

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[ 210 PA. CODE CH. 1 ]

#### Order Amending Rule 126 of the Pennsylvania Rules of Appellate Procedure; No. 278 Appellate Procedural Rules Doc.

#### Order

*Per Curiam*

*And Now*, this 4th day of March, 2019, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published for public comment at 47 Pa.B. 7 (January 7, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 126 of the Pennsylvania Rules of Appellate Procedure 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 May 1, 2019.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### PART I. RULES OF APPELLATE PROCEDURE

#### ARTICLE I. PRELIMINARY PROVISIONS

#### CHAPTER 1. GENERAL PROVISIONS

#### DOCUMENTS GENERALLY

#### Rule 126. Citations of Authorities.

[ A party citing authority that is not readily available shall attach the authority as an appendix to its filing. ] (a) When citing authority, a party should direct the court's attention to the specific part of the authority on which the party relies. **A party citing authority that is not readily available shall attach the authority as an appendix to its filing. If a party cites a decision as authorized in paragraph (b), (c), or (d), the party shall indicate the value or basis for such citation in a parenthetical following the citation.**

#### (b) *Non-Precedential Decisions.*

(1) **As used in this rule, "non-precedential decision" refers to an unpublished non-precedential memorandum decision of the Superior Court filed after May 1, 2019 or an unreported memorandum opinion of the Commonwealth Court filed after January 15, 2008.**

(2) **Non-precedential decisions as defined in (b)(1) may be cited for their persuasive value.**

(c) **Single-Judge Opinions of the Commonwealth Court.**

(1) **A reported single-judge opinion in an election law matter filed after October 1, 2013, may be cited as binding precedent only in an election law matter.**

(2) **All other single-judge opinions, even if reported, shall be cited only for persuasive value and not as binding precedent.**

(d) **Law of the Case and Related Doctrines.—Any disposition may always be cited if relevant to the doctrine of law of the case, res judicata, or collateral estoppel, or if relevant to a criminal action or proceeding because it recites issues raised and reasons for a decision affecting the same defendant in a prior action or proceeding.**

#### *Official Note:*

#### **Paragraph (a)**

Pa.R.A.P. 126 is intended to ensure that cited authority is readily available to the court and parties. [ **This rule is not intended to supersede any internal operating procedure of an appellate court regarding the citation to memorandum decisions or unreported opinions. See, e.g., Superior Court Internal Operating Procedure § 37, 210 Pa. Code § 65.37; Pa.R.A.P. 3716 and Commonwealth Court Internal Operating Procedure § 414, 210 Pa. Code § 69.414.** ] **Paragraph (a) encourages parties to provide citations to the specific pages of cases and sections or subsections of statutes or rules that are relevant to the reason for the citation.**

[ **The second sentence of the rule encourages parties to provide pinpoint citations for cases and section or subsection citations for statutes or rules.** ]

Although the rule does not establish rules for citation, the following guidelines regarding the citation of Pennsylvania cases and statutes are offered for parties' benefit:

Regarding cases, the rule does not require parallel citation to the National Reporter System and the official reports of the Pennsylvania appellate courts. Parties may cite to the National Reporter System alone.

Regarding statutes, Pennsylvania has officially consolidated only some of its statutes. Parties citing a statute enacted in the Pennsylvania Consolidated Statutes may use the format "1 Pa.C.S. § 1928." Parties citing an unconsolidated statute may refer to the Pamphlet Laws or other official collection of the Legislative Reference Bureau, with a parallel citation to *Purdon's Pennsylvania Statutes Annotated*, if available, using the format, "Act of February 14, 2008, P.L. 6, 65 P.S. §§ 67.101—67.3104" or "Section 3(a) of the Act of May 16, 1923, P.L. 207, *as amended*, 53 P.S. § 7106(a)." Parties are advised that *Purdon's* does not represent an official version of Pennsylvania statutes. *In re Appeal of Tenet HealthSystems Bucks Cnty., LLC*, 880 A.2d 721, 725-26 (Pa. Cmwlth. 2005), appeal denied, 897 A.2d 1185 (Pa. 2006).

**Litigants are directed to provide, as far as practicable, citations to non-precedential decisions from electronic databases, such as LEXIS or Westlaw or any other readily available website. Opinions of the appellate courts are posted at <http://www.pacourts.us> and that website has searching and filtering capabilities. If another Rule of Appellate Procedure requires a paper copy, one should be provided.**

Prior to Pa.R.A.P. 126, the format for citation was discussed only in Pa.R.A.P. 2119(b), a rule applicable to briefs. The format guidelines [ **above** ] are not mandatory, and a party does not waive an argument merely by failing to follow the format. The guidelines [ **above** ] do, however, provide assistance to parties looking for generally acceptable citation format in [ **Pennsylvania** ] **Pennsylvania's appellate courts.**

**Paragraph (b)**

**Paragraph (b) defines non-precedential decisions and their value for citation purposes. The new term is intended to harmonize the designations of intermediate appellate court opinions. Thus, "non-precedential decision" encompasses what are referred to as unpublished non-precedential memorandum decisions of the Superior Court and unreported memorandum opinions of the Commonwealth Court.**

[Pa.B. Doc. No. 19-416. Filed for public inspection March 22, 2019, 9:00 a.m.]

## Title 225—RULES OF EVIDENCE

[ 225 PA. CODE ART. IX ]

### Proposed Amendment of Pa.R.E. 901 and 902

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

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Committee on Rules of Evidence  
Supreme Court of Pennsylvania  
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All communications in reference to the proposal should be received by May 17, 2019. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Committee on  
Rules of Evidence*

JOHN P. KRILL, Jr.,  
*Chair*

## Annex A

### TITLE 225. RULES OF EVIDENCE

#### ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

##### Rule 901. Authenticating or Identifying Evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Comment

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

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

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

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

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

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

Pa.R.E. 901(b)(3) is identical to F.R.E. 901(b)(3). It is consistent with Pennsylvania law. When there is a question as to the authenticity of an exhibit, the trier of fact will have to resolve the issue. This may be done by comparing the exhibit to authenticated specimens. See *Commonwealth v. Gipe*, [ **169 Pa. Super. 623**, ] 84 A.2d 366 (**Pa. Super.** 1951) (comparison of typewritten document with authenticated specimen). Under this rule, the court must decide whether the specimen used for comparison to the exhibit is authentic. If the court determines that there is sufficient evidence to support a finding that the specimen is authentic, the trier of fact is then permitted to compare the exhibit to the authenticated specimen. Under Pennsylvania law, lay or expert testimony is admissible to assist the jury in resolving the question. See, e.g., 42 Pa.C.S. § 6111.

Pa.R.E. 901(b)(4) is identical to F.R.E. 901(b)(4). Pennsylvania law has permitted evidence to be authenticated by circumstantial evidence similar to that discussed in this illustration. The evidence may take a variety of forms including: evidence establishing chain of custody, see *Commonwealth v. Melendez*, [ **326 Pa. Super. 531**, ] 474 A.2d 617 (**Pa. Super.** 1984); evidence that a letter is in reply to an earlier communication, see *Roe v. Dwelling House Ins. Co. of Boston*, [ **149 Pa. 94**, ] 23 A. 718 (**Pa.**

1892); testimony that an item of evidence was found in a place connected to a party, see *Commonwealth v. Bassi*, [ **284 Pa. 81**, ] 130 A. 311 (**Pa.** 1925); a phone call authenticated by evidence of party's conduct after the call, see *Commonwealth v. Gold*, [ **123 Pa. Super. 128**, ] 186 A. 208 (**Pa. Super.** 1936); and the identity of a speaker established by the content and circumstances of a conversation, see *Bonavitacola v. Cluver*, [ **422 Pa. Super. 556**, ] 619 A.2d 1363 (**Pa. Super.** 1993).

Pa.R.E. 901(b)(5) is identical to F.R.E. 901(b)(5). Pennsylvania law has permitted the identification of a voice to be made by a person familiar with the alleged speaker's voice. See *Commonwealth v. Carpenter*, [ **472 Pa. 510**, ] 372 A.2d 806 (**Pa.** 1977).

Pa.R.E. 901(b)(6) is identical to F.R.E. 901(b)(6). This paragraph appears to be consistent with Pennsylvania law. See *Smithers v. Light*, [ **305 Pa. 141**, ] 157 A. 489 (**Pa.** 1931); *Wahl v. State Workmen's Ins. Fund*, [ **139 Pa. Super. 53**, ] 11 A.2d 496 (**Pa. Super.** 1940).

Pa.R.E. 901(b)(7) is identical to F.R.E. 901(b)(7). This paragraph illustrates that public records and reports may be authenticated in the same manner as other writings. In addition, public records and reports may be self-authenticating as provided in Pa.R.E. 902. Public records and reports may also be authenticated as otherwise provided by statute. See Pa.R.E. 901(b)(10) and its Comment.

Pa.R.E. 901(b)(8) differs from F.R.E. 901(b)(8), in that the Pennsylvania Rule requires thirty years, while the Federal Rule requires twenty years. This change makes the rule consistent with Pennsylvania law. See *Commonwealth ex rel. Ferguson v. Ball*, [ **277 Pa. 301**, ] 121 A. 191 (**Pa.** 1923).

Pa.R.E. 901(b)(9) is identical to F.R.E. 901(b)(9). There is very little authority in Pennsylvania discussing authentication of evidence as provided in this illustration. The paragraph is consistent with the authority that exists. For example, in *Commonwealth v. Viscontio*, [ **301 Pa. Super. 543**, ] 448 A.2d 41 (**Pa. Super.** 1982), a computer print-out was held to be admissible. In *Appeal of Chartiers Valley School District*, [ **67 Pa. Cmwlth. 121**, ] 447 A.2d 317 (**Pa. Cmwlth.** 1982), computer studies were not admitted as business records, in part, because it was not established that the mode of preparing the evidence was reliable. The court used a similar approach in *Commonwealth v. Westwood*, [ **324 Pa. 289**, ] 188 A. 304 (**Pa.** 1936) (test for gun powder residue) and in other cases to admit various kinds of scientific evidence. See *Commonwealth v. Middleton*, [ **379 Pa. Super. 502**, ] 550 A.2d 561 (**Pa. Super.** 1988) (electrophoretic analysis of dried blood); *Commonwealth v. Rodgers*, [ **413 Pa. Super. 498**, ] 605 A.2d 1228 (**Pa. Super.** 1992) (results of DNA/RFLP testing).

Pa.R.E. 901(b)(10) differs from F.R.E. 901(b)(10) to eliminate the reference to Federal law and to make the paragraph conform to Pennsylvania law.

There are a number of statutes that provide for authentication or identification of various types of evidence. See, e.g., 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office); 42 Pa.C.S. § 6110 (certain registers of marriages, births and burials records);

75 Pa.C.S. § 1547(c) (chemical tests for alcohol and controlled substances); 75 Pa.C.S. § 3368 (speed timing devices); 75 Pa.C.S. § 1106(c) (certificates of title); 42 Pa.C.S. § 6151 (certified copies of medical records); 23 Pa.C.S. § 5104 (blood tests to determine paternity); 23 Pa.C.S. § 4343 (genetic tests to determine paternity).

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; rescinded and replaced January 17, 2013, effective March 18, 2013; **adopted \_\_\_\_\_, 2019, effective \_\_\_\_\_, 2019.**

*Committee Explanatory Reports:*

Final Report explaining the January 17, 2013 rescission and replacement published with the Court's Order at 43 Pa.B. 651 (February 2, 2013).

