THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ART. IX]

Proposed Adoption of Pa.R.E. 902(13) and Pa.R.E. 902(14)

The Committee on Rules of Evidence propose the adoption of Pennsylvania Rule of Evidence 902(13) and 902(14) concerning the self-authentication of certified records generated by an electronic process or system and certified data copied from an electronic device, storage medium, or file, 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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All communications in reference to the proposal should be received by February 22, 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 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.

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

(6) *Newspapers and Periodicals.* 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 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) *Certified Records Generated by an Electronic Process or System.* A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

(14) *Certified Data Copied from an Electronic Device, Storage Medium, or File.* Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

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

Comment

This rule permits some evidence to be authenticated without extrinsic evidence of authentication or identification. In other words, the requirement that a proponent must present authentication or identification evidence as a condition precedent to admissibility, as provided by Pa.R.E. 901(a), is inapplicable to the evidence discussed in Pa.R.E. 902. The rationale for the rule is that, for the types of evidence covered by Pa.R.E. 902, the risk of forgery or deception is so small, and the likelihood of discovery of forgery or deception is so great, that the cost of presenting extrinsic evidence and the waste of court time is not justified. Of course, this rule does not preclude the opposing party from contesting the authenticity of the evidence. In that situation, authenticity is to be resolved by the finder of fact.

Pa.R.E. 902(1), (2), (3), and (4) deal with self-authentication of various kinds of public documents and records. They are identical to F.R.E. 902(1), (2), (3), and (4), except that Pa.R.E. 901(4) eliminates the reference to Federal law. These paragraphs are consistent with Pennsylvania statutory law. *See, e.g.* 42 Pa.C.S. § 6103 (official records within the Commonwealth); 42 Pa.C.S. § 5328 (domestic records outside the Commonwealth and foreign records); 35 P.S. § 450.810 (vital statistics); 42 Pa.C.S. § 6106 (documents filed in a public office).

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

Pa.R.E. 902(8) is identical to F.R.E. 902(8). It is consistent with Pennsylvania law. *See Sheaffer v. Baeringer*, 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) is identical to F.R.E. 902(13). This rule establishes a procedure by which parties can authenticate certain electronic evidence other than through the testimony of a foundation witness. The rule specifically allows the authenticity foundation that satisfies Rule 901(b)(9) to be established by a certification rather than the testimony of a live witness.

A certification under this rule can establish only that the proffered item has satisfied the admissibility requirements for authenticity. The opponent remains free to object to admissibility of the proffered item on other grounds—including hearsay, relevance, or in criminal cases the right to confrontation. For example, a certification authenticating a computer output, such as a spreadsheet or a printout of a webpage, does not preclude an objection that the information produced is unreliable—the authentication establishes only that the output came from the computer.

The reference to the "certification requirements of Rule 902(11) or (12)" is only to the procedural requirements for a valid certification. There is no intent to require, or permit, a certification under this rule to prove the requirements of Rule 803(6). Rule 902(13) is solely limited to authentication of a record generated by an electronic process or system and any attempt to satisfy a hearsay exception must be made independently.

A challenge to the authenticity of electronic evidence may require technical information about the

system or process at issue, including possibly retaining a forensic technical expert; such factors will affect whether the opponent has a fair opportunity to challenge the evidence given the notice provided.

Nothing in Rule 902(13) is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including though judicial notice where appropriate.

Pa.R.E. 902(14) is identical to F.R.E. 902(14). This rule establishes a procedure by which parties can authenticate data copied from an electronic device, storage medium, or an electronic file, using a certificate rather than through the testimony of a foundation witness. A proponent establishing authenticity under this rule must present a certification containing information that would be sufficient to establish authenticity were that information provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record of the certifying person testified, then authenticity is not established under this rule.

Today, data copied from electronic devices, storage media, and electronic files are ordinarily authenticated by "hash value." A hash value is a number that is often represented as a sequence of characters and is produced by an algorithm based upon the digital contents of a drive, medium, or file. If the hash values for the original and copy are different, then the copy is not identical to the original. If the hash values for the original and copy are the same, it is highly improbable that the original and copy are not identical. Thus, identical hash values for the original and copy reliably attest to the fact that they are exact duplicates. This Rule allows self-authentication by a certification of a qualified person that she checked the hash value of the proffered item and that it was identical to the original. The Rule is flexible enough to allow certifications through processes other than comparison of hash value, including by other reliable means of identification provided by future technology.

A certification under this rule can only establish that the proffered item is authentic. The opponent remains free to object to admissibility of the proffered item on other grounds—including hearsay, relevance, or in criminal cases the right to confrontation. For example, in a criminal case in which data copied from a hard drive is proffered, the defendant can still challenge hearsay found in the hard drive, and can still challenge whether the information on the hard drive was placed there by the defendant.

The reference to the "certification requirements of Rule 902(11) or (12)" is only to the procedural requirements for a valid certification. There is no intent to require, or permit, a certification under this rule to prove the requirements of Rule 803(6). Rule 902(14) is solely limited to authentication, and any attempt to satisfy a hearsay exception must be made independently.

A challenge to the authenticity of electronic evidence may require technical information about the system or process at issue, including possibly retaining a forensic technical expert; such factors will affect whether the opponent has a fair opportunity to challenge the evidence given the notice provided.

Nothing in Rule 902(14) is intended to limit a party from establishing authenticity of electronic evidence on any ground provided in these Rules, including though judicial notice where appropriate.

Pa.R.E. **[902(13)]** **902(15)** 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 7, 2016, effective January 1, 2017; amended June 12, 2017, effective November 1, 2017; amended , 2018, effective , 2018.**

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 48 Pa.B. (2018).

