

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 5]

Order Amending Rule 511 of the Pennsylvania Rules of Appellate Procedure; No. 280 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 15th 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. 4810 (August 19, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 511 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 July 1, 2019.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 5. PERSONS WHO MAY TAKE OR PARTICIPATE IN APPEALS

MULTIPLE APPEALS

Rule 511. [Cross Appeals] Cross-Appeals.

The timely filing of an appeal shall extend the time for any other party to [cross appeal as set forth in Rules 903(b) (cross appeals) 1113(b) (cross petitions for allowance of appeal) and 1512(a)(2) (cross petitions for review)] cross-appeal as set forth in Pa.R.A.P. 903(b) (cross-appeals), 1113(b) (cross-petitions for allowance of appeal), and 1512(a)(2) (cross-petitions for review). The discontinuance of an appeal by a party shall not affect the right of appeal or cross-appeal of any other party regardless of whether the parties are adverse.

Official Note: [The 2002 amendment clarifies the intent of the former rule that the filing of an appeal extends the time within which any party may cross appeal as set forth in Rules 903(b), 1113(b) and 1512(a)(2) and that a discontinuance of an appeal by a party will not affect the right of any other party to file a timely cross appeal under Rules 903(b), 1113(b) or 1512(a)(2) or to otherwise pursue an appeal or cross appeal already filed at the time of the discontinuance. The discontinuance of the appeal at any time before or after a cross appeal is filed will not affect the right of any party to file or discontinue a cross appeal.

The 2002 amendment eliminates the requirement that a party be adverse in order to file a cross appeal and supersedes *In Re Petition of the Board of School Directors of the Hampton Township School District*, 688 A.2d 279 (Pa. Cmwlth. 1997), to the

extent that decision requires that a party be adverse to the initial appellant in order to file a cross appeal. See Rule 903(b).]

See also [Rules] Pa.R.A.P. 2113, 2136, and 2185 regarding briefs in [cross appeals] cross-appeals and [Rule] Pa.R.A.P. 2322 regarding oral argument in multiple appeals.

An appellee should not be required to file a [cross appeal] cross-appeal because the [Court] court below ruled against it on an issue, as long as the judgment granted appellee the relief it sought. [See *Ratti v. Wheeling Pittsburgh Steel Corp.*, 758 A.2d 695 (Pa. Super. 2000) and *Hashagen v. Worker's Compensation Appeal Board*, 758 A.2d 276 (Pa. Cmwlth. 2000). To the extent that *Saint Thomas Township Board of Supervisors v. Wycko*, 758 A.2d 755 (Pa. Cmwlth. 2000) is in conflict, it is disapproved.] See *Lebanon Valley Farmers Bank v. Commonwealth*, 83 A.3d 107, 112 (Pa. 2013); *Basile v. H & R Block, Inc.*, 973 A.2d 417, 421 (Pa. 2009).

If, however, an intermediate appellate court awards different relief than the trial court or other government unit, a party may wish to file a cross-petition for allowance of appeal under Pa.R.A.P. 1112. See, e.g., *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 179 A.3d 1093, 1098 & n.5 (Pa. 2018); *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.*, 137 A.3d 1247 (Pa. 2016).

In deciding whether to cross-appeal, parties may also consider that appellate courts have discretion, but are not required, to affirm for any reason appearing in the record. See *Commonwealth v. Fant*, 146 A.3d 1254, 1265 n.13 (Pa. 2016); *Pa. Dept. of Banking v. NCAS of Del., LLC*, 948 A.2d 752, 762 (Pa. 2008); *Am. Future Sys., Inc. v. Better Bus. Bureau of E. Pa.*, 923 A.2d 389, 401 (Pa. 2007).

[Pa.B. Doc. No. 19-446. Filed for public inspection March 29, 2019, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[243 PA. CODE CH. 2]

Proposed Amendment of Pa.R.Crim.P. 231

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 231 (Who May be Present During Session of an Investigating Grand Jury) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

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

All communications in reference to the proposal should be received by no later than Friday, May 10, 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 B(1). Investigating Grand Juries

Rule 231. Who May be Present During Session of an Investigating Grand Jury.

(A) The attorney for the Commonwealth, the alternate grand jurors, the witness under examination, and a stenographer may be present while the investigating grand jury is in session. Counsel for the witness under examination may be present as provided by law.

