

# 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 ]

**Order Adopting Rule 127 and Amending Rules 123, 531, 552, 752, 910, 911, 1115, 1116, 1123, 1312, 1314, 1513, 1516, 1571, 1573, 1703, 1732, 1770, 1781, 1931, 1952, 2111, 2112, 2113, 2152, 2156, 2171, 2544, 2545 and 2751 of the Rules of Appellate Procedure; No. 273 Appellate Procedural Rules Doc.**

#### Order

*Per Curiam*

*And Now*, this 5th day of January, 2018, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published before adoption at 47 Pa.B. 4622 (August 12, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Appellate Procedure 127 is adopted and Pennsylvania Rules of Appellate Procedure 123, 531, 552, 752, 910, 911, 1115, 1116, 1123, 1312, 1314, 1513, 1516, 1571, 1573, 1703, 1732, 1770, 1781, 1931, 1952, 2111, 2112, 2113, 2152, 2156, 2171, 2544, 2545, and 2751 are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 6, 2018.

#### 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.

(b) *Answer.*—Any party may file an answer to an application within 14 days after service of the application, but applications under Chapter 17 (effect of appeals; supersedeas and stays), or for delay in remand of the record, may be acted upon after reasonable notice, unless the exigency of the case is such as to impel the court to dispense with such notice. The court may shorten or extend the time for answering any application. Answers shall be deemed filed on the date of mailing if first class, express, or priority United States Postal Service mail is utilized.

(c) *Speaking applications.*—An application or answer which sets forth facts which do not already appear of record shall be verified by some person having knowledge of the facts, except that the court, upon presentation of such an application or answer without a verified statement, may defer action pending the filing of a verified statement or it may in its discretion act upon it in the absence of a verified statement if the interests of justice so require.

(d) *Oral argument.*—Unless otherwise ordered by the court, oral argument will not be permitted on any application.

(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 added and printed in regular type to enhance readability.)

#### **Rule 127. Confidential Information and Confidential Documents. Certification.**

(a) Unless public access is otherwise 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* ("Public Access 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 or order of court, or a Confidential Document Form.

(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* (“Public Access Policy”) can be found at <http://www.pacourts.us/public-records>. Sections 7.0(D) and 8.0(D) of the Public Access 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-records>. Pursuant to Section 7.0(C) of the Policy, a court may adopt a rule or order that permits, in lieu of a Confidential Information Form, the filing of a document in two versions, that is, a “Redacted Version” and an “Unredacted Version.” For certification of the Reproduced Record and Supplemental Reproduced Record in compliance with the Public Access Policy, see Pa.R.A.P. 2152, 2156, 2171, and accompanying notes.

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*.

(a) *General*.—An *amicus curiae* is a non-party interested in the questions involved in any matter pending in an appellate court.

(b) *Briefs*

(1) *Amicus curiae Briefs Authorized*.—An *amicus curiae* may file a brief (i) during merits briefing; (ii) in support of or against a petition for allowance of appeal, if the *amicus curiae* participated in the underlying proceeding as to which the petition for allowance of appeal seeks review; or (iii) by leave of court. An *amicus curiae* does not need to support the position of any party in its brief.

(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 ] Trial 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 ] trial 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 ] trial 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 ] trial 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) and applications under [ Rule ] Pa.R.A.P. 552 (or 553) and [ther] 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 consider-

ation 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:

(1) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported, the citation thereto. Any unreported opinions shall be appended to the jurisdictional statement;

(2) A statement of the basis, either by Act of Assembly or general rule, for the jurisdiction of the Supreme Court or the cases believed to sustain that jurisdiction;

(3) The text of the order in question, or the portions thereof sought to be reviewed, and the date of its entry in the court. The order may be appended to the statement;

(4) A concise statement of the procedural history of the case; and

(5) The questions presented for review, expressed in the terms and the 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 statement, or fairly comprised therein will ordinarily be considered by the Court.

(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 answer complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the answer.

(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, trial courts, or [ lower ] intermediate appellate 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 intermediate 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 ] intermediate appellate 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.**

(a) *General rule.*—Except as otherwise prescribed by this rule, within 14 days after service of a petition for allowance of 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 order involved should not be reviewed by the Supreme Court, and shall comply with Pa.R.A.P. 1115(a).7. No separate motion to dismiss a petition for allowance of 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 allowance of appeal will not be filed. The failure to file an answer will not be construed as concurrence in the request for allowance of appeal.

(b) *Children's fast track appeals.*—In a children's fast track appeal, within 10 days after service of a petition for allowance of appeal, an adverse party may file an answer.

(c) *Length.*—An answer to a petition for allowance of appeal shall not exceed 9,000 words. An answer that does not exceed 20 pages when produced by a word processor or typewriter shall be deemed to meet the 9,000 word limit. In all other cases, the attorney or the unrepresented filing party shall include a certification that the answer complies with the word count limit. The certificate may be based on the word count of the word processing system used to prepare the answer.

(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):

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

(2) The text of the order in question, or the portions thereof sought to be reviewed (including the statement by the [ **lower** ] **trial** court or other government unit that the order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter), and the date of its entry in the **trial** court or other government unit [ **below** ]. If the order is voluminous, it may, if more convenient, be appended to the petition.

(3) A concise statement of the case containing the facts necessary to an understanding of the controlling questions of law determined by the order of the [ **lower** ] **trial** court or other government unit.

(4) The controlling questions of law 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 permission to appeal is granted.

(5) A concise statement of the reasons why a substantial ground exists for a difference of opinion on the questions and why an immediate appeal may materially advance the termination of the matter.

(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 [ **lower** ] **trial** courts or other government units in the case, and, if reference thereto is necessary to ascertain the grounds of the order, opinions in companion cases. If whatever is required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented.

(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** ] **trial** 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 311 (interlocutory appeals as of right)** ] **Pa.R.A.P. 311**.

**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).

\* \* \* \* \*

**Rule 1516. Other Pleadings Allowed.**

(a) *Appellate jurisdiction petitions for review.*—No answer or other pleading to an appellate jurisdiction peti-



tion for review is authorized, unless the petition for review is filed pursuant to the [ **Notes to Rules** ] **notes to 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.

(a) *General rule.*—Review of a determination of the Board of Finance and Revenue shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule.

(b) *Time for petitioning for review.*—A petition for review of a determination of the Board of Finance and Revenue shall be filed:

(1) Within 30 days after entry of an order of the Board which does not expressly state that it is interlocutory in nature.

(2) Within 30 days after entry of an order of the Board adopting a determination by the Department of Revenue or other government unit made at the direction of the Board respecting any matter pending before the Board.

(3) Where the Board is required by statute to act finally on any matter pending before it within a specified

period after the matter is filed with the Board and has not done so, at any time between:

(i) the expiration of such specified period; and

(ii) 30 days after service of actual notice by the Board stating that it has failed to act within such period.

(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).

(e) *Answer.*—An answer may not be filed to a petition for review of a determination of the Board of Finance and Revenue. The Commonwealth may raise any question on review, although no cross petition for review has been filed by it, and may introduce any facts in support of its position if 20 days written notice is given to the petitioner prior to trial of the intention of raising such new questions or presenting new facts.

(f) *Record.*—No record shall be certified to the court by the Board of Finance and Revenue. After the filing of the petition for review, the parties shall take appropriate steps to prepare and file a stipulation of such facts as may be agreed to and to identify the issues of fact, if any, which remain to be tried. See Rule 1542 (evidentiary hearing).

(g) *Oral argument.*—Except as otherwise ordered by the court on its own motion or on application of any party, after the record is closed, the matter may be listed for argument before or submission to the court.

(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** ] a **trial** court or agency after appeal) of an order expressly granting reconsideration of the determi-

nation 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:

Section 1103 of The Fiscal Code [ (72 P.S. § 1103) ], **Act of April 9, 1929 (P.L. 343), 72 P.S. § 1103.**

[ **Act of December 5, 1933, (Sp. session 1933-34), (P.L. 38, No. 6, known as the Spirituous and Vinous Liquor Tax Law, § 5 (47 P.S. § 749).**

**Act of January 14, 1952 (1951 P.L. 1965, No. 550), known as the Fuel Use Tax Act, § 7 (72 P.S. § 2614.7).**

**Sections 234 (sales and use tax), 341 (personal income tax), and 2005 (malt beverage tax), Act of March 4, 1971 (P.L. 6, No. 2), known as The Tax Reform Code of 1971 (72 P.S. §§ 7234, 7341, 9005). ]**

**Section 2005 (malt beverage tax) of The Tax Reform Code of 1971, Act of March 4, 1971 (P.L. 6), 72 P.S. § 9005.**

The following statute requires the Board of Finance and Revenue to act within twelve months in certain tax refund matters:

Section 3003.5 of the Tax Reform Code of 1971, Act of March 4, 1971 [ , **P.L. 6 , No. 2, 72 P.S. § 10003.5. Section 3003.5 was added by Section 41 of the Act of June 16, 1994, P.L. 279, No. 48 ] (P.L. 6), 72 P.S. § 10003.5.**

The following statutes are covered by Section 1103 of The Fiscal Code [ (petition to Board of Finance and Revenue for review) ]:

[ **Sections 809 (various insurance taxes) and 1001 (miscellaneous settlements, e.g., under the act of May 17, 1921 (P.L. 789, No. 285), known as The Insurance Department Act of 1921, § 212 (40 P.S. § 50) (retaliatory insurance taxes) of The Fiscal Code (72 P.S. §§ 809 and 1001).**

**Act of June 22, 1931 (P.L. 694, No. 255) § 4 (72 P.S. § 2186) (motor carriers-trackless trolley carriers).**

**Act of June 22, 1935 (P.L. 414, No. 182), known as the State Personal Property Tax Act, § 18(b) (72 P.S. § 3250-11a(b)) (corporate loans tax). See Act of April 25, 1929 (P.L. 669, No. 288), § 1.**

**Act of May 23, 1945 (P.L. 893, No. 360), known as the Co-operative Agricultural Association Corporate Net Income Tax Act, § 6 (72 P.S. § 3420-26).**

**Act of January 24, 1966 (P.L. (1965) 1509, No. 531), § 11 (40 P.S. § 1006.11) (surplus lines tax). ]**

**Sections 809 (various insurance taxes) and 1001 (miscellaneous settlements, for example, under Section 212 of The Insurance Department Act of 1921, Act of May 17, 1921 (P.L. 789), 40 P.S. § 50) of the Fiscal Code, Act of April 9, 1929 (P.L. 343), (72 P.S. §§ 809 and 1001).**

**Section 6 of the Co-operative Agricultural Association Corporate Net Income Tax Act, Act of May 23, 1945 (P.L. 893), 72 P.S. § 3420-21, et seq.**

Sections 407 (corporate net income tax), 603 (capital stock—franchise tax), 702 (bank **and trust company**

shares tax), 802 (title insurance [ **and trust** ] companies shares tax), 904 (insurance premiums tax), 1102 ([ **utilities** ] gross receipts tax), 1111-C (realty transfer tax), and 1503 (mutual thrift institutions tax) of the Tax Reform Code of 1971, **Act of March 4, 1971 (P.L. 6), [ ( ) 72 P.S. §§ 7407, 7603, 7702, 7802, 7904, 8102, 8111-C, and 8503[ ) ]**.

75 Pa.C.S. § 9616(f) (motor carriers road tax).

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.

(a) *General rule.*—Any party seeking review of a frivolousness determination by a court of common pleas under Pennsylvania Rule of Criminal Procedure 587 shall file a petition for review in the appellate court having jurisdiction over the matter. Review of a frivolousness determination under Pennsylvania Rule of Criminal Procedure 587 shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule. The time for filing is provided for in Pa.R.A.P. 1512(a)(1).

(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.

(d) *No supporting brief.*—All contentions in support of a petition shall be set forth in the body of the petition as prescribed by subparagraph (b)(v) of this rule. No separate brief in support of the petition for review will be received, and the prothonotary of the appellate court will refuse to file any petition for review to which is annexed or appended any brief other than the briefs filed in the trial court.

(e) *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.

(f) *Effect of filing petition.*—The filing of a petition for review shall not automatically stay the proceedings before the trial court. A petitioner may file an application for a stay in the trial or appellate court pending the determination of the petition for review, or the trial or appellate court may issue a stay *sua sponte*.

(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.**

(h) Pa.R.A.P. 1531—1571 do not apply to petitions for review filed under this rule. Pa.R.A.P. 1514 does apply, except that no copy of the petition needs to be served upon the Attorney General.

(i) *Grant of petition for review and transmission of record.*—If the petition for review is granted, the prothonotary of the appellate court shall immediately give written notice of the entry of the order to the clerk of the trial court and to each party who has appeared in the appellate court. The grant of the petition for review shall operate as a stay of all trial court proceedings. The clerk of the trial court shall docket the notice in the same manner as a notice of appeal and shall mail that notice to all parties to the trial court proceeding. The certified record shall be transmitted and filed in accordance with Chapter 19 (preparation and transmission of the record and related matters). The times fixed by those provisions for transmitting the record shall run from the date of the entry of the order granting the petition for review. No party needs to file a separate notice of appeal.

(j) *Denial of petition for review.*—If the petition for review is denied, the prothonotary of the appellate court shall immediately give written notice of the order to the clerk of the trial court and to each party who has appeared in the appellate court.

**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. Ori*, 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.

Where the petition for review of the determination of frivolousness is granted, the grant automatically initiates a separate appeal on the merits from the order denying the pretrial motion seeking dismissal of criminal charges on double jeopardy grounds.

A party may seek (or a court may *sua sponte* issue) a stay of the trial court proceedings pending review of the frivolousness determination. Otherwise, the trial court may proceed while the petition for review is pending. *See* Pa.R.A.P. 1701(d). Where the petition for review of the determination of frivolousness is granted, the grant automatically stays further proceedings in the trial courts.