REPORT

Proposed Adoption of Pa.R.E. 902(13) & Pa.R.E. 902(14)

The Committee on Rules of Evidence is considering proposing the adoption of Pennsylvania Rule of Evidence 902(13) and 902(14) concerning the self-authentication of certified records generated by an electronic process or system and certified data copied from an electronic device, storage medium, or file.

The Federal Advisory Committee on Evidence considered the expense and inconvenience of producing a witness to authenticate an item of electronic evidence given that the adversary often either stipulates authenticity before the witness is called or fails to challenge the authentication testimony once it is presented. In light of business records able to be self-authenticated by certification, see F.R.E. 902(11) & (12), the Advisory Committee proposed rule amendments in 2015 that would provide for a similar procedure where the parties can determine in advance of trial whether a real challenge to authenticity will be made to electronic evidence, and can then plan accordingly.

As approved by the Rules Committee of the Judicial Conference, F.R.E. 902(13) & (14) were adopted, effective December 1, 2017. Specifically, F.R.E. 902(13) states:

> *Certified Records Generated by an Electronic Process or System.* A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that

complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of Rule 902(11).

To establish authenticity under this Rule, the proponent must present a certification containing information that would be sufficient to establish authenticity if that information was provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule. The Rule specifically allows the authenticity foundation that satisfies Rule 901(b)(9) to be established by a certification rather than the testimony of a live witness.

Illustrations of how F.R.E. 902(13) can be used include:

1. *Proving that a USB device was connected to (i.e., plugged into) a computer*: In a hypothetical civil or criminal case in Chicago, a disputed issue is whether Devera Hall used her computer to access files stored on a USB thumb drive owned by a co-worker. Ms. Hall's computer uses the Windows operating system, which automatically records information about every USB device connected to her computer in a database known as the "Windows registry." The Windows registry database is maintained on the computer by the Windows operating system in order to facilitate the computer's operations. A forensic technician, located in Dallas, Texas, has provided a printout from the Windows registry that indicates that a USB thumb drive, identified by manufacturer, model, and serial number, was last connected to Ms. Hall's computer at a specific date and time.

Without Rule 902(13): Without Rule 902(13), the proponent of the evidence would need to call the forensic technician who obtained the printout as a witness, in order to establish the authenticity of the evidence. During his or her testimony, the forensic technician would typically be asked to testify about his or her background and qualifications; the process by which digital forensic examinations are conducted in general; the steps taken by the forensic technician during the examination of Ms. Hall's computer in particular; the process by which the Windows operating system maintains information in the Windows registry, including information about USB devices connected to the computer; and the steps taken by the forensic examiner to examine the Windows registry and to produce the printout identifying the USB device.

Impact of Rule 902(13): With Rule 902(13), the proponent of the evidence could obtain a written certification from the forensic technician, stating that the Windows operating system regularly records information in the Windows registry about USB devices connected to a computer; that the process by which such information is recorded produces an accurate result; and that the printout accurately reflected information stored in the Windows registry of Ms. Hall's computer. The proponent would be required to provide reasonable written notice of its intent to offer the printout as an exhibit and to make the written certification and proposed exhibit available for inspection. If the opposing party did not dispute the accuracy or reliability of the process that produced the exhibit, the proponent would not need to call the forensic technician as a witness to establish the authenticity of the exhibit. (There are many other examples of the same types of machine-generated information on computers, for example, Internet browser histories and Wi-Fi access logs.)

* * * * *

3. *Proving that a person was or was not near the scene of an event*: Hypothetically, Robert Jackson is a defendant in a civil (or criminal) action alleging that he was the driver in a hit-and-run collision with a U.S. Postal Service mail carrier in Atlanta at 2:15 p.m. on March 6, 2015. Mr. Jackson owns an iPhone, which has software that records machine-generated dates, times, and GPS coordinates of each picture he takes with his iPhone. Mr. Jackson's iPhone contains two pictures of his home in an Atlanta suburb at about 1 p.m. on March 6. He wants to introduce into evidence the photos together with the metadata, including the date, time, and GPS coordinates, recovered forensically from his iPhone to corroborate his alibi that he was at home several miles from the scene at the time of the collision.

Without Rule 902(13): The proponent would have to call the forensic technician to testify about Mr. Jackson's iPhone's operating system; his search of the phone; how the metadata was created and stored with each photograph; and that the exhibit is an accurate record of the photographs.

With Rule 902(13): The proponent would obtain the forensic technician's certification of the facts establishing authenticity of the exhibits and provide the certification and exhibit to the opposing party with reasonable notice that it intends to offer the exhibit at trial. If the opposing party does not timely dispute the reliability of the process that produced the iPhone's logs, then the proponent would not have to call the technician to establish authenticity.

Hon. Paul W. Grimm *et. al., Authenticating Digital Evidence*, 69 Baylor L. Rev. 1, 42—44 (2017).

F.R.E. 902(9) states:

(14) *Certified Data Copied from an Electronic Device, Storage Medium, or File*. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent also must meet the notice requirements of Rule 902(11).

This Rule sets forth a procedure by which parties can authenticate data copied from an electronic device, storage medium, or an electronic file, other than through the testimony of a foundation witness. A proponent establishing authenticity under this Rule must present a certification containing information that would be sufficient to establish authenticity if that information was provided by a witness at trial. If the certification provides information that would be insufficient to authenticate the record if the certifying person testified, then authenticity is not established under this Rule.