(B) The supervising judge, upon the request of the attorney for the Commonwealth or the grand jury, may order that an interpreter, security officers, and such other persons as the judge may determine are necessary to the presentation of the evidence may be present while the investigating grand jury is in session.

(C) All persons who are to be present while the grand jury is in session shall be identified in the record, shall be sworn to secrecy as provided in these rules, and shall not disclose **[any information pertaining to the grand jury except as provided by law] anything that transpires in the Grand Jury room and all matters occurring before the Grand Jury, except when disclosure is authorized by law or permitted by the supervising judge of the grand jury.**

(D) No person other than the permanent grand jurors may be present during the deliberations or voting of the grand jury.

Comment

As used in this rule, the term “witness” includes both juveniles and adults.

The 1987 amendment provides that either the attorney for the Commonwealth, or a majority of the grand jury, through their foreperson, may request that certain, speci-

fied individuals, in addition to those referred to in paragraph (A), be present in the grand jury room while the grand jury is in session. As provided in paragraph (B), the additional people would be limited to an interpreter or interpreters the supervising judge determines are needed to assist the grand jury in understanding the testimony of a witness; a security officer or security officers the supervising judge determines are needed to escort witnesses who are in custody or to protect the members of the grand jury and the other people present during a session of the grand jury; and any individuals the supervising judge determines are required to assist the grand jurors with the presentation of evidence. This would include such people as the case agent (lead investigator), who would assist the attorney for the Commonwealth with questions for witnesses; experts, who would assist the grand jury with interpreting difficult, complex technical evidence; or technicians to run such equipment as tape recorders, videomachines, *etc.*

It is intended in paragraph (B) that when the supervising judge authorizes a certain individual to be present during a session of the investigating grand jury, the person may remain in the grand jury room only as long as is necessary for that person to assist the grand jurors.

Paragraph (C), added in 1987, generally prohibits the disclosure of any information related to testimony before the grand jury. There are, however, some exceptions to this prohibition enumerated in Section 4549 of the Judicial Code, 42 Pa.C.S. § 4549. **Section 4549(d) permits a witness to disclose his or her testimony before the investigating grand jury unless prohibited for cause shown in a hearing before the supervising judge. This testimony also may be disclosed by the witness’ attorney with the explicit, knowing, voluntary, and informed consent of the client witness. See *In re Fortieth Statewide Investigating Grand Jury*, 191 A.3d 750 (Pa. 2018).**

Official Note: Rule 264 adopted June 26, 1978, effective January 9, 1979; amended June 5, 1987, effective July 1, 1987; renumbered Rule 231 and amended March 1, 2000, effective April 1, 2001; Comment revised January 18, 2013, effective May 1, 2013; **amended** , 2019, **effective** , 2019.

Committee Explanatory Reports:

Report explaining the June 5, 1987 amendments adding paragraphs (B)—(D) published at 17 Pa.B. 167 (January 10, 1987).

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 January 18, 2013 Comment revision concerning definition of witness as used in this rule published with the Court’s Order at 43 Pa.B. 653 (February 2, 2013).

Report explaining the proposed amendment to paragraph (C) regarding the scope of the secrecy requirement published for comment at 49 Pa.B. 1511 (March 30, 2019).

REPORT

Proposed Amendment of Pa.R.Crim.P. 231

Counsel Secrecy Obligation in Investigating Grand Juries

The Committee, at the Court’s request, has undertaken a review of the language in Rule 231(C) regarding non-disclosure of investigating grand jury testimony in

light of *In Re Fortieth Statewide Investigating Grand Jury*, 191 A.3d 750 (Pa. 2018). In this case, the grand jury was investigating alleged child abuse by Roman Catholic clergy. Subpoenas were issued to the Dioceses of Harrisburg and Greensburg. Attorneys representing the Dioceses requested copies of the notice of submission that the Office of the Attorney General had submitted to the supervising judge. The supervising judge replied that this would be provided once the counsel had signed and submitted an entry of appearance. The entry of appearance required the attorneys to agree under oath “to keep secret all that transpires in the Grand Jury room, all matters occurring before the Grand Jury, and all matters and information concerning this Grand Jury obtained in the course of the representation, except when authorized by law or permitted by the Court. 42 Pa.C.S. § 4549(b).”

The attorneys for the Dioceses filed a joint motion to strike the non-disclosure provision from the entry of appearance form, arguing that the statutory secrecy provisions did not apply to private attorneys or, alternatively, that the scope of the secrecy obligation contained in the oath exceeded what was mandated by the statute. The Court found that private attorneys are explicitly subject to the general requirement of secrecy under the statute.