**Final Report explaining the \_\_\_\_\_, 2019 amendment of paragraph (1) published with the Court's Order at 49 Pa.B. (\_\_\_\_\_, 2019).**

**Rule 902. Evidence That is Self-Authenticating.**

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(1) *Domestic Public Documents That Are Sealed and Signed.* A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

(2) *Domestic Public Documents That Are Not Sealed But Are Signed and Certified.* A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal—or its equivalent—that the signer has the official capacity and that the signature is genuine.

(3) *Foreign Public Documents.* A document that purports to be signed or attested by a person who is authorized by a foreign country's law to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester—or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

(4) *Certified Copies of Public Records.* A copy of an official record—or a copy of a document that was recorded or filed in a public office as authorized by law—if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3), a statute, or a rule prescribed by the Supreme Court.

**A certificate required by paragraph (4)(B) may include a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization. A seal may, but need not, be raised.**

(5) *Official Publications.* A book, pamphlet, or other publication purporting to be issued by a public authority.

(6) *Newspapers and Periodicals.* [ **Printed material** ] **Material** purporting to be a newspaper or periodical.

(7) *Trade Inscriptions and the Like.* An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

(8) *Acknowledged Documents.* A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

(9) *Commercial Paper and Related Documents.* Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

(10) *Presumptions Authorized by Statute.* A signature, document, or anything else that a statute declares to be presumptively or *prima facie* genuine or authentic.

(11) *Certified Domestic Records of a Regularly Conducted Activity.* The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)—(C), as shown by a certification of the custodian or another qualified person that complies with Pa.R.C.P. No. 76. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record—and must make the record and certification available for inspection—so that the party has a fair opportunity to challenge them.

(12) *Certified Foreign Records of a Regularly Conducted Activity.* [ **In a civil case, the** ] **The** original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification rather than complying with a statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

(13) *Certificate of Non-Existence of a Public Record.* A certificate that a document was not recorded or filed in a public office as authorized by law if certified by the custodian or another person authorized to make the certificate.

**Comment**

This rule permits some evidence to be authenticated without extrinsic evidence of authentication or identification. In other words, the requirement that a proponent must present authentication or identification evidence as a condition precedent to admissibility, as provided by Pa.R.E. 901(a), is inapplicable to the evidence discussed in Pa.R.E. 902. The rationale for the rule is that, for the types of evidence covered by Pa.R.E. 902, the risk of forgery or deception is so small, and the likelihood of discovery of forgery or deception is so great, that the cost

of presenting extrinsic evidence and the waste of court time is not justified. Of course, this rule does not preclude the opposing party from contesting the authenticity of the evidence. In that situation, authenticity is to be resolved by the finder of fact.

Pa.R.E. 902(1), (2), (3), and (4) deal with self-authentication of various kinds of public documents and records. They are identical to F.R.E. 902(1), (2), (3), and (4), except that Pa.R.E. 901(4) eliminates the reference to Federal law **and does not require the certificate to include a pen-and-ink signature or raised seal for the self-authentication of public documents.** These paragraphs are consistent with Pennsylvania statutory law. *See, e.g.* 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office).

The admission of a self-authenticating record of a prior conviction also requires sufficient evidence, either direct or circumstantial, to prove that the subject of the record is the same person for whom the record is offered in a proceeding. *See, e.g., Commonwealth v. Boyd*, 344 A.2d 864 (Pa. 1975).

**Pa.R.E. 902(4) differs from F.R.E. 902(4) insofar as the rule does not require the certificate to include a pen-and-ink signature or raised seal for the self-authentication of public documents.**

Pa.R.E. 902(5) [ , (6) and (7) are ] is identical to F.R.E. 902(5) [ , (6) and (7) ]. There [ are ] is no corresponding statutory provisions in Pennsylvania; however, 45 Pa.C.S. § 506 (judicial notice of the contents of the *Pennsylvania Code* and the *Pennsylvania Bulletin*) is similar to Pa.R.E. 902(5).

**Pa.R.E. 902(6) differs from F.R.E. 902(6) insofar as it does not contain “print” in reference to newspapers or periodicals. Cf. F.R.E. 101(b)(6) (“[ A ] reference to any kind of written material or any other medium includes electronically stored information.”). A newspaper or periodical should be available to the public online, digitally, or in print, principally devoted to the dissemination of local or general news and other editorial content, adherent to journalistic ethics and standards, and updating its content on a regular basis. For online newspapers and periodicals, links to other web content may be included, but the core content must reside on a server or website.**

**Pa.R.E. 902(6) permits both printed and digital newspapers and periodicals to be self-authenticated. Evidence purported to be an article or item from a newspaper or periodical must contain sufficient indicia of its original publication, including, but not limited to, the publication’s title, the date of publication, page or volume of the article or item, and web address, if applicable, where the article or item was originally published.**

**Pa.R.E. 902(7) is identical to F.R.E. 902(7).**

Pa.R.E. 902(8) is identical to F.R.E. 902(8). It is consistent with Pennsylvania law. *See Sheaffer v. Baeringer*, 29 A.2d 697 (Pa. 1943); *Williamson v. Barrett*, 24 A.2d 546 (Pa. Super. 1942); [ 21 P.S. §§ 291.1—291.13 (Uniform Acknowledgement Act); ] 57 Pa.C.S. §§ 301—331 (Revised Uniform Law on Notarial Acts). An acknowledged

document is a type of official record and the treatment of acknowledged documents is consistent with Pa.R.E. 902(1), (2), (3), and (4).

Pa.R.E. 902(9) is identical to F.R.E. 902(9). Pennsylvania law treats various kinds of commercial paper and documents as self-authenticating. *See, e.g.*, 13 Pa.C.S. § 3505 (evidence of dishonor of negotiable instruments).

Pa.R.E. 902(10) differs from F.R.E. 902(10) to eliminate the reference to Federal law and to make the paragraph conform to Pennsylvania law. In some Pennsylvania statutes, the self-authenticating nature of a document is expressed by language creating a “presumption” of authenticity. *See, e.g.*, 13 Pa.C.S. § 3505.

Pa.R.E. 902(11) and (12) permit the authentication of domestic and foreign records of regularly conducted activity by verification or certification. Pa.R.E. 902(11) is similar to F.R.E. 902(11). The language of Pa.R.E. 902(11) differs from F.R.E. 902(11) in that it refers to Pa.R.C.P. No. 76 rather than to Federal law. Pa.R.E. 902(12) differs from F.R.E. 902(12) in that it requires compliance with a Pennsylvania statute rather than a Federal statute.

Pa.R.E. 902(13) has no counterpart in the Federal Rules. This rule provides for the self-authentication of a certificate of the non-existence of a public record, as provided in Pa.R.E. 803(10)(A).

**Official Note:** Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; amended February 23, 2004, effective May 1, 2004; rescinded and replaced January 17, 2013, effective March 18, 2013; amended November 9, 2016, effective January 1, 2017; amended June 12, 2017, effective November 1, 2017; **amended** , **2019, effective** , **2019.**

*Committee Explanatory Reports:*

Final Report explaining the November 2, 2001 amendments adding paragraphs (11) and (12) published with Court’s Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the February 23, 2004 amendment of paragraph (12) published with Court’s Order at 34 Pa.B. 1429 (March 13, 2004).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the November 9, 2016 addition of paragraph (13) published with the Court’s Order at 46 Pa.B. 7438 (November 26, 2016).

Final Report explaining the June 12, 2017 amendment of the Comment published with the Court’s Order at 47 Pa.B. 3491 (June 24, 2017).

**Final Report explaining the** , **2018 amendment of paragraphs (4), (6), and (12) published with the Court’s Order at 49 Pa.B.** ( , **2019).**

## REPORT

### Proposed Amendment of Pa.R.E. 901 & 902

The Committee on Rules of Evidence is considering amendment of Pennsylvania Rules of Evidence 901 and 902 to facilitate the authentication of evidence. The Committee previously published proposed amendments of Rule 901(a), and Rule 902(4) and (6). *See* 47 Pa.B. 4658 (August 12, 2017). Upon further deliberations, the Committee herein republishes the proposed amendments of Rule 901(a), and Rule 902(4) and (6), together with amendment of Rule 902(12).

**Pa.R.E. 901(a)**

In the most general of descriptions, authentication is the requirement of proving what the evidence is purported to be. The purpose of this requirement is to reduce the risk of forgery or deception; yet, commentators have questioned whether this safeguard is justified by the time, expense, and inconvenience of authentication. *See* 2 McCormick on Evid. § 221 (7th ed.).

While authentication may serve a salutary purpose in evidence of questionable origin or dubious portrayal, the mechanical application of the requirements in every instance, especially when authentication is not reasonably contested, does not serve the purpose of the Rules in eliminating unjustifiable expense or delay. *See* Pa.R.E. 102. To that end, the Committee wishes to signal to readers that authentication of evidence can be stipulated by the parties and, therefore, relieve the proponent of introducing authentication evidence. Accordingly, the Committee recommends that Rule 901(a) be amended to include the phrase, “unless stipulated,” and corresponding Comment language.

**Pa.R.E. 902(4)**

The Committee undertook review of Rule 902(4) to consider whether copies of public records can be certified and transmitted electronically.<sup>1</sup> This question tested whether a certificate pursuant to Rule 902(4)(B) must be contain a pen-and-ink (a.k.a. “wet”) signature and whether a seal, if required, must be raised.

Informed by Pa.R.Crim.P. 103 (defining “signature”), the Committee concluded that a signature on a certification need not be pen-and-ink to serve its function. Additionally, technology has progressed to where wet signatures are no longer required as evidence for commerce and transactions. *See, e.g.*, Electronic Transactions Act, Act of December 16, 1999, P.L. 971, 73 P.S. § 2260.309 (“In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.”).

Concerning the necessity of a raised seal, its absence is not a foreign concept. Under the Protection From Abuse Act, a “certified copy” is defined as “a paper copy of the original order of the issuing court endorsed by the appropriate clerk of that court or an electronic copy of the original order of the issuing court endorsed with a digital signature of the judge or appropriate clerk of that court.” 23 Pa.C.S. § 6102. The definition goes further to state: “A raised seal on the copy of the order of the issuing court shall not be required.” *Id.* Further, Section 322 of the Judicial Code, insofar as it pertains to court seals, states: “A facsimile or preprinted seal may be used for all purposes in lieu of the original seal.” 42 Pa.C.S. § 322.

Accordingly, the Committee recommends amendment of Rule 902(4) to add:

A certificate required by paragraph (4)(B) may include a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer’s authorization. A seal may, but need not, be raised.

<sup>1</sup> With the increasing availability of direct access to public records via the Internet, one might question the future necessity of authenticating public records as opposed to requesting judicial notice pursuant to Pa.R.E. 201(b)(2) that a record is authentic based upon its on-line repository.

This amendment is intended to facilitate the use of electronic forms of certification for copies of public records; it is not intended to prohibit the use of pen-and-ink signatures and raised seals.

The amendment is specifically limited to paragraph (B). It was drafted narrowly with the belief that copies of public records are being authenticated by certificate pursuant to 42 Pa.C.S. § 6103(a) rather than paragraph (A). Because the requirements of the certificate are governed by statute, it was believed that the certificate would fall under paragraph (B) (certificate that complies with a statute). Of course, this may be an esoteric point and practitioners are probably relying more on the appearance of a certification to satisfy the Rule rather than parsing out whether the record is certified pursuant to paragraph (A) or (B).

The absence of a raised seal and wet signature potentially raises an issue about whether the certification itself is an original or copy. Theoretically, a proponent might attempt to admit a copy of a certified copy of a public record without traditional indicators of an original certification. At that juncture, Rule 1003 permits the admissibility of a duplicate to the same extent as the original unless there is a question about the original’s authenticity. Therefore, a copy of a certified copy of a public record would be admissible unless there was a question concerning the authenticity of the certification. *See also* Pa.R.E. 1005 (admitting a copy of the public record itself to prove content). This construct would permit a copy of a public document to be certified at one location, imaged (*e.g.*, scanned into a .pdf), and electronically transmitted to another location for use in a legal proceeding subject to the Pennsylvania Rules of Evidence.