**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] trial court.*—Application for a stay of an order of a [lower] trial 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, must ordinarily be made in the first instance to the [lower] trial 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] trial 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] trial court for the relief sought is not practicable, or that the [lower] trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the [lower] trial 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] trial 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.

(a) *Application to government unit.*—Application for a stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review shall ordinarily be made in the first instance to the government unit.

(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** ] **paragraph** 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 ] trial 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 **whether it is marked as confidential, so as to determine whether the record on appeal is complete. Any Confidential Information Forms and the "Unredacted Version" of any pleadings, documents, or other legal papers where a "Redacted Version" was also filed shall be separated either physically or electronically and transmitted to the appellate court. Whatever is confidential shall be labeled as such. 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.

(a) *Time and notice.*—Where under the applicable law the question raised by a petition for review may be determined in whole or in part upon the record before the government unit, the government unit shall file the record with the prothonotary of the court named in the petition for review within 40 days after service upon it of the petition. The court may shorten or extend the time prescribed in this [ **subdivision** ] **paragraph**. The prothonotary shall give notice to all parties of the date on which the record is filed.

(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 documents or case records were maintained as confidential in the government unit, the list of documents that comprise the record shall specifically identify such documents or the entire record as having been maintained as confidential, and the government unit shall either physically or electronically separate such documents.** The certificate shall be made by the head, chairman, deputy, or secretary of the govern-

ment 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 documents or case records were maintained as confidential in the government unit, the list of documents that comprise the record shall specifically identify such documents or the entire record as having been maintained as confidential.** 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:

- (1) Statement of jurisdiction.
- (2) Order or other determination in question.
- (3) Statement of both the scope of review and the standard of review.
- (4) Statement of the questions involved.
- (5) Statement of the case.
- (6) Summary of argument.
- (7) Statement of the reasons to allow an appeal to challenge the discretionary aspects of a sentence, if applicable.
- (8) Argument for appellant.
- (9) A short conclusion stating the precise relief sought.

(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** ] **trial court, intermediate appellate 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 allowed 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 and its requirement is now subsumed under paragraph (a)(2) of this Rule.

Pa.R.A.P. 2119(f) requires a separate statement of reasons that an appellate court should allow an appeal to challenge the discretionary aspects of a sentence. The 2008 amendments recognize that, while Pa.R.A.P. 2119(f) does not apply to all appeals, an appellant must include the reasons for allowance of appeal as a separate enumerated section immediately before the Argument section if he or she desires to challenge the discretionary aspects of a sentence.

**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).**

**Official Note:** See Pa.R.A.P. 2111 and 2114—2119.

**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.

**(d) “Confidential Information” and “Confidential Documents”, as those terms are defined in the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, shall appear in the reproduced record in the same manner and format as they do in the original record.**

**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) ] 122 A. 341, 342 (Pa. 1923); *Sims v. Pennsylvania R.R. Co.*, [ 279 Pa. 111, 117, 123 Atl. ] 123 A. 676, 679 (Pa. 1924).

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

**The Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts (“Public Access Policy”) does not apply retroactively to pleadings, documents, or other legal papers filed prior to the effective date of the Public Access Policy. Reproduced records may therefore contain pleadings, documents, or legal papers that do not comply with the Public Access Policy if they were originally filed prior to the effective date of the Public Access Policy.**

#### 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** ], and file a 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. “Confidential Information” and “Confidential Documents”, as those terms are defined in the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, shall appear in the reproduced record in the same manner and format as they do in the original record.**

**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.

As the division of the reproduced record into two separate documents will ordinarily render the record less intelligible to the court and the parties, the preparation of a supplemental reproduced record is not favored and the appellate court may suppress a supplemental record which has been separately reproduced without good cause.

**The Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts (“Public Access Policy”) does not apply retroactively to pleadings, documents, or other legal papers filed prior to the effective date of the Public Access Policy. Supplemental reproduced records may therefore contain pleadings, documents, or legal papers that do not comply with the Public Access Policy if they were originally filed prior to the effective date of the Public Access Policy.**

#### FORM OF BRIEFS AND REPRODUCED RECORD

##### Rule 2171. Method of Reproduction. Separate Brief and Record.

(a) *General Rule.*—Briefs and reproduced records may be reproduced by any duplicating or copying process which produces a clear black image on white paper. Briefs and records shall comply with the requirements of [ Rule ] Pa.R.A.P. 124 and shall be firmly bound at the left margin.

(b) *Separate brief and record.*—In all cases the reproduced record may be bound separately, and must be if it and the brief together contain more than 100 pages or if the reproduced record contains “Confidential Information” or “Confidential Documents”, as those terms are defined in the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (“Public Access Policy”), in any pleadings, documents, or legal papers originally filed after the effective date of the Public Access Policy.

**Official Note:** See Rule 124 (form of papers; number of copies) for general provisions on quality, size and format of papers (including briefs and reproduced records) filed in Pennsylvania courts.

#### 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):

(1) A reference to the order in question, or the portions thereof sought to be reargued, and the date of its entry in the appellate court. If the order is voluminous, it may, if more convenient, be appended to the application.

(2) A specification with particularity of the points of law or fact supposed to have been overlooked or misapprehended by the court.

(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).

(4) There shall be appended to the application a copy of any opinions delivered relating to the order with respect to which reargument is sought, and, if reference thereto is necessary to ascertain the grounds of the application for reargument, slip opinions in related cases. If whatever



is required by this paragraph to be appended to the application is voluminous, it may, if more convenient, be separately presented.

(b) *No supporting brief.*—All contentions in support of an application for reargument shall be set forth in the body of the application as prescribed by paragraph (a)(3) of this rule. No separate brief in support of an application for reargument will be received, and the prothonotary of the appellate court will refuse to file any application for reargument to which is annexed or appended any supporting brief.

(c) *Length.*—Except by permission of the court, an application for reargument shall not exceed 3,000 words, exclusive of pages containing table of contents, table of citations and any addendum containing opinions, etc., or any other similar supplementary matter provided for by this rule.

(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.**

*Official Note:* Based on former Supreme Court Rule 65 and former Superior Court Rule 56, and makes no change in substance.

[Pa.B. Doc. No. 18-92. Filed for public inspection January 19, 2018, 9:00 a.m.]

## **Title 231—RULES OF CIVIL PROCEDURE**

### **PART I. GENERAL**

#### **[ 231 PA. CODE CHS. 200, 1000 AND 2020 ]**

#### **Order Adopting Rule 205.6 and Amending Rules 229.2, 240, 1018 and 2028 of the Rules of Civil Procedure; No. 675 Civil Procedural Rules Doc.**

#### **Order**

*Per Curiam*

*And Now*, this 5th day of January, 2018, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 47 Pa.B. 4662 (August 12, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 205.6 of the Pennsylvania Rules of Civil Procedure is adopted and Rules 229.2, 240, 1018, and 2028 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on January 6, 2018.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

(Editor's Note: The following rule is 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 or order 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-records. 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-records. In lieu of the Confidential Information Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order 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

I, \_\_\_\_\_, the payee, verify that the statements below are true and correct:

\* \* \* \* \*

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 Protection of Victims of Sexual Violence or 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 Protection of Victims of Sexual Violence or 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.

CHAPTER 1000. ACTIONS

Subchapter A. CIVIL ACTION

PLEADINGS

Rule 1018. Caption.

Every pleading shall contain a caption setting forth the name of the court, the number of the action and the name

of the pleading. The caption of a complaint shall set forth the form of the action and the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side in the complaint with an appropriate indication of other parties.

**Official Note:** Civil Actions and proceedings shall be captioned “Court of Common Pleas of \_\_\_\_\_ County—Civil Action” or other appropriate form of action.

The caption of all legal papers filed in a medical professional liability action must contain the designation “Civil Action—Medical Professional Liability Action.” See Rule 1042.16.

**The caption of all legal papers filed in a civil action by and against a minor must designate the minor by the initials of his or her first and last name. See Rule 2028.**

#### CHAPTER 2020. MINORS AS PARTIES

##### Rule 2028. Actions By and Against Minors. Averments in Plaintiff’s Pleading.

(a) An action in which a minor is plaintiff shall be entitled “A, a Minor, by B, Guardian,” against the party defendant. **The minor shall be designated by the initials of his or her first and last name.**

**Official Note:** Under the above rule the representative of a minor plaintiff is termed a “guardian” regardless of whether under prior practice he or she would be termed a legal guardian or a next friend.

(b) The initial pleading filed in behalf of a minor plaintiff shall state the name and address of his or her guardian and the guardian’s relationship, if any, to the subject matter of the action or to any of the parties thereto. In case the person selected as guardian is a guardian appointed by any court of competent jurisdiction or by a will duly probated, the initial pleading shall contain a reference to the record of the appointment.

(c) An action in which a minor is the defendant shall be commenced against the minor [ **by name** ] in the manner in which a like action is commenced against an adult. **The minor shall be designated by the initials of his or her first and last name.**

**Official Note:** An action against a minor is begun in the same manner as an action against an adult, although by Rule 2034[ , *infra*, ] as under prior practice, the subsequent appointment of a guardian to represent the minor is essential to the rendition of a valid judgment against the minor.

**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. To provide guidance to practitioners regarding the Policy, new Rule 205.6 has been adopted and 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 of the Policy 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.

Conforming amendments have been made to Rule 229.2 governing the petition to transfer structured settlement payment rights, Rule 240 governing the petition to proceed *in forma pauperis*, Rule 1018 governing captions, and Rule 2028 governing the naming and caption of minor children’s names in actions by and against a minor. 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 amendment requires a petitioner to provide the initials only of any minor children. For Rule 2028, the amended rule requires that minor’s initials only be provided in the caption. A cross-reference to Rule 2028 has been added to the note to Rule 1018. In addition, a note cross-referencing new Rule 205.6 has been added to Rules 229.2, 240, and 2028. Stylistic amendments to Rule 240 have also been made.

*By the Civil Procedural  
Rules Committee*

DAVID L. KWASS,  
*Chair*

[Pa.B. Doc. No. 18-93. Filed for public inspection January 12, 2018, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CHS. 1900, 1910, 1915, 1920, 1930  
AND 1950 ]

Order Amending Rules 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 of the Rules of  
Civil Procedure; No. 674 Civil Procedural Rules  
Doc.

#### Order

*Per Curiam*

And Now, this 5th day of January, 2018, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 47 Pa.B. 4664 (August 12, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 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 of the Pennsylvania Rules of Civil Procedure are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on January 6, 2018.



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: See Pa.R.C.P. No. 1930.1(b). 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.

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.

See Pa.R.C.P. No. 1930.1(b). 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.

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:

\* \* \* \* \*

Official Note: See Pa.R.C.P. No. 1930.1(b). 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.

(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).

See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts shall apply.

Section 961 of the Judicial Code, 42 Pa.C.S. § 961, provides that each court of common pleas shall have a domestic relations section.

(b) No filing fee shall be required in advance.

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: See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts shall apply.

(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: See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts shall apply.**

(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: See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts shall apply.**

(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: See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts shall apply.**

\* \* \* \* \*

(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 1910.11(c)(1)). ] See 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 ] shall complete the Expense Statement in subparagraph (B) [ below ].

**Official Note: See Pa.R.C.P. No. 1930.1(b). To the extent this rule applies to actions not governed by other legal authority regarding confidentiality of information and documents in support actions or that attorneys or unrepresented parties file support-related confidential information and documents in non-support actions (e.g., divorce, custody), the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts shall apply.**

(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: See Pa.R.C.P. No. 1930.1(b). 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.

(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: See Pa.R.C.P. No. 1930.1(b). 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.

(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: See Pa.R.C.P. No. 1930.1(b). 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.

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.

See Pa.R.C.P. No. 1930.1(b). 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.

(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: See Pa.R.C.P. No. 1930.1(b). 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.

(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 INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**Official Note: See Pa.R.C.P. No. 1930.1(b). 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.**

(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: See Pa.R.C.P. No. 1930.1(b). 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.**

**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.**

\* \* \* \* \*

(c) The court may order alimony pendente lite, reasonable counsel fees, costs and expenses pending final disposition of any claim.

**Official Note: See Pa.R.C.P. No. 1930.1(b). 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.**

**Rule 1920.15. Counterclaim. Subsequent Petition.**

\* \* \* \* \*

**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.

**See Pa.R.C.P. No. 1930.1(b). 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.**

Rule 1920.31. Joinder of Related Claims. Child and Spousal Support. Alimony. Alimony *Pendente Lite*. Counsel Fees. **Costs and 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** ], **counsel fees, 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: See Pa.R.C.P. No. 1930.1(b). 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.**

(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: See Pa.R.C.P. No. 1930.1(b). 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 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: See Pa.R.C.P. No. 1930.1(b). 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.**

(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

<i>Item Number</i>	<i>Description of Property</i>	<i>Names of All Creditors</i>	<i>Names of All Debtors</i>	<i>Estimated Value at Date of Separation</i>
--------------------	--------------------------------	-------------------------------	-----------------------------	--

**Official Note: See Pa.R.C.P. No. 1930.1(b). 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.**

**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 following form:**

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) 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 or order 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-records>. 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-records>. In lieu of the Confidential Information Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order permitting the filing of a document in two versions, a “Redacted Version” and an “Unredacted Version.”**

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: See Pa.R.C.P. No. 1930.1(b). 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.**

(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: See Pa.R.C.P. No. 1930.1(b). 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.**

**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: See Pa.R.C.P. No. 1930.1(b). 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.**

(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:

\* \* \* \* \*

[Pa.B. Doc. No. 18-94. Filed for public inspection January 19, 2018, 9:00 a.m.]