The Court agreed with the Dioceses’ attorney that the entry of appearance form’s requirement to keep secret all “matters occurring before the grand jury” was broader than the secrecy requirements of Section 4549(b) of the Investigating Grand Jury Act, 42 Pa.C.S. § 4549(b). Although the Section 4549(b) terminology of “matters occurring before the grand jury” is not defined in the Act, the Court found that a proscription against disclosure of “all matters and information concerning this Grand Jury obtained in the course of the representation” was too great an impingement on counsel’s ability to effectively represent their clients and should apply only to what actually transpired in a grand jury room.

The Court, under its supervisory prerogative, ordered that the entry-of-appearance form be modified to remove the commitment to secrecy for “all matters and information concerning this Grand Jury obtained in the course of the representation” and “the syntax of the prior clauses should be adjusted, so that attorneys are bound to keep secret ‘all that transpires in the Grand Jury room and all matters occurring before the Grand Jury, except when disclosure is authorized by law or permitted by the Court.’” 191 A.3d at 762. In footnote 20 of the case, the Court provided this further direction:

To the extent that Criminal Procedural Rule 231(C) can be read to sweep more broadly in its requirement of non-disclosure of “any information pertaining to the grand jury,” Pa.R.Crim.P. 231(C), we direct that it should be construed to align with the material provisions of the Investigating Grand Jury Act. Additionally, we intend to invoke the rulemaking process to effectuate a clarifying amendment.

The Committee examined the history of Rule 231, in particular the language used in paragraph (C). This language was added to then-Rule 264 in 1987. The Publication Report from that time explains the rationale of the Committee when the rule changes were proposed. See 17 Pa.B. 167 (January 10, 1987). It would appear that the Committee at that time contemplated that the secrecy provision applied to what transpired before the grand jury. The Committee concluded that this language as originally developed was not intended to apply to every-

thing that an attorney might learn during his or her representation of a client who is involved with the grand jury.

Therefore, the Committee is proposing a change to Rule 231(C) that would narrow the language of the secrecy obligation. Utilizing the language mandated by the Court in *In Re Fortieth Statewide Investigating Grand Jury*, the rule would describe the information covered by the secrecy obligation as “anything that transpires in the grand jury room and all matters occurring before the grand jury.”

One of the subsidiary concerns raised in the case was the seeming incongruity of a client-witness being permitted to disclose his or her testimony but the same permission not extending to his or her counsel. The Court held that this was not the case, and found the statute permits counsel to disclose such testimony when the client has consented. See 191 A.3d at 761. The Committee concluded that this point should be noted in the rule. Therefore, clarifying language would be added to the Comment regarding the allowance of an attorney to disclose their client’s testimony when the client has consented.

[Pa.B. Doc. No. 19-447. Filed for public inspection March 29, 2019, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Order Amending Rule 161 of the Pennsylvania Rules of Juvenile Court Procedure; No. 794 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 15th day of March, 2019, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published for public comment at 48 Pa.B. 4217 (July 21, 2018):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rule of Juvenile Court Procedure 161 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 July 1, 2019.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 161. Inspecting, Copying, and Disseminating Juvenile Probation Files.

A. *Inspecting and [copying] Copying.* Except as provided in paragraph (C), juvenile probation files shall be open to inspection and/or copying only by:

1) the **juvenile or the juvenile's attorney of record in the instant proceeding**;

- 2) the attorney for the Commonwealth;
- 3) the State Sexual Offenders Assessment Board;
- 4) the Juvenile Court Judges' Commission; or
- 5) any other person, agency, or department by order of court.

B. [*Electronic records*] *Juvenile Probation Information*.

1) [**Records which are maintained electronically**] **Information maintained** by juvenile probation offices **other than juvenile probation files** shall be subject to inspection and/or copying only pursuant to court order.

2) Each juvenile probation office shall create a document, which describes the information that is maintained by the juvenile probation office concerning each juvenile. This document shall be open to inspection and copying pursuant to paragraph (A).

C. Contents of [*order*] *Order*. The order shall:

1) specify who shall be permitted to inspect the [**record**] **file, information**, or any portion [**of the record**] **thereof**;

2) specify who shall be permitted to copy the [**record**] **file or information**;

3) state that the **file or** information received shall not be disseminated to any person, agency, or department not listed in the court order; and

4) state that dissemination of any **file or** information received is a violation of the court order.