The Committee considered whether adoption of rules similar to the new Federal Rules would be consistent with purpose of the Pennsylvania Rules of Evidence "to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination." Pa.R.E. 102. At the risk of oversimplification, the Committee notes that the Federal Rules do not alter the requirement of authentication; they merely permit an out-of-court certification to replace in-court testimony.

Pursuant to Pa.R.E. 901(a), the proponent is required to produce sufficient extrinsic evidence to authenticate or attribute evidence as being what the proponent claims it to be. For example, when a proponent wishes to introduce a voice recording and connect the voice to a specific speaker, the proponent can have a witness familiar with the speaker's voice testify as to the witness's opinion whether the voice on the recording is that of the speaker. *See* Pa.R.E. 901(b)(5).

Likewise, if the proponent wishes to introduce evidence of a result of a process or system, then the proponent must introduce extrinsic evidence describing the process or system and show that it produces an accurate result. *See* Pa.R.E. 901(b)(9). For example, an x-ray, unlike a photograph or videotape, cannot be authenticated by the operator of the imaging equipment because the operator cannot accurately see what is being depicted on the x-ray. Hence, the x-ray can be authenticated pursuant to Rule 901(b)(9) through evidence regarding the capability of the imaging equipment, the operation of equipment, the training of the operators, and the accuracy and clarity of the resulting image. However, in current practice, seldom is authenticity challenged with long established, well-known, and understood processes or systems where results are generally accepted as accurate.

Rule 901(b)(9) also has application to computer generated records. *See, e.g., Wachovia Bank, N.A. v. Gemini Equipment Co.*, 2006 WL 5429543 (Dauphin Co. 2006). While Pennsylvania precedent is scant, F.R.E. 902(b)(6), the analogue to Pa.R.E. 901(b)(9), has been more definitively applied to computer output. *See* 5 Federal Evidence § 9:20 (4th ed.) (discussing application to, *inter alia*, computer output).

As reliance on electronic processes and systems increases, so does a sense of familiarity and trustworthiness that records generated by same are done so without the potential bias or error inherent when records are generated by human involvement. An accurate record generated by computation requires only an understanding of the computation process or system to be authenticated. Pa.R.E. 902(13) would permit this task to be accomplished by certification rather than live testimony.

Similarly, a comparison of a unique identifier produced by an algorithm (*i.e.*, hashtag) in the source data with the copied data can be used to authenticate the copied data as being identical to the source data. Pa.R.E. 902(14) allows the authentication to be accomplished by certification and without the need for extrinsic evidence.

Broadly stated, the use of certifications in lieu of testimony is not foreign concept in Pennsylvania. *See*, *e.g.*, Pa.R.Crim.P. 574 (permitting the admission of forensic lab reports by certification in lieu expert testimony). More specifically, the use of certifications in lieu of authentication testimony has long been acceptable by the Rules of Evidence and statute. *See* Pa.R.E. 902(4), (11), & (12); 42 Pa.C.S. § 6106 (self-authentication of documents filed in public offices).

Borrowing language largely from F.R.E. 902(13) and F.R.E. 902(14), together with their commentary, the Committee seeks comment about the utility of incorporating these provisions into the Pennsylvania Rules of Evidence.

[Pa.B. Doc. No. 19-37. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 200]

Damages for Delay

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF COURTS

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

* * * * *

Addendum to Explanatory Comment (2019)

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

Date of Publication	*Prime Rate Percentage*
January 2, 2019	5 1/2
January 2, 2018	4 1/2
January 3, 2017	3 3/4
January 4, 2016	3 1/2
January 2, 2015	3 1/4
January 2, 2014	3 1/4
January 2, 2013	3 1/4
January 3, 2012	3 1/4
January 3, 2011	3 1/4
January 4, 2010	3 1/4
January 2, 2009	3 1/4
January 2, 2008	7 1/4
January 2, 2007	8 1/4
January 3, 2006	7 1/4
January 3, 2005	5 1/4
January 2, 2004	4
January 2, 2003	4 1/4
January 2, 2002	4 3/4
January 2, 2001	9 1/2
January 3, 2000	8 1/2
January 4, 1999	7 3/4
January 2, 1998	8 1/2

***Official Note*: The prime rate for the years 1980 through 1997 may be found in the Addendum to the Explanatory Comment published in the [*Pennsylvania Bulletin*, volume 33, page 634 (2/1/03)] *Pennsylvania Bulletin*, 33 Pa.B. 634 (February 1, 2003)**, and on the web site of the Civil Procedural Rules Committee at http://www.pacourts.us.

By the Civil Procedural Rules Committee

DAVID L. KWASS,
Chair

[Pa.B. Doc. No. 19-38. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Order Amending Rules 1910.11, 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.16-6, 1910.18 and 1910.19 and Rescinding Rule 1910.16 of the Pennsylvania Rules of Civil Procedure; No. 687 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 28th day of December, 2018, upon the recommendation of the Domestic Relations Procedural Rules Committee, the proposal having been published for public comment in the *Pennsylvania Bulletin*, 48 Pa.B. 4214 (July 21, 2018) and 48 Pa.B. 5831 (September 22, 2018):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1910.11, 1910.16-1, 1910.16-2, 1910.16-3, 1910.16-3.1, 1910.16-4, 1910.16-6, 1910.18, and 1910.19 of the Pennsylvania Rules of Civil Procedure are amended, and Rule 1910.16 is rescinded, in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on January 1, 2019.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.11. Office Conference. Subsequent Proceedings. Order.

[(a)(1) The office conference shall be conducted by a conference officer.]

(a) *Office Conference.*

(1) A conference officer shall conduct the office conference.