**Title 231—RULES OF CIVIL PROCEDURE**

**PART II. ORPHANS' COURT RULES**

**[ 231 PA. CODE PART II ]**

**Order Adopting Rule 1.99 and Amending the Notes to Rules 2.1, 2.4, 2.7, 2.8, 2.10, 3.3—3.6, 3.9—3.11, 3.14, 7.2—7.4 and 8.2 of the Orphans' Court Rules; No. 758 Supreme Court Rules Doc.**

**Order**

*Per Curiam*

And Now, this 5th day of January, 2018, upon the recommendation of the Orphans' Court Procedural Rules Committee, the proposal having been published for public comment at 47 Pa.B. 4671 (August 12, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1.99 of the Pennsylvania Orphans' Court Rules is adopted in the following form, and that the Notes to Rules 2.1, 2.4, 2.7, 2.8, 2.10, 3.3—3.6, 3.9—3.11, 3.14, 7.2—7.4, and 8.2 of the Pennsylvania Orphans' Court Rules are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on January 6, 2018.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART II. ORPHANS' COURT RULES**

**CHAPTER I. PRELIMINARY RULES**

*(Editor's Note: The following rule is 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 legal paper 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 or order 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 <http://www.pacourts.us/public-records>. 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-records>. In lieu of the Confidential Information



Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order 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](http://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.

**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.

**CHAPTER VII. RULES RELATING TO PRE-HEARING AND HEARING PROCEDURE**

**Rule 7.2. Motion for Judgment on the Pleadings.**

\* \* \* \* \*

**Note:** Rule 7.2 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1034.

**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 Official Note to Pa.R.C.P. No. 1034 is fully incorporated by reference herein, except that the court may, but is not required to, promulgate local rules governing the procedure for these motions.

**Rule 7.3. Motion for Summary Judgment.**

\* \* \* \* \*

**Note:** Rule 7.3 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1035.1 *et seq.*

**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 Notes, Official Note and Explanatory Comments to Pa.R.C.P. No. 1035.1 *et seq.* are incorporated by reference herein, except that the court may, but is not required to, promulgate local rules governing the procedure for these motions.

**Rule 7.4. Injunctions.**

\* \* \* \* \*

**Note:** Rule 7.4 has no counterpart in former Orphans' Court Rules, but is derived from Pa.R.C.P. No. 1531.

**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:** With the repeal of 20 Pa.C.S. § 772, the propriety of and procedure for obtaining an injunction in an Orphans' Court matter was uncertain. This Rule clarifies that an injunction may be requested and issued in this court. The procedure for requesting the issuance of an injunction shall conform to the practice set forth in Pa.R.C.P. No. 1531. The Notes and Explanatory Comments to Pa.R.C.P. No. 1531 are fully incorporated by reference herein.

## CHAPTER VIII. RECONSIDERATION

### Rule 8.2. Motions for Reconsideration

\* \* \* \* \*

(c) Motions for reconsideration are not permitted to any order in involuntary termination or adoption matters under the Adoption Act, 23 Pa.C.S. § 2101 *et seq.*

**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 1.99.**

**Explanatory Comment:** The period for filing an appeal is not tolled by the filing of a motion for reconsideration unless the court grants the motion for reconsideration prior to the expiration of the appeal period. See Pa.R.A.P. 1701(b)(3). Interlocutory orders may be reconsidered anytime during the pendency of the proceeding. See *Key Automotive Equip. Specialists, Inc. v. Abernethy*, 636 A.2d 1126, 1128 (Pa. Super. 1994); 42 Pa.C.S. § 5505.

## ORPHANS' COURT PROCEDURAL RULES COMMITTEE REPORT

### Adoption of New Rule 1.99 and Amendment of the Notes to Rules 2.1, 2.4, 2.7, 2.8, 2.10, 3.3—3.6, 3.9—3.11, 3.14, 7.2—7.4, and 8.2 of the Pennsylvania Orphans' Court Rules

The Orphans' Court Procedural Rules Committee ("Committee") recommended the adoption of New Rule 1.99 and amendment of the Notes to Rules 2.1, 2.4, 2.7, 2.8, 2.10, 3.3—3.6, 3.9—3.11, 3.14, 7.2—7.4, and 8.2 of the Pennsylvania Orphans' Court Rules ("Rules"). These rule changes will facilitate the implementation of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* ("Policy").

The Supreme Court adopted the Policy on January 6, 2017, and it takes effect on January 6, 2018. The Policy generally provides that "[a]ll case records shall be open to the public in accordance with this policy", subject to certain exceptions for information and documents designated confidential. In response to the Court's adoption of the policy, the Committee undertook a review of the Rules to determine what new rules and/or amendments would be needed to implement the Policy. The Committee proposed a new rule, Rule 1.99, which provides that, absent any applicable authority that constrains public access, an attorney or unrepresented party filing a legal paper with the clerk must comply with Sections 7.0 and 8.0 of the Policy. The Note to proposed Rule 1.99 cites the authority for the treatment of confidential information and confi-

dential documents, provides information regarding the certification of compliance, and states that redaction of confidential information may be permitted by local rule.

The Committee also recommended the amendment of the Notes to Rules 2.1, 2.4, 2.7, 2.8, 2.10, 3.3—3.6, 3.9—3.11, 3.14, 7.2—7.4 and 8.2 to add a cross-reference to Rule 1.99. The cross-reference to Rule 1.99 in the Note to these rules will serve as a reminder to practitioners and unrepresented parties to comply with the Policy. Rules 2.1, 2.4, 2.7, 2.8, 3.3—3.6, 3.9—3.11 and 3.14 identify the required content of a filing. Filings made pursuant to Rules 7.2—7.4 and 8.2 could contain information or exhibits that are subject to the Policy.

[Pa.B. Doc. No. 18-95. Filed for public inspection January 19, 2018, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART II. ORPHANS' COURT RULES

#### [ 231 PA. CODE PART II ]

### Proposed Amendment of the Index and Appendix of Orphans' Court and Register of Wills Forms

The Orphans' Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of the Index and Appendix of Orphans' Court and Register of Wills Forms, removing the Estate Information Sheet, Form RW-01, 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 and underlined; 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 March 23, 2018. 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*

WAYNE M. PECHT, Esq.,  
*Chair*



REPORT

Proposed Amendment of the Index and Appendix of Orphans' Court and Register of Wills Forms

Removal of Estate Information Sheet From Forms' Appendix

The Orphans' Court Procedural Rules Committee ("Committee") is planning to propose to the Supreme Court of Pennsylvania the removal of the Estate Information Sheet, Form RW-01, from the Index and Appendix of Orphans' Court and Register of Wills Forms.

The Estate Information Sheet, RW-01<sup>1</sup>, appears in the Appendix of Orphans' Court and Register of Wills Forms as well as on the website of the Unified Judicial System ("UJS"). This form was not adopted by the Supreme Court; rather, it was promulgated and is updated by the Pennsylvania Department of Revenue. Although not a Supreme Court form, the Estate Information Sheet was maintained with the Register of Will Forms in the Appendix and on the UJS website for public convenience.

The Department of Revenue revised the Estate Information Sheet in November 2015. Rather than continuing to update the form in response to changes by the Department of Revenue, the Committee plans to recommend the removal of the Estate Information Sheet from the Appendix and UJS website, and, instead, direct the public to the Department of Revenue website. This change will ensure that practitioners and the public are directed to the most current version of the form as made available by the agency responsible for its promulgation and updates.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE PART II. ORPHANS' COURT RULES

INDEX TO APPENDIX

ORPHANS' COURT AND REGISTER OF WILLS FORMS ADOPTED BY SUPREME COURT PURSUANT TO Pa. O.C. Rule 1.8

Available as Fill-in Forms on Website of Administrative Office of Pennsylvania Courts http://www.pacourts.us/Forms/OrphansCourtForms.htm

Orphans' Court and Administration Forms

\* \* \* \* \*

D. Register of Wills Forms

- 1. Estate Information Sheet . . . . . [ RW-01 ] \*\*\*

[ (Not adopted by Supreme Court; form promulgated by Department of Revenue and maintained with Register of Wills forms for convenience) ]

\*\*\* The Estate Information Sheet is not a form adopted by the Supreme Court. It is available on the Department of Revenue website (www.revenue.pa.gov), and is no longer maintained with the Register of Wills Forms.

- 2. Petition for Grant of Letters . . . . . RW-02

\* \* \* \* \*

[Pa.B. Doc. No. 18-96. Filed for public inspection January 19, 2018, 9:00 a.m.]

<sup>1</sup>The current Estate Information Sheet is Department of Revenue form number REV-346 EX (11-15).

Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 1 AND 5 ]

Order Adopting New Rule 113.1, Amending Rules 560 and 575 and Revising the Comment to Rule 578 of the Rules of Criminal Procedure; No. 500 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 5th day of January, 2018, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 47 Pa.B. 4674 (August 12, 2017), 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 Pennsylvania Rule of Criminal Procedure 113.1 is adopted, Rules of Criminal Procedure 560 and 575 are amended and the Comment to Pennsylvania Rule of Criminal Procedure 578 is revised, in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 6, 2018.

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 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 clerk of court'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). 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 or order of court, or a Confidential Document Form. Nothing in this rule applies to any document filed with a magisterial district judge.

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: http://www.pacourts.us/public-records. 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: <http://www.pacourts.us/public-records/public-records-forms>. In lieu of the Confidential Information Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order 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 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 January 5, 2018, effective January 6, 2018.

*Committee Explanatory Reports:*

Final Report explaining the provisions of the new rule published with the Court’s Order at 48 Pa.B. 490 (January 20, 2018).

**CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES**

**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 (**Pa. Super.** 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.

\* \* \* \* \*

**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 January 5, 2018, effective January 6, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

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).

**Final Report explaining the January 5, 2018 amendment regarding the Court’s public access policy published with the Court’s Order at 48 Pa.B. 490 (January 20, 2018).**

**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

\* \* \* \* \*

(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**

\* \* \* \* \*

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.

The format requirements in paragraph (C) are not intended to apply to pre-printed and computer-generated forms prepared by the Administrative Office of Pennsylvania Courts; to charging documents; to documents routinely used by court-related agencies; or to documents routinely prepared or utilized by the courts.

*Pro se* defendants may submit handwritten documents that comply with the other requirements in paragraph (C) and are clearly readable.

Paragraph (D), titled "Unified Practice," was added in 2004 to emphasize that local rules must not be inconsistent with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules) and Pa.R.J.A. No. 103(d), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See [ **the first paragraph of the Rule 105 Comment** ] Pa.R.J.A. No. 103(d)(1). The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See [ **Rule 105(A)** ] Pa.R.J.A. No. 103(d)(1).

The prohibition on local rules mandating cover sheets was added because cover sheets are no longer necessary with the addition of the Rule 576(B)(1) requirement that the court administrator be served a copy of all motions and answers.

Although paragraph (D) precludes local rules that require a proposed order be included with a motion, a party should consider whether to include a proposed order. Proposed orders may aid the court by defining the relief requested in the motion or answer.

**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 January 5, 2018, effective January 6, 2018.**

*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. 3808 (July 22, 2006).

**Final Report explaining the January 5, 2018 amendment regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 490 (January 20, 2018).**

**Rule 578. Omnibus Pretrial Motion for Relief.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

See Pa.R.E. 702 and 703 regarding the admissibility of scientific or expert testimony. Pa.R.E. 702 codifies Pennsylvania's adherence to the test to determine the admissibility of expert evidence first established in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and adopted by the Pennsylvania Supreme Court in *Commonwealth v. Topa*, 369 A.2d 1277 (Pa. 1977). Given the potential complexity when the admissibility of such evidence is challenged, such challenges should be raised in advance of trial as part of the omnibus pretrial motion if possible. However, nothing in this rule precludes such challenges from being raised in a motion *in limine* when circumstances necessitate it.

**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 September 21, 2017, effective January 1, 2018; **Comment revised January 5, 2018, effective January 6, 2018.**

*Committee Explanatory Reports:*

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Final Report explaining the September 21, 2017 Comment revision regarding pretrial challenges to the admissibility of expert evidence published with the Court's Order at 47 Pa.B. 6173 (October 7, 2017).

**Final Report explaining the January 5, 2018 Comment revisions regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 490 (January 20, 2018).**

**FINAL REPORT<sup>1</sup>**

***New Rule 113.1; Amendments to Pa.Rs.Crim.P. 560 and 575; Revision of the Comment to Pa.R.Crim.P. 578***

**Public Access Policy**

On January 5, 2018, effective January 6, 2018, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule 113.1 (Confidential Information and Confidential Documents. Certification), amended Rules 560 (Information: Filing, Contents, Function) and 575 (Motions and Answers), and revised the *Comment* to Rule 578 (Omnibus Pretrial Motion for Relief) to provide correlative rule changes to assist in implementing the Court's new *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (hereafter "the new Policy").

These rule changes are the product of the Committee's examination resulting from a directive sent by the Court to all of the Rules Committees to consider correlative rule changes to implement the new Policy. The new Policy provides that trial and appellate court 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

<sup>1</sup> 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.

policy. This rule has been numbered "Rule 113.1," so that it falls after Rule 113 (Criminal Case File and Docket Entries) since both rules deal with provisions applicable to all case records. The new rule alerts filing parties to the requirements of the new Policy, in particular, the provisions regarding the inclusion of confidential information.

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 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 filings 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 aspirational language is included in the Comment to Rule 113.1 that a court should be careful about including such information in its filings.

Another area of concern was the requirement that a certification of compliance with the Policy be included in most filings. The Committee concluded that filers should be alerted to this requirement and its import. The rules that contain "contents" provisions for documents filed by the parties will now contain a cross-reference to the new Policy and the certification requirement in particular. These cross-references are included in Rules 560 (Information: Filing, Contents, Function) and 575 (Motions and Answers). These rules contain the most clearly defined contents provisions as well as are some of the most significant filing rules for documents filed in the courts of common pleas. A similar cross-reference also has been 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 at the common pleas level.

[Pa.B. Doc. No. 18-97. Filed for public inspection January 19, 2018, 9:00 a.m.]

