provided in this illustration. The paragraph is consistent with the authority that exists. For example, in *Commonwealth v. Visconto*, **[301 Pa. Super. 543,]** 448 A.2d 41 (**Pa. Super.** 1982), a computer print-out was held to be admissible. In *Appeal of Chartiers Valley School District*, **[67 Pa. Cmwlth. 121,]** 447 A.2d 317 (**Pa. Cmwlth.** 1982), computer studies were not admitted as business records, in part, because it was not established that the mode of preparing the evidence was reliable. The court used a similar approach in *Commonwealth v. Westwood*, **[324 Pa. 289,]** 188 A. 304 (**Pa.** 1936) (test for gun powder residue) and in other cases to admit various kinds of scientific evidence. *See Commonwealth v. Middleton*, **[379 Pa. Super. 502,]** 550 A.2d 561 (**Pa. Super.** 1988) (electrophoretic analysis of dried blood); *Commonwealth v. Rodgers*, **[413 Pa. Super. 498,]** 605 A.2d 1228 (**Pa. Super.** 1992) (results of DNA/RFLP testing).

Pa.R.E. 901(b)(10) differs from F.R.E. 901(b)(10) to eliminate the reference to Federal law and to make the paragraph conform to Pennsylvania law.

There are a number of statutes that provide for authentication or identification of various types of evidence. *See, e.g.*, 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office); 42 Pa.C.S. § 6110 (certain registers of marriages, births and burials records); 75 Pa.C.S. § 1547(c) (chemical tests for alcohol and controlled substances); 75 Pa.C.S. § 3368 (speed timing devices); 75 Pa.C.S. § 1106(c) (certificates of title); 42 Pa.C.S. § 6151 (certified copies of medical records); 23 Pa.C.S. § 5104 (blood tests to determine paternity); 23 Pa.C.S. § 4343 (genetic tests to determine paternity).

***Official Note*: Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013; adopted , 2017, effective , 2017**.

Committee Explanatory Reports:

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the , 2017 amendment published with the Court's Order at 47 Pa.B. (, 2017).

Rule 902. Evidence That Is Self-Authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) *Domestic Public Documents That Are Not Sealed But Are Signed and Certified.* A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) *Certified Copies of Public Records.* A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a statute or a rule prescribed by the Supreme Court.

A certificate required by paragraph (4)(B) may include a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization. A seal may, but need not, be raised.

(5) *Official Publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) *Newspapers and Periodicals.* **[Printed material] Material** purporting to be a newspaper or periodical.

(7) *Trade Inscriptions and the Like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) *Acknowledged Documents.* A document accompanied by a certificate of acknowledgment that is lawfully ex-

ecuted by a notary public or another officer who is authorized to take acknowledgments.

(9) *Commercial Paper and Related Documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) *Presumptions Authorized by Statute.* A signature, document, or anything else that a statute declares to be presumptively or prima facie genuine or authentic.

(11) *Certified Domestic Records of a Regularly Conducted Activity.* The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)—(C), as shown by a certification of the custodian or another qualified person that complies with Pa.R.C.P. No. 76. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

(12) *Certified Foreign Records of a Regularly Conducted Activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification rather than complying with a statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

(13) *Certificate of Non-Existence of a Public Record.* A certificate that a document was not recorded or filed in a public office as authorized by law if certified by the custodian or another person authorized to make the certificate.

Comment

This rule permits some evidence to be authenticated without extrinsic evidence of authentication or identification. In other words, the requirement that a proponent must present authentication or identification evidence as a condition precedent to admissibility, as provided by Pa.R.E. 901(a), is inapplicable to the evidence discussed in Pa.R.E. 902. The rationale for the rule is that, for the types of evidence covered by Pa.R.E. 902, the risk of forgery or deception is so small, and the likelihood of discovery of forgery or deception is so great, that the cost of presenting extrinsic evidence and the waste of court time is not justified. Of course, this rule does not preclude the opposing party from contesting the authenticity of the evidence. In that situation, authenticity is to be resolved by the finder of fact.

Pa.R.E. 902(1), (2), (3)**,** and (4) deal with self-authentication of various kinds of public documents and records. They are identical to F.R.E. 902(1), (2), (3)**,** and (4), except that Pa.R.E. 901(4) eliminates the reference to Federal law. These paragraphs are consistent with Pennsylvania statutory law. *See, e.g.* 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office).

Pa.R.E. 902(4) differs from F.R.E. 902(4) insofar as the rule does not require the certificate to include a pen-and-ink signature or raised seal for the self-authentication of public documents.

Pa.R.E. 902(5), (6)**,** and (7) are identical to F.R.E. 902(5), (6)**,** and (7). There are no corresponding statutory provisions in Pennsylvania; however, 45 Pa.C.S. § 506 (judicial notice of the contents of the *Pennsylvania Code* and the *Pennsylvania Bulletin*) is similar to Pa.R.E. 902(5).

Pa.R.E. 902(8) is identical to F.R.E. 902(8). It is consistent with Pennsylvania law. *See Sheaffer v. Baeringer*, **[346 Pa. 32,]** 29 A.2d 697 (**Pa.** 1943); *Williamson v. Barrett*, **[147 Pa. Super. 460,]** 24 A.2d 546 (**Pa. Super.** 1942); 21 P.S. §§ 291.1—291.13 (Uniform Acknowledgement Act); 57 P.S. §§ 147—169 (Notary Public Law). An acknowledged document is a type of official record and the treatment of acknowledged documents is consistent with Pa.R.E. 902(1), (2), (3), and (4). Pa.R.E. 902(9) is identical to F.R.E. 902(9). Pennsylvania law treats various kinds of commercial paper and documents as self-authenticating. *See, e.g.*, 13 Pa.C.S. § 3505 (evidence of dishonor of negotiable instruments).

Pa.R.E. 902(10) differs from F.R.E. 902(10) to eliminate the reference to Federal law and to make the paragraph conform to Pennsylvania law. In some Pennsylvania statutes, the self-authenticating nature of a document is expressed by language creating a "presumption" of authenticity. *See, e.g.*, 13 Pa.C.S. § 3505.

Pa.R.E. 902(11) and (12) permit the authentication of domestic and foreign records of regularly conducted activity by verification or certification. Pa.R.E. 902(11) is similar to F.R.E. 902(11). The language of Pa.R.E. 902(11) differs from F.R.E. 902(11) in that it refers to Pa.R.C.P. No. 76 rather than to Federal law. Pa.R.E. 902(12) differs from F.R.E. 902(12) in that it requires compliance with a Pennsylvania statute rather than a Federal statute.

Pa.R.E. 902(13) has no counterpart in the Federal Rules. This rule provides for the self-authentication of a certificate of the non-existence of a public record, as provided in Pa.R.E. 803(10)(A).

***Official Note*: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; amended February 23, 2004, effective May 1, 2004; rescinded and replaced January 17, 2013, effective March 18, 2013; amended November 9, 2016, effective January 1, 2017; amended , 2017, effective , 2017**.

Committee Explanatory Reports:

Final Report explaining the November 2, 2001 amendments adding paragraphs (11) and (12) published with Court's Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the February 23, 2004 amendment of paragraph (12) published with Court's Order at 34 Pa.B. 1429 (March 13, 2004).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the November 7, 2016 addition of paragraph (13) published with the Court's Order at 46 Pa.B. 7436 (November 26, 2016).

Final Report explaining the , 2017 amendment of the Comment published with the Court's Order at 47 Pa.B. (, 2017).

REPORT

Proposed Amendment of Pa.R.E. 901 & 902

The Committee on Rules of Evidence is considering amendment of Pennsylvania Rule of Evidence 901 and 902 to facilitate the authentication of evidence. In the most general of descriptions, authentication is the requirement of proving what the evidence is purported to

be. The purpose of this requirement is to reduce the risk of forgery or deception; yet, commentators have questioned whether this safeguard is justified by the time, expense, and inconvenience of authentication. *See* 2 McCormick on Evid. § 221 (7th ed.).

While authentication may serve a salutary purpose in evidence of questionable origin or dubious portrayal, the mechanical application of the requirements in every instance, especially when authentication is not reasonably contested, does not serve the purpose of the Rules in eliminating unjustifiable expense or delay. *See* Pa.R.E. 102. To that end, the Committee wishes to signal to readers that authentication of evidence can be stipulated by the parties and, therefore, relieve the proponent of introducing authentication evidence. Accordingly, Rule 901(a) is proposed to be amended to include the phrase, "unless stipulated," and corresponding Comment language.

With a public comment serving as a catalyst, the Committee undertook review of Rule 902(4) to consider whether copies of public records can be certified and transmitted electronically. This question tested whether a certificate pursuant to Rule 902(4)(B) must be contain a pen-and-ink (a.k.a. "wet") signature and whether a seal, if required, must be raised.

Informed by Pa.R.Crim.P. 103 (defining "signature"), the Committee concluded that a signature on a certification need not be pen-and-ink to serve its function. Additionally, technology has progressed to where wet signatures are no longer required as evidence for commerce and transactions. *See, e.g.*, Electronic Transactions Act, Act of December 16, 1999, P.L. 971, 73 P.S. § 2260.309 ("In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.").

Concerning the necessity of a raised seal, its absence is not a foreign concept. Under the Protection From Abuse Act, a "certified copy" is defined as "a paper copy of the original order of the issuing court endorsed by the appropriate clerk of that court or an electronic copy of the original order of the issuing court endorsed with a digital signature of the judge or appropriate clerk of that court." 23 Pa.C.S. § 6102. The definition goes further to state: "A raised seal on the copy of the order of the issuing court shall not be required." *Id.* Further, Section 322 of the Judicial Code, insofar as it pertains to court seals, states: "A facsimile or preprinted seal may be used for all purposes in lieu of the original seal."

Accordingly, the Committee proposed to amend Rule 902(4) to add:

> A certificate required by paragraph (4)(B) may include a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization. A seal may, but need not, be raised.

This amendment is intended to facilitate the use of electronic forms of certification for copies of public records; it is not intended to prohibit the use of a pen-and-ink signatures and raised seals. Further, this amendment is not intended to address whether a duplicate of a certificate may be admitted to the same extent as the original. *Cf.* Pa.R.E. 1003.

Upon reviewing Rule 902(6), the Committee proposes to remove "printed" as a condition of material purporting to be a newspaper or periodical. The Committee believes that such a term has become antiquated in an era when electronic media has largely replaced print media. The fact that a newspaper or periodical is printed (or not) does not appear to serve as a hallmark of authentication.

All comments, concerns, and suggestions concerning this proposal are welcome.

The Committee also received a request to expand the self-authentication of official publications pursuant to Rule 902(5) to include items published on a public authority's website. The Committee was not inclined to undertake the requested rulemaking believing that "issued," as used in Rule 902(5), was sufficiently broad to include "a book, pamphlet, or other publication" authored or adopted by a public authority and placed on its website. The Committee welcomes comments on whether Rule 902(5) requires further clarification.

[Pa.B. Doc. No. 17-1330. Filed for public inspection August 11, 2017, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Proposed Adoption of Pa.R.C.P. No. 205.6 and Proposed Amendment of Pa.R.C.P. Nos. 229.2 and 240

The Civil Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa.R.C.P. No. 205.6 governing the certification and filing of confidential information and confidential documents, and amendments of Pa.R.C.P. Nos. 229.2 governing the petition to transfer structured settlement payment rights and 240 governing the petition to proceed *in forma pauperis* for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
civilrules@pacourts.us

All communications in reference to the proposal should be received by September 12, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be repro-

duced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee

DAVID L. KWASS,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

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

Rule 205.6. Confidential Information and Confidential Documents. Certification.

Unless public access is otherwise constrained by applicable authority, any attorney, or any party if unrepresented, who files a document pursuant to these rules with the prothonotary's office shall comply with the requirements of Sections 7.0 and 8.0 of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) including a certification of compliance with the Policy and, as necessary, a Confidential Information Form, unless otherwise specified by rule of court, or a Confidential Document Form in accordance with the Policy.

***Official Note*: Applicable authority includes but is not limited to statute, procedural rule or court order. The *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) can be found on the website of the Supreme Court of Pennsylvania at http://www.pacourts.us/public-record-policies. Sections 7.0(D) and 8.0(D) of the Policy provide that the certification shall be in substantially the following form:

> I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

The Confidential Information Form and the Confidential Document Form can be found at http://www.pacourts.us/public-record-policies. In lieu of the Confidential Information Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order pursuant to Pa.R.J.A. No. 103(c) permitting the filing of a document in two versions, a "Redacted Version" and an "Unredacted Version."