(2) **[Any]** **A** lawyer serving as a conference officer employed by, or under contract with, a judicial district or appointed by the court shall not practice family law before a conference officer, hearing officer, permanent or standing master, or judge of the same judicial district.

***Official Note*:** Conference officers preside at office conferences under **[Rule]** **Pa.R.C.P. No.** 1910.11. Hearing officers preside at hearings under **[Rule]** **Pa.R.C.P. No.** 1910.12. The appointment of masters to hear actions in divorce or for annulment of marriage is authorized by **[Rule]** **Pa.R.C.P. No.** 1920.51.

(b) If **[either]** **a** party fails to appear at the conference **[before the officer]** as directed by the court, the conference may proceed.

[(c) At the conference, the parties shall furnish to the officer true copies of their most recent federal income tax returns, their pay stubs for the preceding six months, verification of child care expenses, and proof of medical coverage that they may have or have available to them. In addition, the parties shall provide copies of their Income Statements and Expense Statements in the forms required by Pa.R.C.P. No. 1910.27(c) and completed as set forth in (1) and (2) of this subdivision.

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

(1) For cases which can be determined according to the guideline formula, the Income Statement must be completed and the Expense Statement at Rule 1910.27(c)(2)(A) should be completed if a party is claiming unusual needs and unusual fixed expenses that may warrant a deviation from the guideline amount of support pursuant to Rule 1910.16-5 or seeks apportionment of expenses pursuant to Rule 1910.16-6. In a support case that can be decided according to the guidelines, even if the support claim is raised in a divorce complaint, no expense form is needed unless a party claims unusual needs or unusual fixed expenses or seeks apportionment of expenses pursuant to Rule 1910.16-6. However, in the divorce action, the Expense Statement at Rule 1910.27(c)(2)(B) may be required.

(2) For cases which are decided according to Rule 1910.16-3.1, the Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) must be submitted.]

(c) At the conference, the parties shall provide to the conference officer the following documents:

• the most recently filed individual federal income tax returns, including all schedules, W-2s, and 1099s;

• the partnership or business tax returns with all schedules, including K-1, if the party is self-employed or a principal in a partnership or business entity;

• pay stubs for the preceding six months;

• verification of child care expenses;

• child support, spousal support, alimony *pendente lite*, or alimony orders or agreements for other children or former spouses;

• proof of available medical coverage; and

• an Income Statement and, if necessary, an Expense Statement on the forms provided in Pa.R.C.P. No. 1910.27(c) and completed as set forth in subdivisions (c)(1) and (2).

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

(1) The parties shall provide the conference officer with a completed:

(i) Income Statement as set forth in Pa.R.C.P. No. 1910.27(c)(1) in all support cases, including high-income cases under Pa.R.C.P. No. 1910.16-3.1; and

(ii) Expense Statement as set forth in Pa.R.C.P. No. 1910.27(c)(2)(A), if a party:

(A) claims that unusual needs and unusual fixed expenses may warrant a deviation from the guideline support amount pursuant to Pa.R.C.P. No. 1910.16-5; or

(B) seeks expense apportionment pursuant to Pa.R.C.P. No. 1910.16-6.

(2) For high-income support cases as set forth in Pa.R.C.P. No. 1910.16-3.1, the parties shall provide to the conference officer the Expense Statement in Pa.R.C.P. No. 1910.27(c)(2)(B).

[(d)(1)] (d) ***Conference Officer Recommendation.***

(1) The conference officer shall **[make a recommendation to the parties of an amount of support calculated in accordance with the guidelines] calculate and recommend a guideline support amount to the parties**.

[(2) If an agreement for support is reached at the conference, the officer shall prepare a written order substantially in the form set forth in Rule 1910.27(e) and in conformity with the agreement for signature by the parties and submission to the court together with the officer's recommendation for approval or disapproval. The court may enter the order in accordance with the agreement without hearing the parties.]

(2) If the parties agree on a support amount at the conference, the conference officer shall:

(i) prepare a written order consistent with the parties' agreement and substantially in the form set forth in Pa.R.C.P. No. 1910.27(e), which the parties shall sign; and

(ii) submit to the court the written order along with the conference officer's recommendation for approval or disapproval.

(iii) The court may enter the order in accordance with the agreement without hearing from the parties.

(3) In all cases in which one or both parties are unrepresented, the parties must provide income information to the domestic relations section so that a guidelines calculation can be performed.

* * * * *

Rule 1910.16. **[Support Order. Allocation] Rescinded**.

[(a) In an order awarding child support and spousal support or child support and alimony *pendente lite*, the court may on its own motion or upon the motion of either party:

(1) Make an unallocated award in favor of the spouse and one or more children; or

(2) State the amount of support allocable to the spouse and the amount allocable to each child.

***Official Note*: *See* 23 Pa.C.S. § 4348(d) for additional matters that must be specified in an order of support if arrearages exist when the order is entered.**

(b) An unallocated order for child support and spousal support or child support and alimony *pendente lite* shall be a final order as to all claims covered in the order. Motions for post-trial relief may not be filed to the final order.

***Official Note*: The procedure relating to Motions for Reconsideration is set forth in Pa.R.C.P. No. 1930.2.**

Explanatory Comment—1994

The decision to allocate a support order has federal income tax consequences and an effect upon subsequent modification of an order. Allocation of an order, as well as other factors, will determine which party pays the federal income tax, and thus the actual cost of the support to the payor and the amount of money available to the payee. Allocation of the order permits the court to determine more easily whether modification of the order is warranted.