**Title 234—RULES OF  
CRIMINAL PROCEDURE**

[ 234 PA. CODE CH. 1 ]

**Order Amending Rules 140, 141 and 142 of the  
Rules of Criminal Procedure; No. 499 Criminal  
Procedural Rules Doc.**

**Order**

*Per Curiam*

*And Now*, this 2nd day of January, 2018, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having not been published before adoption pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice and efficient administration, 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 Pennsylvania Rules of Criminal Procedure 140, 141, and 142 are amended, in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective April 1, 2018.

### Annex A

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

### PART D. Procedures Implementing 42 Pa.C.S. §§ 4137, 4138, and 4139: Criminal Contempt Powers of District Justices, Judges of the Pittsburgh Magistrates Court, and Judges of the Traffic Court of Philadelphia

Rule 140. Contempt Proceedings Before Magisterial District Judges and Pittsburgh Magistrates Court Judges [ , and Philadelphia Traffic Court Judges ].

#### (A) CONTEMPT IN THE PRESENCE OF THE COURT

[ 1. ] (1) An issuing authority may summarily hold an individual in contempt for misbehavior in the presence of the court that obstructs the administration of justice, and, after affording the individual an opportunity to be heard, may impose a punishment of a fine of not more than \$100 or imprisonment for not more than 30 days or both.

[ 2. ] (2) The issuing authority shall orally advise the contemnor of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that:

[ a. ] (a) any punishment shall be automatically stayed for a period of 30 days from the date of the imposition of the punishment;

[ b. ] (b) if the contemnor files an appeal within the 30-day period, the stay will remain in effect pending disposition of the appeal;

[ c. ] (c) when the punishment is imprisonment, the contemnor has the right to assistance of counsel for the purpose of the *de novo* hearing in the court of common pleas, and, if the contemnor is without financial resources or otherwise unable to employ counsel, counsel will be assigned as provided in Rule 122;

[ d. ] (d) the contemnor must appear in the court of common pleas for the *de novo* hearing or the appeal may be dismissed; and

[ e. ] (e) unless a notice of appeal is filed within the 30-day period, on the date specified by the issuing authority, the contemnor must:

[ (1) ] (i) pay any fine imposed; and

[ (2) ] (ii) appear before the issuing authority for execution of any punishment of imprisonment.

[ 3. ] (3) The issuing authority shall issue a written order of contempt, in which the issuing authority shall:

[ a. ] (a) set forth the facts of the case that constitute the contempt;

[ b. ] (b) certify that the issuing authority saw or heard the conduct constituting the contempt, and that the contempt was committed in the actual presence of the issuing authority;

[ c. ] (c) set forth the punishment imposed, and the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment; and

[ d. ] (d) set forth the information specified in paragraph [ (A)2 ] (A)(2).

[ 4. ] (4) The order of contempt shall be signed by the issuing authority, and a copy shall be given to the contemnor.

#### (B) CONTEMPT NOT IN THE PRESENCE OF THE COURT

##### [ 1. ] (1) INSTITUTION OF PROCEEDINGS

[ a. ] (a) An issuing authority may institute contempt proceedings by either

[ (1) ] (i) giving written notice to the alleged contemnor of the time, date, and place of the contempt hearing, or

[ (2) ] (ii) when deemed appropriate by the issuing authority, issuing an attachment by means of a warrant,

whenever a person is alleged to have [ (i) ] (a) failed to obey a subpoena issued by the issuing authority; [ (ii) ] (b) failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order; [ (iii) ] (c) failed to comply with an order of an issuing authority directing a defendant to compensate a victim; or [ (iv) ] (d) failed to comply with an order of an issuing authority in any case in which the issuing authority is by statute given the power to find the person in contempt.

[ b. ] (b) If the proceedings are instituted by notice, the notice shall:

[ (1) ] (i) specify the acts or omissions and the essential facts constituting the contempt charged;

[ (2) ] (ii) advise what the punishment may be for a finding of contempt in the case;

[ (3) ] (iii) if, in the event of a finding of contempt, there is a likelihood that the punishment will be imprisonment, advise the alleged contemnor of the right to the assistance of counsel and that counsel will be assigned pursuant to Rule 122 if the alleged contemnor is without financial resources or is otherwise unable to employ counsel; and

[ (4) ] (iv) advise the alleged contemnor that failure to appear at the hearing may result in the issuance of a bench warrant.

[ c. ] (c) The notice shall be served in person or by both first class and certified mail, return receipt requested.

##### [ 2. ] (2) HEARING

[ a. ] (a) The hearing shall be conducted in open court, and the alleged contemnor shall be given a reasonable opportunity to defend.

[ b. ] (b) At the conclusion of the hearing:

[ (1) ] (i) The issuing authority in open court shall announce the decision, and, upon a finding of contempt, impose punishment, if any.

[ (2) ] (ii) If the issuing authority finds contempt and imposes punishment, the issuing authority shall orally advise the contemnor of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that:

(a) any punishment shall be automatically stayed for a period of 30 days from the date of the imposition of the punishment;

(b) if the contemnor files an appeal within the 30-day period, the stay will remain in effect until disposition of the appeal;

(c) when the punishment is imprisonment, that the contemnor has the right to assistance of counsel for the purpose of the *de novo* hearing in the court of common pleas and, if the contemnor is without financial resources or otherwise unable to employ counsel, that counsel will be assigned as provided in Rule 122;

(d) the contemnor must appear in the court of common pleas for the *de novo* hearing or the appeal may be dismissed; and

(e) unless a notice of appeal is filed within the 30-day period, on the date specified by the issuing authority, the contemnor must:

(i) pay any fine imposed; and

(ii) appear before the issuing authority for execution of any punishment of imprisonment.

[ (3) ] (iii) If the issuing authority finds contempt and imposes punishment, the issuing authority shall issue a written order of contempt setting forth:

(a) the facts of the case that constitute the contempt;

(b) the punishment imposed, and the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment; and

(c) the information specified in paragraph [ (B)2.b(2) ] (B)(2)(b)(ii).

[ (4) ] (iv) The order of contempt shall be signed by the issuing authority, and a copy given to the contemnor.

[ (5) ] (v) Whether or not the issuing authority finds an individual in contempt for failure to comply with an order to pay restitution or to pay fines and costs, the issuing authority may alter or amend the order. If the issuing authority alters or amends the order, the issuing authority shall:

(a) issue a written order setting forth the amendments and the reasons for the amendments, make the order a part of the transcript, and give a copy of the order to the defendant; and

(b) advise the defendant that the defendant has 30 days within which to file a notice of appeal of the altered or amended order pursuant to Rule 141.

c. The issuing authority shall not hold a contempt hearing in the absence of the alleged contemnor. If the alleged contemnor fails to appear for the contempt hearing, the issuing authority may continue the hearing and issue a bench warrant.

### [ 3. ] (3) PUNISHMENT

Punishment for contempt may not exceed the limits set forth as follows:

[ a. ] (a) Whenever a person is found to have failed to obey a subpoena issued by the issuing authority, punishment may be a fine of not more than \$100. Failure to pay the fine within a reasonable time may result in imprisonment for not more than 10 days.

[ b. ] (b) Whenever a person is found to have failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an

installment payment order, punishment may be imprisonment for not more than 90 days.

[ c. ] (c) Whenever a person is found to have failed to comply with an order of an issuing authority directing a defendant to compensate a victim, punishment may be a fine of not more than \$100 or imprisonment for not more than 30 days, or both.

### Comment

This rule sets forth the procedures to implement 42 Pa.C.S. §§ 4137[ , 4138, and 4139 ] and 4138 concerning contempt powers of the minor judiciary, as well as any other statutes subsequently enacted that would provide for findings of contempt by the minor judiciary. It is not intended to supplant the procedures set forth in 23 Pa.C.S. § 6110 *et seq.* concerning violations of protection from abuse orders.

The scope of the contempt powers of magisterial district judges[ , ] and Pittsburgh Magistrates Court judges[ , and Philadelphia Traffic Court judges ] is governed by 42 Pa.C.S. §§ 4137[ , 4138, and 4139 ] and 4138 respectively. Therefore, as used in this rule, "issuing authority" refers only to magisterial district judges[ , ] and Pittsburgh Magistrates Court judges[ , and Philadelphia Traffic Court judges ] when acting within the scope of their contempt powers. However, 42 Pa.C.S. §§ 4137(c)[ , 4138(c) , and 4139(c) ] and 4138(c) contain limitations upon the punishment that a minor court may impose for contempt. Such statutory limitations were held to be unconstitutional in *Commonwealth v. McMullen*, [ 599 Pa. 435, ] 961 A.2d 842 (Pa. 2008).

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

[ Pursuant to Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013), the jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division. The terminology is retained in these rules because the Philadelphia Traffic Court, which is created by the Pennsylvania Constitution, has not been disestablished by constitutional amendment. Hearing officers of the Philadelphia Municipal Court Traffic Division do not have contempt powers of Philadelphia Traffic Court judges under 42 Pa.C.S. § 4139. ]

This rule was amended in 2018 to remove references to Philadelphia Traffic Court judges after that Court was abolished by an amendment to Article 5, Section 6, of the Pennsylvania Constitution.

All contempt proceedings under this rule are to be entered on the issuing authority's miscellaneous docket, and a separate docket transcript for the contempt proceeding is to be prepared. If an appeal is taken, the



issuing authority is required to forward the transcript and the contempt order to the clerk of courts. *See* Rule 141.

Paragraph (A) sets forth the procedures for handling contempt proceedings when the misbehavior is committed in the presence of the court and is obstructing the administration of justice. *See* 42 Pa.C.S. §§ 4137(a)(1) [ , **4138(a)(1), and 4139(a)(1)** ] and **4138(a)(1)**. This type of contempt is commonly referred to as “direct” or “summary” contempt. The issuing authority may immediately impose punishment without a formal hearing because prompt action is necessary to maintain or restore order in the courtroom and to protect the authority and dignity of the court. Although immediate action is permitted in these cases, the alleged contemnor is ordinarily given an opportunity to be heard before the imposition of punishment. *See Commonwealth v. Stevenson*, [ **482 Pa. 76,** ] 393 A.2d 386 (**Pa.** 1978).

Customarily, individuals are not held in summary contempt for misbehavior before the court without prior oral warning by the presiding judicial officer.

Paragraph (B) provides the procedures for instituting and conducting proceedings in all other cases of alleged contemptuous conduct subject to the minor judiciary’s statutory contempt powers, which are commonly referred to as “indirect criminal contempt” proceedings.

For purposes of this rule, the phrase “failed to obey a subpoena issued by the issuing authority” in paragraph (B)(1)(a) is intended to include the failure to obey any other lawful process ordering the person to appear before an issuing authority.

Pursuant to 42 Pa.C.S. §§ 4137(a)(2), (3), and (4), **and 4138(a)(2) and (3), [ and 4139(a)(2) and (3) ]** only issuing authorities have the power to impose punishment for contempt of court for failure to comply with an order directing a defendant to compensate a victim. *See* paragraph [ **(B)1.a** ] **(B)(1)(a)**.

“Indirect criminal contempt” proceedings must be instituted either by serving the alleged contemnor with a notice of the contempt hearing, or by issuing an attachment in the form of a warrant. The alleged contemnor must be afforded the same due process protections that are normally provided in criminal proceedings, including notice of the charges, an opportunity to be heard and to present a defense, and counsel. *See, e.g., Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), and *Bloom v. Illinois*, 391 U.S. 194 (1968).

When a warrant is executed under this rule, the alleged contemnor should be taken without unreasonable delay before the proper issuing authority.

Although 42 Pa.C.S. §§ 4137(a)(4) [ , **4138(a)(3), and 4139(a)(3)** ] and **4138(a)(3)** permit an issuing authority to impose summary punishments for indirect criminal contempt when a defendant fails to comply with an order of the issuing authority directing the defendant to pay fines and costs in accordance with an installment payment order, nothing in this rule is intended to preclude an issuing authority from proceeding pursuant to Rule 456 (Default Procedures: Restitution, Fines, and Costs).

No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the contempt hearing. *See Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). *Also see* Rule 454 concerning counsel in summary cases. The Supreme Court in *Commonwealth*

*v. Abrams*, [ **461 Pa. 327,** ] 336 A.2d 308 (**Pa.** 1975), held that the right to counsel applies in cases of criminal contempt. *See also Commonwealth v. Crawford*, [ **466 Pa. 269,** ] 352 A.2d 52 (**Pa.** 1976).

For the assignment of counsel, follow the Rule 122 procedures for summary cases.

For waiver of counsel, follow the Rule 121 procedures for proceedings before an issuing authority.

For the procedures for taking, perfecting, and handling an appeal from an order entered pursuant to this rule, see Rule 141.

If a contemnor defaults in the payment of a fine imposed as punishment for contempt pursuant to this rule, the matter is to proceed as provided in Rule 142.

*See* Chapter 5 Part C concerning bail before a contempt hearing. *See* 42 Pa.C.S. § 4137(e) concerning a magisterial district judge’s authority to set bail after an adjudication of contempt.

Paragraphs [ **(A)2.e and (B)2.b(2)(e)** ] **(A)(2)(e) and (B)(2)(b)(2)(e)** require the issuing authority to set a date for the contemnor to pay any fine or to appear for execution of any punishment of imprisonment. This date should be at least 35 days from the date of the contempt proceeding to allow for the expiration of the 30-day automatic stay period and the 5-day period within which the clerk of courts is to serve a copy of the notice of appeal on the issuing authority. *See* Rule 141.

Paragraph [ **(B)2.b(5)** ] **(B)(2)(b)(5)** requires that the case be reviewed at the conclusion of a contempt hearing to determine whether the restitution order or the fines and costs installment order should be altered or amended, rather than scheduling another hearing. This review should be conducted whether or not the issuing authority finds an individual in contempt for failure to comply with an order to pay restitution, or whether or not the issuing authority finds an individual in contempt for failure to comply with an installment order to pay fines and costs. For the authority to alter or amend a restitution order, see 18 Pa.C.S. § 1106(c)(3).