D. Disseminating.

1) The juvenile probation office has discretion to disseminate portions of its files **or information** to the juvenile, service providers, placement facilities, and courts and courts' professional staff of other jurisdictions when facilitating placement, the delivery of services, treatment, or transfer of the case to, or supervision by another jurisdiction consistent with applicable Federal or state law.

2) Unauthorized dissemination of any **file or** information [**contained in the juvenile probation file**] to a person, agency, or department not permitted to inspect or copy the file pursuant to this rule may result in a finding of contempt of court.

Comment

Documents contained in the juvenile probation files are not a part of the official court record unless the juvenile probation office officially files the documents in the official court record. Those documents placed in the official court record are governed by Rule 160 and 42 Pa.C.S. § 6307.

Juvenile probation files containing a juvenile's disclosures for the purpose of treatment should be reviewed for potentially privileged communications prior to dissemination. See, e.g., Commonwealth v. Carter, 821 A.2d 601 (Pa. Super. 2003).

The notes of a juvenile probation officer, which describe the officer's impressions or personal observations but which are not included in a report to the court or other report, are not considered a component of a juvenile probation file that is open to inspection or copying under paragraph (A). **"Juvenile probation files," as used in paragraph (A) and defined in Rule 120, is intended to include files existing in whole or in part in either paper or digital form.**

Nothing in this rule is intended to preclude the juvenile probation office from sharing information [**in its file**] with the juvenile.

Official Note: Rule 161 adopted May 21, 2012, effective August 1, 2012. Amended August 23, 2012, effective immediately. **Amended March 15, 2019, effective July 1, 2019.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 161 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012).

Final Report explaining the amendments to Rule 161 published with the Court's Order at 42 Pa.B. 5734 (September 8, 2012).

Final Report explaining the amendments to Rule 161 published with the Court's Order at 49 Pa.B. 1512 (March 30, 2019).

FINAL REPORT¹

Amendment of Pa.R.J.C.P. 161

On March 15, 2019, the Supreme Court amended Rule of Juvenile Court Procedure 161 to clarify that "juvenile probation files" used in paragraph (A) includes records existing in both paper and digital form; and (2) distinguish between "juvenile probation files" and other information maintained by the juvenile probation office.

Rule 161(A) provides access to juvenile probation files for an identified class of people (e.g., juvenile's attorney, attorney for the Commonwealth). Rule 161(B) states that records maintained electronically by juvenile probation offices are only accessible by court order. The Juvenile Court Procedural Rules Committee received feedback that Rule 161(B) was being interpreted to require a court order for access to digital forms of juvenile probation files being "maintained electronically" by the juvenile probation office.

Rule 161(B) was intended to limit access to non-file information on the Juvenile Case Management System (JCMS), not to "juvenile probation files," as defined by Rule 120. The JCMS is a software application used by juvenile probation offices for case management purposes. If a record exists on JCMS and that record is part of a juvenile probation file, see Pa.R.J.C.P. 120, then that record is accessible pursuant to paragraph (A). If there is information on JCMS that is not part of the juvenile probation file, then a court order is required pursuant to paragraph (B) to access that information.

To clarify, "file" is used in Rule 161 to refer to the "juvenile probation file" and "information" to refer to all other information maintained by the juvenile probation office not part of the "juvenile probation file." Further, the

¹ The Committee's Final Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

Comment has been revised to instruct that paragraph (A) is intended to apply regardless of the form of the file.

The Committee received a comment seeking further clarification about the interpretation and application of Rule 161. Two of the areas of inquiry resulted in further revisions. First, a citation to *Commonwealth v. Carter*, 821 A.2d 601 (Pa. Super. 2003) was added to the Comment to signal that juvenile probation files containing a juvenile's disclosures for the purpose of treatment should be reviewed for potentially privileged communications prior to dissemination. Second, Rule 161(A)(1) was revised to clarify that the juvenile and the juvenile's attorney in the instant proceeding were permitted to copy and inspect a juvenile probation file without first obtaining an order of court.

The amendments will become effective July 1, 2019.