**Pa.R.E. 902(6)**

Upon reviewing Rule 902(6), the Committee originally proposed removing “printed” as a condition of material purporting to be a newspaper or periodical. The Committee believed that such a term has become antiquated in an era when digital media has largely replaced print media. The fact that a newspaper or periodical is printed (or not) does not appear to serve as a hallmark of authentication.

The proposed deletion raised additional concerns. First, “printed” operated to reduce the scope of what might constitute a newspaper or periodical. Eliminating the “printed” condition may expand what material may be considered a “newspaper” or “periodical,” and allow online publications to be included under Pa.R.E. 902(6). Additionally, purely digital media that might be considered a “newspaper” or “periodical” could be at greater risk of unauthorized alteration than print media.

As background, newspaper circulation in general has declined by 40% since 1991. On a per capita basis, the decline is even more pronounced. Volume of periodicals, as measured by the USPS, reached a peak in 1990 at 10.7 billion pieces. In 2017, households only received 4.9 billion periodicals. As readers migrate to digital newspapers and periodicals, the universe of print media continues to shrink. For example, U.S. News and World Report stopped printing in December 2010; it now exists entirely digitally. Six of Duke Law’s nine student-edited law journals have been published only in digital format since 2013. A Reuters, Bloomberg, Dow Jones or AP wire story may never appear in print. While “newspapers” and “periodicals” connote a degree of professional journalism, as opposed to citizen journalism, unprinted material may still be the product of professional journalism. For ex-

ample, the HuffPost (formerly Huffington Post) won a Pulitzer in 2012 in the category of national reporting and it is a digital format rather than print. Managed by Spirited Media, digital-only journalism now exists in Philadelphia with billypenn.com and in Pittsburgh with theincline.com.

Effective December 1, 2011, the Federal Rules of Evidence were restyled, adding F.R.E. 101(b)(6) as a definition to state “a reference to any kind of written material or any other medium includes electronically stored information.”

Under Rule 902(6) (*Newspapers and Periodicals*), “[p]rinted material purporting to be a newspaper or periodical” is self-authenticating. This includes online newspaper and periodicals, because Fed. R. Evid. 101(b)(6) provides that any reference in the Rules to printed material also includes comparable information in electronic form. Thus all newspaper and periodical material is self-authenticating whether or not it ever appeared in hard copy.

Hon. Paul W. Grimm *et al.*, *Authenticating Digital Evidence*, 69 Baylor L. Rev. 1, 28 (2017) (footnotes omitted). See also *White v. City of Birmingham, Ala.*, 96 F. Supp. 3d 1260, 1274 (N.D. Ala. 2015), *as amended* (website “news articles are analogous to traditional newspaper articles and could be found self-authenticating at trial.”). Based upon the federal approach, it could be concluded that printing no longer serves as a hallmark of authentication. While Pennsylvania did not adopt an analog to F.R.E. 101(b)(6) during its restyling, the proposal seeks to accomplish the same effect as F.R.E. 101(b)(6) albeit limited to Pa.R.E. 902(6).

Regarding the concern about a greater risk of undetected adulteration with non-printed material than with printed material, the concern appears to be multifold: 1) the source material could be maliciously altered by a third party unbeknownst to the author and parties; 2) the author could subsequently alter the source material unbeknownst to the parties; or 3) a party could retrieve the digital material, alter it, and then present the altered material in court.

Undetected third party alteration is a factor of the security of newspaper and periodical websites. The Committee lacks information about the frequency in which content has been altered on media websites. Intuitively, the Committee believes that if the websites are in the business of producing digital material (*i.e.*, a newspaper or periodical), then they have a significant interest in protecting the content against alteration.

With an author’s subsequent alteration, the Committee recognizes that an author may sometimes correct an article. It is expected that the author would follow the journalistic ethics and standards applicable to newspapers and periodicals. As discussed *infra*, the Committee proposes adding guidance that would require a newspaper or periodical to adhere to journalistic standards and ethics.

Regarding a party’s alteration, if someone were willing to alter digital material then that person would be similarly motivated to alter print material. Nonetheless, the Federal Rules of Evidence ostensibly did not view this risk as an obstacle when F.R.E. 101(b)(6) was promulgated.

Additionally, the detection of altered digital content is enhanced through the Internet Archive’s Wayback Machine. See <http://web.archive.org/>. The Internet Archive is a nonprofit corporation founded in 1996 as an online

library to provide access to historical collections in digital format and “to prevent the Internet—a new medium with major historical significance—and other ‘born-digital’ materials from disappearing into the past.” Deborah R. Eltgroth, *Best Evidence and the Wayback Machine: Toward A Workable Authentication Standard for Archived Internet Evidence*, 78 Fordham L. Rev. 181, 185-86 (2009). The Wayback Machine is a service available through the Internet Archive that allows parties to visit digitally archived webpages. Users can type in a URL and select a date range, permitting them to browse through older versions of the given site that were posted during the designated period.

Regardless of whether the material exists in print or digitally, the proponent still has the burden of establishing that the material purports to be a “newspaper” or “periodical”—the proposal does not intend to alter that requirement. The Committee deliberated at length and concluded that “printed” is not determinative of an article’s authenticity; rather, authenticity pivots on whether the article was from a “newspaper” or “periodical.” With no definition of these terms in the Pennsylvania Rules of Evidence or Pennsylvania case law, the Committee consulted statutory definitions containing a “printed” requirement. See 45 Pa.C.S. § 101(a) (definitions for the “Newspaper Advertising Act” and “any other law relating to printing or newspaper advertising”). While those definitions are instructive, their advent in 1976 predates what is colloquially called the “Internet” where digital media currently exists. See Act of July 9, 1976, P.L. 877, 45 Pa.C.S. §§ 101 *et seq.* Further, the application of those definitions appears limited to advertising. See 45 Pa.C.S. § 101(a) and § 302. Commentary directed toward F.R.E. 902(6) appeared to focus on publication at regular intervals when construing “newspaper” and “periodical.” See § 9:35 *Newspapers and Periodicals*, 5 Federal Evidence § 9:35 (4th ed.).

Seeking a more modern approach to digital media, the Committee considered the Pennsylvania Newsmedia Association’s criteria for “online publications,” as set forth in its bylaws. See Article 4.1.2, PNA Bylaws (revised November 2016) at <http://panewsmedia.org/docs/default-source/about-us-documents/pna-bylaws.pdf> (last visited March 5, 2019). With modification, the Committee believed the criteria can serve as a guide to determining whether a source is a “newspaper” or “periodical” under Pa.R.E. 902(6). The proposed guidance would be contained in the Comment to Pa.R.E. 902(6), which states:

Pa.R.E. 902(6) differs from F.R.E. 902(6) insofar as it does not contain “print” in reference to newspapers or periodicals. *Cf.* F.R.E. 101(b)(6) (“[A] reference to any kind of written material or any other medium includes electronically stored information.”). A newspaper or periodical should be available to the public online, digitally, or in print, be principally devoted to the dissemination of local or general news and other editorial content, be adherent to journalistic ethics and standards, and contain regularly updated content. For online newspapers and periodicals, links to other web content may be included, but the core content must reside on a server or website.

However, a question arose whether this guidance would require extrinsic evidence, which then defeats the purpose of self-authentication. See Pa.R.E. 902 (evidence not requiring extrinsic evidence of authenticity in order to be admitted).

The Committee next considered whether the Comment to Pa.R.E. 902(6) should be further revised to provide

guidance for the authentication of digital newspapers and periodicals. Initially, the Committee thought that the absence of such guidance for printed newspapers and periodicals suggested that no additional guidance was warranted for digital newspapers and periodicals. However, federal case law applying F.R.E. 902(6) suggested that guidance may be helpful to readers. *See, e.g., Ciampi v. City of Palo Alto*, 790 F.Supp.2d 1077 (N.D. Cal. 2011); *United States Security and Exchange Commission v. Berrettini*, No. 10-CV-1614, 2015 WL 5159746 (N.D. Ill. 2015) (unreported).

After much deliberation, the Committee favored additional commentary addressing both print and digital newspapers and periodicals. The proposed Comment states:

Pa.R.E. 902(6) permits both printed and digital newspapers and periodicals to be self-authenticated. Evidence purported to be an article or item from a newspaper or periodical must contain sufficient indicia of its original publication, including, but not limited to, the publication's title, the date of publication, page or volume of the article or item, and web address, if applicable, where the article or item was originally published.

**Pa.R.E. 902(12)**

On November 2, 2001, the Court adopted Rule 902(12) addressing the self-authentication of certified foreign records of regularly conducted activity in civil cases. *See* 31 Pa.B. 6381 (November 24, 2001). On February 23, 2004, the Court amended Rule 902(12) to eliminate its civil case-specific application. *See* 34 Pa.B. 1429 (March 13, 2004). On January 17, 2013, the Court rescinded and replaced, *inter alia*, Rule 902(12) as part of a larger restyling of the Rules of Evidence. *See* 43 Pa.B. 620 (February 2, 2013).

While no substantive changes to the Rules were intended as a part of the restyling, 43 Pa.B. at 652, the replacement of Rule 902(12) erroneously removed the substance of the 2004 amendment. Accordingly, the Committee has proposed correction of the text to reflect the 2004 amendment.

\* \* \* \* \*

The Committee invites all comments, suggestions, and concerns, especially with regard to the proposed amendment of Pa.R.E. 902(6).

[Pa.B. Doc. No. 19-417. Filed for public inspection March 22, 2019, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### [ 231 PA. CODE CH. 1900 ]

#### Order Amending Rule 1905 of the Pennsylvania Rules of Civil Procedure; No. 690 Civil Procedural Rules Doc.

#### Order

*Per Curiam*

And Now, this 5th day of March, 2019, upon the recommendation of the Domestic Relations Procedural

Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interest of efficient administration:

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1905 of the Pennsylvania Rules of Civil Procedure 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 April 10, 2019.

#### Annex A

#### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1900. ACTIONS PURSUANT TO THE PROTECTION FROM ABUSE ACT

#### Rule 1905. Forms for Use in PFA Actions. Notice and Hearing. Petition. Temporary Protection Order. Final Protection Order.

(a) The Notice of Hearing and Order required by [ Rule ] Pa.R.C.P. No. 1901.3 shall be substantially in the following form:

(Caption)

#### NOTICE OF HEARING AND ORDER

**YOU HAVE BEEN SUED IN COURT.** If you wish to defend against the claims set forth in the following papers, you must appear at the hearing scheduled herein. If you fail to do so, the case may proceed against you and a FINAL order may be entered against you granting the relief requested in the petition. In particular, you may be evicted from your residence, [ **be** ] prohibited from possessing any firearm, other weapon, ammunition, or any firearm license, and lose other important rights, including custody of your children. [ **Any** ] A protection order granted by a court may be considered in subsequent proceedings under Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, including child custody proceedings under Chapter 53 (relating to custody) **and Child Protective Services Law proceedings under Chapter 63 (related to juvenile matters).**

A hearing on the matter is scheduled for the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_ .m., in Courtroom \_\_\_\_\_ at \_\_\_\_\_ Courthouse, \_\_\_\_\_ Pennsylvania.