**Official Note:** Rule 30 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 140 and amended March 1, 2000, effective April 1, 2001; Comment revised March 26, 2004, effective July 1, 2004; amended March 1, 2012, effective July 1, 2012; Comment revised May 7, 2014, effective immediately; **amended January 2, 2018, effective April 1, 2018.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of new Rule 30 published with the Court’s Order at 27 Pa.B. 5405 (October 18, 1997).

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

Final Report explaining the March 26, 2004 Comment revision concerning right to counsel published with the Court’s Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the March 1, 2012 amendments concerning limitations on punishment for contempt published with the Court’s Order at 42 Pa.B. 1367 (March 17, 2012).

Final Report explaining the May 7, 2014 Comment revision concerning the transfer of the Philadelphia Traf-

fic Court functions to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

**Final Report explaining the January 2, 2018 amendment concerning the abolition of the Philadelphia Traffic Court published with the Court's Order at 48 Pa.B. 495 (January 20, 2018).**

Rule 141. Appeals from Contempt Adjudications by Magisterial District Judges and Pittsburgh Magistrates Court Judges[, and Philadelphia Traffic Court Judges ].

(A) An appeal authorized by 42 Pa.C.S. §§ 4137(d)[, **4138(d), or 4139(d)** ] and 4138(d) of the action of an issuing authority in a contempt proceeding shall be perfected by filing a notice of appeal within 30 days after the action of the issuing authority with the clerk of courts and by appearing in the court of common pleas for the *de novo* hearing.

\* \* \* \* \*

**Comment**

This rule provides the procedures for taking an appeal from a finding of contempt by a magisterial district judge[, ] or a Pittsburgh Magistrates Court judge[, or a Philadelphia Traffic Court judge ].

As used in this rule, “issuing authority” refers only to magisterial district judges[, ] and Pittsburgh Magistrates Court judges[, and Philadelphia Traffic Court judges ] when acting within the scope of their contempt powers. *See* 42 Pa.C.S. §§ 4137[, **4138, and 4139** ] and 4138.

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

[ Pursuant to Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013), the jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division. The terminology is retained in these rules because the Philadelphia Traffic Court, which is created by the Pennsylvania Constitution, has not been disestablished by constitutional amendment. Hearing officers of the Philadelphia Municipal Court Traffic Division do not have contempt powers of Philadelphia Traffic Court judges under 42 Pa.C.S. § 4139. ]

This rule was amended in 2018 to remove references to Philadelphia Traffic Court judges after that Court was abolished by an amendment to Article 5, Section 6, of the Pennsylvania Constitution.

As the Pennsylvania Supreme Court stated in *Commonwealth v. McMullen*, [ **599 Pa. 435,** ] 961 A.2d 842 (Pa. 2008), legislative limitations on a court's power to sentence for contempt are unconstitutional.

Pursuant to paragraph (B), any punishment imposed for contempt will be automatically stayed for 30 days from the date of the imposition of the punishment, during which time a notice of appeal may be filed with the clerk of courts. To the extent that 42 Pa.C.S. §§ 4137(d)[, **4138(d), and 4139(d)** ] and 4138(d) are inconsistent with this rule, they are suspended by Rule 1101 (Suspension of Acts of Assembly).

If no notice of appeal is filed within the 30-day period following imposition of the punishment, Rule 140 requires the issuing authority to direct the contemnor on a date certain to pay any fine imposed or to appear for execution of any punishment of imprisonment.

*See* 42 Pa.C.S. § 4137(e) concerning the imposition of bail as a condition of release by a magisterial district judge.

The procedures set forth in Rule 462 (Trial *De Novo*) for a trial *de novo* on a summary case should be followed when a contempt adjudication is appealed to the common pleas court.

No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the *de novo* contempt hearing. *See Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Paragraph (F) makes it clear that the judge assigned to conduct the *de novo* hearing may dismiss an appeal of the action of an issuing authority in a contempt proceeding when the judge determines that the appellant is absent without cause from the *de novo* hearing. If the appeal is dismissed, the judge should enter judgment and order execution of any punishment imposed by the issuing authority.

Once punishment for a contempt adjudication is imposed, paragraph (F)(1) makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any fine and costs, and the case may not be returned to the issuing authority.

**Official Note:** Rule 31 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 141 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; amended March 1, 2012, effective July 1, 2012; Comment revised May 7, 2014, effective immediately; **amended January 2, 2018, effective April 1, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the May 7, 2014 Comment revision concerning the transfer of the Philadelphia Traffic Court functions to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

**Final Report explaining the January 2, 2018 amendment concerning the abolition of the Philadelphia Traffic Court published with the Court's Order at 48 Pa.B. 495 (January 20, 2018).**

**Rule 142. Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt.**

\* \* \* \* \*

**Comment**

This rule provides the procedures governing defaults in the payment of fines imposed as punishment for contempt in proceedings before magisterial district judges[ , ] **and** Pittsburgh Magistrates Court judges[ , **and Philadelphia Traffic Court judges** ]. See Rule 140(A)(1) and (B)(3).

As used in this rule, “issuing authority” refers only to magisterial district judges[ , ] **and** Pittsburgh Magistrates Court judges[ , **and Philadelphia Traffic Court judges** ] when acting within the scope of their contempt powers. See 42 Pa.C.S. §§ 4137[ , 4138, and 4139 ] **and 4138**.

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

**[ Pursuant to Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013), the jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division. The terminology is retained in these rules because the Philadelphia Traffic Court, which is created by the Pennsylvania Constitution, has not been disestablished by constitutional amendment. Hearing officers of the Philadelphia Municipal Court Traffic Division do not have contempt powers of Philadelphia Traffic Court judges under 42 Pa.C.S. § 4139. ]**

**This rule was amended in 2018 to remove references to Philadelphia Traffic Court judges after that Court was abolished by an amendment to Article 5, Section 6, of the Pennsylvania Constitution.**

For contempt procedures generally, see Rule 140.

As the Pennsylvania Supreme Court stated in *Commonwealth v. McMullen*, [ 599 Pa. 435, ] 961 A.2d 842 (Pa. 2008), legislative limitations on a court’s power to sentence for contempt are unconstitutional.

When a contemnor defaults on a payment of a fine, paragraph (A) requires the issuing authority to notify the contemnor of the default, and to provide the contemnor with an opportunity to either pay the amount due or appear within a 10-day period to explain why the contemnor should not be imprisoned for nonpayment. If the contemnor fails to pay or appear, the issuing authority must issue a bench warrant for the arrest of the contemnor.

If the hearing on the default cannot be held immediately, the issuing authority may set bail as provided in Chapter 5 Part C.

This rule contemplates that when there has been an appeal pursuant to paragraph (C), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

**Official Note:** Rule 32 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 142 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; amended March 1, 2012 effective July 1, 2012; Comment revised May 7, 2014, effective immediately; **amended January 2, 2018, effective April 1, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the May 7, 2014 Comment revision concerning the transfer of the Philadelphia Traffic Court functions to the Philadelphia Municipal Court published with the Court’s Order at 44 Pa.B. 3065 (May 24, 2014).

**Final Report explaining the January 2, 2018 amendment concerning the abolition of the Philadelphia Traffic Court published with the Court’s Order at 48 Pa.B. 495 (January 20, 2018).**

**FINAL REPORT<sup>1</sup>**

***Amendments to Pa.R.Crim.P. 140, 141, and 142***

**Technical Corrections Related to the Abolition of the Philadelphia Traffic Court**

On January 2, 2018, effective April 1, 2018, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 140 (Contempt Proceedings Before Magisterial District Judges and Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges), 141 (Appeals from Contempt Adjudications by Magisterial District Judges and Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges), and 142 (Procedures Governing Defaults in Payment of Fine Imposed as Punishment for Contempt) to correct the references to the Philadelphia Traffic Court to reflect the abolition of that court and the transfer of its function to the Traffic Court Division of the Philadelphia Municipal Court.

The Philadelphia Traffic Court was abolished with the process beginning in 2013 with the passage of Act 17 of 2013. The Act transferred the functions and responsibilities of the Traffic Court to the Traffic Division of the Philadelphia Municipal Court. Shortly after the passage of the Act, the Committee developed a number of rule changes to reflect this transfer. These changes were adopted by the Court on May 7, 2014, effective immediately upon adoption.

Most of the amendments changed references to the “Traffic Court” to the “Traffic Division of the Municipal Court.” However, Rules 140-142 that provide the procedures for contempt proceedings by the minor judiciary were treated somewhat differently. A paragraph was added to the Comment in each of these rules stating:

Pursuant to Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013), the jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division. The terminology is retained in these rules because the Philadelphia Traffic Court, which is created by the Pennsylvania Constitution, has not been disestab-

<sup>1</sup>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.



lished by constitutional amendment. Hearing officers of the Philadelphia Municipal Court Traffic Division do not have contempt powers of Philadelphia Traffic Court judges under 42 Pa.C.S. § 4139.

This was consistent with existing provisions in these Comments retaining reference to Pittsburgh Magistrate Court judges. Even though the function of the Pittsburgh Magistrate Court has been transferred to the Pittsburgh Municipal Court that has been staffed entirely by magisterial district judges for some time, statutes referencing Pittsburgh Magistrate Court judges remain, particularly 42 Pa.C.S. § 4138 that defines the contempt powers of these judges. Therefore, the Committee had decided to retain the references to Philadelphia Traffic Court judges in Rules 140—142 because they still were authorized by the Pennsylvania Constitution and Act 17 permitted those non-convicted sitting Traffic Court judges to continue to serve until they completed their current terms or until the Constitution had been amended. *See* 42 Pa.C.S. § 1321.

In April 2016, a referendum to amend Article V, Section 6 of the Pennsylvania Constitution formally abolishing the Traffic Court was passed and references to the Traffic Court have been removed from the Constitution. As a result, the Committee deemed it appropriate to modify these rules to reflect that change.

Therefore, the remaining references to the Traffic Court contained in Rules 140—142 are removed and the Comment language revised to state the reason for this removal. Additionally, references in the rules to 42 Pa.C.S. § 4139 are being removed. Section 4139 defines the contempt powers of the Traffic Court judges. Even though that statute has not been repealed, it refers to the powers of an office that no longer exists. Finally, the format of the numeration of paragraphs in Rule 140 has been changed to make it consistent with that in the other rules.

[Pa.B. Doc. No. 18-98. Filed for public inspection January 19, 2018, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 4 ]

**Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 456 and 470**

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 403 (Contents of Citation), Rule 407 (Pleas in Response to Citation), 408 (Not Guilty Pleas—Notice of Trial), 409 (Guilty Pleas), 411 (Procedures Following Filing of Citation—Issuance of Summons), 412 (Pleas in Response to Summons), 413 (Not Guilty Pleas—Notice of Trial), 414 (Guilty Pleas), 422 (Pleas in Response to Citation), 423 (Not Guilty Pleas—Notice of Trial), 424 (Guilty Pleas), 454 (Trial in Summary Cases), 456 (Default Procedures: Restitution, Fines, and Costs), 470 (Procedures Related to License Suspension after Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs) 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 and underlined; deletions to the text are bolded and bracketed.

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

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

All communications in reference to the proposal should be received by no later than Friday, February 23, 2018. 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*

BRIAN W. PERRY,  
*Chair*

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART B. Citation Procedures

##### Rule 403. Contents of Citation.

\* \* \* \* \*

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

(1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and

(2) that the defendant shall, within [ 10 ] 30 days after issuance of the citation:

(a) plead not guilty by:

(i) notifying the proper issuing authority in writing of the plea [ **and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial; or** ], providing a current mailing address and telephone number, and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law, or

(b) forwarding as collateral for appearance at trial the sum of \$50 if the fine and costs are not specific on the citation, or

**(c) certifying in writing that they do not have the financial means to deposit the amount of collateral specified in the citation, or \$50 when no amount is specified; or**

(ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require[ . **If the defendant cannot afford to pay the collateral specified in the citation or the \$50, the defendant must appear before the issuing authority to enter a plea ]**; or

(b) plead guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation, **or when a payment plan is necessary**, or when required to appear pursuant to Rule 409(B)(3), 414(B)(3), or 424(B)(3); or

\* \* \* \* \*

**Official Note:** Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the January 26, 2007 amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published with the Court's Order at 37 Pa.B. 752 (February 17, 2007).

**Report explaining the proposed amendments regarding responses in writing asserting an inability to pay published for comment at 48 Pa.B. 505 (January 20, 2018).**

**PART B(1). Procedures When Citation Is Issued to Defendant**

**Rule 407. Pleas in Response to Citation.**

Within [ 10 ] 30 days after issuance of a citation, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

\* \* \* \* \*

**Official Note:** Previous Rule 57 adopted September 18, 1973, effective January 1, 1974; title of rule amended January 23, 1975, effective September 1, 1975; rescinded

July 12, 1985, effective January 1, 1986, and replaced by present Rules 411-414 and 421-424. Present Rule 57 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 407 and amended March 1, 2000, effective April 1, 2001; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

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

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 505 (January 20, 2018).**

**Rule 408. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number**, and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . **If ]**;

(b) **if** the fine and costs are not specified, [ **the defendant shall forward** ] **forwarding** the sum of \$50 as collateral for appearance at trial[ . ] **; or**

(c) **certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.**

(B) The issuing authority, upon receiving a plea of not guilty, shall:

\* \* \* \* \*

**Comment**

[ **It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452.** ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted

July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; **amended** , 2018, **effective** , 2018.