Rule 229.2. Petition to Transfer Structured Settlement Payment Rights.

* * * * *

(f) The Payee's Affidavit in Support of Petition shall be substantially in the following form:

(Caption)
Payee's Affidavit in Support of
Petition to Transfer Structured Settlement Rights

* * * * *

3. Minor children and other dependents:

[Names] Initials of minor children, names of other dependents, ages, and places of residence:

_____

_____ .

* * * * *

***Official Note*: The form of order does not preclude a court from adding additional language to the order as deemed appropriate in the individual circumstances of a case.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 205.6.

Rule 240. *In Forma Pauperis.*

(a) This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection From Abuse Act **and the Victims of Sexual Violence and Intimidation Act**.

***Official Note*: The term "all civil actions and proceedings" includes all domestic relations actions except those brought pursuant to the Protection From Abuse Act, **[which are governed by]** 23 Pa.C.S. § 6106 **and the Victims of Sexual Violence and Intimidation Act, 42 Pa.C.S. §§ 62A01—62A20**.

* * * * *

(h) The affidavit in support of a petition for leave to proceed *in forma pauperis* shall be substantially in the following form:

(Caption)

* * * * *

3. I represent that the information below relating to my ability to pay the fees and costs is true and correct:

* * * * *

(g) Persons dependent upon you for support

(Wife) (Husband) Name: _____

Children, if any:

[Name] Initials: _____

* * * * *

(j)(1) If, simultaneous with the commencement of an action or proceeding or the taking of an appeal, a party has filed a petition for leave to proceed *in forma pauperis*, the court prior to acting upon the petition may dismiss the action, proceeding or appeal if the allegation of poverty is untrue or if it is satisfied that the action, proceeding or appeal is frivolous.

***Official Note*: A frivolous action or proceeding has been defined as one that "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989).

(2) If the petitioner commences the action by writ of summons, the court shall not act on the petition for leave to proceed *in forma pauperis* until the complaint is filed. If the complaint has not been filed within ninety days of the filing of the petition, the court may dismiss the action pursuant to subdivision (j)(1).

***Official Note*: The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 205.6.**

Explanatory Comment

On January 6, 2017, the Supreme Court of Pennsylvania adopted the *Public Access Policy: Case Records of the Appellate and Trial Courts* (Policy), which will become effective January 6, 2018. In anticipation of the implementation of the Policy, the Civil Procedural Rules Committee is proposing new Rule 205.6 which provides that

absent any applicable authority that constrains public access, all civil filings must comply with the Policy. Of particular importance are the requirements of Sections 7.0 and 8.0 governing confidential information and confidential documents. In addition, the rule provides that all practitioners and unrepresented parties must certify that a filing is compliant with the Policy.

The Committee is also proposing amendments to Rule 229.2 governing the petition to transfer structured settlement payment rights and Rule 240 governing the petition to proceed *in forma pauperis*. Section 7.0(A)(5) of the Policy prohibits the disclosure of the names of minor children in a filing unless the minor is charged as a defendant in a criminal matter. Both Rule 229.2 and Rule 240 require the filing of an affidavit in support of the petition. The form affidavit currently requires the disclosure of the full names of any minor children of the petitioner. *See* Rule 229.2(f) and 240(h). The proposed amendment would require a petitioner to provide the initials only of any minor children. In addition, a note cross-referencing new Rule 205.6 has been added to both rules. Stylistic amendments to Rule 240 are also proposed.

By the Civil Procedural Rules Committee

DAVID L. KWASS,
Chair

[Pa.B. Doc. No. 17-1331. Filed for public inspection August 11, 2017, 9:00 a.m.]

PART I. GENERAL

[231 PA. CODE CHS. 1900, 1910, 1915, 1920, 1930 AND 1950]

Proposed Amendments to Pa.R.C.P. Nos. 1901.3, 1901.6, 1905, 1910.4, 1910.7, 1910.11, 1910.27, 1915.3, 1915.4-4, 1915.7, 1915.15, 1915.17, 1915.18, 1920.13, 1920.15, 1920.31, 1920.33, 1920.75, 1930.1, 1930.6, 1953 and 1959

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania numerous amendments to the Pennsylvania Rules of Civil Procedure included with this Notice and for the reasons set forth in the accompanying Publication 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:

Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us

All communications in reference to the proposal should be received by September 12, 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 Domestic Relations Procedural Rules Committee

DAVID J. SLESNICK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

Rule 1901.3. Commencement of Action.

* * * * *

(d) The master for emergency relief shall follow the procedures set forth in the Pennsylvania Rules of Civil Procedure Governing Actions and **[proceedings before magisterial district judges] Proceedings before Magisterial District Judges** for emergency relief under the Protection From Abuse Act.

[Explanatory Comment—2006

New subdivision (c) reflects the 2005 amendments to the Protection From Abuse Act which prohibits charging fees or costs against the plaintiff. 23 Pa.C.S.A. § 6106(b). The 2005 amendments to 23 Pa.C.S.A. § 6110(e) of the Protection From Abuse Act authorize the use of masters for emergency relief which is reflected in new subdivision (d).]

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

Rule 1901.6. **[No responsive pleading required] Responsive Pleading not Required**.

[No pleading need be filed in response] The defendant is not required to file an answer or other responsive pleading to the petition or the certified order**,** and all averments not admitted shall be deemed denied.

***Official Note*:** For procedures as to the time and manner of hearings and issuance of orders, see 23 **[Pa.C.S.A.] Pa.C.S.** § 6107. For provisions as to the scope of relief available, see 23 **[Pa.C.S.A.] Pa.C.S.** § 6108. For provisions as to contempt for violation of an order, see 23 **[Pa.C.S.A.] Pa.C.S.** § 6114.

This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified*

***Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

Rule 1905. Forms for Use in PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

* * * * *

(b) The petition in an action filed pursuant to the Act shall be substantially in the following form, but the first page (paragraphs 1 through 4), following the Notice of Hearing and Order, **[must] shall** be exactly as set forth in this rule:

* * * * *

Notice: This attachment will be withheld from public inspection in accordance with 23 Pa.C.S.A. § 6108(a)(7)(v).

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(c) The Temporary Order of Court, or any continued, amended**,** or modified Temporary Order of Court, entered pursuant to the Act shall be substantially in the following form, but the first page **[must] shall** be exactly as set forth in this rule:

* * * * *

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.4. Commencement of Action. Fee.

(a) An action shall be commenced by filing a complaint with the domestic relations section of the court of common pleas.

***Official Note*:** For the form of the complaint, see **[Rule] Pa.R.C.P. No.** 1910.27(a).

This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).

Section 961 of the Judicial Code, 42 Pa.C.S. § 961, provides that each court of common pleas shall have a domestic relations section.

* * * * *

Rule 1910.7. **[No]** Pleading by Defendant **not** Required. Question of Jurisdiction or Venue or Statute of Limitations in Paternity.

(a) **[No] An answer or other responsive** pleading by the defendant shall **not** be required, but if **the** defendant elects to file a pleading, the domestic relations office conference required by the order of court shall not be delayed.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(b) If defendant raises a question of jurisdiction or venue or in paternity cases the defense of the statute of limitations, the court shall promptly dispose of the question and may, in an appropriate case, stay the domestic relations office conference.

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

* * * * *

(c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses**,** and proof of medical coverage **[which] that** they may have or have available to them. In addition, **[they] the parties** shall provide copies of their Income **Statements** and Expense Statements in the forms required by **[Rule 1910.27(c), completed as set forth below] Pa.R.C.P. No. 1910.27(c) and completed as set forth in (1) and (2) of this subdivision**.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(1) For cases which can be determined according to the guideline formula, the Income Statement must be completed and the Expense Statement at Rule 1910.27(c)(2)(A) should be completed if a party is claiming unusual needs and unusual fixed expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks apportionment of expenses pursuant to Rule 1910.16-6. In a support case that can be decided according to the guidelines, even if the support claim is raised in a divorce complaint, no expense form is needed unless a party claims unusual needs or unusual fixed expenses or seeks apportionment

of expenses pursuant to Rule 1910.16-6. However, in the divorce action, the Expense Statement at Rule 1910.27(c)(2)(B) may be required.

* * * * *

Rule 1910.27. Form of Complaint. Order. Income Statements and Expense Statements. Health Insurance Coverage Information Form. Form of Support Order. Form Petition for Modification. Petition for Recovery of Support Overpayment.

(a) The complaint in an action for support shall be substantially in the following form:

* * * * *

NOTICE

Guidelines for child and spousal support, and for alimony pendente lite have been prepared by the Court of Common Pleas and are available for inspection in the office of Domestic Relations Section,

_____

(Address)

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(b) The order to be attached at the front of the complaint **[set forth]** in subdivision (a) shall be **[in]** substantially **in** the following form:

* * * * *

(c) The Income **Statements** and Expense Statements to be attached to the order **in subdivision (b)** shall be **[in]** substantially **in** the following form:

(1) *Income* **[** ***Statement*** **]** ***Statements***. This form must be filled out in all cases.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

_____ v. _____ No. _____

* * * * *

(2) *Expense Statements*. An Expense Statement is not required in cases **[which] that** can be determined pursuant to the guidelines unless a party avers unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-5 or seeks an apportionment of expenses pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-6. **[( ]***See* **[Rule] Pa.R.C.P. No.** 1910.11(c)(1)**[ )]**. Child support is calculated under the guidelines based upon the **monthly** net incomes of the parties, with additional amounts ordered as necessary to provide for child care expenses, health insurance premiums, unreimbursed medical expenses, mortgage payments**,** and other needs, contingent upon the obligor's ability to pay. The Expense Statement in subparagraph (A) **[below]** shall be utilized if a party is claiming that he or she has unusual needs and unusual fixed expenses that may warrant deviation or adjustment in a case determined under the guidelines. In child support, spousal support**,** and alimony *pendente lite* cases calculated pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-3.1 and in divorce cases involving claims for alimony **[or],** counsel fees, **or** costs and expenses pursuant to **[Rule] Pa.R.C.P. No.** 1920.31(a), the parties must complete the Expense Statement in subparagraph (B) **[below]**.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(A) *Guidelines Expense Statement.* If the combined monthly net income of the parties is $30,000 or less, it is not necessary to complete this form unless a party is claiming unusual needs and expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks an apportionment of expenses pursuant to Rule 1910.16-6. At the conference, each party must provide receipts or other verification of expenses claimed on this statement. The Guidelines Expense Statement shall be substantially in the following form.

* * * * *

CHAPTER 1915. ACTIONS FOR CUSTODY OF MINOR CHILDREN

Rule 1915.3. Commencement of Action. Complaint. Order.

(a) Except as provided by subdivision (c), an action shall be commenced by filing a verified complaint substantially in the form provided by **[Rule] Pa.R.C.P. No.** 1915.15(a).

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(b) An order shall be attached to the complaint directing the defendant to appear at a time and place specified. The order shall be substantially in the form provided by Rule 1915.15(b).

* * * * *

Rule 1915.4-4. Pre-Trial Procedures.

* * * * *

(b) Not later than five days prior to the pre-trial conference, each party shall file a pre-trial statement with the prothonotary's office and serve a copy upon the court and the other party or counsel of record. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

* * * * *

In addition to the above items included in the pre-trial statement, any reports of experts and other proposed exhibits shall be included as part of the pre-trial statement served upon the other party or opposing counsel, but not included with the pre-trial statement served upon the court.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(c) If a party fails to file a pre-trial statement or otherwise comply with the requirements of subdivision (b), the court may make an appropriate order under Pa.R.C.P. No. 4019(c)(2) and (4) governing sanctions.

* * * * *

Rule 1915.7. Consent Order.

If an agreement for custody is reached and the parties desire a consent order to be entered, they shall note their agreement upon the record or shall submit to the court a proposed order bearing the written consent of the parties or their counsel.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

Rule 1915.15. Form of Complaint. Caption. Order. Petition to Modify a Custody Order.

(a) The complaint in an action for custody shall be **[in]** substantially **in** the following form:

* * * * *

***Official Note*: The form of complaint is appropriate [where] if** there is one plaintiff and one defendant and **[where] if** the custody of one child is sought, or **[where] if** the custody of several children is sought and the information required by paragraphs 3 to 7 is identical for all of the children. **[Where] If** there are multiple parties, the complaint should be appropriately adapted to accommodate them. **[Where] If** the custody of several children is sought and the information required is not identical for all **of the children**, the complaint should contain a separate paragraph for each child.