If an order of protection has been entered, you **MUST** obey the order until it is modified or terminated by the court after notice and hearing. If you disobey this order, the police or sheriff may arrest you. Violation of this order may subject you to a charge of indirect criminal contempt [ **which is punishable by a fine of up to \$1,000 and/or up to six months in jail** ] under 23 [ Pa.C.S.A. ] Pa.C.S. § 6114. Violation may also subject you to prosecution and criminal penalties under the Pennsylvania Crimes Code. Under federal law, 18 U.S.C. § 2265, this order is enforceable anywhere in the United States, tribal lands, U.S. Territories, and the Commonwealth of Puerto Rico. If you travel outside of the state and intentionally violate this order, you may be subject to federal criminal proceedings under the Violence Against Women Act, 18 U.S.C. §§ 2261-2262.

If this order directs you to relinquish any firearm, other weapon, ammunition, or any firearm license to the sheriff **or the appropriate law enforcement agency**, you may do so upon service of this order. As an alternative, you may relinquish any firearm, other weapon, or ammu-



dition listed herein to a third party provided you and the third party first comply with all requirements to obtain a safekeeping permit. 23 [ Pa.C.S.A. ] Pa.C.S. § 6108.3. You must relinquish any firearm, other weapon, ammunition, or any firearm license listed in the order no later than 24 hours after service of the order. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, you must provide an affidavit to the sheriff **or the appropriate law enforcement agency** listing the firearms, other weapons, or ammunition and their current location no later than 24 hours after service of the order. Failure to timely relinquish any firearm, other weapon, ammunition, or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 [ Pa.C.S.A. ] Pa.C.S. § 6105.

NOTICE: Even if this order does not direct you to relinquish firearms, you may be subject to federal firearms prohibitions and federal criminal penalties under 18 U.S.C. § 922(g)(8) **or state firearms prohibitions and state criminal penalties under 18 Pa.C.S. § 6105.**

**[ YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. ]** YOU HAVE THE RIGHT TO HAVE A LAWYER REPRESENT YOU AT THE HEAR-

ING[ . ], **HOWEVER,** THE COURT WILL NOT [ , **HOWEVER,** ] APPOINT A LAWYER FOR YOU. **YOU HAVE THE RIGHT TO PRESENT EVIDENCE AT THE HEARING, INCLUDING SUBPOENAING WITNESSES TO TESTIFY ON YOUR BEHALF.**

**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. IF YOU CANNOT FIND A LAWYER, YOU MAY HAVE TO PROCEED WITHOUT ONE.

County Lawyer Referral Service  
[ Insert Street Address ]  
[ Insert City, State, Zip Code ]  
[ Insert Phone ]

(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, shall be exactly as set forth in this rule:

<b>PETITION FOR PROTECTION FROM ABUSE</b>	IN THE COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA NO. _____
---	--

1. PLAINTIFF

--	--

First Middle Last Plaintiffs DOB

Plaintiff's Address:

Plaintiff's address is confidential or  Plaintiff's address is: \_\_\_\_\_

V.

2. DEFENDANT

--

First Middle Last Suffix

Defendant's Address:

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

DEFENDANT IDENTIFIERS			
DOB		HEIGHT	
SEX		WEIGHT	
RACE		EYES	
HAIR			
SSN			
DRIVERS LICENSE #			
EXP DATE		STATE	

CAUTION:

- Weapon Involved**
- Weapon Present on the Property**
- Weapon Requested Relinquished**

Defendant's Place of employment is: \_\_\_\_\_

Check here if you have reason to believe that Defendant is a licensed firearms dealer, **[is]** employed by a licensed firearms dealer or manufacturer; **[is]** employed as a writer, researcher, or technician in the firearms or hunting industry, or is required to carry a firearm as a condition of employment.

3. I am filing this Petition on behalf of:  Myself **[and/or] or**  Another Person

If you checked "myself", please answer all questions referring to yourself as "Plaintiff". If you ONLY checked "another person", please answer all questions referring to that person as the "Plaintiff", and provide your name and address here, as filer, unless confidential.

Filer's Name:

--

First Middle Last Suffix

Filer's Address is Confidential or  Filer's address is: \_\_\_\_\_

If you checked "Another Person", indicate your relationship with Plaintiff:

- parent of minor Plaintiff(s)
- applicant for appointment as guardian ad litem of minor Plaintiff(s)
- adult household member with minor Plaintiff(s)
- court appointed guardian of incompetent Plaintiff(s)

4. Name(s) of all persons, including minor child/ren, who seek protection from abuse:

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

5. Indicate the relationship between Plaintiff and Defendant[ . ]:

CHECK ALL THAT APPLY:

- spouse or former spouse of Defendant
- parent of a child with Defendant
- current or former sexual or intimate partner with Defendant
- child of Plaintiff
- child of Defendant
- family member related by blood (consanguinity) to Defendant
- family member related by marriage or affinity to Defendant
- sibling (person who shares parenthood) of Defendant
- Check here if Defendant is 17 years old or younger.

6. Have Plaintiff and Defendant been involved in any of the following court actions?

- Divorce     Custody     Support     Protection from Abuse

If you checked any of the above, briefly indicate when and where the case was filed and the court number, if known:

---



---

7. Has Defendant been involved in any criminal court action? \_\_\_\_\_

If you answered Yes, is Defendant currently on probation? \_\_\_\_\_

**Has Defendant been determined to be a perpetrator in a founded or indicated report under the Child Protective Services Law, 23 Pa.C.S. §§ 6301—6386?**

**If you answered Yes, what county's court or child protective services agency issued the founded or indicated report?**

8. Plaintiff and Defendant are the parents of the following minor child/ren:

Name(s)	Age(s)	who reside at (list address unless confidential)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

9. If Plaintiff and Defendant are parents of any minor child/ren together, is there an existing court order regarding their custody? \_\_\_\_\_

If you answered "Yes," describe the terms of the order (e.g., primary, shared, legal [ **and/or** ] or physical custody):

---

If you answered "yes", in what county and state was the order issued?

---

If you are now seeking an order of child custody as part of this petition, list the following information:

(a) Where has each child resided during the past five years?

Child's name	Person(s) child lived with	Address, unless confidential	When
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(b) List any other persons who are known to have or claim a right to custody of each child listed above.

Name	Address	Basis of Claim
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

10. The following other minor child/ren presently live with Plaintiff:

Name(s)	Age(s)	Plaintiff's relationship to child/ren
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. The facts of the most recent incident of abuse are as follows:

Approximate Date: \_\_\_\_\_  
 Approximate Time: \_\_\_\_\_  
 Place: \_\_\_\_\_

Describe in detail what happened, including any physical or sexual abuse, threats, injury, incidents of stalking, medical treatment sought, [ **and/or** ] **or** calls to law enforcement. (attach additional sheets of paper if necessary):

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

12. If Defendant has committed prior acts of abuse against Plaintiff or the minor child/ren, describe these prior incidents, including any threats, injuries, or incidents of stalking, and indicate approximately when such acts of abuse occurred (attach additional sheets of paper if necessary):

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

13.(a) Has Defendant used or threatened to use any firearms or other weapons against Plaintiff or the minor child/ren? If so, please describe the use or threatened use below and list on Attachment A to Petition, which is incorporated by reference into this petition, any firearms, other weapons, or ammunition Defendant used or threatened to use against Plaintiff [ **and/or** ] **or** the minor child/ren: \_\_\_\_\_

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

(b) Other than the firearms, other weapons, or ammunition Defendant used or threatened to use against [ **Petitioner** ] **Plaintiff** or the minor child/ren, does Defendant, to the best of your knowledge or belief, own or possess any additional firearm, other weapon, ammunition, or any firearm license?

(c) If the answer to (b) above is "yes," list any additional firearm, other weapon, or ammunition owned by or in the possession of Defendant on Attachment A to Petition, which is incorporated by reference into this petition.

(d) Plaintiff (*check one*)  DOES  DOES NOT request that the court order Defendant to relinquish firearms, other weapons, or ammunition listed on Attachment A to Petition. If Plaintiff does seek relinquishment, identify on Attachment A to Petition the firearms, other weapons [ **and** ], **or** ammunition Plaintiff requests the court to order Defendant to relinquish.

14. Identify the sheriff, police department, or law enforcement agency in the area in which Plaintiff lives that should be provided with a copy of the protection order: \_\_\_\_\_

\_\_\_\_\_

15. There is an immediate and present danger of further abuse from Defendant.

CHECK THE FOLLOWING BOXES ONLY IF THEY APPLY TO YOUR CASE AND PROVIDE THE REQUESTED INFORMATION

- Plaintiff is asking the court to evict and exclude Defendant from the following residence: \_\_\_\_\_
- owned by (list owners, if known): \_\_\_\_\_
- rented by (list all names, if known): \_\_\_\_\_
- Defendant owes a duty of support to Plaintiff [ **and/or** ] **or** the minor child/ren: \_\_\_\_\_
- Plaintiff has suffered out-of-pocket financial losses as a result of the abuse described above. Those losses are : \_\_\_\_\_

\_\_\_\_\_

FOR THE REASONS SET FORTH ABOVE, I REQUEST THAT THE COURT ENTER A TEMPORARY ORDER, AND AFTER HEARING, A FINAL ORDER THAT WOULD DO THE FOLLOWING (CHECK ALL FORMS OF RELIEF REQUESTED):

A. Restrain Defendant from abusing, [ **threatening, harassing, or stalking Plaintiff and/or** ] **harassing, stalking, threatening, or attempting or threatening to use physical force against Plaintiff or** the minor child/ren in any place where Plaintiff [ **and/or** ] **or** the child/ren may be found.

B. Evict/exclude Defendant from Plaintiff's residence and prohibit Defendant from attempting to enter any temporary or permanent residence of Plaintiff.

C. Require Defendant to provide Plaintiff [ **and/or** ] **or** the minor child/ren with other suitable housing.

D. Award Plaintiff temporary custody of the minor child/ren and place the following restrictions on contact between Defendant and the child/ren: \_\_\_\_\_

E. Prohibit Defendant from having any contact with Plaintiff [ **and/or** ] **or** the minor child/ren, [ **either** ] in person, by telephone, or in writing, personally or through third persons, including but not limited to any contact at Plaintiff's school, business, or place of employment, except as the court may find necessary with respect to partial custody [ **and/or visitation** ] with the minor child/ren.

F. Prohibit Defendant from having any contact with Plaintiff's relatives and Plaintiff's children listed in this petition, except as the court may find necessary with respect to partial custody [ **and/or visitation** ] with the minor child/ren. The following persons are Plaintiff's relatives or family and household members that Plaintiff believes require protection from stalking and harassment by Defendant.

Name	Address (optional)	Relationship to Plaintiff

G. Order Defendant to temporarily relinquish [ **some or all of** ] the firearms, other weapons [ **and/or** ], **or** ammunition listed on Attachment A to Petition, [ **and** ] **under Defendant's control, or in Defendant's possession, or** any firearm license to the sheriff [ **of this county and/or prohibit** ] **or the appropriate law enforcement agency.**

**H. Prohibit** Defendant from [ **transferring,** ] acquiring or possessing [ **some or all** ] firearms for the duration of the order.

[ **H** ] **I.** Order Defendant to pay temporary support for Plaintiff [ **and/or** ] **or** the minor child/ren, including medical support and  payment of the rent or mortgage on the residence.

[ **I** ] **J.** Direct Defendant to pay Plaintiff for the reasonable financial losses suffered as the result of the abuse, to be determined at the hearing.

[ **J** ] **K.** Order Defendant to pay the costs of this action, including filing and service fees.

[ **K** ] **L.** Order Defendant to pay Plaintiff's reasonable attorney's fees.

[ **L** ] **M.** Order the following additional relief, not listed above:

[ **M** ] **N.** Grant such other relief as Plaintiff requests [ **and/or** ] **or** the court deems appropriate.