Explanatory Comment—2018

Subdivision (b) resolves the question of the appealability of an unallocated order and any other claims adjudicated in that order. The rule declares the orders are final and appealable. Not only is the unallocated support order final and appealable, so are the other claims covered in the order, irrespective of whether those would be final and appealable had the claims not been a part of the order awarding unallocated support.]

Rule 1910.16-1. Amount of Support. Support Guidelines.

* * * * *

(b) **[*Amount of*]** *Support* ***Amount***. The **[amount of]** support **amount** (child support, spousal support or alimony **[pendente lite) to be]** ***pendente lite*)** awarded pursuant to the **[procedures under Rules] Pa.R.C.P. Nos.** 1910.11 and 1910.12 **[shall] procedures must** be determined in accordance with the support guidelines**,** which consist of the guidelines expressed as the child support schedule **[set forth in Rule] in Pa.R.C.P. No.** 1910.16-3, the **[formula set forth in Rule] Pa.R.C.P. No.** 1910.16-4 **formulas,** and the operation of the guidelines as set forth in these rules.

(c) *Spousal Support and Alimony Pendente Lite.*

(1) **[Orders for spousal support and alimony pendente lite shall] Spousal support and alimony *pendente lite* orders must** not be in effect simultaneously.

(2) In determining **[the duration of an award for spousal support or alimony *pendente lite*, the trier of fact] a spousal support or alimony *pendente lite* award's duration, the trier-of-fact** shall consider the **[duration of the marriage from] marriage's duration, i.e.,** the date of marriage to the date of final separation.

(d) *Rebuttable Presumption.* **[If it has been determined that there is an obligation to pay support, there shall be a rebuttable presumption that the amount of the award determined from the guidelines is the correct amount of support to be awarded. The support guidelines are a rebuttable presumption and must be applied taking into con-**

sideration the special needs and obligations of the parties. The trier of fact must consider the factors set forth in Rule 1910.16-5. The presumption shall be rebutted if the trier of fact makes a written finding, or a specific finding on the record, that an award in the amount determined from the guidelines would be unjust or inappropriate.] If the trier-of-fact determines that a party has a duty to pay support, there is a rebuttable presumption that the guideline-calculated support amount is the correct support amount.

(1) The presumption is rebutted if the trier-of-fact concludes in a written finding or states on the record that the guideline support amount is unjust or inappropriate.

(2) The trier-of-fact shall consider the children's and parties' special needs and obligations, and apply the Pa.R.C.P. No. 1910.16-5 deviation factors, as appropriate.

(e) *Guidelines Review.* The guidelines **[shall] must** be reviewed at least **[once]** every four years to **[insure] ensure** that **[application results in the determination of appropriate amounts of support] their application determines appropriate support amounts**.

* * * * *

Explanatory Comment—2017

Pursuant to Pa.R.C.P. No. 1910.3(a), a person having custody of a child or caring for a child may initiate a support action against the child's parent(s). Previously, this rule only addressed when a public body or private agency had custody of a child but was silent with regard to an individual third party, e.g., grandparent, seeking support. The rule has been amended by adding a new subdivision (a)(2) and renumbering the previous (a)(2) to (a)(3). In addition, an example illustrating the new (a)(2) calculation has been included.

Subdivision (a)(2) excludes the income of the third party/obligee, as that person does not have a duty of support to the child; instead, the rule uses the combined monthly net income of the parents to determine the basic child support amount, which is then apportioned between the parents consistent with their respective percentage of the combined monthly net income in the same manner as a parent vs. parent support action. However, under this rule, each parent would be a separate obligor, would pay the obligee their proportionate share under a separate support order, and would be subject to separate enforcement proceedings. Under (a)(2), the exclusion of the third party's income is consistent with Pa.R.C.P. No. **[1910.16-2(b)(2)(B)] 1910.16-2(b)(2)(ii)** as that rule relates to an action for support by a third party against a surviving parent in which the child receives a Social Security derivative benefit due to the death of the other parent.

In accordance with Pa.R.C.P. No. 1910.16-6(c), payment of the first $250 of unreimbursed medical expenses per year per child is applicable to third party/obligees in support actions governed by (a)(2). The first $250 of unreimbursed medical expenses is built into the Basic Child Support Schedule.

Rule 1910.16-2. Support Guidelines. Calculation of Monthly Net Income.

Generally, the **support** amount **[of support to be]** awarded is based **[upon] on** the parties' monthly net income.

(a) *Monthly Gross Income.* Monthly gross income is ordinarily based **[upon] on** at least a six-month average of **[all of]** a party's income. The **[term "income" is defined by the]** support law, 23 **[Pa.C.S.A.] Pa.C.S.** § 4302, **defines the term "income"** and includes income from any source. The statute lists many types of income including, but not limited to:

(1) wages, salaries, bonuses, fees, and commissions;

(2) net income from business or dealings in property;

(3) interest, rents, royalties, and dividends;

(4) pensions and all forms of retirement;

(5) income from an interest in an estate or trust;

(6) Social Security disability benefits, Social Security retirement benefits, temporary and permanent disability benefits, workers' compensation, and unemployment compensation;

(7) alimony if, in the **trier-of-fact's** discretion **[of the trier of fact]**, inclusion of part or all of it is appropriate; and

***Official Note*: In determining the appropriateness of including alimony in gross income, the trier-of-fact shall consider whether the party receiving the alimony must include the amount received as gross income when filing his or her federal income taxes. If the alimony is not includable in the party's gross income for federal income tax purposes, the trier-of-fact may include in the party's monthly net income the alimony received, as appropriate. *See* Pa.R.C.P. No. 1910.16-2(c)(2)(ii).**

Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's gross income must also vary. For example, if the obligor is paying $1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.