This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).

(b) A petition to modify a custody order shall be **[in]** substantially **in** the following form:

* * * * *

I verify that the statements made in this petition are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date Petitioner

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(c) The order to be attached at the front of the complaint or petition for modification shall be **[in]** substantially **in** the following form:

* * * * *

Rule 1915.17. Relocation. Notice and Counter-Affidavit.

* * * * *

(i) The notice of proposed relocation shall be substantially in the following form:

* * * * *

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMA-

TION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

_____

_____

_____

_____

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(j) The counter-affidavit that must be served with the relocation notice shall be substantially in the following form as set forth **[at] in** 23 Pa.C.S. § 5337(d):

* * * * *

I verify that the statements made in this counter-affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

_____ _____

(Date) (Signature)

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

Rule 1915.18. Form of Order Directing Expert Examination and Report.

The order of court directing expert evaluation in a custody matter pursuant to **[Rule] Pa.R.C.P. No.** 1915.8 shall be **[in]** substantially **in** the following form:

* * * * *

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.13. Pleading More Than One Cause of Action. Alternative Pleading.

* * * * *

(b) **[The plaintiff may] Except as otherwise provided in these rules, the plaintiff may:**

(1) join **as separate counts** in the complaint **[in separate counts any other claims which may under the Divorce Code] the ancillary claims that may** be joined with an action of divorce or for annulment **[or, if they have not been so joined, the plaintiff may as of course] under the Divorce Code;**

(2) amend the complaint to include **[such other claims or may] the ancillary claims;**

(3) file to the same term and number a separate supplemental complaint or complaints limited to **[such other] the ancillary** claims; or

[(2)] (4) file to the same term and number a subsequent petition raising **[such other] the ancillary** claims.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(c) The court may order alimony pendente lite, reasonable counsel fees, costs and expenses pending final disposition of any claim.

Rule 1920.15. Counterclaim. Subsequent Petition.

(a) The defendant may **[set forth] state** in an answer under the heading "Counterclaim" a cause of action of divorce or for annulment **[and, whether the defendant does so or not, may set forth any other matter which under the Divorce Code may be joined with an action of divorce]**.

(b) **[The defendant may] Except as otherwise provided in these rules, the defendant may:**

(1) join as separate counts in the counterclaim the ancillary claims that may be joined with an action of divorce or for annulment under the Divorce Code; or

(2) file **[to] at** the same term and number a subsequent petition raising **[any claims which under the Divorce Code may be joined with an action of divorce or for annulment. The averments shall be deemed denied unless admitted by an answer] the ancillary claims**.

(c) The averments in the counterclaim shall be deemed denied unless admitted by an answer.

***Official Note*:** *See* **[Rule] Pa.R.C.P. No.** 1920.31, which requires the joinder of certain related claims under penalty of waiver. A claim for alimony must be raised before the entry of a final decree of divorce or annulment.

This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing

or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).

Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony Pendente Lite. Counsel Fees. Expenses.

(a)(1) **[When either] If a** party has raised a claim for alimony **[or],** counsel fees, **or** costs and expenses, **[each party] the parties** shall file a true copy of the most recent federal income tax return, pay stubs for the preceding six months, a completed Income Statement in the form required **[at Rule] by Pa.R.C.P. No.** 1910.27(c)(1)**,** and a completed Expense Statement in the form required by **[Rule] Pa.R.C.P. No.** 1910.27(c)(2)(B). A party may not file a motion for the appointment of a master or a request for court action regarding alimony, alimony *pendente lite* **[or],** counsel fees, **[cost] or costs** and expenses until at least 30 days following the filing of that party's tax returns, Income Statement**,** and Expense Statement. The other party shall file the tax returns, Income Statement**,** and Expense Statement within 20 days of service of the moving party's documents. If a claim for child support, spousal support**,** or alimony *pendente lite* is raised in a divorce complaint, **[no expense form is] an Expense Statement is not** needed in a support action that can be decided pursuant to the support guidelines unless a party claims unusual needs or unusual fixed expenses **[or],** seeks deviation pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-5**,** or apportionment of expenses pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-6.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(2) If a party fails to file the documents as required by subdivision (a)(1), the court on motion may make an appropriate order under Rule 4019 governing sanctions.

* * * * *

Rule 1920.33. Joinder of Related Claims. Equitable Division. Enforcement.

(a) If a pleading or petition raises a claim for equitable division of marital property under Section 3502 of the Divorce Code, the parties shall file and serve on the other party an inventory, which shall include the information in subdivisions (1) through (3) and shall be substantially in the form set forth in Pa.R.C.P. No. 1920.75. Within 20 days of service of the moving party's inventory, the non-moving party shall file an inventory. A party may not file a motion for the appointment of a master or a request for court action regarding equitable division until at least 30 days following the filing of that party's inventory.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

The inventory shall set forth as of the date of separation:

* * * * *

(b) Within the time required by order of court or written directive of the master or, if none, at least 60 days before the scheduled hearing on the claim for equitable division, the parties shall file and serve upon the other party a pre-trial statement. The pre-trial statement shall include the following matters, together with any additional information required by special order of the court:

* * * * *

(10) a proposed resolution of the economic issues raised in the pleadings.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(c) If a party fails to file either an inventory, as required by subdivision (a), or a pre-trial statement, as required by subdivision (b), the court may make an appropriate order under Pa.R.C.P. No. 4019(c) governing sanctions.

* * * * *

Rule 1920.75. Form of Inventory.

The inventory required by **[Rule] Pa.R.C.P. No.** 1920.33(a) shall be substantially in the following form:

* * * * *

LIABILITIES

Item Number	*Description of Property*	*Names of All Creditors*	*Names of All Debtors*	*Estimated Value at Date of Separation*

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY

Rule 1930.1. **[Form of Pleadings.]** Form of Caption. **Confidential Information and Confidential Documents. Certification.**

(a) The form of the caption in all domestic relations matters shall be substantially as follows:

In the Court of Common Pleas of _____ County, Pennsylvania

A. Litigant,	)	
Plaintiff	)	
vs.	)	No. **[of 19] (Docket number)**
B. Litigant,	)	
Defendant	)	

(Title of Pleading)

***Official Note*:** As domestic relations matters are no longer quasi-criminal, the phrase "Commonwealth ex rel." shall not be used in the caption of any domestic relations matter.

(b) Attorneys and unrepresented parties who file documents with the prothonotary's office or domestic relations office pursuant to these rules, including Protection from Abuse, Support, Custody, Divorce, or Protection of Victims of Sexual Violence and Intimidation, shall comply with Sections 7.0 and 8.0 of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy). The Policy has specific requirements for both Confidential Documents and other documents containing Confidential Information, which includes, but are not limited to, the following:

- **Social Security Numbers;**
- **Financial Account Numbers**
- **Driver License Numbers;**
- **State Identification (SID) Numbers;**
- **Minors' names and dates of birth**
- **Abuse victim's address and other contact information**
- **Financial Source Documents;**
- **Minors' educational records;**
- **Medical/Psychological records;**
- **Children and Youth Services' records;**
- **Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33;**
- **Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c); and**
- **Agreements between the parties as used in 23 Pa.C.S. § 3105.**

Additionally, the Policy requires the person filing a document to certify in writing:

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

***Official Note*: The *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) can be found on the website of the Supreme Court of Pennsylvania at http://www.pacourts.us/assets/opinions/supreme/out/477jad-attach1.pdf?cb=1&cb=1499874026638.**

Rule 1930.6. Paternity Actions. **Scope. Venue. Commencement of Action.**

(a) **[*Scope.*]** This rule shall govern the procedure by which a putative father may initiate a civil action to establish paternity and seek genetic testing. Such an action shall not be permitted if an order already has been entered as to the paternity, custody**,** or support of the child, or if a support or custody action to which the putative father is a party is pending.

(b) **[*Venue.*]** An action may be brought only in the county in which the defendant or the child(ren) reside.

(c) **[*Commencement of Action.*]** An action shall be **[initiated] commenced** by filing a verified complaint to establish paternity and for genetic testing substantially in the form set forth in subdivision (1) **[below]**. The complaint shall have as its first page the Notice of Hearing and Order set forth in subdivision (2) **[below]**.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(1) The complaint filed in a civil action to establish paternity shall be substantially in the following form:

* * * * *

CHAPTER 1950. ACTIONS PURSUANT TO THE PROTECTION OF VICTIMS OF SEXUAL VIOLENCE OR INTIMIDATION ACT

Rule 1953. Commencement of Action.

* * * * *

(c) Any fees associated with this action shall not be charged to the plaintiff.

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

Rule 1959. Forms for Use in Protection of Victims of Sexual Violence or Intimidation Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

* * * * *

(b) The petition in an action filed pursuant to the Act shall be identical in content to the following form:

* * * * *

VERIFICATION

I verify that the statements made in this petition are true and correct to the best of my knowledge. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

_____

Signature

_____

Date

***Official Note*: This rule may require attorneys or unrepresented parties to file Confidential Documents and documents containing Confidential Information that are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. The policy requires that a person filing Confidential Documents or documents containing Confidential Information attach a Confidential Document Form or a Confidential Information Form to the document before filing or, alternatively, file a redacted version of the document. *See* Pa.R.C.P. No. 1930.1(b).**

(c) The Temporary Order of Court, or any continued, amended or modified Temporary Order of Court, entered pursuant to the Act shall be identical in content to the following form:

* * * * *

PUBLICATION REPORT

Recommendation 166

On January 6, 2017, the Supreme Court of Pennsylvania adopted the Public Access Policy: Case Records of the Appellate and Trial Courts (Policy), which will become effective January 6, 2018. Of particular importance are the requirements of Sections 7.0 and 8.0 governing confidential information and confidential documents. In anticipation of the implementation of the Policy, the Domestic Relations Procedural Rules Committee (Committee) is proposing a new subdivision to Pa.R.C.P. No. 1930.1, which provides that all domestic relations filings must comply with the Policy. Also, the rule notes that all practitioners and unrepresented parties must certify that a filing is compliant with the Policy. In addition to the amendment in Pa.R.C.P. No. 1930.1(b), the Committee is proposing the addition of an official note referencing the amendment to Pa.R.C.P. No. 1930.1(b) in numerous other rules related to the filing of confidential information and documents.

The Policy will have a significant impact on the family law practice as many of the items outlined in Section 7.0 and Section 8.0 of the Policy identify information and documents routinely included in the family law practice. Compounding the impact of the Policy is the significant number of *pro se* litigants in family law cases, who must understand and comply with the Policy.

Notwithstanding that the domestic relations procedural rules are a subset of the Rules of Civil Procedure, the Committee determined a separate standalone rule was necessary for the domestic rules as many *pro se* parties to domestic relations litigation rarely consult the general rules of civil procedure. The Committee concluded that the general rules relating to domestic relations, Chapter 1930, should include the standalone rule; however, as with the general civil rules, the Committee decided that many *pro se* litigants involved in specific litigation (e.g. support only or custody only) might not consult the Chapter 1930 series of rules on a routine basis. As such, in addition to the standalone rule in the Chapter 1930 series, the Committee included a note referencing the standalone rule in those domestic relations rules that may require an attorney or a party to file a confidential document or a document with confidential information.

The Committee invites comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 17-1332. Filed for public inspection August 11, 2017, 9:00 a.m.]

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Proposed Adoption of Pa. O.C. Rule 1.99 and Proposed Amendment of Pa. O.C. Rules 2.1, 2.4, 2.7-2.8, 2.10, 3.3—3.6, 3.9—3.11 and 3.14

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa. O.C. Rule 1.99, governing the certification and filing of confidential information and documents, and amendment of Pa. O.C. Rules 2.1, 2.4, 2.7-2.8, 2.10, 3.3—3.6, 3.9—3.11, and 3.14, to add a cross-reference to the new rule, 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 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:

Orphans' Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
orphanscourtproceduralrules@pacourts.us

All communications in reference to the proposal should be received by September 12, 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 Orphans' Court
Procedural Rules Committee

JOHN F. MECK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

CHAPTER I. PRELIMINARY RULES

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

Rule 1.99. Confidential Information and Confidential Documents. Certification.