[ **N** ] **O.** Order the police, sheriff, or other law enforcement agency to serve [ **the** ] Defendant with a copy of this petition, any order issued, and the order for hearing. Plaintiff will inform the designated authority of any addresses, other than Defendant's residence, where Defendant can be served.

**P. Direct the Pennsylvania State Police, the municipal police, or the sheriff to accompany Plaintiff to his or her residence to retrieve personal belongings or accompany Plaintiff while the petition or order is served on Defendant, if Plaintiff has reason to believe his or her safety is at risk.**

VERIFICATION

I verify that I am the petitioner as designated in the present action and that the facts and statements contained in the above Petition are true and correct to the best of my knowledge. I understand that any false statements are made subject to the penalties of 18 [ **Pa.C.S.A.** ] **Pa.C.S.** § 4904, relating to unsworn falsification to authorities

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

THE COURTS

(Caption)

ATTACHMENT A TO PETITION

FIREARMS, OTHER WEAPONS, [ AND ] OR

AMMUNITION INVENTORY

I, \_\_\_\_\_, Plaintiff in this Protection From Abuse Action, hereby

(a) state that Defendant used or threatened to use the following firearms, other weapons, [ and ] or ammunition against Plaintiff [ and/or ] or the minor child/ren (include addresses or locations, if known, such as "front seat of blue truck," "gun cabinet," "bedroom closet," etc.):

Firearm/Other Weapon/Ammunition	Location
1.	
2.	
3.	
4.	
5.	

(b) state that Defendant, to the best of my knowledge or belief, owns or possesses the following firearms, other weapons, or ammunition not set forth in (a) above (include addresses or locations if, known):

Firearm/Other Weapon/Ammunition	Location
1.	
2.	
3.	
4.	
5.	

(c) request that the court order Defendant to relinquish the following firearms, other weapons, [ and ] or ammunition (include addresses or locations, if known):

Firearm/Other Weapon/Ammunition	Location
1.	
2.	
3.	
4.	
5.	

All firearms, other weapons [ and ], or ammunition owned or possessed by Defendant. If more space is needed, more sheets may be attached to this document.

Name \_\_\_\_\_

Date \_\_\_\_\_

Notice: This attachment will be withheld from public inspection in accordance with 23 [ Pa.C.S.A. ] Pa.C.S. § 6108(a)(7)(v).

**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 Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.

(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 shall be exactly as set forth in this rule:

<p align="center"><b>TEMPORARY PROTECTION FROM ABUSE ORDER</b></p> <p><input type="checkbox"/> Amended Order <input type="checkbox"/> Continued Order</p>	<p align="center">IN THE COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA</p> <p>NO. _____</p>
---	---

<b>PLAINTIFF</b>	
------------------	--

First Middle Last Plaintiff's DOB

Name(s) of all protected persons, including minor child/ren and DOB:

\_\_\_\_\_

\_\_\_\_\_

v.

<b>DEFENDANT</b>
------------------

First Middle Last Suffix

Defendant's Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DEFENDANT IDENTIFIERS			
DOB		HEIGHT	
SEX		WEIGHT	
RACE		EYES	
HAIR			
SSN			
DRIVERS LICENSE #			
EXP DATE		STATE	

**CAUTION:**

- Weapon Involved
- Weapon Present on the Property
- Weapon Ordered Relinquished

**The Court Hereby Finds:** That it has jurisdiction over the parties and subject matter, and **[the]** Defendant will be provided with reasonable notice and opportunity to be heard.

**The Court Hereby Orders:**

- Defendant shall not abuse, harass, stalk **[or]**, threaten, **or attempt or threaten to use physical force against** any of the above persons in any place where they might be found.
- Except for such contact with the minor child/ren as may be permitted under **[paragraph] Paragraph 5** of this order, Defendant shall not contact Plaintiff, or any other person protected under this order, by telephone or by any other means, including through third persons.
- Additional findings of this order are set forth below.

Order Effective Date \_\_\_\_\_ Order Expiration Date \_\_\_\_\_

**NOTICE TO [THE] DEFENDANT**

Defendant is hereby notified that **[violation of] failure to obey** this order may result in arrest **[for] as set forth in 23 Pa.C.S. § 6113 and that violation of the order may result in a charge of** indirect criminal contempt, **which is punishable by a fine of up to \$1,000 and/or up to six months in jail.] as set forth in 23 [Pa.C.S.A.] Pa.C.S. § 6114.** Consent of Plaintiff to Defendant's return to the residence shall not invalidate this order, which can only be changed or modified through the filing of appropriate court papers for that purpose. 23 **[Pa.C.S.A.] Pa.C.S. § 6108 (g).** If Defendant is required to relinquish any firearms, other weapons **[or]**, ammunition, or any firearm license, those items must be relinquished to the sheriff **or the appropriate law enforcement agency** within 24 hours of the service of this order. As an alternative, Defendant may relinquish any firearm, other weapon, or ammunition listed herein to a third party provided Defendant and the third party first comply with all requirements to obtain a safekeeping permit. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide an affidavit to the sheriff **or the appropriate law enforcement agency** listing the firearms, other weapons, or ammunition and their current location no later than 24 hours after the service of this order. Defendant is further notified that violation of this order may subject him/her to state charges and penalties under the Pennsylvania Crimes Code **under 18 Pa.C.S. § 6105** and to federal **criminal** charges and penalties under **18 U.S.C. § 922(g)(8) and** the Violence Against Women Act, 18 U.S.C. §§ 2261-2262.

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, upon consideration of the attached Petition for Protection From Abuse, the court hereby enters the following Temporary Order:

- Plaintiff's request for a Temporary Protection Order is **denied**.
- Plaintiff's request for a Temporary Protection Order is **granted**.
- 1. Defendant shall not abuse, harass, stalk [ or ], threaten, **or attempt or threaten to use physical force against** any of the above persons in any place where they might be found.
- 2. Defendant is evicted and excluded from the residence at [NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED] or any other permanent or temporary residence where Plaintiff or any other person protected under this order may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this order.
- 3. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this order, Defendant is prohibited from having ANY CONTACT with Plaintiff, or any other person protected under this order, either directly or indirectly, at any location, including but not limited to any contact at Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this order: \_\_\_\_\_

- 
- 4. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this order, Defendant shall not contact Plaintiff, or any other person protected under this order, by telephone or by any other means, including through third persons.
  - 5. CUSTODY.
  - There is a current custody order as to the child/ren of the parties:

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(county court) \_\_\_\_\_ (docket number) \_\_\_\_\_

- THIS ORDER SHALL NOT SUPERSEDE THE CURRENT CUSTODY ORDER.
- THIS ORDER SUPERSEDES ANY PRIOR ORDER RELATING TO CHILD CUSTODY.
- Until the final hearing, all contact between Defendant and the child/ren shall be limited to the following:

---

Pending the outcome of the final hearing in this matter, Plaintiff is awarded temporary custody of the following minor child/ren:

---

The local law enforcement agency in the jurisdiction where the child/ren are located shall ensure that the child/ren are placed in the care and control of the Plaintiff in accordance with the terms of this order.

- 6. FIREARMS, OTHER WEAPONS [ AND ], **OR** AMMUNITION RESTRICTIONS.
- Check all that apply:
- Defendant is prohibited from possessing[ , transferring ] or acquiring any firearms for the duration of this order.
  - Defendant shall relinquish to the sheriff **or the appropriate law enforcement agency** the following [ firearms ] **firearm** licenses owned or possessed by Defendant: \_\_\_\_\_

Defendant is directed to relinquish to the sheriff **or the appropriate law enforcement agency** any firearm, other weapon, or ammunition listed in Attachment A to Temporary Order, which is incorporated herein by reference, **under Defendant's control or in Defendant's possession**.

Defendant may relinquish any firearms, other weapons, or ammunition to the sheriff **or the appropriate law enforcement agency**. As an alternative, Defendant may relinquish firearms, other weapons [ and ], **or** ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit. Defendant must relinquish any firearm, other weapon, ammunition, or firearm license ordered to be relinquished no later than 24 hours after service of this order. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide to the sheriff **or the appropriate law enforcement agency** an affidavit listing the firearms, other weapons, or ammunition and their current location no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition, or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 [ Pa.C.S.A. ] **Pa.C.S.** § 6105.



7. The following additional relief is granted:

Defendant is prohibited from stalking, as defined in 18 [ Pa.C.S.A. ] Pa.C.S. § 2709.1, or harassing, as defined in 18 [ Pa.C.S.A. ] Pa.C.S. § 2709, the following family and household members of Plaintiff:

Name	Address (optional)	Relationship to Plaintiff
_____	_____	_____
_____	_____	_____

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

**8. The Pennsylvania State Police, the municipal police, or the sheriff shall accompany Plaintiff to his or her residence to retrieve personal belongings or accompany Plaintiff while the petition or order is served on Defendant.**

[ 8 ] 9. A certified copy of this order shall be provided to the sheriff or police department where Plaintiff resides and any other agency specified hereafter: [ insert name of agency ]

[ 9 ] 10. THIS ORDER SUPERSEDES ANY PRIOR PROTECTION FROM ABUSE ORDER OBTAINED BY THE SAME PLAINTIFF AGAINST THE SAME DEFENDANT.

[ 10 ] 11. THIS ORDER APPLIES IMMEDIATELY TO DEFENDANT AND SHALL REMAIN IN EFFECT UNTIL [ insert expiration date ] OR UNTIL OTHERWISE MODIFIED OR TERMINATED BY THIS COURT AFTER NOTICE AND HEARING.

NOTICE TO [ THE ] DEFENDANT

Defendant is hereby notified that [ violation of ] failure to obey this order may result in arrest [ for ] as set forth in 23 Pa.C.S. § 6113 and that violation of the order may result in a charge of indirect criminal contempt[ , which is punishable by a fine of up to \$1,000 and/or up to six months in jail. ] as set forth in 23 [ Pa.C.S.A. ] Pa.C.S. § 6114. Consent of Plaintiff to Defendant's return to the residence shall not invalidate this order, which can only be changed or modified through the filing of appropriate court papers for that purpose. 23 [ Pa.C.S.A. ] Pa.C.S. § 6108(g). If Defendant is required to relinquish any firearms, other weapons [ or ], ammunition, or any firearm license, those items must be relinquished to the sheriff or the appropriate law enforcement agency within 24 hours of the service of this order. As an alternative, Defendant may relinquish any firearm, other weapon, or ammunition listed herein to a third party provided Defendant and the third party first comply with all requirements to obtain a safekeeping permit. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide an affidavit to the sheriff or the appropriate law enforcement agency listing the firearms, other weapons, or ammunition and their current location no later than 24 hours after the service of this order. Defendant is further notified that violation of this order may subject him/her to state charges and penalties under the Pennsylvania Crimes Code under 18 Pa.C.S. § 6105 and to federal criminal charges and penalties under 18 U.S.C. § 922(g)(8) and the Violence Against Women Act, 18 U.S.C. §§ 2261-2262.

NOTICE TO SHERIFF, POLICE AND LAW ENFORCEMENT OFFICIALS

This order shall be enforced by the police department or sheriff who has jurisdiction over Plaintiff's residence OR any location where a violation of this order occurs OR where Defendant may be located. If Defendant violates Paragraphs 1 through 6 of this order, Defendant shall be arrested on the charge of indirect criminal contempt. An arrest for violation of this order may be made without warrant, based solely on probable cause, whether or not the violation is committed in the presence of a police officer or sheriff.