(8) other entitlements to money or lump sum awards, without regard to source, including:

(i) lottery winnings;

(ii) income tax refunds;

(iii) insurance compensation or settlements;

(iv) awards and verdicts; and

(v) [any form of payment] payments due to and collectible by an individual regardless of source.

***Official Note*:** The **[trial court has discretion to determine] trier-of-fact determines** the most appropriate method for imputing lump-sum awards as income for purposes of establishing or modifying the party's support obligation. These awards may be annualized or **[they may be]** averaged over a shorter or longer period **[of time]** depending on the **case's** circumstances **[of the case]**. **[They may also be escrowed in an amount sufficient] The trier-of-fact may order all or part of the lump sum award escrowed** to secure the support obligation during that period **[of time]**.

[Income tax refunds should not be included as income to the extent they were already factored

into the party's actual tax obligation for purposes of arriving at his or her net income.] The trier-of-fact shall not include income tax refunds in a party's income, if the trier-of-fact factored in the tax refund when calculating the party's actual tax obligation and monthly net income.

(b) *Treatment of Public Assistance, SSI Benefits, Social Security Payments to a Child Due to a Parent's Death, Disability or Retirement and Foster Care Payments.*

(1) *Public Assistance and SSI Benefits.* Neither public assistance nor Supplemental Security Income (SSI) benefits shall be **[counted]** **included** as income for **[purposes of]** determining support.

(2) ***Child's*** *Social Security Derivative Benefits* **[for a Child]**.

[(A) This subdivision (A) shall be applied if a child for whom support is sought is receiving Social Security derivative benefits as a result of either parent's retirement or disability.

(i) If a child for whom support is sought is receiving Social Security benefits as a result of a parent's retirement or disability, the amount of the benefit shall be added to the income of the party receiving the benefit on behalf of the child to calculate child support. Next, apportion the amount of basic child support set forth in the schedule in Rule 1910.16-3 between the parties based upon each party's percentage share of their combined net monthly income, including the child's benefit in the income of the party receiving it.

(ii) If the child's benefit is being paid to the obligee, the amount of the child's benefit shall be deducted from the basic support obligation of the party whose retirement or disability created the child's benefit. If the child's benefit is being paid to the obligor, the child's benefit shall not be deducted from the obligor's obligation, even if the obligor's retirement or disability created the child's benefit. In cases of equally shared custody, first determine which party has the higher income without the benefit, and thus is the obligor, before adding the child's benefit to the income of the party receiving it.

(iii) In cases in which the obligor is receiving the child's benefits, the domestic relations sections shall provide the parties with two calculations theoretically assigning the benefit to each household.

(iv) In allocating additional expenses pursuant to Rule 1910.16-6, the allocation shall be based upon the parties' incomes before the addition of the child's benefit to the income of the party receiving it.

(B) This subdivision (B) shall be applied when determining the support obligation of a surviving parent when the child for whom support is sought is receiving Social Security derivative benefits as a result of the other parent's death. The income of a non-parent obligee who is caring for a child but has no support obligation to that child shall include only those funds the obligee is receiving on behalf of the child, including the Social Security derivative benefits if they are being paid to the obligee. If the benefits are being paid to the surviving parent, the amount of the benefit shall be added to that parent's income to calculate child support.]

(i) If a child is receiving Social Security derivative benefits due to a parent's retirement or disability:

(A) The trier-of-fact shall determine the basic child support amount as follows:

(I) add the child's benefit to the monthly net income of the party who receives the child's benefit;

(II) calculate the parties' combined monthly net income, including the child's benefit;

(III) determine the basic child support amount set forth in the Pa.R.C.P. No. 1910.16-3 schedule; and

(IV) apportion the basic child support amount between the parties based on the party's percentage of the combined monthly net income.

(B) If the obligee receives the child's benefit, the trier-of-fact shall deduct the child's benefit from the basic support obligation of the party whose retirement or disability created the child's benefit.

(C) If the obligor receives the child's benefit, the trier-of-fact shall not deduct the child's benefit from the obligor's basic support obligation, even if the obligor's retirement or disability created the child's benefit. To illustrate for the parties the impact of the obligor receiving the benefit instead of the obligee, the domestic relations section shall provide the parties with two calculations theoretically assigning the benefit to each household.

(D) The trier-of-fact shall allocate the additional expenses in Pa.R.C.P. No. 1910.16-6 based on the parties' monthly net incomes without considering the child's benefit.

(E) In equally shared custody cases, the party with the higher monthly net income, excluding the child's benefit, is the obligor.

(ii) If a child is receiving Social Security derivative benefits due to a parent's death:

(A) The trier-of-fact shall determine the surviving parent's basic child support amount as follows:

(I) The non-parent obligee's monthly net income shall include only those funds the obligee is receiving on the child's behalf, including the Social Security derivative benefit.

(II) If the surviving-parent obligor receives the Social Security derivative benefit, the benefit shall be added to the parent's monthly net income to calculate child support.

(3) *Foster Care Payments.* If either party to a support action is a foster parent and/or is receiving payments from a public or private agency for the care of a child who is not his or her biological or adoptive child, those payments shall not be included in the income of the foster parent or other caretaker for purposes of calculating child support for the foster parent's or other caretaker's biological or adoptive child.