Unless public access is otherwise constrained by applicable authority, any attorney, or any party if unrepresented, who files a document pursuant to these rules with the clerk shall comply with the requirements of Sections 7.0 and 8.0 of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) including a certification of compliance with the Policy and, as necessary, a Confidential Information Form, unless otherwise specified by rule of court, or a Confidential Document Form, in accordance with the Policy.

***Note*:** Applicable authority includes, but is not limited to, statute, procedural rule, or court order. The *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) can be found on the website of the Supreme Court of Pennsylvania at _____. Sections 7.0(D) and 8.0(D) of the Policy provide that the certification shall be in substantially the following form:

> I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

The Confidential Information Form and the Confidential Document Form can be found at _____. In lieu of the Confidential Information Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order pursuant to Pa.R.J.A. No. 103(c) permitting the filing of a document in two versions, a "Redacted Version" and an "Unredacted Version."

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.1. Form of Account.

* * * * *

***Note*:** Rule 2.1 is substantively similar to former Rule 6.1 and Rule 12.15, except that certain subparagraphs have been reordered and Rule 12.15 and its Official Note have become subparagraph (d).

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: Piggy-backed Accounts and limited Accounts are permitted pursuant to 20 Pa.C.S. §§ 762, 3501.2, and 7799.1.

Rule 2.4. Petition for Adjudication/Statement of Proposed Distribution; Virtual Representation.

* * * * *

***Note*:** Although substantially modified, Rule 2.4 is derived from former Rule 6.9. One modification is to require averments for virtual representation under 20 Pa.C.S. § 751(6) generally and representation in "trust matters" pursuant to 20 Pa.C.S. § 7721 *et seq*. Another substantial modification is the addition of subparagraph (e) that requires counsel to sign the petition for adjudication/statement of distribution attesting that the submitted petition for adjudication/statement of distribution accurately replicates the Model Form and subjects counsel to rules and sanctions as provided in Pa.R.C.P. Nos. 1023.1 through 1023.4. (*See* Rule 3.12.)

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: The Supreme Court has adopted form petitions for adjudication/statements of proposed distribution of a decedent's estate, trust, guardian of an incapacitated person's estate, guardian of a minor's estate, and the estate of a principal stated by an agent under a power of attorney. These form petitions for adjudication/statements of proposed distribution are the exclusive forms for adjudicating an Account, and consequently, the local court and clerk must accept these statewide forms and may not accept or allow any other forms previously permitted under local rules. The exclusive statewide form petitions for adjudication/statements of proposed distribution appear in the Appendix and are available electronically at www.pacourts.us/forms under the For-the-Public category.

Cover sheets or checklists may be required by local rule as permitted by Rule 1.8(c).

Rule 2.7. Objections to Accounts or Petitions for Adjudication/Statements of Proposed Distribution.

* * * * *

***Note*:** Although substantially modified, Rule 2.7 is derived from former Rule 6.10.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: If the notice received by the objector has a service list appended to it setting forth the

name and address of each interested party who received the notice under Rule 2.5, the objector must mail his or her objections to every name and address appearing on the service list.

Rule 2.8. Pleadings Allowed After Objections are Filed.

* * * * *

***Note*:** Rule 2.8 has no counterpart in former Orphans' Court Rules.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: Preliminary objections to objections are limited in the grounds that may be raised. Insufficient specificity, failure to conform to law, and the inclusion of scandalous or impertinent matter, *inter alia*, are not properly raised as preliminary objections to objections. (*Cf.* Rule 3.9 and Pa.R.C.P. No. 1028).

Rule 2.10. Foreign Heirs and Unknown Distributees.

* * * * *

***Note*:** With only minor modifications, Rule 2.10 is substantively similar to former Rules 13.2 and 13.3. Former Rule 13.1 has been deleted.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: The filing of an Account provides the procedure for raising questions related to the administration or distribution of an estate or trust, including a guardianship or minor's estate as well as a decedent's estate. Application to the Orphans' Court Division may also be commenced by a petition that is verified or attested by an affidavit. *See* 20 Pa.C.S. §§ 761, 762.

CHAPTER III. PETITION PRACTICE AND PLEADING

Part A. Petition Practice

Rule 3.3. Contents of All Pleadings; General and Specific Averments.

* * * * *

***Note*:** Rule 3.3 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 206.1(c) and Pa.R.C.P. No. 1019.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Rule 3.4. Form of Petition; Exhibits; Consents; Signing and Verification.

* * * * *

***Note*:** Rule 3.4 is based upon former Rule 3.3 and Rule 3.4, but has been modified to require averments for virtual representation under 20 Pa.C.S. § 751(6) generally and representation in "trust matters" pursuant to 20 Pa.C.S. § 7721 *et seq.* Another modification is the addition of subparagraph (d) that requires petitioner's counsel to sign the petition, or all of the petitioners to sign the petition, if unrepresented, thereby subjecting these signatories to rules and sanctions as provided in Pa.R.C.P. Nos. 1023.1 through 1023.4. (*See* Rule 3.12.)

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Rule 3.5. Mode of Proceeding on Petition.

* * * * *

***Note*:** Subparagraphs (a) and (b) of Rule 3.5 are derived from former Rule 3.5. The final sentence of subparagraph (a)(2) is identical to former Rule 3.7(h)(1); it merely has been relocated to this section. Subparagraphs (c) and (d) of this Rule have no counterpart in former Orphans' Court Rules.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: Personal jurisdiction is conferred by statute in certain circumstances. *See e.g.,* 20 Pa.C.S. § 7712. A sheriff does not need to serve the citation issued by the clerk; instead, any adult person may serve the citation and file the proof of service in accordance with subparagraph (a)(7) of this Rule 3.5. *See* 20 Pa.C.S. § 765. If a citation is not being issued with the petition, then the petition must be endorsed with a notice to plead. *See* Rule 3.5(b) and Pa.R.C.P. No. 1026. The court, by local rule or by order in a particular matter, may establish a procedure for rules to show cause as provided in Pa.R.C.P. No. 206.4 *et seq*.

Part B. Responsive Pleadings

Rule 3.6. Pleadings Allowed After Petition.

* * * * *

***Note*:** Rule 3.6 has no counterpart in former Orphans' Court Rules, but is based, in part, on Pa.R.C.P. No. 1017.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: Any interested party may file a new petition bringing a new issue or dispute before the court or seeking alternative relief in the same trust or estate. Motions are permitted in Orphans' Court Division, and this Rule 3.6 does not prohibit or limit motions practice.

Rule 3.9. Preliminary Objections.

* * * * *

***Note*:** Rule 3.9 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1028.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: Preliminary objections raising an issue under subparagraphs (b)(2), (b)(3), (b)(4), and in some instances (b)(1), may be determined from the facts of record so that further evidence is not required. In such situations, the court may summarily decide preliminary objections prior to the filing of an answer.

* * * * *

Rule 3.10. Denials; Effect of Failure to Deny.

* * * * *

***Note*:** Rule 3.10 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1029.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: Reliance on subparagraph (c) does not excuse a failure to admit or deny a factual allegation when it is clear that the respondent must know whether a particular allegation is true or false. *Cf. Cercone v. Cercone*, 386 A.2d 1, 4 (Pa. Super. 1978).

Rule 3.11. Answer with New Matter.

* * * * *

***Note*:** Rule 3.11 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1030.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Part C. Pleadings in General

Rule 3.14. Amendment.

* * * * *

***Note*:** Rule 3.14 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1033.

The filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts*. *See* Rule 1.99.

Explanatory Comment: Rule 3.9(d)(1) provides for amending a pleading after the filing of preliminary objections.

REPORT

Proposed Adoption of Pa. O.C. Rule 1.99, and Proposed Amendment of Pa. O.C. Rules 2.1, 2.4, 2.7-2.8, 2.10, 3.3—3.6, 3.9—3.11, and 3.14

Certification and Filing of Confidential Information and Documents

The Orphans' Court Procedural Rules Committee ("Committee") is planning to propose to the Supreme Court of Pennsylvania the adoption of Pa. O.C. Rule 1.99, governing the certification and filing of confidential information and documents, as well as amendment of Pa. O.C. Rules 2.1, 2.4, 2.7-2.8, 2.10, 3.3—3.6, 3.9—3.11, and 3.14, to add a cross-reference to Rule 1.99.

On January 6, 2017, the Supreme Court of Pennsylvania adopted the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* ("Policy"), which will become effective January 6, 2018. In anticipation of the implementation of the Policy, the Orphans' Court Procedural Rules Committee is proposing new Rule 1.99, which provides that absent any applicable authority that constrains public access, all filings must comply with the Policy. Of particular importance are the requirements of Sections 7.0 and 8.0 governing confidential information and confidential documents. In addition, the rule provides that all practitioners and unrepresented parties must certify that a filing is compliant with the Policy.

The Committee is also proposing amendments of Rules 2.1, 2.4, 2.7-2.8, 2.10, 3.3—3.6, 3.9—3.11, and 3.14 to add a cross-reference to new Rule 1.99. The cross-reference to Rule 1.99 is being added to these rules to advise practitioners and unrepresented parties that filings made pursuant to these rules are subject to the Policy.

Certain Orphans' Court procedural rules are not subject to the Policy. Rules pertaining to filings made to and hearings before the Register of Wills were not affected because the Register of Wills does not meet the Policy definition of a "court" or "custodian." Rules pertaining to guardianships were not amended because Section 9.0(B) of the Policy concerning incapacity proceedings states that such records are not publicly accessible, except for the docket and any final decree adjudicating a person as incapacitated. Rules pertaining to adoption proceedings were not amended because Pa. O.C. Rule 15.7 already provides for the confidential filing of such proceedings. Rules pertaining to proceedings pursuant to Section 3206 of the Abortion Control Act were not amended because Pa. O.C. Rule 16.2(b) already operates to seal records in proceedings under the Abortion Control Act.

[Pa.B. Doc. No. 17-1333. Filed for public inspection August 11, 2017, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 2 AND 5]

Proposed New Pa.R.Crim.P. 113.1, Proposed Amendment of Pa.Rs.Crim.P. 206, 504, 560 and 575 and Proposed Revision of the Comment to Pa.Rs.Crim.P. 513 and 578

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania adoption of New Rule 113.1, the amendment of Rules 206, 504, 560 and 575, and the revision of the Comments to Rules 513 and 578 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 Tuesday, September 12, 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

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

Rule 113.1. Confidential Information and Confidential Documents. Certification.

Unless public access is otherwise constrained by applicable authority, any attorney, or any party if unrepresented, or any affiant who files a document pursuant to these rules with the issuing authority or clerk of courts' office shall comply with the requirements of Sections 7.0 and 8.0 of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy). In accordance with the Policy, the filing shall include a certification of compliance with the Policy and, as necessary, a Confidential Information Form, unless otherwise specified by rule of court, or a Confidential Document Form."

Comment

"Applicable authority," as used in this rule, includes but is not limited to statute, procedural rule, or court order. The *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) can be found on the website of the Supreme Court of Pennsylvania at _____. The Policy is applicable to all filings by the parties or an affiant in any criminal court case.

Sections 7.0(D) and 8.0(D) of the Policy provide that the certification shall be in substantially the following form:

> I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Filings may require further precautions, such as placing certain types of information in a "Confidential Information Form." The Confidential Information Form and the Confidential Document Form can be found at _____. In lieu of the Confidential Information Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order pursuant to Pa.R.J.A. No. 103(c) permitting the filing of a document in two versions, a "Redacted Version" and an "Unredacted Version."

In addition to the restrictions above, a filing party should be cognizant of the potential impact that inclusion of personal information may have on an individual's privacy rights and security. Therefore, inclusion of such information should be done only when necessary or required to effectuate the purpose of the filing. Consideration of the use of sealing or protective orders also should be given if inclusion of such information is necessary.

While the Public Access Policy is not applicable to orders or other documents filed by a court, judges should give consideration to the privacy interests addressed by the Policy when drafting an order that might include information considered confidential under the Policy.

***Official Note*:** New Rule 113.1 adopted , 2017, effective , 2017.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published for comment at 47 Pa.B. 4679 (August 12, 2017).

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 206. Contents of Application for Search Warrant.

Each application for a search warrant shall be supported by written affidavit(s) signed and sworn to or affirmed before an issuing authority, which affidavit(s) shall:

* * * * *

(7) if a "nighttime" search is requested (*i.e.*, 10 p.m. to 6 a.m.), state additional reasonable cause for seeking permission to search in nighttime; **[and]**

(8) when the attorney for the Commonwealth is requesting that the affidavit(s) be sealed pursuant to Rule 211, state the facts and circumstances which are alleged to establish good cause for the sealing of the affidavit(s)**[.]; and**

(9) a certification that the application complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* regarding confidential information and documents.