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3235 (June 25, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 505 (January 20, 2018).**

**Rule 409. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the citation; **[ or ]**

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3) [ . ]; **or**

(c) **the defendant is without the financial means immediately to pay the fine and costs specified in the citation.**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant **[ must ] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

\* \* \* \* \*

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

\* \* \* \* \*

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay **[ the fine and costs ] the full amount of the fine, costs, and restitution. The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.**

**Comment**

The rule **[ was amended in 2007 to make it clear (1) ] makes it clear** that a defendant may not enter a guilty plea by mail **(1)** to an offense that carries a mandatory sentence of imprisonment, **[ and (2) in ] or (2) when the defendant is without the financial means immediately to pay the fine and costs. In** those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

**In determining whether a defendant is without the financial means immediately to pay the fine, costs, and restitution, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.**

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

\* \* \* \* \*

**Official Note:** Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are



all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 505 (January 20, 2018).**

**PART B(2). Procedures When Citation Filed**

**Rule 411. Procedures Following Filing of Citation—Issuance of Summons.**

(A) Upon the filing of the citation, including receipt of electronically transmitted citation or parking violation information, the issuing authority shall issue a summons commanding the defendant to respond within [ 10 ] 30 days of receipt of the summons, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons in which case an arrest warrant shall be issued. The summons shall be served as provided in these rules.

\* \* \* \* \*

**Official Note:** Previous Rule 117, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 431. Present Rule 61 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; renumbered Rule 411 and Comment revised March 1, 2000, effective April 1, 2001; amended \_\_\_\_\_, 2003, effective 2003; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the February 6, 2003 amendments concerning electronic transmission of citation and parking violation information published with the Court's Order at 33 Pa.B. 969 (February, 22, 2003).

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 505 (January 20, 2018).**

**Rule 412. Pleas in Response to Summons.**

Within [ 10 ] 30 days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

\* \* \* \* \*

**Official Note:** Previous rule, originally numbered Rule 118 and 118(b), adopted June 30, 1964, effective January

1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered as Rule 62 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 441. Present Rule 62 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 412 and amended March 1, 2000, effective April 1, 2001; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

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

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 505 (January 20, 2018).**

**Rule 413. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number,** and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . If ];

(b) **if the fine and costs are not specified, [ the defendant shall forward ] forwarding** the sum of \$50 as collateral for appearance at trial[ . ]; **or**

(c) **certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.**

(B) The issuing authority, upon receiving a plea of not guilty, shall:

\* \* \* \* \*

**Comment**

[ It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed

by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court’s Order at 46 Pa.B. 3235 (June 26, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 505 (January 20, 2018).**

**Rule 414. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the citation; **[ or ]**

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3) [ . ]; **or**

**(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant **[ must ] shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. **The defendant shall provide confirmation of a current mailing address and telephone number.**

\* \* \* \* \*

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

\* \* \* \* \*

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay **[ the fine and costs ] the full amount of the fine, costs, and restitution. The issuing authority may delay imposing sentence pending confirmation of the defendant’s ability to pay.**

**Comment**

The rule [ was amended in 2007 to make it clear (1) ] **makes it clear** that a defendant may not enter a guilty plea by mail (1) to an offense that carries a mandatory sentence of imprisonment, [ and (2) in ] **or (2) when the defendant is without the financial means immediately to pay the fine and costs. In** those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority’s office pursuant to paragraphs (A)(1) and (B). The issuing authority’s staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant’s eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and §9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

**In determining whether a defendant is without the financial means immediately to pay the fine and costs, the issuing authority must consider the defendant’s financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant’s current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers’ compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant’s actual contribution to that support**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant’s financial situation.**

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence

of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

\* \* \* \* \*

**Official Note:** Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 505 (January 20, 2018).**

**PART C. Procedures in Summary Cases When Complaint Filed**

**Rule 422. Pleas in Response to Summons.**

Within [ 10 ] 30 days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

\* \* \* \* \*

**Official Note:** Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; Comment revised April 24, 1981, effective July 1, 1981; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

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

**Report explaining the proposed amendments increasing the period to respond to 30 days published for comment at 48 Pa.B. 505 (January 20, 2018).**

**Rule 423. Not Guilty Pleas—Notice of Trial.**

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea, **providing a current mailing address and telephone number,** and

(a) forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law[ . If ];

(b) **if the fine and costs are not specified, [ the defendant shall forward ] forwarding** the sum of \$50 as collateral for appearance at trial[ . ]; **or**

(c) **certifying that the defendant does not have the financial means to deposit the amount of the collateral specified in the citation or the \$50 when no amount is specified.**

(B) The issuing authority, upon receiving a plea of not guilty, shall:

\* \* \* \* \*

**Comment**

[ It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. ] All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offenses charged.

Paragraph (B)(3) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

**Official Note:** Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016; **amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3235 (June 26, 2016).

**Report explaining the proposed amendments regarding responses by mail when the defendant is unable to post collateral published for comment at 48 Pa.B. 505 (January 20, 2018).**



**Rule 424. Guilty Pleas.**

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when:

(a) the fine and costs are not specified in the citation; [ or ]

(b) after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3)[ . ]; or

(c) the defendant is without the financial means immediately to pay the fine and costs specified in the citation.

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant [ **must** ] **shall** sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly. The defendant shall provide confirmation of a current mailing address and telephone number.

\* \* \* \* \*

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

\* \* \* \* \*

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay [ **the fine and costs** ] **the full amount of the fine, costs, and restitution.** The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.

**Comment**

The rule [ **was amended in 2007 to make it clear (1) ] makes it clear** that a defendant may not enter a guilty plea by mail (1) to an offense that carries a mandatory sentence of imprisonment, [ **and (2) in ] or (2) when the defendant is without the financial means immediately to pay the fine and costs.** In those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet

certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

In determining whether a defendant is without the financial means immediately to pay the fine and costs, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support

The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.

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

\* \* \* \* \*

**Official Note:** Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; **amended** , **2018, effective** , **2018.**

Committee Explanatory Reports:

\* \* \* \* \*

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).

**Report explaining the proposed amendments regarding inability to pay published for comment at 48 Pa.B. 505 (January 20, 2018).**

**PART E. General Procedures in Summary Cases**

**Rule 454. Trial in Summary Cases.**

\* \* \* \* \*

(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, except as provided in paragraph (E).

**(E) In determining the amount of the discretionary fine, if any, or discretionary costs, if any, that is to be imposed and the payment schedule, if any, the issuing authority shall consider the defendant's ability to pay. The issuing authority may delay imposing sentence pending confirmation of the defendant's ability to pay.**

[ (E) ] (F) If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.

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

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

\* \* \* \* \*

(c) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the issuing authority [ may ] **shall** provide for installment payments and shall state the date on which each installment is due **and shall advise the defendant of the procedures in Rule 456 in the event of any default in payment.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Paragraph [ (F)(2)(b) ] (G)(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

\* \* \* \* \*

Under paragraph [ (F)(2)(a) ] (G)(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph [ (F)(3) ] (G)(3), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

\* \* \* \* \*

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

**In determining whether a defendant has the financial means to pay, the issuing authority must consider the defendant's financial situation. Some factors that should be considered in this determination include, but are not limited to:**

**(1) the defendant's current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);**

**(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers' compensation, public assistance;**

**(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;**

**(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;**

**(5) other contributions to household support from spouse, parents, children, or others; and**

**(6) all persons dependent upon the defendant for support and the defendant's actual contribution to that support.**

**The issuing authority may require the defendant to present documents or other evidence to verify the defendant's financial situation.**

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

\* \* \* \* \*

**Official Note:** Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; amended March 9, 2016, effective July 1, 2016; **amended** , 2018, **effective** , 2018.

Committee Explanatory Reports:

\* \* \* \* \*

Final Report explaining the March 9, 2016 amendments to paragraph (F) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 3235 (March 26, 2016).

Report explaining the proposed amendments related to determining the defendant’s ability to pay case assessments published for comment at 48 Pa.B. 505 (January 20, 2018).

**Rule 456. Default Procedures: Restitution, Fines, and Costs.**

\* \* \* \* \*

(D) When a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C):

\* \* \* \* \*

(3) At the conclusion of the hearing, the issuing authority shall:

\* \* \* \* \*

(c) if a sentence of imprisonment has been imposed, state in writing the reason(s) why a sentence of imprisonment was deemed appropriate and the facts that support a determination that the defendant has the ability to pay as ordered, and direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set collateral as provided in Rule 523. However, the issuing authority should only set monetary collateral when he or she has determined that less restrictive conditions of release will not be effective in ensuring the defendant’s appearance.

In determining whether a defendant has the financial means to pay, the issuing authority must consider the defendant’s financial situation. Some factors that should be considered in this determination include, but are not limited to:

(1) the defendant’s current employment status, including current salary and gross income from this year and previous recent years, if any, from the current employer(s) or previous employer(s);

(2) income from other sources such as interest, dividends, pension and annuities, social security benefits, support payments, disability payments, unemployment compensation and supplemental benefits, workers’ compensation, public assistance;

(3) the value of all property owned, including money available in cash, or bank accounts, real estate (including home), and other significant property such as motor vehicles;

(4) debts and obligations including mortgages, rent, loans; court assessments, and any other miscellaneous recurring expenses;

(5) other contributions to household support from spouse, parents, children, or others; and

(6) all persons dependent upon the defendant for support and the defendant’s actual contribution to that support.

The issuing authority may require the defendant to present documents or other evidence to verify the defendant’s financial situation.

Under paragraph (D)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded [ at trial ] at the default hearing. See Rule 122(A)(1) (“Counsel shall be appointed. . . in all summary cases, for all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed. . .”). See *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also [ Rules 121 and 122 ] Rule 121 (dealing with [ appearance or ] waiver of counsel).

\* \* \* \* \*

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; Comment revised September 21, 2012, effective November 1, 2012; Comment revised January 17, 2013, effective May 1, 2013; amended April 10, 2015, effective July 10, 2015; amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the April 10, 2015 amendments concerning the setting of collateral published with the Court’s Order at 45 Pa.B. 2040 (April 25, 2015).



Report explaining the proposed amendment concerning factors to be considered when determining a defendant's ability to pay published for comment at 48 Pa.B. 505 (January 20, 2018).

**PART G. Special Procedures in Summary Cases Under the Vehicle Code**

**Rule 470. Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs.**

(A) When a defendant fails to comply with the [ 10-day ] 30-day response period set forth in Rules 407, 412, [ 422, and 456, ] and 422, or when a defendant defaults on the payment of fines and costs, or restitution as ordered, the issuing authority shall notify the defendant in writing that, pursuant to Section 1533 of the Vehicle Code, the defendant's license will be suspended if, within 15 days of the date of the notice, the defendant fails to respond to the citation or summons or fails to pay all fines and costs imposed or enter into an agreement to make installment payments for the fines and costs [ within 15 days of the date of the notice ] .

\* \* \* \* \*

**Comment**

This rule was adopted in 1993, and amended in 2011, to implement the notice requirements of 75 Pa.C.S. § 1533 and to insure uniform, prompt transmissions to the Department of Transportation. It does not change the other procedural requirements contained in the summary case rules generally. *See, e.g.*, paragraph (B)(1)(a) of Rule 430 (Issuance of Warrant) and Rule 456 (Default Procedures: Restitution, Fines, and Costs). This rule was amended in 2018 to clarify that, in cases involving default on the payment of fines and costs, or restitution, the 15-day notice of the license suspension may be sent at the time of default and not subsequent to the expiration of the 10-day bench warrant notice under Rules 430(B)(3)(b) and 456(B).

\* \* \* \* \*

**Official Note:** Previous Rule 91, formerly Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986. The January 1, 1986 effective date is extended to July 1, 1986. Readopted and renumbered Rule 91 February 1, 1989, effective July 1, 1989; rescinded June 3, 1993, effective July 1, 1993, and replaced by new Rule 92. New Rule 91 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 470 and amended March 1, 2000, effective April 1, 2001; amended February 18, 2011, effective March 18, 2011; amended , 2018, effective , 2018.

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the February 18, 2011 amendments to paragraphs (A) and (D) adding failure to pay fines and costs published with the Court's Order at 41 Pa.B. 1167 (March 5, 2011).

Report explaining the proposed amendments to paragraphs (A) regarding the timing of the notice

of suspension for failure to pay fines and costs published for comment at 48 Pa.B. 505 (January 20, 2018).

**REPORT**

*Proposed Amendment of Pa.Rs.Crim.P. 403, 407, 408, 409, 411, 412, 413, 414, 422, 423, 424, 454, 456, and 470*

**Incarceration of the Indigent for Failure to Pay in Summary Cases**

*Background*

The Committee has been studying issues related to the incarceration of defendants for failure to pay case assessments in summary cases when there is a question regarding their ability to pay. The Committee's efforts were prompted by a March 14, 2016 letter from the Civil Rights Division of the U.S. Department of Justice to state courts nationwide. This letter raised constitutional concerns regarding the imposition and methods of enforcement of case assessments on the poor in non-felony matters. Shortly thereafter, the Committee received communications from representatives of the American Civil Liberties Union ("ACLU") who made a number of suggested rule changes related to these issues. The suggestions addressed two perceived problems: (1) the absence of an explicit mechanism for reducing or waiving fees and costs for those who cannot pay; and (2) the lack of guidance provided to MDJs as to how to evaluate a defendant's ability to pay.

The Committee concluded that legislative action was the more appropriate means of addressing the first problem; the Committee agreed that rule changes could be formulated to address the second problem. The Committee has developed a series of rule changes that fall into three main areas:

- (1) increasing the amount of time a defendant has to respond to a citation from the current 10 days to 30 days;
- (2) permitting a defendant who wishes to plead not guilty but who cannot afford to post collateral to assert the inability to pay when responding in writing to the citation;
- (3) provide guidance to the issuing authority regarding the factors to be considered when assessing a defendant's ability to pay at time of sentencing and default.

*Proposed Rule Changes*

With regard to increasing the response time to a citation to 30 days, the Committee concluded that this would allow for additional time for a defendant to obtain the necessary funds for payment of the assessments in the citation. This may result in fewer numbers of not guilty pleas. This increase to the time to respond to the citation to 30 days would be included in Rule 403. Similar changes also would be made to Rules 407, 411, 412 and 422.