Subsequent to an arrest, the law enforcement officer or sheriff shall seize all firearms, other weapons [ and ], or ammunition in Defendant's possession which were used or threatened to be used during the violation of the protection order or during prior incidents of abuse and any other firearms in Defendant's possession. Any firearm, other weapon, ammunition, or any firearm license must be delivered to the [ sheriff's office of the county which issued this order ] sheriff or the appropriate law enforcement agency, which [ office ] sheriff or agency shall maintain possession of the firearms, other weapons [ and ], or ammunition until further order of this court, unless the [ weapon/s ] weapon(s) are evidence of a crime, in which case, they shall remain with the law enforcement agency whose officer or sheriff made the arrest.

BY THE COURT:

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

THE COURTS

(Caption)

ATTACHMENT A TO TEMPORARY ORDER  
FIREARMS, OTHER WEAPONS [ **AND** ], **OR**  
AMMUNITION INVENTORY

It is hereby ordered that Defendant relinquish the following firearms, other weapons, [ **and** ] **or** ammunition to the sheriff **or the appropriate law enforcement agency**:

Firearm/Other Weapon/Ammunition	Location
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

All firearms, other weapons [ **and** ], **or** ammunition owned or possessed by [ **the** ] Defendant.

BY THE COURT:

Judge \_\_\_\_\_ Date \_\_\_\_\_

Notice: This attachment will be withheld from public inspection in accordance with 23 [ **Pa.C.S.A.** ] **Pa.C.S.** § 6108(a)(7)(v).

\* \* \* \* \*

(e) The Final Order of Court, or any amended, modified, or extended Final Order of Court, entered pursuant to the Act shall be substantially in the following form, but the first page must be exactly as set forth in this rule:

<p align="center"><b>FINAL PROTECTION FROM ABUSE ORDER</b></p> <p><input type="checkbox"/> Extended Order <input type="checkbox"/> Amended Order</p>	<p align="center">IN THE COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA</p> <p>NO. _____</p>
--	---

**PLAINTIFF**

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First Middle Last Plaintiff's DOB

Name(s) of all protected persons, including minor child/ren and DOB:

\_\_\_\_\_

\_\_\_\_\_

V.

**DEFENDANT**

--	--	--	--

First Middle Last Suffix

Defendant's Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DEFENDANT IDENTIFIERS			
DOB		HEIGHT	
SEX		WEIGHT	
RACE		EYES	
HAIR			
SSN			
DRIVERS LICENSE #			
EXP DATE		STATE	

**CAUTION:**

- Weapon Involved**
- Weapon Present on the Property**
- Weapon Ordered Relinquished**

**The Court Hereby Finds:** That it has jurisdiction over the parties and subject matter, and [the] Defendant has been provided with reasonable notice and opportunity to be heard.

**The Court Hereby Orders:**

- Defendant shall not abuse, harass, stalk [or], threaten, or attempt or threaten to use physical force against any of the above persons in any place where they might be found.
- Except as provided in [paragraph] Paragraph 5 of this order, Defendant shall not contact Plaintiff, or any other person protected under this order, by telephone or by any other means, including through third persons.
- Additional findings of this order are set forth below.

Order Effective Date \_\_\_\_\_ Order Expiration Date \_\_\_\_\_

**NOTICE TO [THE] DEFENDANT**

[Violation of this order may result in your arrest on the charge of indirect criminal contempt which is punishable by a fine of up to \$1,000 and/or a jail sentence of up to six months. 23 Pa.C.S.A. § 6114] Defendant is hereby notified that failure to obey this order may result in arrest as set forth in 23 Pa.C.S. § 6113 and that violation of the order may result in a charge of indirect criminal contempt as set forth in 23 Pa.C.S. § 6114. Violation may also subject you to prosecution and criminal penalties under the Pennsylvania Crimes Code. A violation of this order may result in the revocation of the safekeeping permit, which will require the immediate relinquishment of your firearms, other weapons [and], or ammunition to the sheriff or the appropriate law enforcement agency. Plaintiff's consent to contact by Defendant shall not invalidate this order which can only be modified by further order of court. 23 [Pa.C.S.A.] Pa.C.S. § 6108(g).

This order is enforceable in all fifty (50) States, the District of Columbia, Tribal Lands, U.S. Territories, and the Commonwealth of Puerto Rico under the Violence Against Women Act, 18 U.S.C. § 2265. If you travel outside of the state and intentionally violate this order, you may be subject to federal criminal proceedings under that act. 18 U.S.C. §§ 2261-2262. If you possess a firearm or any ammunition while this order is in effect, you may be charged with a federal criminal offense even if this Pennsylvania order does not expressly prohibit you from possessing firearms or ammunition[.] under 18 U.S.C. § 922(g)(8) or state criminal offenses and state criminal penalties under 18 Pa.C.S. § 6105.

CHECK ALL THAT APPLY:

Plaintiff or Protected Person(s) is/are:

- spouse or former spouse of Defendant
- parent of a child with Defendant
- current or former sexual or intimate partner with Defendant
- child of Plaintiff
- child of Defendant
- family member related by blood (consanguinity) to Defendant
- family member related by marriage or affinity to Defendant
- sibling (person who shares parenthood) of Defendant

Defendant was served in accordance with Pa.R.C.P. No. 1930.4 and provided notice of the time, date, and location of the hearing scheduled in this matter.

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, the court having jurisdiction over the parties and the subject-matter, it is ORDERED, ADJUDGED, and DECREED as follows:

This order is entered by (check one)  by agreement  by agreement without an admission  after a hearing and decision by the court  after a hearing at which Defendant was not present, despite proper service being made  by default. Without regard as to how the order was entered, this is a final order of court subject to full enforcement pursuant to the Protection From Abuse Act.

*Note:* Space is provided to allow for 1) the court's general findings of abuse; 2) inclusion of the terms under which the order was entered (e.g., that the order was entered with the consent of the parties, or that [ **the defendant** ] **Defendant**, though properly served, failed to appear for the hearing, or the reasons why the plaintiff's request for a final PFA order was denied); or 3) [ **and/or** ] information that may be helpful to law enforcement (e.g., whether a firearm or other weapon was involved in the incident of abuse [ **and/or** ] or whether [ **the defendant** ] **Defendant** is believed to be armed and dangerous).

- Plaintiff's request for a final protection order is denied.

OR

- Plaintiff's request for a final protection order is granted.

1. Defendant shall not abuse, stalk, harass, threaten, or attempt or threaten to use physical force [ **that would reasonably be expected to cause bodily injury to** ] against Plaintiff or any other protected person in any place where they might be found.

2. Defendant is completely evicted and excluded from the residence at (NONCONFIDENTIAL ADDRESS FROM WHICH DEFENDANT IS EXCLUDED) or any other residence where Plaintiff or any other person protected under this order may live. Exclusive possession of the residence is granted to Plaintiff. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this order.

On [ insert date and time ], Defendant may enter the residence to retrieve his/her clothing and other personal effects, provided that Defendant is in the company of a law enforcement officer or sheriff when such retrieval is made and [ insert any other conditions ] \_\_\_\_\_

3. Except as provided in [ **paragraph** ] **Paragraph** 5 of this order, Defendant is prohibited from having ANY CONTACT with Plaintiff, either directly or indirectly, or any other person protected under this order, at any location, including but not limited to any contact at Plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this order.

\_\_\_\_\_

\_\_\_\_\_

4. Except as provided in [ **paragraph** ] **Paragraph** 5 of this order, Defendant shall not contact Plaintiff, either directly or indirectly, or any other person protected under this order, by telephone or by any other means, including through third persons.

5. Temporary custody of the minor children, [ NAMES OF THE CHILDREN SUBJECT TO THE PROVISION OF THIS PARAGRAPH ] shall be as follows:

Check all that apply:

STATE TO WHOM PRIMARY PHYSICAL CUSTODY IS AWARDED, STATE TERMS OF PARTIAL CUSTODY, IF ANY.

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There is a current custody order as to the children of the parties:

\_\_\_\_\_  
(county court)

\_\_\_\_\_  
(docket number)

A custody petition is pending.

A hearing is scheduled for

\_\_\_\_\_  
(date, time and location)

THIS ORDER SHALL NOT SUPERSEDE THE CURRENT CUSTODY ORDER.

THIS ORDER SUPERSEDES ANY PRIOR ORDER RELATING TO CHILD CUSTODY.

The custody provisions of [ **paragraph** ] **Paragraph** 5 of this order are temporary. Either party may initiate custody proceedings pursuant to the custody statute at 23 Pa.C.S. [ § 5321 et seq ] §§ 5321—5340. Any valid custody order entered after the final Protection From Abuse order supersedes the custody provisions of this order.

6. FIREARMS, OTHER WEAPONS [ **AND** ], **OR** AMMUNITION RESTRICTIONS

Check all that apply:

Defendant is prohibited from possessing[ , **transferring** ] or acquiring any firearms for the duration of this order.

Defendant shall relinquish to the sheriff **or the appropriate law enforcement agency** the following [ **firearms** ] **firearm** licenses owned or possessed by Defendant:

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Defendant is directed to relinquish to the sheriff **or the appropriate law enforcement agency** any firearm, other weapon, or ammunition listed in Attachment A to Final Order, which is incorporated herein by reference.

Defendant may relinquish any firearms, other weapons, or ammunition to the sheriff **or the appropriate law enforcement agency**. As an alternative, Defendant may either relinquish firearms, other weapons [ **and** ], **or** ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit, or relinquish firearms, other weapons [ **and** ], **or** ammunition to a licensed firearms dealer for consignment sale, lawful transfer, or safekeeping pursuant to 23 [ **Pa.C.S.A.** ] **Pa.C.S.** § 6108.2(e). Defendant must relinquish any firearm, other weapon, ammunition, or [ **firearms** ] **firearm** license ordered to be relinquished no later than 24 hours after service of this order. Failure to timely relinquish any firearm, other weapon, ammunition, or any firearm license ordered to be relinquished shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 [ **Pa.C.S.A.** ] **Pa.C.S.** § 6105.

7. Any firearm delivered to the sheriff **or the appropriate law enforcement agency** or transferred to a licensed firearm dealer[ , ] or a qualified third party, who satisfies the procedural and substantive requirements to obtain a safekeeping permit issued under 23 [ **Pa.C.S.A.** ] **Pa.C.S.** § 6108.3 pursuant to this order or the temporary order, shall not be returned to Defendant until further order of court or as otherwise provided by law.

8. **The Pennsylvania State Police, the municipal police, or the sheriff shall accompany Plaintiff to his or her residence to retrieve personal belongings.**

9. The following additional relief is granted as authorized by § 6108 of the Act:

Defendant is prohibited from stalking, as defined in 18 [ **Pa.C.S.A.** ] **Pa.C.S.** § 2709.1, or harassing, as defined in 18 [ **Pa.C.S.A.** ] **Pa.C.S.** § 2709, the following family and household members of Plaintiff:

Name	Address (optional)	Relationship to Plaintiff
_____	_____	_____
_____	_____	_____

Other relief:

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[ 9 ] 10. Defendant is directed to pay temporary support for: [ INSERT THE NAMES OF THE PERSONS FOR WHOM SUPPORT IS TO BE PAID ] as follows: [ INSERT AMOUNT, FREQUENCY AND OTHER TERMS AND CONDITIONS OF THE SUPPORT ORDER ]. This order for support shall remain in effect until a final support order is entered by this court. However, this order shall lapse automatically if Plaintiff does not file a complaint for support with the Domestic Relations Section of the court within two weeks of the date of this order. The amount of this temporary order does not necessarily reflect Defendant's correct support obligation, which shall be determined in accordance with the guidelines at the support hearing. Any adjustments in the final amount of support shall be credited, retroactive to this date, to the appropriate party.