Comment

For the contents of the search warrant, see Rule 205.

While this rule continues to require written affidavits, the form of affidavit was deleted in 1984 because it is no longer necessary to control the specific form of written affidavit by rule.

The 2005 amendments to paragraph (6) recognize anticipatory search warrants. To satisfy the requirements of paragraph (6) when the warrant being requested is for a prospective event, the application for the search warrant also must include a statement explaining how the affiant knows that the items to be seized on a later occasion will be at the place specified. *See Commonwealth v. Coleman*, **[574 Pa. 261,]** 830 A.2d 554 (**Pa.** 2003), and *Commonwealth v. Glass*, **[562 Pa. 187,]** 754 A.2d 655 (**Pa.** 2000).

When the attorney for the Commonwealth is requesting that the search warrant affidavit(s) be sealed, the affidavit(s) in support of the search warrant must set forth the facts and circumstances the attorney for the Commonwealth alleges establish that there is good cause to seal the affidavit(s). *See also* Rule 211(B)(2). Pursuant to Rule 211(B)(1), when the attorney for the Commonwealth requests that the search warrant affidavit be sealed, the application for the search warrant must be made to a judge of the court of common pleas or to an appellate court justice or judge, who would be the issuing authority for purposes of this rule. For the procedures for sealing search warrant affidavit(s), see Rule 211.

***See* Rule 113.1 regarding the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* and the requirements regarding filings and documents that contain confidential information.**

***Official Note*:** Previous Rule 2006 adopted October 17, 1973, effective 60 days hence; rescinded November 9, 1984, effective January 2, 1985. Present Rule 2006 adopted November 9, 1984, effective January 2, 1985;

amended September 3, 1993, effective January 1, 1994; renumbered Rule 206 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006**; amended , 2017, effective , 2017**.

Committee Explanatory Reports:

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Final Report explaining the October 19, 2005 amendments to paragraph (6) and the Comment published with the Court's Order at 35 Pa.B. 6087 (November 5, 2005).

Report explaining the proposed amendment regarding the Court's public access policy published for comment at 47 Pa.B. 4679 (August 12, 2017).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(1). Complaint Procedures

Rule 504. Contents of Complaint.

Every complaint shall contain:

* * * * *

(11) a verification by the affiant that the facts set forth in the complaint are true and correct to the affiant's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; **[and]**

(12) a certification that the complaint complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* regarding confidential information and documents; and

[(12)] (13) the signature of the affiant and the date of the execution of the complaint.

Comment

This rule sets forth the required contents of all complaints whether the affiant is a law enforcement officer, a police officer, or a private citizen. When the affiant is a private citizen, the complaint must be submitted to an attorney for the Commonwealth for approval. *See* Rule 506. When the district attorney elects to proceed under Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option), the police officer must likewise submit the complaint for approval by an attorney for the Commonwealth.

Ordinarily, whenever a misdemeanor, felony, or murder is charged, any summary offense in such a case, if known at the time, should be charged in the same complaint, and the case should proceed as a court case under Chapter 5 Part B. *See Commonwealth v. Caufman*, **[541 Pa. 299,]** 662 A.2d 1050 (**Pa.** 1995) and *Commonwealth v. Campana*, **[455 Pa. 622,]** 304 A.2d 432 (**Pa.** 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, **[454 Pa. 233,]** 314 A.2d 854 (**Pa.** 1974) (compulsory joinder rule). In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, **[275 Pa. Super. 166],** 418 A.2d 664 (**Pa. Super.** 1980).

Paragraph (8) requires the affiant who prepares the complaint to indicate on the complaint whether criminal laboratory services are requested in the case. This information is necessary to alert the magisterial district judge, the district attorney, and the court that the defendant in the case may be liable for a criminal laboratory user fee. *See* 42 Pa.C.S. § 1725.3 that requires a defendant to be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

The requirement that the affiant who prepares the complaint indicate whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is included so that the issuing authority knows whether it is necessary to issue a fingerprint order with the summons as required by Rule 510.

***See* Rule 113.1 regarding the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* and the requirements regarding filings and documents that contain confidential information.**

***Official Note*:** Original Rule 104 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 504 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended July 10, 2008, effective February 1, 2009**; amended , 2017, effective , 2017**.

Committee Explanatory Reports:

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Final Report explaining the July 10, 2008 amendments adding new paragraph (9) requiring a notation concerning fingerprinting published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).

Report explaining the proposed amendment regarding the Court's public access policy published for comment at 47 Pa.B. 4679 (August 12, 2017).

PART B(3). Arrest Procedures in Court Cases

(a) Arrest Warrants

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

* * * * *

Comment

* * * * *

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).

All affidavits and applications filed pursuant to this rule are public records. However, in addition to

restrictions placed by law and rule on the disclosure of confidential information, the filings required by this rule are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* and may require further precautions, such as placing certain types of information in a "Confidential Information Form" or providing both a redacted and unredacted version of the filing. *See* Rule 113.1.

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.

* * * * *

***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; Comment revised , 2017, effective , 2017**.

Committee Explanatory Reports:

* * * * *

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 Comment revision regarding the Court's public access policy published for comment at 47 Pa.B. 4679 (August 12, 2017).

PART F. Procedures Following a Case Held for Court

Rule 560. Information: Filing, Contents, Function.

* * * * *

(B) The information shall be signed by the attorney for the Commonwealth and shall be valid and sufficient in law if it contains:

* * * * *

(5) a plain and concise statement of the essential elements of the offense substantially the same as or cognate to the offense alleged in the complaint; **[and]**

(6) a concluding statement that "all of which is against the Act of Assembly and the peace and dignity of the Commonwealth**[.]**"**; and**

(7) a certification that the information complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* regarding confidential information and documents.

(C) The information shall contain the official or customary citation of the statute and section thereof, or other provision of law that the defendant is alleged therein to have violated; but the omission of or error in such citation shall not affect the validity or sufficiency of the information.

(D) In all court cases tried on an information, the issues at trial shall be defined by such information.

Comment

* * * * *

In any case in which there are summary offenses joined with the misdemeanor, felony, or murder charges that are held for court, the attorney for the Commonwealth must include the summary offenses in the information. *See Commonwealth v. Hoffman*, 406 Pa. Super. 583, 594 A.2d 772 (1991).

***See* Rule 113.1 regarding the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* and the requirements regarding filings and documents that contain confidential information.**

When there is an omission or error of the type referred to in paragraph (C), the information should be amended pursuant to Rule 564.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing. When the preliminary hearing is held in the defendant's absence and the case is held for court, the attorney for the Commonwealth should proceed as provided in this rule.

See Chapter 5 Part E for the procedures governing indicting grand juries. As explained in the Comment to Rule 556.11, when the grand jury indicts the defendant, this is the functional equivalent to holding the defendant for court following a preliminary hearing.

***Official Note*: Rule 225 adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised April 23, 2004, effective immediately; Comment revised August 24, 2004, effective August 1, 2005; Comment revised March 9, 2006, effective September 1, 2006; amended June 21, 2012, effective in 180 days; amended , 2017, effective , 2017**.

Committee Explanatory Reports:

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

Report explaining the proposed amendment regarding the Court's public access policy published for comment at 47 Pa.B. 4679 (August 12, 2017).

PART G(1). Motion Procedures

Rule 575. Motions and Answers.

(A) MOTIONS

(1) All motions shall be in writing, except as permitted by the court or when made in open court during a trial or hearing.

(2) A written motion shall comply with the following requirements:

(a) The motion shall be signed by the person or attorney making the motion. The signature of an attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay. **The motion also shall contain a certification that the motion complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* regarding confidential information and documents.**

* * * * *

(B) ANSWERS

(1) Except as provided in Rule 906 (Answer to Petition for Post-Conviction Collateral Relief), an answer to a motion is not required unless the judge orders an answer in a specific case as provided in Rule 577. Failure to answer shall not constitute an admission of the facts alleged in the motion.

(2) A party may file a written answer, or, if a hearing or argument is scheduled, may respond orally at that time, even though an answer is not required.

(3) A written answer shall comply with the following requirements:

(a) The answer shall be signed by the person or attorney making the answer. The signature of an attorney shall constitute a certification that the attorney has read the answer, that to the best of the attorney's knowledge, information, and belief there is good ground to support the answer, and that it is not interposed for delay. **The answer also shall contain a certification that the answer complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* regarding confidential information and documents.**

* * * * *

Comment

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Paragraph (B)(1) changes prior practice by providing that the failure to answer a motion in a criminal case never constitutes an admission. Although this prohibition applies in all cases, even those in which an answer has been ordered in a specific case or is required by the rules, the judge would have discretion to impose other appropriate sanctions if a party fails to file an answer ordered by the judge or required by the rules.

***See* Rule 113.1 regarding the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* and the requirements regarding filings and documents that contain confidential information.**

Paragraph (C), added in 2006, sets forth the format requirements for all motions, answers, and briefs filed in criminal cases. These new format requirements are substantially the same as the format requirements in Pennsylvania Rule of Appellate Procedure 124(a) and Pennsylvania Rule of Civil Procedure 204.1.

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***Official Note*: Former Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004. Former Rule 9021 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 575 and amended March 1, 2000, effective April 1, 2001; Rules 574 and 575 combined as Rule 575 and amended March 3, 2004, effective July 1, 2004; amended July 7, 2006, effective February 1, 2007; amended , 2017, effective , 2017**.

Committee Explanatory Reports:

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Final Report explaining the July 7, 2006 addition of the format requirements in paragraph (C) published with the Court's Order at 36 Pa.B. 3809 (July 22, 2006).

Report explaining the proposed amendment regarding the Court's public access policy published for comment at 47 Pa.B. 4679 (August 12, 2017).

Rule 578. Omnibus Pretrial Motion for Relief.

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Comment

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The omnibus pretrial motion rule is not intended to limit other types of motions, oral or written, made pretrial or during trial, including those traditionally called motions *in limine*, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

All motions filed pursuant to this rule are public records. However, in addition to restrictions placed by law and rule on the disclosure of confidential information, the motions are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* and may require further precautions, such as placing certain types of information in a "Confidential Information Form" or providing both a redacted and unredacted version of the filing. *See* Rule 113.1.

***See* Rule 113.1 regarding the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* and the requirements regarding filings and documents that contain confidential information.**

See Rule 556.4 for challenges to the array of an indicting grand jury and for motions to dismiss an information filed after a grand jury indicts a defendant.

***Official Note*: Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; Comment revised October 25, 1990, effective January 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised June 21, 2012, effective in 180 days; Comment revised July 31, 2012, effective November 1, 2012; Comment revised , 2017, effective , 2017**.

Committee Explanatory Reports:

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Final Report explaining the July 31, 2012 Comment revision adding motions for transfer published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Report explaining the proposed Comment revision regarding the Court's public access policy published for comment at 47 Pa.B. 4679 (August 12, 2017).

REPORT

Proposed New Rule 113.1; Proposed Amendments to Pa.Rs.Crim.P.206, 504, 560 and 575; Proposed Revision of the Comment to Pa.Rs.Crim.P. 513 and 578

Public Access Policy

The Supreme Court of Pennsylvania recently adopted the new *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (hereafter "the new Policy"). The Court previously had adopted other policies governing public access to case records. These are: (1) the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* (hereafter "the Electronic Records Policy") that provides for access to the statewide case management systems' web docket sheets and requests for bulk data; and (2) the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts* (hereafter "the MDJ Records Policy") that provides for access to case records of the magisterial district courts maintained in a paper format. The new Policy, in essence, governs the paper case records of the common pleas and appellate courts and provides the final portion of the Court's policy on public access to case records.

In January 2017, the Court sent a directive to all of the Procedural Rules Committees to consider correlative rule changes to implement the new Policy. In particular, the Court requested that the Committees examine rules that may require filings contain confidential information in light of the new Policy's restrictions on access to this information. The rule changes proposed here is the product of the Criminal Procedural Rules Committee's examination resulting from the Court's directive. These proposed rules are being published in conjunction with proposals from the other Rules Committees

The new Policy provides that case records generally are publicly accessible but contains provisions that restrict certain types of information from being included in filings. This restricted information includes personal and financial information such as Social Security numbers, financial account numbers, driver license numbers, SID numbers, minors' personal information, victims' address and contact information, etc. This restricted information is prohibited by the new Policy from being included in filings unless it is contained in a "Confidential Information Form" or provided in both a redacted and unredacted version of the filing. Under the new Policy, the burden of ensuring that the confidential information or documents are filed in the proper manner rests with the filer and the court or record custodian will not review or redact the filings. The new Policy recognizes that public access may also be restricted by a sealing or protective order or "by federal law, state law, or state court rule. . . ."