[Pa.B. Doc. No. 19-448. Filed for public inspection March 29, 2019, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Adoption of Philadelphia Criminal Rule *708. Violation of Probation or Parole. Revocation Hearings; Administrative Order No. 07 of 2019

Order

And Now, this 6th day of March, 2019, it is hereby *Ordered and Decreed* that Philadelphia Criminal Rule *708. Violation of Probation or Parole. Revocation Hearings is adopted, effective thirty (30) days after publication in the *Pennsylvania Bulletin*, and applicable in the Court of Common Pleas of Philadelphia County, Trial Division—Criminal, and in the Philadelphia Municipal Court—Criminal Division.

As required by Pa.R.J.A. 103(d), this Administrative Order and the proposed local rule were submitted to the Supreme Court of Pennsylvania Criminal Procedural Rules Committee for review and written notification has been received from the Rules Committee certifying that the proposed local rule is not inconsistent with any general rule of the Supreme Court. This Administrative Order and the following local rule shall be filed with the Office of Judicial Records (formerly the Prothonotary, Clerk of Courts and Clerk of Quarter Sessions) in a docket maintained for Administrative Orders issued by the First Judicial District of Pennsylvania. As required by Pa.R.J.A. 103(d)(5)(ii), two certified copies of this Administrative Order and the following local rule, as well as one copy of the Administrative Order and local rule shall be distributed to the Legislative Reference Bureau on a computer diskette for publication in the *Pennsylvania Bulletin*. As required by Pa.R.J.A. 103(d)(6) one certified copy of this Administrative Order and local rule shall be filed with the Administrative Office of Pennsylvania Courts, shall be published on the website of the First Judicial District at <http://www.courts.phila.gov>, and shall be incorporated in the compiled set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*. Copies of the Administrative Order and local rules shall also be published in *The Legal Intelligencer*

and will be submitted to American Lawyer Media, Jenkins Memorial Law Library, and the Law Library for the First Judicial District.

By the Court

HONORABLE IDEE C. FOX,
President Judge
Court of Common Pleas
Philadelphia County

HONORABLE PATRICK F. DUGAN,
President Judge
Philadelphia Municipal Court

HONORABLE JACQUELINE F. ALLEN,
Administrative Judge, Trial Division
Court of Common Pleas
Philadelphia County

Philadelphia Criminal Rule *708. Violation of Probation or Parole. Revocation Hearings.

(A) A probation officer may arrest or cause to be arrested, with or without a warrant, any person ("Defendant") who has been placed on probation or parole for: failure to report as required by the terms of that person's probation or parole, or for any other violation of that person's probation or parole as provided by law, including 42 Pa.C.S. §§ 9913 and 9754.

Explanatory Comment: 42 Pa.C.S. § 9913 authorizes a probation officer to arrest or detain any person on probation or parole for any violation of that person's probation or parole, imposed as provided in 42 Pa.C.S. § 9754 or otherwise.

A probation officer must exercise discretion in determining when a detainer ought to be issued, and shall reference the rule(s) and condition(s) of probation or parole allegedly violated by the Defendant.

(B) The procedure which follows shall be utilized whenever any Defendant who has been released on county probation or parole in Philadelphia County is arrested or detained by law enforcement officers to determine whether the Defendant's probation or parole ought to be revoked.

(1) *Gagnon I Hearing.* A hearing will be held before a Trial Commissioner or a judge as soon as practicable and within a reasonable time after the Defendant has been arrested or detained in order to determine whether there is probable cause to believe that the Defendant has committed a violation of his probation or parole. At the hearing, the Defendant shall:

- a. receive notice of the alleged violation of probation or parole;
- b. be provided the opportunity to appear in person or by two-way simultaneous audio-visual communication and to present evidence in his own behalf;
- c. be provided a conditional right to confront adverse witnesses;
- d. be provided counsel; and
- e. be provided a written hearing disposition report.

At the conclusion of the Gagnon I hearing, if the Trial Commissioner or judge determines that probable cause exists to believe that the Defendant has committed a violation of one or more condition of Defendant's probation or parole, the Defendant may be detained pending a Gagnon II hearing.

Explanatory Comment: See generally *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484

(1972), and *Gagnon v. Scarpelli*, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973) which require that a person arrested and detained due to an alleged violation of a condition of probation or parole be provided a “preliminary revocation hearing” (a “Gagnon I hearing”) conducted by an independent decisionmaker and a “final revocation hearing” (a “Gagnon II hearing”) to determine whether the person may be detained and the person’s probation or parole be revoked.

As noted above, the Gagnon I hearing need not be conducted by a judge, and may be conducted utilizing two-way simultaneous audio visual communications. See Comment to Pa.R.Crim.P. 119. Supervisory Probation staff have been designated in some counties to conduct Gagnon I hearings.