[ 10 ] 11.  (a) The costs of this action are imposed on Defendant.

(b) Because this order followed a contested proceeding, or a hearing at which Defendant was not present, despite being served with a copy of the petition, temporary order and notice of the date, time and place of the hearing, Defendant is ordered to pay an additional \$100 surcharge to the court, which shall be distributed in the manner set forth in 23 [ Pa.C.S.A. ] Pa.C.S. § 6106(d).

(c) Upon a showing of good cause or a finding that Defendant is unable to pay, the costs of this action are waived.

[ 11 ] 12. Defendant shall pay \$ \_\_\_\_\_ to Plaintiff by (insert date) as compensation for Plaintiff's out-of-pocket losses, which are as follows: \_\_\_\_\_

An installment schedule is ordered as follows: \_\_\_\_\_

OR

Plaintiff is granted leave to present a petition, with appropriate notice to Defendant, to [ INSERT THE NAME OF THE JUDGE OR COURT TO WHICH THE PETITION SHOULD BE PRESENTED ] requesting recovery of out-of-pocket losses. The petition shall include an exhibit itemizing all claimed out-of-pocket losses, copies of all bills and estimates of repair, and an order scheduling a hearing. No fee shall be required by the prothonotary's office for the filing of this petition.

[ 12 ] 13. THIS ORDER [ SUPERCEDES ] SUPERSEDES ANY PRIOR PROTECTION FROM ABUSE ORDER OBTAINED BY THE SAME PLAINTIFF AGAINST THE SAME DEFENDANT.

[ 13 ] 14. All provisions of this order shall expire:

Check one

in [ INSERT DAYS, MONTHS OR YEARS ] on [ INSERT EXPIRATION DATE ]

in three years, on [ INSERT EXPIRATION DATE ]

NOTICE TO [ THE ] DEFENDANT

**[ VIOLATION OF THIS ORDER MAY RESULT IN YOUR ARREST ON THE CHARGE OF INDIRECT CRIMINAL CONTEMPT WHICH IS PUNISHABLE BY A FINE OF UP TO \$1,000 AND/OR A JAIL SENTENCE OF UP TO SIX MONTHS. 23 PA.C.S.A. § 6114 ] DEFENDANT IS HEREBY NOTIFIED THAT FAILURE TO OBEY THIS ORDER MAY RESULT IN ARREST AS SET FORTH IN 23 PA.C.S. § 6113 AND THAT VIOLATION OF THE ORDER MAY RESULT IN A CHARGE OF INDIRECT CRIMINAL CONTEMPT AS SET FORTH IN 23 PA.C.S. § 6114. VIOLATION MAY ALSO SUBJECT YOU TO PROSECUTION AND CRIMINAL PENALTIES UNDER THE PENNSYLVANIA CRIMES CODE. A VIOLATION OF THIS ORDER MAY RESULT IN THE REVOCATION OF THE SAFEKEEPING PERMIT, WHICH WILL REQUIRE THE IMMEDIATE RELINQUISHMENT OF YOUR FIREARMS, OTHER WEAPONS, AND AMMUNITION TO THE SHERIFF OR THE APPROPRIATE LAW ENFORCEMENT AGENCY. PLAINTIFF'S CONSENT TO CONTACT BY DEFENDANT SHALL NOT INVALIDATE THIS ORDER, WHICH CAN ONLY BE MODIFIED BY FURTHER ORDER OF COURT. 23 [ PA.C.S.A. ] PA.C.S. § 6108(g).**

THIS ORDER IS ENFORCEABLE IN ALL FIFTY (50) STATES, THE DISTRICT OF COLUMBIA, TRIBAL LANDS, U.S. TERRITORIES, AND THE COMMONWEALTH OF PUERTO RICO UNDER THE VIOLENCE AGAINST WOMEN ACT, 18 U.S.C. § 2265. IF YOU TRAVEL OUTSIDE OF THE STATE AND INTENTIONALLY VIOLATE THIS ORDER, YOU MAY BE SUBJECT TO FEDERAL CRIMINAL PROCEEDINGS UNDER THAT ACT. 18 U.S.C. §§ 2261-2262. IF YOU POSSESS A FIREARM OR ANY AMMUNITION WHILE THIS ORDER IS IN EFFECT, YOU MAY BE CHARGED WITH A FEDERAL CRIMINAL OFFENSE EVEN IF THIS PENNSYLVANIA ORDER DOES NOT EXPRESSLY PROHIBIT YOU FROM POSSESSING FIREARMS OR AMMUNITION[ . ] UNDER 18 U.S.C. § 922(g)(8)[ . ] OR STATE CRIMINAL OFFENSES AND STATE CRIMINAL PENALTIES UNDER 18 PA.C.S. § 6105.

NOTICE TO SHERIFF, POLICE, AND LAW ENFORCEMENT OFFICIALS

The police and sheriff who have jurisdiction over Plaintiff's residence OR any location where a violation of this order occurs OR where Defendant may be located, shall enforce this order. The court shall have jurisdiction over any indirect criminal contempt proceeding, either in the county where the violation occurred or where this protective order was entered. An arrest for violation of [ paragraphs ] Paragraphs 1 through 7 of this order may be without warrant, based solely on probable cause, whether or not the violation is committed in the presence of the police or any sheriff. 23 [ Pa.C.S.A. ] Pa.C.S. § 6113.

Subsequent to an arrest, and without the necessity of a warrant, the police officer or sheriff shall seize all firearms, other weapons, and ammunition in Defendant's possession that were used or threatened to be used during the violation of the protection order or during prior incidents of abuse and any other firearms in Defendant's possession. The [ insert the appropriate name or title ] shall maintain possession of the firearms, other weapons, or ammunition until further order of this court.

When Defendant is placed under arrest for violation of the order, Defendant shall be taken to the appropriate authority or authorities before whom Defendant is to be arraigned. A "Complaint for Indirect Criminal Contempt" shall then be completed and signed by the police officer, sheriff, OR Plaintiff. Plaintiff's presence and signature are not required to file the complaint.

If sufficient grounds for violation of this order are alleged, Defendant shall be arraigned, bond set, if appropriate, and both parties given notice of the date of the hearing.

BY THE COURT:

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Date

[ If ] This order was entered pursuant to the consent of [ plaintiff and defendant ] Plaintiff and Defendant:

\_\_\_\_\_  
(Plaintiff's signature)

\_\_\_\_\_  
(Defendant's signature)

(Caption)

ATTACHMENT A TO FINAL ORDER  
FIREARMS, OTHER WEAPONS AND  
AMMUNITION INVENTORY

It is hereby ordered that Defendant relinquish the following firearms, other weapons, and ammunition to the sheriff or the appropriate law enforcement agency:

Firearm/Other Weapon/Ammunition	Location
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

All firearms, other weapons, and ammunition owned or possessed by Defendant.

BY THE COURT:

Judge \_\_\_\_\_

Date \_\_\_\_\_

Notice: This attachment will be withheld from public inspection in accordance with 23 [ Pa.C.S.A. ] Pa.C.S. § 6108(a)(7)(v).

\* \* \* \* \*

[Pa.B. Doc. No. 19-418. Filed for public inspection March 22, 2019, 9:00 a.m.]

**Title 234—RULES OF  
CRIMINAL PROCEDURE**

[ 234 PA. CODE CHS. 2 AND 5 ]

**Proposed Amendment of Pa.R.Crim.P. 201 and  
Revision to the Comment to Pa.R.Crim.P. 515**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 201 (Purpose of Warrant) and the

revision of the Comment to Rule 515 (Execution of Arrest Warrant) 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:

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Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
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All communications in reference to the proposal should be received by no later than Friday, May 3, 2019. 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 2. INVESTIGATIONS

##### PART A. Search Warrant

##### Rule 201. Purpose of Warrant.

A search warrant may be issued to search for and to seize:

- (1) contraband, the fruits of a crime, or things otherwise criminally possessed; or
- (2) property that is or has been used as the means of committing a criminal offense; or
- (3) property that constitutes evidence of the commission of a criminal offense[ . ];

**(4) a person for whom a bench or arrest warrant has been issued, or a person for whom there is probable cause to believe is a victim of a crime and for whom there is no other means of access.**

##### Comment

Concerning the provisions of paragraph (1) see *United States v. Rabinowitz*, 339 U.S. 56 (1950), overruled as to other points, *Chimel v. California*, 395 U.S. 752, 786 (1969). Also compare, *Cooper v. California*, 386 U.S. 58 (1967), with *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1964).

Warrants may not be issued unless the affidavit alleges a pre-existing crime. See *United States ex. rel. Campbell v. Rundle*, 327 F.2d 153, 161 (3rd Cir. 1964), followed *sub nom. Commonwealth ex rel. Ensor v. Cummings*, 207 A.2d 230 (Pa. 1965) and *Commonwealth ex rel. Campbell v. Russell*, 207 A.2d 232 (Pa. 1965). The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmyer*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955).

Concerning the provisions of paragraph (3), see *Warden v. Hayden*, 387 U.S. 294 (1967).

**Paragraph (4) was added in 2019 to clarify that a person is a proper subject of a search warrant**

**when the person is also the subject of an arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the arrest warrant. The search warrant does not take the place of the underlying arrest warrant. For the use of an arrest warrant to search the residence of the subject of the arrest warrant, see *Payton v. New York*, 445 U.S. 573 (1980); *Steagald v. United States*, 451 U.S. 204 (1981); and *Commonwealth v. Romero and Commonwealth v. Castro*, 183 A.3d 364 (Pa. 2018). Additionally, a search warrant may be utilized to obtain access to the victim of a crime, such as a victim of child or elderly abuse when exigent circumstances do not exist to perform a search without a warrant.**

**Official Note:** Rule 2002 adopted March 28, 1973, effective 60 days hence; renumbered Rule 201 and amended March 1, 2000, effective April 1, 2001; **amended** , 2019, effective , 2019.

*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 amendment regarding persons being subjects of search warrants published for comment 49 Pa.B. 1359 (March 23, 2019).**

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

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

##### (a) Arrest Warrants

##### Rule 515. Execution of Arrest Warrant.

(A) A warrant of arrest may be executed at any place within the Commonwealth.

(B) A warrant of arrest shall be executed by a police officer.

(C) When the warrant has been issued by a magisterial district judge, and the defendant cannot be found, the case shall remain in the magisterial district, and shall not be forwarded to the court of common pleas for further proceedings.

##### Comment

No substantive change in the law is intended by paragraph (A) of this rule; rather, it was adopted to carry on those provisions of the now repealed Criminal Procedure Act of 1860 that had extended the legal efficacy of an arrest warrant beyond the jurisdictional limits of the issuing authority. The Judicial Code now provides that the territorial scope of process shall be prescribed by the Supreme Court's procedural rules. 42 Pa.C.S. §§ 931(d), 1105(b), 1123(c), 1143(b), 1302(c), 1515(b).

For the definition of police officer, see Rule 103.

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 (1985).

**For the use of an arrest warrant to search the residence of the subject of the arrest warrant, see *Payton v. New York*, 445 U.S. 573 (1980); *Steagald v.***



*United States*, 451 U.S. 204 (1981); and *Commonwealth v. Romero and Commonwealth v. Castro*, 183 A.3d 364 (Pa. 2018).

Pursuant to Rule 540, the defendant is to receive a copy of the warrant and the supporting affidavit at the time of the preliminary arraignment.

For purposes of executing an arrest warrant under this rule, warrant information transmitted by using advanced communication technology has the same force and effect as an original arrest warrant. This rule does not require that the transmitted warrant information be an exact copy of the original warrant. Nothing in this rule, however, is intended to curtail the Rule 540(D) requirement that the issuing authority provide the defendant with an exact copy of the warrant. See Rule 513 (Requirements for Issuance).