Given the importance of the new Policy and the need for those working in the criminal justice system to comply with its provisions, the Committee concluded that it would be beneficial to have a specific rule referencing the policy. This rule would be numbered "Rule 113.1," so that it would fall after Rule 113 (Criminal Case File and Docket Entries) since both rules deal with provisions applicable to all case records. The proposed new rule would alert filing parties to the requirements of the new Policy, in particular the provisions regarding the inclusion of confidential information.

New Rule 113.1 would apply to filings in court cases with issuing authorities as well as the clerk of courts. The Committee understands that the new Policy is intended to apply only to records in the courts of common pleas and appellate courts since the MDJ Records Policy already applies to case records in magisterial district courts. There are some differences between these policies. In particular, the new Policy is more detailed and explicit in the types of information that are prohibited from being included in case filings. It's the Committee's understanding that the MDJ Records Policy will be updated at some point in the future to comport with the provision in the new Policy. However, the Committee is concerned that most initial filings in criminal cases, such as criminal complaints and affidavits of probable cause, are filed in the magisterial district courts by non-lawyer police officers. The Committee believes that the provisions of the new Policy, where they differ from the existing provisions of the MDJ Records Policy, should be made applicable to filings in the magisterial district courts. The Committee is soliciting input on this point.

Due to the fact that the new Policy reflects a strong commitment to public access to most filings, the Committee also believes that filers should be more attuned to this accessibility and should limit the inclusion of personal information where possible. Therefore, the Comment to proposed Rule 113.1 would contain an admonition that personal information should be included in a filing only where necessary and consideration given to the use of confidential information forms or sealing orders.

The Committee also noted that the restrictions on inclusion of confidential information contained in the Policy did not apply to filing by the courts but only to those made by the parties. The Committee believes that courts should comply voluntarily with similar restrictions on the inclusion of confidential information in court documents and so have included aspirational language in the Comment to proposed Rule 113.1 that a court should be careful about including such information in its filings.

Another area of concern to the Committee was the requirement that a certification of compliance with the Policy be included in most filings. The Committee believes that filers should be alerted to this requirement and its import. The Committee therefore is proposing to add to the rules that contain "contents" provisions for documents filed by the parties a cross-reference to the new Policy and the certification requirement in particular. These cross-references would be placed in the following rules:

206. Contents of Application for Search Warrant.
504. Contents of Complaint.
560. Information: Filing, Contents, Function.
575. Motions and Answers.

These rules contain the most clearly defined contents provisions as well as are some of the most significant filing rules.

Arrest warrant information is a bit more problematic. Unlike search warrants which have Rule 206 describing the necessary contents, Rule 513 (Requirements for Issuance; Dissemination of Arrest Warrant Information), the main rule for the issuance of arrest warrants, does not provide detailed contents for an arrest warrant application. The Committee concluded that an alert to the requirements of the new Policy should be added to this rule and is therefore proposing a detailed cross-reference

in the Comment. A similar cross-reference also would be added to Rule 578 (Omnibus Pretrial Motion for Relief). While not a content rule, it does represent a significant number of the filing in criminal cases. The Committee concluded that a more detailed cross-reference to the policy be included here.

[Pa.B. Doc. No. 17-1334. Filed for public inspection August 11, 2017, 9:00 a.m.]

[234 PA. CODE CH. 2]

Order Amending Rule 205 and Revising the Comment to Rule 209 of the Rules of Criminal Procedure; No. 492 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 31st day of July, 2017, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 46 Pa.B. 4951 (August 13, 2016), 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 amendment to Pennsylvania Rule of Criminal Procedure 205 and the revision to the Comment to Pennsylvania Rule of Criminal Procedure 209 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 October 1, 2017.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

Rule 205. Contents of Search Warrant.

(A) Each search warrant shall be signed by the issuing authority and shall:

* * * * *

(8) when applicable, certify on the face of the warrant that for good cause shown the affidavit(s) is sealed pursuant to Rule 211 and state the length of time the affidavit(s) will be sealed.

(B) A warrant under paragraph (A) may authorize the seizure of electronic storage media or of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in (A)(4)(a) refers to the seizure of the media or information, and not to any later off-site copying or review.

Comment

Paragraphs **[(2) and (3)] (A)(2) and (A)(3)** are intended to proscribe general or exploratory searches by requiring that searches be directed only towards the specific items, persons, or places set forth in the warrant. Such warrants should, however, be read in a common sense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description may suffice. *See Commonwealth v. Matthews*, **[446 Pa. 65, 69—74,]** 285 A.2d 510, 513-14 (**Pa.** 1971).

Paragraph **[(4)] (A)(4)** is included pursuant to the Court's supervisory powers over judicial procedure to supplement *Commonwealth v. McCants*, **[450 Pa. 245,]** 299 A.2d 283 (**Pa.** 1973), holding that an unreasonable delay between the issuance and service of a search warrant jeopardizes its validity. Paragraph **[(4)] (A)(4)** sets an outer limit on reasonableness. A warrant could, in a particular case, grow stale in less than two days. If the issuing authority believes that only a particular period which is less than two days is reasonable, he or she must specify such period in the warrant.

Paragraph **[(4)(b)] (A)(4)(b)** provides for anticipatory search warrants. These types of warrants are defined in *Commonwealth v. Glass*, **[562 Pa. 187,]** 754 A.2d 655 (**Pa.** 2000), as "a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place."

Paragraph **[(5)] (A)(5)** supplements the requirement of Rule **[203(C)] 203(E)** that special reasonable cause must be shown to justify a nighttime search. A warrant allowing a nighttime search may also be served in the daytime.

Paragraph **[(6)] (A)(6)** anticipates that the warrant will list the correct judicial officer to whom the warrant should be returned. There may be some instances in which the judicial officer who issues the warrant may not be the one to whom the warrant will be returned. For example, it is a common practice in many judicial districts to have an "on-call" magisterial district judge. This "on-call" judge would have the authority to issue search warrants anywhere in the judicial district but may not be assigned to the area in which the search warrant would be executed. There may be cases when the warrant is incorrectly returned to the judge who originally issued the warrant. In such cases, the issuing judge should forward the returned search warrant to the correct judicial officer. Thereafter, that judicial officer should administer the search warrant and supporting documents as provided for in these rules, including the Rule 210 requirement to file the search warrant and supporting documents with the clerk of courts.

Paragraph **[(8)] (A)(8)** implements the notice requirement in Rule 211(C). When the affidavit(s) is sealed pursuant to Rule 211, the justice or judge issuing the warrant must certify on the face of the warrant that there is good cause shown for sealing the affidavit(s) and must also state how long the affidavit will be sealed.

For purposes of this rule, the term "electronically stored information" includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained. This definition is intended to cover all current types of computer-based information and to encompass future changes and developments.

For purposes of this rule, the term "seizure" includes the copying of material or information that is subject to the search warrant. This includes the copying of electronically stored information for later analysis.

For the procedures for motions for return of property, see Rule 588.

***Official Note*: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; Comment revised October 22, 2013, effective January 1, 2014; amended July 31, 2017, effective October 1, 2017**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. 6652 (November 9, 2013).

Final Report explaining the July 31, 2017 amendment regarding search warrants for electronically stored information published with the Court's Order at 47 Pa.B. 4681 (August 12, 2017).

Rule 209. Return with Inventory.

* * * * *

Comment

The inventory is required to ensure that all items seized are accounted for in the return to the issuing authority. It thus differs from the receipt required by Rule 208, which is for the personal records of those from whose possession or from whose premises property was taken. In some cases, however, the list in the receipt may be sufficiently detailed so as to also be sufficient for use in the inventory. The inventory need not be sworn to before the issuing authority; however, the officer is subject to statutory penalties for unsworn falsification.

The rule was amended in 2013 specifically to require that the executed warrant be returned to the issuing authority. This amendment reflects a procedure with a long-standing practice but one that had not been codified in the rules.

See Rule **[205(6)] 205(A)(6)** regarding the circumstances under which the issuing authority to whom the warrant is returned may differ from the one that issued the warrant.

As provided in Rule **[205(4)] 205(A)(4)**, search warrants generally authorize execution within a period not to exceed two days. Paragraph (B) requires that an unexecuted warrant be returned to the issuing authority upon expiration of this period.

Unexecuted search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

For the obligation of the Commonwealth to disclose exculpatory evidence, see Rule 573 and its Comment.

***Official Note*: Rule 2009 adopted October 17, 1973, effective 60 days hence; amended April 26, 1979, effective July 1, 1979; amended September 3, 1993, effective January 1, 1994; renumbered Rule 209 and amended March 1, 2000, effective April 1, 2001; amended October 22, 2013, effective January 1, 2014; Comment revised July 31, 2017, effective October 1, 2017**.

Committee Explanatory Reports:

* * * * *

Final Report explaining the October 22, 2013 amendments related to the return of the search warrant published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Final Report explaining the July 31, 2017 Comment revisions correcting a cross-reference to Rule 205 published with the Court's Order at 47 Pa.B. 4681 (August 12, 2017).

FINAL REPORT[1]

Amendments to Pa.R.Crim.P. 205; Revisions to the Comment to Pa.R.Crim.P. 209

Search Warrants for Electronic Materials

On July 31, 2017, effective October 1, 2017, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 205 (Contents of Search Warrant) to clarify that electronic storage data may be seized or copied for later analysis. The Court also revised the Comment to Rule 209 to correct a cross-reference to Rule 205.

The intention of the amendment is to eliminate any confusion that, when a search warrant is for the seizure of electronically stored information and that information must be extracted, reviewed or analyzed, these additional processes do not need to be performed within the period set for execution of the search warrant. This change is based on language that is contained currently in Federal Rule of Criminal Procedure 41(B). The Committee examined the history of Federal Rule 41 and the specific provision related to electronically stored data which reads:

> (B) *Warrant Seeking Electronically Stored Information.* A warrant under Rule 41(e)(2)(A) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in Rule 41(e)(2)(A) and (f)(1)(A) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

Federal Rule 41 ("the federal rule") was amended in 2009 to add this provision regarding warrants for electronically stored information. Searches of electronic storage media are problematic because computers and external electronic storage devices contain an almost incomprehensible amount and variety of data. The use of computers in all stages of life and business has become ubiquitous. This is only further complicated by the storage of electronic data on networks and, with increasing frequency, "cloud" servers. Additionally, the information is stored as lines of code, often of little practical use without some type of program to convert into a usable form. As a result, it is often impossible to conduct a search on-site for evidence within the computer or server and necessitating analysis by specialists. The federal rule was amended to recognize the need for a two-step process: officers either may seize or may copy the entire storage medium and conduct a review of the storage medium later to determine what electronically stored information falls within the scope of the warrant.

The Committee recognized that Pennsylvania search warrant procedures differ from federal procedures. However, the Committee concluded that the same concerns

[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.

that prompted the change to the federal rule are applicable to search warrant practice in Pennsylvania and that a similar solution would be beneficial in Pennsylvania. For that reason, the language being added to Rule 205 is similar to that in the federal rule.

The term "electronically stored information" is derived from Rule 34(a) of the Federal Rules of Civil Procedure, which states that it includes "writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained." The Committee concluded that this description is an apt one and is intended to cover all current types of computer-based information and to encompass future changes and developments.

The federal rule contains references to the "copying of electronically stored information" in addition to its "seizure." The Committee believes that the term "seizure" used in a search warrant context encompasses the copying of the information and that to retain this terminology would unduly emphasize this single aspect. Therefore, the term "copying" is not used but a statement has been added to the Comment to ensure that it is understood that this is included in the "seizure" of the information.

As in the federal rule, the Committee rejected adding a specific time period within which any subsequent off-site copying or review of the media or electronically stored information would take place. Given the vast divergence in the media being searched, there will be wide differences in the amount of time required for forensic analysis and review of information. The Committee concluded that if a time limit were set for these processes it would be highly arbitrary and result in frequent petitions for additional time.