The Gagnon I hearing must be held within a reasonable period after the person is arrested and detained. See *Commonwealth v. Ferguson*, 2000 Pa. Super 312, 761 A.2d 613, 619 (2000). Requiring that a Gagnon I hearing be held within a mandatory or inflexible number of days, without regards to the individualized factors present in each case, may result in delay in the scheduling and holding some or all Gagnon I hearings.

Whether bail has been ordered and posted in connection with the new charge(s) is not dispositive in determining whether a person who is on probation or parole shall be released or will continue to be detained for violating the condition(s) of probation or parole. The sole consideration before the fact finder in the Gagnon I hearing is whether probable cause exists to believe that the person has violated any condition of the person’s probation or parole.

When a detainer is issued due to conduct which resulted in an arrest, the person on probation or parole may only be detained if after the Gagnon I hearing, evidence of some facts in addition to the facts of arrest is necessary to determine that the person on probation or parole violated any applicable conditions. See *Commonwealth v. Davis*, 234 Pa. Super 31, 38, 336 A.2d 616 (1975).

A Gagnon I hearing is not necessary when a probable cause determination is made, after the preliminary hearing where the Defendant is held for trial or upon the conviction of an offense committed while the Defendant had been released on probation or parole, that the Defendant has violated a condition of probation or parole. See *Commonwealth v. Davis*, 234 Pa. Super 31, 336 A.2d 616 (1975) for the specific scenarios held not to require a Gagnon I hearing in Philadelphia County.

(2) *Gagnon II Hearing*. If at the conclusion of the Gagnon I hearing, it was determined that probable cause existed to believe that the Defendant violated one or more condition of Defendant’s probation or parole, a hearing must be held to determine whether the facts warrant revocation of the Defendant’s probation or parole and whether probation or parole is still an effective vehicle to accomplish the rehabilitation and a sufficient deterrent against future antisocial conduct, as follows:

a. a written request for revocation shall be filed as required by Pa.R.Crim.P. 708(A);

b. a hearing will be held before the sentencing judge or a judge generally assigned to hear violations of probation or parole;

c. a hearing will be scheduled as requested by the sentencing judge or judge generally assigned to hear violations of probation or parole

i. within a reasonable period after the filing of the written request for revocation required by Pa.R.Crim.P. 708(A); or

ii. within a reasonable period after a verdict is rendered in connection with the new charges which had resulted in Defendant’s arrest;

d. the Defendant shall be provided counsel and the opportunity to be heard in person and to present witnesses and documentary evidence;

e. the defendant shall be provided the right to confront and cross-examine adverse witnesses; and

f. the hearing shall proceed as provided in Pa.R.Crim.P. 708.

Explanatory Comment: The judge may not revoke probation or parole on arrest alone, but only upon a finding of a violation thereof after a hearing, as provided in Pa.R.Crim.P. 708. However, the judge need not wait for disposition of new criminal charges to hold such hearing. See *Commonwealth v. Kates*, 452 Pa. 102, 305 A.2d 701 (1973).

The purpose of the Gagnon II Hearing is not to determine whether the person who is on probation or parole has committed a new offense, which the Commonwealth must establish by proving all of the requisite elements of the new offense beyond a reasonable doubt, but rather it is to establish the violation of a condition of probation or parole, which must be proved by a preponderance of the evidence, see *Commonwealth v. Allshouse*, 2009 Pa. Super 47, 969 A.2d 1236, 1240 (2009) and cases cited therein, and further to determine “whether the conduct of the probationer indicates that the probation has proven to be an effective vehicle to accomplish rehabilitation and a sufficient deterrent against anti-social behavior.” *Commonwealth v. Kates*, supra, 452 Pa. at 115 (1973).

[Pa.B. Doc. No. 19-449. Filed for public inspection March 29, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONROE COUNTY

Amendment of Local Rules of Civil Procedure; 60 AD 2019

Order

And Now, this 11th day of March, 2019, it is Ordered that the following amendments to Monroe County Rules of Civil Procedure 212.1(3)(a) shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It Is Further Ordered that the District Court Administrator shall:

1. File one copy of these Rules with the Administrative Office of Pennsylvania Courts via email to adminrules@pacourts.us.

2. File two paper copies and one electronic copy of these Rules in a Microsoft Word format only on a CD-ROM to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Arrange to have these Rules published on the Monroe County Bar Association website at www.monroebar.org.