* * * * *

(c) *Monthly Net Income.*

(1) Unless **[otherwise provided in]** these rules **provide otherwise**, the **[court]** **trier-of-fact** shall deduct

only the following items from monthly gross income to arrive at **monthly** net income:

[(A)] **(i)** federal, state, and local income taxes;

[(B)] **(ii)** unemployment compensation taxes and Local Services Taxes (LST);

[(C)] **(iii)** F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;

[(D)] **(iv)** mandatory union dues; and

[(E)] **(v)** alimony paid to the other party.

(2) In computing a spousal support or alimony **[pendente lite]** ***pendente lite*** obligation, the **[court]** **trier-of-fact** shall**:**

(i) deduct from the obligor's monthly net income **[all of his or her child support obligations and any amounts of]** **child support,** spousal support, alimony **[pendente lite]** ***pendente lite,*** or alimony **[being]** **amounts** paid to **children and** former spouses**[.], who are not part of this action; and**

(ii) include in a party's monthly net income alimony *pendente lite* or alimony received from a former spouse that was not included in the party's gross income, as provided in subdivision (a).

***Official Note*: Since the reasons for ordering payment of alimony vary, the appropriateness of including it in the recipient's monthly net income must also vary. For example, if the obligor is paying $1,000 per month in alimony for the express purpose of financing the obligee's college education, it would be inappropriate to consider that alimony as income from which the obligee could provide child support. However, if alimony is intended to finance the obligee's general living expenses, inclusion of the alimony as income is appropriate.**

* * * * *

(e) *Net Income Affecting Application of the Support Guidelines.*

(1) **[*Low Income*]** ***Low-Income*** *Cases.*

[(A)] **(i)** If the obligor's monthly net income and corresponding number of children fall into the shaded area of the schedule set forth in Pa.R.C.P. No. 1910.16-3, the basic child support obligation shall be calculated initially by using the obligor's monthly net income only. For example, if the obligor has **monthly net** income of $1,100, the presumptive **[amount of]** support **amount** for three children is $110 per month. This amount is determined directly from the schedule in Pa.R.C.P. No. 1910.16-3. Next, **[calculate]** the obligor's child support obligation **is calculated** by using the parties' combined monthly net incomes and the **appropriate** formula in Pa.R.C.P. No. 1910.16-4. The lower of the two calculated amounts shall be the obligor's basic child support obligation.

* * * * *

[(B)] **(ii)** In computing a basic spousal support or alimony *pendente lite* obligation, the presumptive **[amount of]** support **amount** shall not reduce the obligor's monthly net income below the Self-Support Reserve of $981 per month.

Example 2: If the obligor earns $1,000 per month and the obligee earns $300 per month, the formula in **[Part IV of]** Pa.R.C.P. No. **[1910.16-4]** **1910.16-4(a)(1)(Part B)** would result in a support obligation of **[$280]** **$213** per month **[([$1,000 - $300 = $700 × 40%)]** **($1,000 × 33%) or $333 minus ($300 × 40%) or $120 for a total of $213)**. Since this amount leaves the obligor with only **[$720]** **$787** per month, it must be adjusted so that the obligor retains at least $981 per month. The presumptive minimum **[amount of]** spousal support **amount**, therefore, is $19 per month in this case.

[(C) When] **(iii) If** the obligor's monthly net income is $981 or less, the **[court]** **trier-of-fact** may award support only after consideration of the parties' actual financial resources and living expenses.

(2) **[*High Income*]** ***High-Income*** *Cases.* **[When]** **If** the parties' combined **monthly** net income exceeds $30,000 per month, **[calculation of]** child support, spousal support**,** and alimony **[pendente lite]** ***pendente lite calculations*** shall be pursuant to **[Rule]** **Pa.R.C.P. No.** 1910.16-3.1.

***Official Note*: *See Hanrahan v. Bakker*, 186 A.3d 958 (Pa. 2018)**

(f) **[*Dependency Tax Exemption*]** ***Child Tax Credit***. In order to maximize the total income available to the parties and children, the **[court]** **trier-of-fact** may**[, as justice and fairness require, award the federal child dependency tax exemption]** **award, as appropriate, the federal child tax credit** to the non-custodial parent, or to either parent in cases of equally shared custody, and order the other party to execute the waiver required by the Internal Revenue Code, 26 **[U.S.C.A.]** **U.S.C.** § 152(e). The tax consequences **[resulting from an award of the child dependency exemption]** **associated with the federal child tax credit** must be considered in calculating **[each]** **the** party's **monthly net** income available for support.

[Explanatory Comment—2010

Subdivision (a) addresses gross income for purposes of calculating the support obligation by reference to the statutory definition at 23 Pa.C.S.A. § 4322. Subdivision (b) provides for the treatment of public assistance, SSI benefits, Social Security derivative benefits and foster care payments.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Rule 1910.16-6, it is not deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Rule 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) relates to awards of spousal support or alimony pendente lite when there are multiple families. In these cases, a party's net income must be reduced to account for his or her child support obligations, as well as any preexisting spousal support, alimony pendente lite or

alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (d) has been amended to clarify the distinction between voluntary and involuntary changes in income and the imputing of earning capacity. Statutory provisions at 23 Pa.C.S.A. § 4322, as well as case law, are clear that a support obligation is based upon the ability of a party to pay, and that the concept of an earning capacity is intended to reflect a realistic, rather than a theoretical, ability to pay support. Amendments to subdivision (d) are intended to clarify when imposition of an earning capacity is appropriate.

Subdivision (e) has been amended to reflect the updated schedule in Rule 1910.16-3 and the increase in the Self-Support Reserve ("SSR"). The schedule now applies to all cases in which the parties' combined net monthly income is $30,000 or less. The upper income limit of the prior schedule was only $20,000. The amount of support at each income level of the schedule also has changed, so the examples in Rule 1910.16-2 were revised to be consistent with the new support amounts.