One of the concerns raised during the development of the federal rule change was the ability of an aggrieved party to pursue the return of property associated with electronic media. In the note to the 2009 change to the federal rule, it was observed that Federal Rule 41(g), which provides for a motion for return of property, applies to electronic storage media. Pennsylvania Rule 588 provides a similar motion for return. However, the only cross-reference in Chapter 2 that refers to Rule 588 is in the Comment to Rule 211 (Sealing of Search Warrant Affidavits). Therefore, a cross-reference to Rule 588 has been added to the Rule 205 Comment to emphasize the availability of this remedy.

Finally, two technical corrections have been made to cross-references to Rule 205 that are contained in the Comment to Rule 209.

[Pa.B. Doc. No. 17-1335. Filed for public inspection August 11, 2017, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

PART I. GENERAL

[246 PA. CODE CH. 200]

Proposed Amendment of Pa.R.C.P.M.D.J. No. 206

The Minor Court Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Pa.R.C.P.M.D.J. No. 206, governing the petition to proceed *in forma pauperis*, 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 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:

Pamela S. Walker, Counsel
Minor Court Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
minorrules@pacourts.us

All communications in reference to the proposal should be received by September 12, 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 Minor Court Rules Committee

ANTHONY W. SAVEIKIS,
Chair

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 206. Costs; Proceedings *In Forma Pauperis*.

A. Except as otherwise provided by law, the costs for filing and service of the complaint shall be paid at the time of filing.

B. Except as otherwise provided by **[subdivision] paragraph** C of this rule, the prevailing party in magisterial district **[judge] court** proceedings shall be entitled to recover taxable costs from the unsuccessful party. Such costs shall consist of all filing, personal service, witness, and execution costs authorized by Act of Assembly or general rule and paid by the prevailing party.

C. Taxable costs on appeal or *certiorari* shall be paid by the unsuccessful party, and a plaintiff who appeals shall be considered an unsuccessful party if he or she does not obtain on appeal a judgment more favorable than that obtained in the magisterial district **[judge] court** proceeding. A defendant who prevails on *certiorari* proceedings brought by the defendant or who obtains a favorable judgment upon appeal by either party shall not be liable for costs incurred by the plaintiff in the preceding magisterial district **[judge] court** proceeding and may recover taxable costs in that proceeding from the plaintiff. A plaintiff who is unsuccessful in the magisterial district **[judge] court** proceeding may recover taxable costs in that proceeding from the defendant if the plaintiff is successful on appeal, and in that event the defendant

may not recover costs in the magisterial district **[judge] court** proceeding from the plaintiff.

D. This rule shall apply to all civil actions and proceedings except actions pursuant to the Protection **[from] From** Abuse Act or 42 Pa.C.S. §§ 62A01—62A20.

***Official Note*:** "Execution" costs include those for executing an order for possession. The items constituting taxable costs in appeal or *certiorari* proceedings will be governed by law or general rule applicable in the court of common pleas.

Under **[subdivision] paragraph** B, "personal service . . . costs" refers only to personal service since mail costs are to be borne by the plaintiff in all cases in accordance with Section 1725.1 of the Judicial Code, 42 Pa.C.S. § 1725.1.

This rule does not provide for the assessment of filing costs against an unsuccessful plaintiff who has been permitted to proceed *in forma pauperis* and who remains indigent. *See Brady v. Ford*, **[451 Pa. Super. 363,]** 679 A.2d 837 (**Pa. Super.** 1996).

For special provisions governing actions pursuant to the Protection From Abuse Act, *see* Sections 6106(b) and (c) of the Domestic Relations Code, 23 Pa.C.S. §§ 6106(b) and (c). For special provisions governing actions seeking relief for victims of sexual violence or intimidation, *see* 42 Pa.C.S. §§ 62A01—62A20.

E. Proceedings **[in Forma Pauperis]** ***in forma pauperis***

[(i)] (1) A party who is without financial resources to pay the costs of litigation shall be entitled to proceed *in forma pauperis*.

[(ii)] (2) Except as provided by subparagraph **[(iii)] (3)**, the party shall file a petition and affidavit in the form prescribed by subparagraph **[(vi)] (6)**. The petition may not be filed prior to the commencement of the action, which action shall be accepted in the first instance, without the payment of filing costs.

Except as prescribed by subparagraph **[(iii)] (3)**, the **[Magisterial District Judge] magisterial district judge** shall act promptly upon the petition and shall enter a determination within five days from the date of the filing of the petition. If the petition is denied, in whole or in part, the **[Magisterial District Judge] magisterial district judge** shall briefly state the reasons therefor. The unsuccessful petitioner may proceed no further so long as such costs remain unpaid.

[(iii)] (3) If the party is represented by an attorney, the **[Magisterial District Judge] magisterial district judge** shall allow the party to proceed *in forma pauperis* upon the filing of a *praecipe* **[which] that** contains a certification by the attorney that the attorney is providing free legal service to the party and believes the party is unable to pay the costs.

[(iv)] (4) A party permitted to proceed *in forma pauperis* shall not be required to pay any costs imposed or authorized by Act of Assembly or general rule which are payable to any court or any public officer or employee.

The magisterial district judge shall inform a party permitted to proceed *in forma pauperis* of the option to serve the complaint by mail in the manner permitted by these rules.

A party permitted to proceed *in forma pauperis* has a continuing obligation to inform the court of improvement in the party's financial circumstances which will enable the party to pay costs.

[(v)] (5) If there is a monetary recovery by judgment or settlement in favor of the party permitted to proceed *in forma pauperis*, the exonerated costs shall be taxed as costs and paid to the **[Magisterial District Judge] magisterial district judge** by the party paying the monetary recovery. In no event shall the exonerated costs be paid to the indigent party.

[(vi)] (6) The petition for leave to proceed *in forma pauperis* and affidavit shall be substantially in the following form:

(Caption)
Petition

I hereby request that I be permitted to proceed *in forma pauperis* (without payment of the filing and service costs). In support of this I state the following:

1. I am the plaintiff in the above matter and because of my financial condition am unable to pay the costs for filing and service of this action.

2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.

3. I represent that the information below relating to my ability to pay the costs is true and correct:

(a) Name: _____
Address: _____

(b) Employment
[My present employer is: _____]
If you are presently employed, state
Employer: _____
Address: _____
Salary or wages per month: _____
Type of work: _____
[or I am presently unemployed.]
If you are presently unemployed, state
The date of my last employment was: _____
Salary or wages per month: _____
Type of work: _____

(c) Other income that I have received within the past twelve months
Business or profession: _____
Other self-employment: _____
Interest: _____
Dividends: _____
Pension and annuities: _____
Social security benefits: _____
Support payments: _____
Disability payments: _____
Unemployment compensation and supplemental benefits: _____
[Workman's] Workers' compensation: _____
Public assistance: _____
Other: _____

(d) Other contributions to household support
[(Wife) (Husband)] Spouse Name: _____
My **[(Wife) (Husband)] Spouse** is employed: _____
Employer: _____
Salary or wages per month: _____
Type of work: _____
Contributions from children: _____
Contributions from parents: _____
Other contributions: _____

(e) Property owned
Cash: _____
Checking account: _____
[Saving] Savings account: _____
Certificates of deposit: _____
Real estate (including home): _____
Motor vehicle: Make _____ , Year _____
Cost _____ , Amount owed $ _____
Stocks; bonds: _____
Other: _____

(f) Debts and obligations
Mortgage: _____
Rent: _____
Loans: _____
Other: _____

(g) Persons dependent upon me for support
[(Wife) (Husband)] Spouse Name: _____
Ages of Minor Children, if any: _____
[Name: _____ **Age**
Name: _____ **Age**
Name: _____ **Age]**
Other persons:
Name: _____
Relationship: _____

4. I understand that I have a continuing obligation to inform the Court of improvement in my financial circumstances which would permit me to pay the costs incurred herein.

5. I verify that the statements made in this petition are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. **[Sec.] §** 4904, relating to unsworn falsification to authorities.

Date: _____

Petitioner _____

Action by the Magisterial District Judge: _____

Date: _____ Magisterial District Judge: _____

***Official Note*:** This Rule substantially follows Pa.R.C.P. No. 240. Under subparagraph **[E(iv)] E(4)**, "any costs" includes all filing, service, witness, and execution costs.

REPORT

Proposed Amendment of Pa.R.C.P.M.D.J. No. 206

Petition to Proceed *In Forma Pauperis*

I. *Introduction*

The Minor Court Rules Committee ("Committee") is planning to propose the amendment of Pa.R.C.P.M.D.J. No. 206 to the Supreme Court of Pennsylvania. The rule addresses, among other things, the petition to proceed *in forma pauperis*. The Committee is proposing to eliminate the requirement that the petitioner provide the names of children for whom he or she provides support, and instead provide just the ages of such children.

II. *Discussion*

On January 6, 2017, the Supreme Court of Pennsylvania adopted the *Public Access Policy: Case Records of the Appellate and Trial Courts* ("Policy"), which will become effective January 6, 2018. Although the Policy does not apply to the records filed with and maintained by the magisterial district courts, the Committee recognized the important policy considerations set forth therein, particularly as the Policy relates to the confidentiality of minors' names and dates of birth. *See* Policy, Section 7.0A(5).

The Committee noted that Pa.R.C.P.M.D.J. No. 206E, which prescribes the content of the *in forma pauperis* petition, requires the disclosure of the names and ages of children dependent upon the petitioner for support. The Committee discussed this requirement in light of the new Policy, and was unable to find a compelling reason for requiring the disclosure of children's names on the petition. The Committee agreed to recommend the elimination of that requirement, and, instead, only require the listing of dependent children's ages in the petition.

III. *Proposed Changes*

The Committee plans to propose the amendment of Rule 206 by deleting the requirement that the petitioner disclose the names of dependent children on the *in forma pauperis* petition. The Committee will also propose minor stylistic changes throughout Rule 206.

[Pa.B. Doc. No. 17-1336. Filed for public inspection August 11, 2017, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Criminal Division; Rule of the Court of Common Pleas; No. AD 000-217 of 2017—CR Rules Doc.

Order of Court

And Now, to-wit, this 29th day of June, 2017, *It Is Hereby Ordered, Adjudged and Decreed* that the following Rule of the Court of Common Pleas of Allegheny County, Pennsylvania, Criminal Division, adopted by the Board of Judges, shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

RULE OF CRIMINAL PROCEDURE 507.5—Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth in Wiretapping Cases

RULE OF CRIMINAL PROCEDURE 507.6—Approval of Pittsburgh Bureau of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth for Designated Felony Crimes

By the Court

JEFFREY A. MANNING,
President Judge

LOCAL RULES OF CRIMINAL PROCEDURE

Rule 507.5. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth in Wiretapping Cases.

The District Attorney of Allegheny County, Stephen A. Zappala, Jr., having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by police officers, as defined in the Rules of Criminal Procedure, charging Interception, Disclosure or Use Of Wire, Electronic or Oral Communications (18 Pa.C.S. § 5703), or Possession, Sale, Distribution, Manufacture or Advertisement of Electronic, Mechanical or Other Devices and Telecommunication Identification Interception Devices (18 Pa.C.S. § 5705) shall not hereafter be accepted by any judicial officer unless the criminal complaint and arrest warrant affidavit have the approval of an attorney for the Commonwealth prior to filing.

Rule 507.6. Approval of Pittsburgh Bureau of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth for Designated Felony Crimes.

The District Attorney of Allegheny County, Stephen A. Zappala, Jr., having filed a certification pursuant to Pa.R.Crim.P. 507, criminal complaints and arrest warrant affidavits by Pittsburgh Bureau of Police officers, as defined in the Rules of Criminal Procedure, charging the below designated felony crimes shall not hereafter be accepted by any judicial officer unless the criminal complaint and arrest warrant affidavit have the approval of an attorney for the Commonwealth prior to filing.