The Committee had received the suggestion from the ACLU to remove the requirement to post collateral for not guilty pleas entered by mail. The Committee noted that there are a significant number of summary cases in which a not guilty plea had been entered by mail and the defendant failed to appear. Under current practice, these resulted in a guilty finding with forfeiture of the collateral to pay the assessed fines. Completely eliminating the collateral requirement likely would result in a large increase in the number of arrest warrants having to be issued in these cases with the associated costs to the

defendant for these warrants. However, the Committee also considered it strange that collateral is required in all summary cases while bail is not required in the often more serious court cases that are initiated by summons.

As an intermediate step, the Committee agreed to an alternative that would still require the posting of collateral in most cases but would permit a defendant to assert in his or her response to the citation that they do not have the financial means to post the collateral. This is contained in new paragraph (A)(3) in Rule 408. Language regarding the requirement to appear personally when unable to deposit collateral would be removed from the Comment to Rule 408. Similar changes also would be repeated in Rules 413 and 423.

Associated with this proposal would be the requirement that defendants would have to provide a current mailing address and telephone number in their response to the citation. The Committee concluded that this requirement should also be included with any written response to a citation. It is therefore included in Rules 408, 409, 413, 414, 423, and 424.

The Committee also concluded there was merit in providing more guidance to the MDJs in assessing a defendant's ability to pay. The Committee developed language to provide that guidance derived from several sources including the IFP application contained in Pennsylvania Rule of Civil Procedure 240. This language would be included in the Comments to Rule 454 (Trial in Summary Cases) and Rule 456 (Default Procedures: Restitution, Fines, and Costs). Among the elements included in consideration would be a defendant's financial assets and obligations, including recurring expenses and actual contribution to support of dependents. A statement also would be included indicating that the issuing authority may require the defendant to produce documentation regarding his or her ability to pay.

Additionally, language would be added to the text of Rule 454 that would require the judge to consider a defendant's ability to pay in determining the amount of fine and discretionary costs when sentencing the defendant. This would be added as a new paragraph (E) to Rule 454. Language also would be added to current Rule 454(F) that requires the defendant be advised of the opportunity to seek a modification of the payment plan in the event of default, referencing the procedures in Rule 456.

The Committee also is proposing to add language to Rule 454 to permit the MDJ to delay sentencing to have time for the defendant to present proof of financial ability in the same way that current paragraph (E) provides for a delay for determination of eligibility for intermediate punishment. This would consist of a second sentence to new paragraph (E).

The Committee rejected the inclusion of some specific standard for the inability to pay, such as an income at a certain percentage of the Federal Poverty Level, as was suggested by the ACLU. They believed that the circumstances of each case will differ and should be examined individually. However, the Committee thought it might be helpful if the MDJ had to explain his or her rationale for finding an ability to pay in writing when the defendant was to be incarcerated for failure to pay. This provision would be included in Rule 456(D)(3)(c).

Although implied, the Committee noted that the rules do not specifically state that a defendant who wishes to

plead guilty but cannot afford to pay the full case assessments must appear before the MDJ for the establishment of a payment plan. Rule 409 (Guilty Pleas) would be amended to specifically provide that a defendant who desires to plead guilty but cannot afford to pay the entire fine and costs must appear for sentencing before the MDJ and the establishment of a payment plan as provided in Rule 409(C)(5). Additionally, since the MDJ may impose sentence when the defendant appears to enter the guilty plea because he or she can't afford to pay the fine in single payment, the same language regarding delay in sentencing and determining a defendant's ability to pay that is proposed for Rules 454 and 456 would be added to Rule 409 and its Comment. Similar amendments would also be made to the other summary case guilty plea rules, Rules 414 and 424.

#### *Rule 470 License Suspension*

During the discussion of changes to these summary case procedures, the Committee examined a subsidiary issue related to Rule 470, which provides the procedures for license suspension in failure to respond and failure to pay situations. Rule 470 was adopted, as Rule 91, in 1993 to provide procedures to implement Section 1533 of the Motor Vehicle Code, 75 Pa.C.S. § 1533. Section 1533 originally provided that a defendant who fails to respond to a citation or summons shall have his or her driver's license suspended but subsequently was amended in 1994 to add the failure to pay case assessment to the categories of cases for which license suspension was authorized. The statute requires that notice of impending license suspension be served on the defendant at least 15 days before the suspension becomes effective.

Rule 470 originally provided that the license suspension notice could be sent out if the defendant failed to respond to a citation or summons within 10 days of issuance or receipt after which, as provided in Rule 430(B), a bench warrant may be issued. Rule 470 was amended in 2011 to add failure to pay as one of the grounds for which license suspension was authorized. Rule 456 provides that, once a defendant is in default, notice shall be sent that the defendant has 10 days to pay or appear before the issuing authority to explain the non-payment or else a bench warrant will be issued. The amendments added failure-to-pay to the existing procedures for failure-to-respond situation. As a result, under the current rule, when the defendant is in default, there is a 10-day notice that a bench warrant will be issued. At the expiration of that 10-day notice, the bench warrant would be issued and the 15-day notice of license suspension would be sent, effectively providing 25 days after the default before the license suspension becomes effective.

Prior to the 2011 amendments, it was the practice in failure-to-pay cases to issue the 10-day notice of bench warrant and the notice of license suspension simultaneously. The suggestion was made to the Committee to change Rule 470 to permit the service of the suspension notice with the 10-day notice. Sending the defendant's notice of license suspension prior to issuing a bench warrant, in many cases, encourages a response or payment from the defendant before incurring additional monetary charges to the defendant that would arise with the issuance of a warrant. The Committee concluded that the original practice should be permitted. Therefore, paragraph (A) of Rule 470 would be amended to remove

the linkage between the notice of license suspension and the bench warrant notice in default cases. Comment language would describe this further.

[Pa.B. Doc. No. 18-99. Filed for public inspection January 19, 2018, 9:00 a.m.]

**Title 234—RULES OF  
CRIMINAL PROCEDURE**

[ 234 PA. CODE CH. 5 ]

**Proposed New Pa.R.Crim.P. 556.13, Proposed  
Amendment of Pa.R.Crim.P. 556.11 and Pro-  
posed Revision of the Comment to Pa.R.Crim.P.  
502, 513, 516, 517 and 518**

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of new Rule 556.13 (Procedures Following Execution of Warrant of Arrest Issued Following Indictment), the amendment of Rule 556.11 (Proceedings When Case Presented to Grand Jury) and the revision of the Comment to Rules 502 (Instituting Proceedings in Court Cases), 513 (Requirements for Issuance; Dissemination of Arrest Warrant Information), Rule 516 (Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance), 517 (Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance), and 518 (Using Advanced Communication Technology in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance) 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 and underlined; 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  
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All communications in reference to the proposal should be received by no later than Friday, February 23, 2018. 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*

BRIAN W. PERRY,  
*Chair*

**Annex A**

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

**PART B. Instituting Proceedings**

**Rule 502. Instituting Proceedings in Court Cases.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

There are only a few exceptions to this rule regarding the instituting of criminal proceedings in court cases. There are, for example, special proceedings involving a coroner or medical examiner. *See Commonwealth v. Lopinson*, 427 Pa. 552, 234 A.2d 552 (1967), and *Commonwealth v. Smouse*, 406 Pa.Super. 369, 594 A.2d 666 (1995).

**See Rules 556.11 and 556.13 for the procedures for the filing of a complaint following the issuance of an indictment.**

Whenever a misdemeanor, felony, or murder is charged, even if the summary offense is also charged in the same complaint, the case should proceed as a court case under Chapter 5. *See Commonwealth v. Cauffman*, 541 Pa. 299, 662 A.2d 1050 (1995), and *Commonwealth v. Campana*, 455 Pa. 622, 304 A.2d 432 (1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 454 Pa. 233, 314 A.2d 854 (1974). 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 (1980).

\* \* \* \* \*

**Official Note:** Original Rule 102(1), (2), and (3), adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 102 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 101, and made applicable to court cases only, September 18, 1973, effective January 1, 1974; Comment revised February 15, 1974, effective immediately; amended June 30, 1975, effective September 1, 1975; Comment amended January 4, 1979, effective January 9, 1979; paragraph (1) amended October 22, 1981, effective January 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; amended August 9, 1994, effective January 1, 1995; Comment revised January 16, 1996, effective immediately; renumbered Rule 502 and amended March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006; Comment revised September 21, 2012, effective November 1, 2012; **Comment revised , 2018, effective , 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the September 21, 2012 revising the second paragraph of the Comment to correct a typographical error published with the Court's Order at 42 Pa.B. ( , 2012).



**Report explaining the proposed revision of the Comment regarding complaint procedures subsequent to indictment published comment at 48 Pa.B. 510 (January 20, 2018).**

**PART B(3). Arrest Procedures in Court Cases**

**(a) Arrest Warrants**

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

\* \* \* \* \*

**Comment**

\* \* \* \* \*

**ISSUANCE OF ARREST WARRANTS**

\* \* \* \* \*

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).

\* \* \* \* \*

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

**See Rule 556.11 for the procedures for the issuance of an arrest warrant by the supervising judge of an indicting grand jury following indictment of an individual not previously arrested.**

**DELAY IN DISSEMINATION OF ARREST WARRANT INFORMATION**

\* \* \* \* \*

**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 , 2018, effective , 2018.**

*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 41 Pa.B. ( , 2013).

**Report explaining the Comment revision cross-referencing post-indictment arrest warrant procedures in Rule 556.11 published for comment at 48 Pa.B. 510 (January 20, 2018).**

**Rule 516. Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

This rule permits a defendant to be transported to an advanced communication technology site that is located

outside the judicial district of arrest for preliminary arraignment. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

**See Rule 556.13 for procedures following execution of an arrest warrant issued after indictment pursuant to Rule 556.11(E).**

**Official Note:** Original Rule 116 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 116 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 122 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; renumbered Rule 123 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 516 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **Comment revised , 2018, effective , 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court’s Order at 32 Pa.B. ( ).

**Report explaining the proposed Comment revisions regarding post-indictment arrest warrants published for comment at 48 Pa.B. 510 (January 20, 2018).**

**Rule 517. Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer’s primary jurisdiction. See also *Commonwealth v. Mason*, [ 507 Pa. 396, ] 490 A.2d 421 (Pa. 1985).

Paragraph (E) originally used the term “alias warrant” to describe the type of warrant issued when a defendant is arrested outside the judicial district of issuance, is released on bond by a magisterial district judge in the judicial district of arrest conditioned on the defendant’s appearance at a preliminary arraignment in the judicial district of issuance, and then fails to appear. Because the term “alias warrant” is an archaic term that refers to the reissuance of a warrant when the original purpose of the warrant has not been achieved, and the warrant issued in paragraph (E) is issued for the failure to appear as contemplated by Rule 536(A)(1)(b), paragraph (E) was amended in 2005 by changing the terminology to “bench warrant.”

**For purposes of this rule, if a defendant is arrested pursuant to an arrest warrant issued following indictment pursuant to Rule 556.11(E), the issuing authority in the county of issuance is the supervising judge of the grand jury in that county or the president judge’s designee. See Rule 556.13.**

**Official Note:** Original Rule 117 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 117 adopted

January 31, 1970, effective May 1, 1970; renumbered Rule 123 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; renumbered Rule 124 and amended August 9, 1994, effective January 1, 1995; amended December 27, 1994, effective April 1, 1995; renumbered Rule 517 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006; **Comment revised \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the October 19, 2005 amendments to paragraph (E) changing “alias warrant” to “bench warrant” published with the Court’s Order at 35 Pa.B. (\_\_\_\_\_, 2005).

**Report explaining the proposed Comment revisions regarding post-indictment arrest warrants published for comment at 48 Pa.B. 510 (January 20, 2018).**

**Rule 518. Using Advanced Communication Technology in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

This rule permits a defendant to be transported to an advanced communication technology site that is located outside the judicial district of arrest. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

**For purposes of this rule, if a defendant is arrested pursuant to an arrest warrant issued following indictment pursuant to Rule 556.11(E), the issuing authority in the county of issuance is the supervising judge of the grand jury in that county or the president judge’s designee. See Rule 556.13.**

**Official Note:** New Rule 518 adopted May 10, 2002, effective September 1, 2002; **Comment revised \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.**

*Committee Explanatory Reports:*

Final Report explaining the May 10, 2002 adoption of new Rule 518 published with the Court’s Order at 32 Pa.B. (\_\_\_\_\_).

**Report explaining the proposed Comment revisions regarding post-indictment arrest warrants published for comment at 48 Pa.B. 510 (January 20, 2018).**

**PART E. Indicting Grand Jury**

**Rule 556.11. Proceedings When Case Presented to Grand Jury.**

(A) A grand jury has the authority to:

(1) inquire into violations of criminal law through subpoenaing witnesses and documents; and

(2) based upon evidence it has received, including hearsay evidence as permitted by law, or upon a presentment issued by an investigating grand jury, if the grand jury finds the evidence establishes a *prima facie* case that (1) an offense has been committed and (2) the defendant has committed it, indict defendant for an offense under the criminal laws of the Commonwealth of Pennsylvania; or

**(3) based upon evidence it has received, including hearsay evidence as permitted by law, or upon a presentment issued by an investigating grand jury, if the grand jury finds the evidence establishes a *prima facie* case that (1) an offense has been committed and (2) the person other than the defendant in the matter originally presented to the indicting grand jury has committed it, indict the individual for an offense under the criminal laws of the Commonwealth of Pennsylvania; or**

[ (3) ] (4) decline to indict.

(B) After a grand jury has considered the evidence presented, the grand jury shall vote whether to indict the defendant **or the person other than the defendant who has been identified as having committed an offense as provided in paragraph (A)(3)**. The affirmative vote of at least 12 grand jurors is required to indict.

(C) In cases in which the grand jury votes to indict, an indictment shall be prepared setting forth the offenses on which the grand jury has voted to indict. The indictment shall be signed by the grand jury foreperson, or deputy foreperson if the foreperson is unavailable, and returned to the supervising judge.