Paragraph (C) abolishes the traditional practice known as “*NET*” or “*non est inventus*” as being no longer necessary.

**Official Note:** Formerly Rule 124, adopted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 122 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 515 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended February 12, 2010, effective April 1, 2010; Comment revised July 31, 2012, effective November 1, 2012; Comment revised September 21, 2012, effective immediately; **Comment revised , 2019, effective , 2019.**

*Committee Explanatory Reports:*

Report explaining the August 9, 1994 Comment revisions published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court’s Order at 24 Pa.B. 4342 (August 27, 1994).

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 May 10, 2002 Comment revision concerning advanced communication technology published with the Court’s Order at 32 Pa.B. 2582 (May 25, 2002).

Final Report explaining the February 12, 2010 changes adding new paragraph (C) and the Comment revision published with the Court’s Order at 40 Pa.B. 1071 (February 27, 2010).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(C) to Rule 540(D) published with the Court’s Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the September 21, 2012 revising the last paragraph of the Comment by correcting a typographical error published with the Court’s Order at 42 Pa.B. 6251 (October 6, 2012).

**Report explaining the proposed Comment revision regarding searches conducted pursuant to an arrest warrant published for comment at 49 Pa.B. 1359 (March 23, 2019).**

REPORT

*Proposed Amendment of Pa.R.Crim.P. 201*

*Proposed Revision of the Comment to Pa.R.Crim.P. 515*

**Searches Pursuant to Arrest Warrant**

The Committee has been examining the manner in which arrest warrants are used as the authority for searches of premises to apprehend the subjects of the arrest warrants. This examination was prompted by the Court’s opinion in the companion cases of *Commonwealth v. Romero* and *Commonwealth v. Castro*, 183 A.3d 364 (Pa. 2018). In *Romero*, a majority of the Court found that the defendants’ Fourth Amendment rights were violated by police officers’ search without a search warrant of their home while looking for the defendant’s brother-in-law who was the target of an arrest warrant. The Court held that entry into a home to execute an arrest warrant must be explicitly authorized by a magisterial determination of probable cause to search that home for the arrestee. In this case, it was not clear if the defendant’s home was the residence of the brother-in-law nor was it clear that the police had presented to the issuing authority the information they relied upon to believe the defendant’s home was the brother-in-law’s residence.

In reaching this position, the Court examined the U.S. Supreme Court cases of *Payton v. New York*, 445 U.S. 573 (1980) and *Steagald v. United States*, 451 U.S. 204 (1981). In *Payton*, the U.S. Supreme Court held that the Fourth Amendment prohibits law enforcement officers from making a warrantless and nonconsensual entry into a residence to conduct a routine felony arrest. The Court in *Payton* stated that a warrant requirement for arrests in the home placed no undue burden on law enforcement, and that “an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” Id. at 603. In *Steagald*, the U.S. Supreme Court held that a warrant for an individual’s arrest does not authorize an entry into the home of a third party not named in the arrest warrant. To protect third parties’ interests in the privacy of their homes, the *Steagald* Court held that the Fourth Amendment’s warrant requirement mandates a magistrate’s determination of probable cause before police may enter those homes in order to search the premises for the individual named in the arrest warrant. These cases suggest that an arrest warrant authorizes law enforcement to enter the home of the subject of an arrest warrant in order to effectuate his arrest, but that a separate search warrant is required to enter the home of a third party. There was not clear agreement among the Justices as to how that authorization must come.

The Committee concluded that the extent to which the police may search a residence pursuant to an arrest warrant is primarily a substantive issue. However, because it is likely that non-attorney police will be those initially seeking and executing search and arrest warrants, the Committee believes that the rules should provide some alert as to this issue. Therefore, citations to the key cases in this area, *Payton*, *Steagald*, and *Romero* would be added to the Comments to Rules 201 (Purpose of Warrant) and 515 (Execution of Arrest Warrant).

While studying Rule 201, the Committee also concluded that the rule text itself might cause some confusion by not including “persons” as a proper subject of a search warrant. The Committee considered the situations in

which a search warrant might be necessary to enter a residence to seek a person. The most obvious is the situation in which the police are seeking to execute an arrest warrant by searching a premise that is not the residence of the subject of the warrant. Additionally, the Committee concluded that a search warrant might be necessary in cases of elder or child abuse where access to a believed victim cannot be obtained absent a warrant, such as when exigent circumstances cannot be demonstrated at the time of entry to the premises. A new paragraph (4) would be added to Rule 201 to state that a person could be the subject of a search warrant in the above two circumstances.

The terminology used in the rule is that the warrant permits both “search” and “seizure.” The Committee was concerned that the term “seizure” would suggest that the search warrant could replace the need for an arrest warrant in the first circumstance. Therefore, the proposed language specifically states that an arrest warrant must be issued for the person to be the subject of a search warrant. An arrest warrant would not be needed if the person sought is believed to be the victim of a crime. This would be further clarified by language added to the Comment.

[Pa.B. Doc. No. 19-419. Filed for public inspection March 22, 2019, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### DAUPHIN COUNTY

#### Promulgation of Local Rules; No. 1793 S 1989

##### Order

And Now, this 7th day of March, 2019, Dauphin County Local Rules of Civil Procedure 208.3(a), 211 and 212.2 are amended as follows:

#### **Rule 208.3(a). Motion Procedure.**

##### (1) *General Procedure.*

(a) Motions are defined in Pa.R.C.P. 208.1. All motions not covered by **[ subsection (a)(3) ] Local Rule 208.3(a)(3)** shall be deemed uncontested motions.

(b) In addition to the requirements regarding the content of a motion found in Pa.R.C.P. 208.2, Dauphin County Local Rules 208.2(c) and 208.2(d) regarding **[ uncontested motions ] concurrence certification**, all motions shall contain the following information:

(i) whether a hearing or argument is requested and the estimated length of time needed for the hearing or argument; and

(ii) whether discovery is necessary.

**(iii) a copy of the previous Court Order if the motion directly involves that previous Court Order.**

(c) An original and one copy of a motion shall be filed with the Prothonotary and a copy served on all other parties.

(d) The Prothonotary shall forward the original motion to the Court Administrator’s Office and shall retain the copy in the file.

**(e) All motions and answers or responses thereto shall be accompanied by a proposed order (or alternative orders). The proposed order(s) shall**

**contain a distribution legend which shall include the name(s) and mailing address(es), telephone number(s), facsimile number(s) and e-mail address(es), if any, of all attorneys and self-represented parties to be served. The distribution legend shall identify which party each person represents.**

##### (2) *Uncontested Motions.*

(a) The **[ Civil Calendar Judge ] Court Administrator’s Office** shall determine whether the uncontested motion should be ruled upon by the Motion Judge or if it should be assigned to an individual judge for disposition, which decision shall be final. If the uncontested motion seeks to modify an order previously issued by the Court, the Court Administrator shall present it to the judge who signed the previous order, who may act upon the motion or forward it to the **[ Civil Calendar Judge ] Court Administrator’s Office** for **[ assignment ] re-assignment**.

(b) If the **[ Civil Calendar Judge ] Court Administrator’s Office** determines that the uncontested motion should be assigned to an individual judge, the Court Administrator’s Office shall assign the motion to a judge who has had prior significant involvement with the case or, if no judge has had prior significant involvement, to a judge on a rotating basis.

(c) The Court Administrator’s Office shall forward the uncontested motion to either the Motion Judge or the Assigned Judge for disposition as aforesaid.

(d) The Assigned Judge or Motion Judge, as the case may be, shall review the motion and issue an appropriate order pursuant to Pa.R.C.P. 208.4.

(e) If the Assigned Judge determines that argument is advisable to be heard before a three-judge panel, the Assigned Judge and the Court Administrator’s Office shall make the necessary scheduling arrangements for such panel argument.

**[ (f) Additional rules regarding discovery motions are found in Local Rule 4019, especially those relating to a Motion for Sanctions. ]**

##### (3) *Contested Motions.*

A party filing a contested motion or a motion deemed contested pursuant to Dauphin County Local Rule 208.3(b)(1) shall follow the procedure set forth in Dauphin County Local Rule 208.3(b).

##### (4) *Emergency Motions:*

(a) Motions that genuinely require an expedited disposition shall be designated as Emergency Motions by the filing party and clearly indicated as such in the title of the motion contained on the first page thereof.

(b) The attorney or **[ pro se ] self-represented** party shall promptly notify the Deputy Civil Court Administrator’s Office by telephone as soon as it is determined that an Emergency Motion will be filed, and shall give the Deputy Civil Court Administrator’s Office a realistic estimate of the date and time of the intended filing, a **[ detailed ]** description of the background of the motion, and the requested relief.

(c) An original and one copy of the Emergency Motion shall be filed with the Prothonotary.

(d) After filing, the original shall be hand-carried by counsel or the **[ pro se ] self-represented** party to the

Deputy Court Administrator's Office, and the Prothonotary shall retain the copy in the file. **When handing the emergency motion to the Deputy Court Administrator's Office, the filing party shall advise the Office that the filing is an emergency.**

(e) The Court Administrator's Office shall assign the Emergency Motion to a judge to be resolved as soon as practical.

(5) Except for motions seeking to modify previous orders, see Local Rule 208.3(a)(2)(a), all issues relating to the administration, filing, and processing of judicial assignments relating to motions shall be under the direction and supervision of the Civil Calendar Judge.

**(6) Additional rules regarding discovery motions are found in Local Rule 4019, especially those relating to a Motion for Sanctions.**

*Comment:* Rule 208.3(a) is amended to provide instructions regarding contested and uncontested motions.

#### **Rule 211. Oral Argument.**

[ Any party has a right to argue any motion, and the Court may require oral argument. ] **Any party may request oral argument on a motion, and the Court may require oral argument whether or not requested by a party. The court may dispose of any motion without oral argument.** If desired by any party involved in a motion, an oral argument request must be so noted on the Certificate of Readiness. If the party filing the Certificate of Readiness does not desire oral argument, counsel or that party if unrepresented shall inquire if any other party filing a brief wishes to present oral argument. **If no oral argument is requested by any party, it must be so noted on the Certificate of Readiness.** By filing a completed Certificate of Readiness, counsel or an unrepresented party certifies that said inquiry has been made and that the wishes of all interested parties are accurately reflected. **Failure to**

**indicate whether or not oral argument is requested shall result in the rejection of the Certificate of Readiness.**

#### **Rule 212.2. Contents of Pre-Trial Statements.**

In addition to requirements of Pa.R.C.P. 212.2, the pre-trial statement shall include:

**(a) a brief narrative statement of the case and legal issues;**

**(b) a list of the types and amounts of all damages claimed;**

[ (a) ] **(c)** the estimated length of trial;

[ (b) ] **(d)** any scheduling problems;

[ (c) ] **(e)** any special evidentiary issues;

[ (d) ] **(f)** a realistic settlement offer or demand;

[ (e) ] **(g)** a certification that counsel discussed mediation in good faith with his or her client(s) and with opposing counsel and with all unrepresented parties, if any, in accordance with Dauphin County Local Rule 1001.

**(h) the names of all witnesses;**

**(i) copies of all expert reports;**

**(j) stipulations agreed and stipulations desired.**

**A courtesy copy shall be served on the judge's chambers.**

The amendments to Rules of Civil Procedure 208.3(a), 211 and 212.2 shall be published in the *Pennsylvania Bulletin* and effective thirty (30) days from the date of publication.

*By the Court*

RICHARD A. LEWIS,  
*President Judge*

[Pa.B. Doc. No. 19-420. Filed for public inspection March 22, 2019, 9:00 a.m.]