Designated Felony Crimes

a) Aggravated Assault of unborn child—18 Pa.C.S. § 2606(a)

b) Aggravated Assault—18 Pa.C.S. § 2702(a)(1) through (9)

c) Aggravated assault of law enforcement officer 18 Pa.C.S. § 2702.1(a)

d) Stalking—18 Pa.C.S. § 2709.1(a)(1) and (c)(2)

e) Stalking—18 Pa.C.S. § 2709.1(a)(2) and (c)(2)

f) Threat to use weapons of mass destruction—18 Pa.C.S. § 2715(a)(3) and (b)(2) and (b)(4)

g) Threat to use weapons of mass destruction—18 Pa.C.S. § 2715(a)(4) and (b)(2) and (b)(4)

h) Weapons of mass destruction—18 Pa.C.S. § 2716(a)

i) Weapons of mass destruction—18 Pa.C.S. § 2716(b)

j) Terrorism—18 Pa.C.S. § 2717(a)

k) Kidnapping—18 Pa.C.S. § 2901(a)

l) Unlawful restraint of minor—18 Pa.C.S. § 2902(b) and (c)

m) False imprisonment of a minor—18 Pa.C.S. § 2903(b) and (c)

n) Trafficking in individuals—18 Pa.C.S. § 3011(a) and (b)

o) Involuntary Servitude—18 Pa.C.S. § 3012(a)

p) Patronizing a victim of sexual servitude—18 Pa.C.S. § 3013(a)

q) Unlawful conduct regarding documents—18 Pa.C.S. § 3014

r) Causing or risking catastrophe—18 Pa.C.S. § 3302(a) and (b)

s) Burglary—18 Pa.C.S. § 3502(a)

t) Criminal trespass—18 Pa.C.S. § 3503(a)

u) Forgery—18 Pa.C.S. § 4101(a)

v) Intimidation of witness—18 Pa.C.S. § 4952(a) and (b)(1) through (4)

w) Retaliation against witness/victim—18 Pa.C.S. § 4953(a) and 4952(1) through (5)

x) Retaliation against prosecutor/judicial official—18 Pa.C.S. § 4953.1(a) and (b)(1) through (5)

y) Intimidation, retaliation or obstruction in child abuse cases—18 Pa.C.S. § 4958(a)(b), (b.1) and (c)(1)

z) Disarming law enforcement officer—18 Pa.C.S. § 5104.1(a)

aa) Recruiting criminal gang member—18 Pa.C.S. § 5131(a) and (b)(1)(iii) and (2)

bb) Riot—18 Pa.C.S. § 5501

cc) Animal Fighting—18 Pa.C.S. § 5511(h.1)(1) through (7)

dd) Facsimile weapons of mass destruction—18 Pa.C.S. § 5516(a)

ee) Operation of methamphetamine laboratory—18 Pa.C.S. § 7508.2

ff) Criminal use of communication facility—18 Pa.C.S. § 7512(a)

gg) Aggravated assault by watercraft while operating under influence—30 Pa.C.S. § 5502.3(a)

hh) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance—35 P.S. § 780-113(a)(30)

ii) Unlawful manufacture of methamphetamine—35 P.S. § 780-113(a)(38)

jj) Operating a methamphetamine laboratory—35 P.S. § 780-113.4(a)(1)(2)(3) and (b)(1)

kk) Aggravated assault by vehicle—75 Pa.C.S. § 3732.1(a)

ll) Aggravated assault by vehicle while driving under the influence—75 Pa.C.S. § 3735.1(a)

mm) Accidents involving death or personal injury—75 Pa.C.S. § 3742(a) and (b)(2) and (3)(i)

nn) Accidents involving death or personal injury while not properly licensed—75 Pa.C.S. § 3742.1(a) and (b)(2)

[Pa.B. Doc. No. 17-1337. Filed for public inspection August 11, 2017, 9:00 a.m.]

SUPREME COURT

Financial Institutions Approved as Depositories for Fiduciary Accounts; No. 152 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 28th day of July, 2017, it is hereby Ordered that the financial institutions named on the following list are approved as depositories for fiduciary accounts in accordance with Pa.R.D.E. 221.

FINANCIAL INSTITUTIONS APPROVED AS DEPOSITORIES OF TRUST ACCOUNTS OF ATTORNEYS

Bank Code A.

595 Abacus Federal Savings Bank
2 ACNB BANK
613 Allegent Community Federal Credit Union
302 Allegheny Valley Bank of Pittsburgh
375 Altoona First Savings Bank
376 Ambler Savings Bank
532 AMERICAN BANK (PA)
615 Americhoice Federal Credit Union
116 AMERISERV FINANCIAL
648 Andover Bank (The)
377 Apollo Trust Company

Bank Code B.

558 Bancorp Bank (The)
485 Bank of America, NA
415 Bank of Landisburg (The)
642 BB & T Company
519 Beaver Valley Federal Credit Union
501 BELCO Community Credit Union
397 Beneficial Bank
652 Berkshire Bank
5 BNY MELLON, NA
392 BRENTWOOD BANK
495 Brown Brothers Harriman Trust Co., NA
161 Bryn Mawr Trust Company (The)
156 Bucks County Bank

Bank Code C.

654 CACL Federal Credit Union
618 Capital Bank, NA
622 Carrollton Bank
16 CBT Bank
136 CENTRIC BANK
394 CFS BANK
623 Chemung Canal Trust Company
649 CHROME FEDERAL CREDIT UNION
599 Citibank, NA
238 Citizens & Northern Bank
561 Citizens Bank (PA)
206 Citizens Savings Bank
602 City National Bank of New Jersey
576 Clarion County Community Bank
591 Clearview Federal Credit Union
23 CNB Bank
354 Coatesville Savings Bank
223 Commercial Bank & Trust of PA
21 Community Bank (PA)
371 Community Bank, NA (NY)
533 Community First Bank
132 Community State Bank of Orbisonia
647 CONGRESSIONAL BANK

Bank Code C.

380 County Savings Bank
617 Covenant Bank
536 Customers Bank

Bank Code D.

339 Dime Bank (The)
239 DNB First, NA
27 Dollar Bank, FSB

Bank Code E.

500 Elderton State Bank
567 Embassy Bank for the Lehigh Valley
541 Enterprise Bank
28 Ephrata National Bank
601 Esquire Bank, NA
340 ESSA Bank & Trust

Bank Code F.

629 1st Colonial Community Bank
158 1st Summit Bank
31 F & M Trust Company—Chambersburg
205 Farmers National Bank of Emlenton (The)
34 Fidelity Deposit & Discount Bank (The)
343 FIDELITY SAVINGS & LOAN ASSOCIATION OF BUCKS COUNTY
583 Fifth Third Bank
643 First Bank
650 First-Citizens Bank & Trust Company
174 First Citizens Community Bank
191 First Columbia Bank & Trust Company
539 First Commonwealth Bank
46 First Community Bank of Mercersburg
504 First Federal S & L Association of Greene County
525 First Heritage Federal Credit Union
42 First Keystone Community Bank
51 First National Bank & Trust Company of Newtown (The)
417 First National Bank of Lilly (The)
419 First National Bank of Mifflintown (The)
48 First National Bank of Pennsylvania
426 First Northern Bank & Trust Company
604 FIRST PRIORITY BANK
592 FIRST RESOURCE BANK
408 First United National Bank
151 Firstrust Savings Bank
416 Fleetwood Bank
493 FNB BANK, NA
175 FNCB Bank
291 Fox Chase Bank
241 Franklin Mint Federal Credit Union
639 Freedom Credit Union
58 FULTON BANK, NA

Bank Code G.

499 Gratz Bank (The)
498 Greenville Savings Bank

Bank Code H.

402 Halifax Branch, of Riverview Bank
244 Hamlin Bank & Trust Company
362 Harleysville Savings Bank
363 Hatboro Federal Savings
463 Haverford Trust Company (The)
655 Home Savings Bank
606 Hometown Bank of Pennsylvania
68 Honesdale National Bank (The)
350 HSBC Bank USA, NA

Bank Code H.

364 HUNTINGDON VALLEY BANK
605 Huntington National Bank (The)
608 Hyperion Bank

Bank Code I.

365 Indiana First Savings Bank
557 Investment Savings Bank
526 Iron Workers Savings Bank

Bank Code J.

70 Jersey Shore State Bank
127 Jim Thorpe Neighborhood Bank
488 Jonestown Bank & Trust Company
72 JUNIATA VALLEY BANK (THE)

Bank Code K.

651 KeyBank NA
414 Kish Bank

Bank Code L.

74 LAFAYETTE AMBASSADOR BANK
554 Landmark Community Bank
418 Liverpool Community Bank
78 Luzerne Bank

Bank Code M.

361 M & T Bank
386 Malvern Federal Savings Bank
412 Manor Bank
510 Marion Center Bank
387 Marquette Savings Bank
81 Mars National Bank (The)
43 Marysville Branch, of Riverview Bank
367 Mauch Chunk Trust Company
619 MB Financial Bank, NA
511 MCS (Mifflin County Savings) Bank
641 Members 1st Federal Credit Union
555 Mercer County State Bank
192 Merchants Bank of Bangor
610 Meridian Bank
420 Meyersdale Branch, of Riverview Bank
294 Mid Penn Bank
276 MIFFLINBURG BANK & TRUST COMPANY
457 Milton Savings Bank
614 Monument Bank
596 MOREBANK, A DIVISION OF BANK OF PRINCETON (THE)
484 MUNCY BANK & TRUST COMPANY (THE)

Bank Code N.

433 National Bank of Malvern
168 NBT Bank, NA
347 Neffs National Bank (The)
434 NEW TRIPOLI BANK
15 NexTier Bank, NA
636 Noah Bank
638 Norristown Bell Credit Union
439 Northumberland National Bank (The)
93 Northwest Bank

Bank Code O.

653 OceanFirst Bank
489 OMEGA Federal Credit Union
94 Orrstown Bank

Bank Code P.

598 PARKE BANK
584 Parkview Community Federal Credit Union
40 Penn Community Bank

Bank Code P.

540 PennCrest Bank
447 Peoples Security Bank & Trust Company
99 PeoplesBank, a Codorus Valley Company
556 Philadelphia Federal Credit Union
448 Phoenixville Federal Bank & Trust
79 PNC Bank, NA
449 Port Richmond Savings
451 Progressive-Home Federal Savings & Loan Association
637 Provident Bank
456 Prudential Savings Bank
491 PS Bank

Bank Code Q.

107 QNB Bank
560 Quaint Oak Bank

Bank Code R.

452 Reliance Savings Bank
220 Republic Bank d/b/a Republic Bank
628 Riverview Bank
208 Royal Bank America

Bank Code S.

153 S & T Bank
316 Santander Bank, NA
464 Scottdale Bank & Trust Co. (The)
460 Second Federal S & L Association of Philadelphia
646 Service 1st Federal Credit Union
458 Sharon Savings Bank
633 Slovak Savings Bank
462 Slovenian Savings & Loan Association of Franklin-Conemaugh
486 Somerset Trust Company
518 STANDARD BANK, PASB
542 Stonebridge Bank
517 Sun National Bank
440 SunTrust Bank
236 SWINEFORD NATIONAL BANK

Bank Code T.

143 TD Bank, NA
182 Tompkins VIST Bank
609 Tristate Capital Bank
640 TruMark Financial Credit Union
467 Turbotville National Bank (The)

Bank Code U.

483 UNB BANK
481 Union Building and Loan Savings Bank

Bank Code U.

133 Union Community Bank
634 United Bank, Inc.
472 United Bank of Philadelphia
475 United Savings Bank
600 Unity Bank
232 Univest Bank & Trust Co.

Bank Code V.

611 Victory Bank (The)

Bank Code W.

119 WASHINGTON FINANCIAL BANK
121 Wayne Bank
631 Wells Fargo Bank, NA
553 WesBanco Bank, Inc.
122 WEST MILTON STATE BANK
494 West View Savings Bank
473 Westmoreland Federal S & L Association
476 William Penn Bank
272 Woodlands Bank
573 WOORI AMERICA BANK
630 WSFS (Wilmington Savings Fund Society), FSB

Bank Code X.

Bank Code Y.

577 York Traditions Bank

Bank Code Z.

Platinum Leader Banks

The **HIGHLIGHTED ELIGIBLE INSTITUTIONS** are Platinum Leader Banks—Institutions that go above and beyond eligibility requirements to foster the IOLTA Program. These Institutions pay a net yield at the higher of 1% or 75 percent of the Federal Funds Target Rate on all PA IOLTA accounts. They are committed to ensuring the success of the IOLTA Program and increased funding for legal aid.

IOLTA Exemption

Exemptions are not automatic. If you believe you qualify, you must apply by sending a written request to the IOLTA Board's executive director: 601 Commonwealth Avenue, Suite 2400, P.O. Box 62445, Harrisburg, PA 17106-2445. If you have questions concerning IOLTA or exemptions from IOLTA, please visit their website at www.paiolta.org or call the IOLTA Board at (717) 238-2001 or (888) PAIOLTA.

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