4. Arrange to have these Rules, as well as all local rules, published on the 43rd Judicial District website at www.monroepacourts.us.

5. Keep these Rules, as well as all local rules of this Court, continuously available for public inspection and copying in the respective Monroe County filing office.

a. Upon request and payment of reasonable cost of reproduction and mailing, the respective filing office shall furnish to any person a copy of any local rule.

By the Court

MARGHERITA PATTI-WORTHINGTON,
President Judge

Rule 212.1. Case Management.

(3) Pretrial procedure.

a. A court order will issue upon filing in Fast Track and Standard Track cases. The case track and/or deadlines established by the case management order may be modified by the Court in its own discretion or for good cause shown. A party seeking modification shall seek the written concurrence of all parties and make the request for modification by written motion. A proposed modified case management order in a form substantially similar to Form "C" shall be attached. A proposed order for a status conference, substantially similar to Form "D" shall also be attached.

Form "C"

COURT OF COMMON PLEAS OF MONROE COUNTY

FORTY-THIRD JUDICIAL DISTRICT

COMMONWEALTH OF PENNSYLVANIA

Plaintiff vs. Defendant
No. CV 20__

CASE MANAGEMENT ORDER

AND NOW, this day of , 20__ , upon consideration of the Motion to Extend Case Management Deadlines, IT IS ORDERED as follows:

- 1. This case is stricken from the , 20__ Civil Trial List.
2. Trial is scheduled for this Court's two week trial term commencing on , 20__ , at 8:30am in Courtroom No. 1. Pre-trial memoranda shall be filed with the Prothonotary before the trial date in accordance with Pa.R.C.P. 212.1. Counsel are attached.
3. Discovery shall be completed by , 20__ , including the filing of all motions to compel the production of discovery.
4. Plaintiff's expert reports shall be completed and served upon Defendant by , 20__ .
5. Defendant's expert reports shall be completed and served upon Plaintiff by , 20__ .
6. All dispositive motions shall be filed by , 20__ .

BY THE COURT:

J.

cc: , Esquire
, Esquire
Prothonotary
Court Administration

Form "D"

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

No. CV 20__
Plaintiff
vs.
Defendant

ORDER

AND NOW, this day of , 20 __, following consideration of the Plaintiff's/Defendant's Motion to Modify the Case Management Schedule, IT IS ORDERED that a status conference shall be held on the ___ day of __, 20 __ at ___ o'clock __ .m., in Courtroom No. __, Monroe County Courthouse, Stroudsburg, Pennsylvania to consider the request to modify the case management order.

BY THE COURT:

_____ J.

cc: _____, Esquire
_____, Esquire
Prothonotary
Court Administrator

[Pa.B. Doc. No. 19-450. Filed for public inspection March 29, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WESTMORELAND COUNTY

Family Division Case Assignments; No. 3 of 2019

Administrative Order of Court

And Now, this 12th day of March, 2019, It Is Hereby Ordered that Westmoreland County Local Rule W1930 is hereby adopted. The new rule shall become effective 30 days after publication in the Pennsylvania Bulletin.

By the Court

RITA DONOVAN HATHAWAY,
President Judge

Rule W1930. Family Division Case Assignments.

(a) Petitions to appoint a standby guardian, as well as any filings in divorce, support, custody cases, or Family Division cases other than Protection from Abuse and Protection of Victims of Sexual Violence or Intimidation cases, shall be assigned to a judge by the Family Court Administrator, using the defendant's last name to assign the case.

(b) The Family Court Administrator shall attempt to ensure that if the same parties have previously had a matter assigned to a judge, that judge shall be assigned

to the new matter in order to preserve the "one family, one judge" concept of case assignment.

[Pa.B. Doc. No. 19-451. Filed for public inspection March 29, 2019, 9:00 a.m.]

DISCIPLINARY BOARD
OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Theodore Hauptle Smith, a/k/a Theodore H. Smith (# 36719), having been disbarred in the State of New Jersey, the Supreme Court of Pennsylvania issued an Order on March 13, 2019, disbarring Theodore Hauptle Smith, a/k/a Theodore H. Smith from the Bar of this Commonwealth, effective April 12, 2019. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the Pennsylvania Bulletin.

MARCEE D. SLOAN,
Board Prothonotary

[Pa.B. Doc. No. 19-452. Filed for public inspection March 29, 2019, 9:00 a.m.]