(D) Upon receipt of the indictment, the supervising judge shall:

(1) provide a copy of the indictment to the Commonwealth authorizing the attorney to prepare an information pursuant to Rule 560; and

(2) forward the indictment to the clerk of courts [ , or issue an arrest warrant, if the subject of the indictment has not been arrested on the charges contained in the indictment ] .

**(E) If the subject of the indictment has not been arrested on the charge contained in the indictment, upon receipt of a copy of the indictment, the attorney for the Commonwealth shall file a complaint with the clerk of courts of the judicial district in which the indicting grand jury sits, and shall request the supervising judge issue an arrest warrant.**

**(1) The indictment shall be used in lieu of the affidavit of probable cause.**

**(2) The supervising judge shall issue an arrest warrant.**

[ (E) ] (F) At the request of the attorney for the Commonwealth, the supervising judge shall order the indictment to be sealed.

[ (F) ] (G) In cases in which the grand jury does not vote to indict, the foreperson promptly and in writing shall so report to the supervising judge who immediately shall dismiss the complaint and shall notify the clerk of courts of the dismissal.

**Comment**

\* \* \* \* \*

Concerning hearsay evidence before the indicting grand jury, see *Commonwealth v. Dessus*, 423 Pa. 177, 224 A.2d 188 (1966).

**This rule was amended in 2018 to clarify that a defendant who has not been previously charged may be indicted. A case must be properly before the grand jury as provided in Rule 556.2. If during the**

**course of that grand jury proceeding, it is determined that a prima facie case exists that an offense has been committed by an individual who is not the defendant in the case that was originally presented to the indicting grand jury, that individual may be indicted. Thereafter, the attorney for the Commonwealth shall file a complaint and a request that an arrest warrant be issued as provided in paragraph (E). See Rule 556.13 for the procedures following the execution of an arrest warrant issued following indictment.**

In cases in which the grand jury has declined to indict and the complaint has been dismissed, the attorney for the Commonwealth may reinstate the charges as provided in Rule 544.

**Official Note:** New Rule 556.11 adopted June 21, 2012, effective in 180 days; amended \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

*Committee Explanatory Reports:*

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. \_\_\_\_\_ (\_\_\_\_\_, 2012).

**Report explaining the proposed amendment regarding the issuance of indictment of non-defendants published for comment at 48 Pa.B. 510 (January 20, 2018).**

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

**Rule 556.13. Procedures Following Execution of Warrant of Arrest Issued Following Indictment.**

(A) When a defendant has been arrested within the judicial district where the warrant of arrest has been issued by the supervising judge of an indicting grand jury following the receipt of the indictment as provided in Rule 556.11(E), the defendant shall be afforded a preliminary arraignment by the supervising judge or another judge designated by the president judge without unnecessary delay.

(B) When a defendant has been arrested outside of the judicial district where the warrant of arrest has been issued by the supervising judge of an indicting grand jury following the receipt of the indictment as provided in Rule 556.11(E), the case shall proceed as provided in Rules 517 and 518 and this rule.

(C) Following the preliminary arraignment provided pursuant to paragraph (A) and (B), the case shall proceed in the court of common pleas pursuant to Rules 560 and 571.

**Comment**

This rule provides the procedures following the arrest of a defendant pursuant to a warrant issued by the supervising judge of an indicting grand jury. The defendant must be provided a preliminary arraignment in a timely manner following arrest. Because a case that had been submitted to the indicting grand jury is transferred to the court of common pleas, the preliminary arraignment must be held before the supervising judge or another judge of the common pleas designated by the president judge.

An indictment by a grand jury is a *prima facie* determination made in lieu of a preliminary hearing in cases where witness intimidation has occurred, is occurring, or will occur. Therefore, following indictment, the case is in same status as a case that has been held for

court. The next steps following the preliminary arraignment in these situations would be the filing of the criminal information as provided in Rule 560 and the arraignment as provided in Rule 571.

**Official Note:** New Rule 556.13 adopted \_\_\_\_\_, 2018, effective \_\_\_\_\_, 2018.

*Committee Explanatory Reports:*

Report explaining proposed new Rule 556.13 providing procedures following the execution of arrest warrants issued by the supervising judge of an investigating grand jury published for comment at 48 Pa.B. 510 (January 20, 2018).

**REPORT**

***Proposed New Rule 556.13; Proposed Amendment of Pa.R.Crim.P. 556.11; Proposed Revision of the Comment to Pa.Rs.Crim.P. 502, 513, 516, 517, and 518***

**Post-Indictment Arrest Warrant Procedures**

The Committee was recently presented with a question from Allegheny County regarding the provision in Rule 556.11(D)(2) that allows for issuance of an arrest warrant for an individual who has not previously been arrested for the charges contained in the indictment. Specifically, it is not clear how such an individual would be formally charged or what procedures for post-indictment arrests should be followed.

Rule 556.11(D)(2) was included when the grand jury indictment procedures were revived in 2012. The idea for this type of warrant came up in the context of a case before the indicting grand jury where the evidence indicates that another individual was involved in the criminal activity and there was sufficient evidence being presented to the grand jury that would allow this new individual to be indicted as a co-defendant even though he or she hadn't been arrested. As noted in the Committee's Final Report from that time:

Paragraph (D)(2) requires the supervising judge to forward a copy of the indictment to the clerk of courts, or to issue an arrest warrant if the subject of the indictment has not been arrested on the charges contained in the indictment. The arrest provision was included because, although infrequent, there are times when the indicting grand jury hears evidence that reveals there is another individual who has not been charged but who is involved in the criminal activity that is the subject of the indicting grand jury. The Committee majority agreed the rule should provide a procedure to address this situation so the case would not "fall through the cracks." 42 Pa.B. 4140 (July 7, 2012).

It appears that more detailed procedures regarding these types of warrants were not included given that the number of cases that may be presented to an indicting grand jury, *i.e.* those that involve witness intimidation concerns, were anticipated to be relatively few and that the situations where new individuals would be identified during the grand jury proceedings would be even rarer. However, in light of the inquiry presented, the Committee decided that these procedures needed to be further defined.

The Committee agreed that an indictment could be issued against a previously uncharged defendant if a case has been properly determined to be before an indicting grand jury due to the possibility of witness intimidation



and the grand jury had determined that there was evidence against that uncharged defendant. The Committee recognized that this method of initiating a case currently was not recognized by the rules. In particular, there was a question as how the case should be initiated and whether the indictment might be used as a charging document in lieu of a criminal complaint.

The Committee concluded that the method for initiating a case for a defendant who had not been previously charged but was indicted by grand jury should be, as in other criminal case, by means of a criminal complaint. However, since the grand jury procedure takes the place of a preliminary hearing, procedures following the preliminary arraignment after the warrant had been executed would differ from other criminal cases. The Committee agreed that the procedures should provide for: (a) the filing of a criminal complaint prior to the issuance of the arrest warrant by the supervising judge of the grand jury; and (b) procedures following the arrest of such a defendant including preliminary arraignment before the supervising judge or president judge's designee. Thereafter, the case would proceed to the filing of the information and formal arraignment.

In the proposal, Rule 556.11 (Proceedings when Case Presented to Grand Jury) would be amended by adding a new paragraph (A)(3) that specifically authorizes the grand jury to indict an individual who was not previously charged in the case that is before the grand jury. The provision that permits the issuance of an arrest warrant in current paragraph (D)(2) would be placed in a new paragraph (E) and would set out the procedures to be followed when such an individual is indicted. Once the attorney for the Commonwealth receives a copy of the indictment, he or she must file a complaint with the clerk of courts in the county where the grand jury sits. A request for an arrest warrant must then be presented to the supervising judge, using the indictment as the affidavit of probable cause. The supervising judge then must issue the warrant. Comment language would be added to provide some additional information.

New Rule 556.13 would provide the procedures following the arrest of this new defendant with receiving a preliminary arraignment before the supervising judge or another common pleas judge designated by the president judge. Following preliminary arraignment, the case would proceed as provided in Rule 560, with the filing of the information, and Rule 571, with formal arraignment.

Since these procedures require the filing of a complaint, no new provisions would need to be added to Rule 502 (Instituting Proceedings in Court Cases) but a cross-reference to the new procedures in Rules 556.11 and 556.13 would be added to the Comment. Similarly, a cross-reference to these procedures would be added to Rule 513 (Requirements for Issuance; Dissemination of Arrest Warrant Information). Additionally, cross-references to the post-execution procedures would be added to Rule 516 (Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance), 517 (Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance), and 518 (Using Advanced Communication Technology in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance).

[Pa.B. Doc. No. 18-100. Filed for public inspection January 19, 2018, 9:00 a.m.]

## Title 246—MINOR COURT CIVIL RULES

### PART I. GENERAL

[ 246 PA. CODE CH. 200 ]

#### Order Amending Rule 206 of the Rules of Civil Procedure Before Magisterial District Judges; No. 417 Magisterial Rules Doc.

#### Order

*Per Curiam*

*And Now*, this 5th day of January, 2018, upon the recommendation of the Minor Court Rules Committee, the proposal having been published for public comment at 47 Pa.B. 4682 (August 12, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 206 of the Pennsylvania Rules of Civil Procedure before Magisterial District Judges is amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on January 6, 2018.

#### Annex A

### TITLE 246. MINOR COURT CIVIL RULES

#### PART I. GENERAL

#### CHAPTER 200. RULES OF CONSTRUCTION; GENERAL PROVISIONS

Rule 206. Costs; Proceedings [ **in** ] *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), the Magisterial District Judge ] (3), the 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.

**FINAL REPORT<sup>1</sup>****Recommendation 1-2017, Minor Court Rules Committee****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”) recommended amendments to Rule 206 of the Pennsylvania Rules of Civil Procedure before Magisterial District Judges (“Rules”). The amendments 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 dependent children.

<sup>1</sup> The Committee’s Final Report should not be confused with the Official Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee’s Official Notes or the contents of the explanatory Final Reports.

**II. Background and 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. Rule Changes**

The Committee recommended deleting the reference to children’s names in the body of the *in forma pauperis* petition. See Pa.R.C.P.M.D.J. No. 206E(vi). The Committee also recommended minor stylistic changes throughout Rule 206.

[Pa.B. Doc. No. 18-101. Filed for public inspection January 19, 2018, 9:00 a.m.]

**Title 255—LOCAL COURT RULES****CUMBERLAND COUNTY****Rules of the Court of Common Pleas; Public Access****Order of Court**

*And Now*, this 4th day of January, 2018, it is hereby Ordered and Decreed, that effective thirty (30) days after publication in the *Pennsylvania Bulletin*, the Cumberland County Court of Common Pleas adopts local rule 205.6:

Pursuant to Section 7 of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts, persons who file documents that contain confidential information as defined by the Policy shall use and file a Confidential Information Form in order to comply with the Policy. The form shall be available in each filing office as well as on the court administration website at [www.ccpa.net/1960/Local-Rules](http://www.ccpa.net/1960/Local-Rules).

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

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

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

3. Publish these Rules on the Cumberland County Court website at [www.ccpa.net](http://www.ccpa.net).

4. Incorporation of the local rule into the set of local rules on [www.ccpa.net](http://www.ccpa.net) within thirty (30) days after the publication of the local rule in the *Pennsylvania Bulletin*.



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

6. Forward one (1) copy to the *Cumberland Law Journal*.

*By the Court*

EDWARD E. GUIDO,  
*President Judge*

[Pa.B. Doc. No. 18-102. Filed for public inspection January 19, 2018, 9:00 a.m.]

**DISCIPLINARY BOARD OF  
THE SUPREME COURT**

**Notice of Disbarment**

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated January 5, 2018, Catherine Eyaal Abbey is disbarred from the practice of law in this Commonwealth to be effective February 4, 2018. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

JULIA FRANKSTON-MORRIS, Esq.,  
*Secretary*

[Pa.B. Doc. No. 18-103. Filed for public inspection January 19, 2018, 9:00 a.m.]

**SUPREME COURT**

**Schedule of Holidays for Year 2019 for Staffs of  
the Appellate Courts and the Administrative Office  
of Pennsylvania Courts; No. 493 Judicial  
Administration Doc.**

**Order**

*Per Curiam:*

*And Now*, this 5th day of January, 2018, it is hereby ordered that the following paid holidays for calendar year 2019 will be observed on the dates specified below by all employees of the appellate courts and the Administrative Office of Pennsylvania Courts:

January 01, 2019	New Year's Day
January 21, 2019	Martin Luther King, Jr. Day
February 18, 2019	Presidents' Day
April 19, 2019	Good Friday

May 27, 2019	Memorial Day
July 04, 2019	Independence Day
September 02, 2019	Labor Day
October 14, 2019	Columbus Day
November 05, 2019	Election Day**
November 11, 2019	Veterans' Day
November 28, 2019	Thanksgiving Day
November 29, 2019	Day after Thanksgiving
December 25, 2019	Christmas Day
**AOPC only; Appellate courts will be open.	

[Pa.B. Doc. No. 18-104. Filed for public inspection January 19, 2018, 9:00 a.m.]

**SUPREME COURT**

**Sessions of the Supreme Court of Pennsylvania  
for the Year 2019; No. 494 Judicial Administration  
Doc.**

**Order**

*Per Curiam:*

*And Now*, this 5th day of January, 2018, it is ordered that the argument/administrative sessions of the Supreme Court of Pennsylvania shall be held in the year 2019 as follows:

Philadelphia (Administrative Session)	February 5th
Philadelphia	March 4th through March 8th
Harrisburg (Administrative Session)	March 26th
Pittsburgh	April 8th through April 12th
Harrisburg	May 13th through May 17th
Pittsburgh (Administrative Session)	June 4th
Philadelphia	September 9th through September 13th
Pittsburgh	October 15th through October 18th
Harrisburg	November 18th through November 22nd

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

[Pa.B. Doc. No. 18-105. Filed for public inspection January 19, 2018, 9:00 a.m.]