The SSR is intended to assure that obligors with low incomes retain sufficient income to meet their basic needs and to maintain the incentive to continue employment. When the obligor's net monthly income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Rule 1910.16-3. There is no need to use the formula in Rule 1910.16-4 to calculate the obligor's support obligation because the SSR keeps the amount of the obligation the same regardless of the obligee's income. The obligee's income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Rule 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Rule 1910.16-6.

Since the schedule in Rule 1910.16-3 sets forth basic child support only, subdivision (e)(1)(B) is necessary to reflect the operation of the SSR in spousal support and alimony pendente lite cases. It adjusts the basic guideline obligation, which would otherwise be calculated under the formula in Rule 1910.16-4, so that the obligor's income does not fall below the SSR amount in these cases.

Previously, the SSR required that the obligor retain at least $748 per month. The SSR now requires that the obligor retain income of at least $867 per month, an amount equal to the 2008 federal poverty level for one person. When the obligor's monthly net income is less than $867, subsection (e)(1)(C) provides that the court must consider the parties' actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order may be appropriate. In some cases, it may not be appropriate to order support at all.

The schedule at Rule 1910.16-3 sets forth the presumptive amount of basic child support to be awarded. If the circumstances warrant, the court may deviate from that amount under Rule 1910.16-5 and may also consider a party's contribution to additional expenses, which are typically added to the basic amount of support under Rule 1910.16-6. If, for example, the obligor earns only $900 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the court may consider an upward deviation under Rule 1910.16-5(b)(3) and/or may order the party to contribute to the additional expenses under Rule 1910.16-6. Consistent with the goals of the SSR, however, the court should ensure that the overall support obligation leaves the obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also has been amended to eliminate the application of *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), in high income child support cases. In cases in which the parties' combined net monthly income exceeds $30,000, child support will be calculated in accordance with the three-step process in new rule 1910.16-3.1(a).

Explanatory Comment—2013

The SSR has been increased to $931, the 2012 federal poverty level for one person. Subdivision (e) has been amended to require that when the obligor's income falls into the shaded area of the basic child support schedule in Rule 1910.16-3, two calculations must be performed. One calculation uses only the obligor's income and the other is a regular calculation using both parties' incomes, awarding the lower amount to the obligee. The two step process is intended to address those cases in which the obligor has minimal income and the obligee's income is substantially greater.

Explanatory Comment—2015

The rule has been amended to provide that a party's support obligation will be reduced by the amount of a child's Social Security derivative benefit if that party's retirement or disability created the benefit and the benefit is being paid to the household in which the child primarily resides or the obligee in cases of equally shared custody. In most cases, payment of the benefit to the obligee's household will increase the resources available to the child and the parties. The rule is intended to encourage parties to direct that the child's benefits be paid to the obligee.]

Explanatory Comment—2010

Subdivision (a) addresses gross income for purposes of calculating the support obligation by reference to the statutory definition at 23 Pa.C.S. § 4322. Subdivision (b) provides for the treatment of public assistance, SSI benefits, Social Security derivative benefits, and foster care payments.

Subdivision (c) sets forth the exclusive list of the deductions that may be taken from gross income in arriving at a party's net income. When the cost of health insurance premiums is treated as an additional expense subject to allocation between the parties under Pa.R.C.P. No. 1910.16-6, it is not deductible from gross income. However, part or all of the cost of health insurance premiums may be deducted from the obligor's gross income pursuant to Pa.R.C.P. No. 1910.16-6(b) in cases in which the obligor is paying the premiums and the obligee has no income or minimal income. Subdivision (c) re-

lates to spousal support or alimony *pendente lite* awards when there are multiple families. In these cases, a party's monthly net income must be reduced to account for his or her child support obligations, as well as any pre-existing spousal support, alimony *pendente lite* or alimony obligations being paid to former spouses who are not the subject of the support action.

Subdivision (d) has been amended to clarify the distinction between voluntary and involuntary changes in income and the imputing of earning capacity. Statutory provisions at 23 Pa.C.S. § 4322, as well as case law, are clear that a support obligation is based upon the ability of a party to pay, and that the concept of an earning capacity is intended to reflect a realistic, rather than a theoretical, ability to pay support. Amendments to subdivision (d) are intended to clarify when imposition of an earning capacity is appropriate.

Subdivision (e) has been amended to reflect the updated schedule in Pa.R.C.P. No. 1910.16-3 and the increase in the Self-Support Reserve ("SSR"). The schedule now applies to all cases in which the parties' combined monthly net income is $30,000 or less. The upper income limit of the prior schedule was only $20,000. The support amount at each income level of the schedule also has changed, so the examples in Pa.R.C.P. No. 1910.16-2 were revised to be consistent with the new support amounts.

The SSR is intended to assure that obligors with low incomes retain sufficient income to meet their basic needs and to maintain the incentive to continue employment. When the obligor's monthly net income or earning capacity falls into the shaded area of the schedule, the basic child support obligation can be derived directly from the schedule in Pa.R.C.P. No. 1910.16-3. There is no need to use the formula in Pa.R.C.P. No. 1910.16-4 to calculate the obligor's support obligation because the SSR keeps the amount of the obligation the same regardless of the obligee's income. The obligee's income may be a relevant factor, however, in determining whether to deviate from the basic guideline obligation pursuant to Pa.R.C.P. No. 1910.16-5 and in considering whether to require the obligor to contribute to any additional expenses under Pa.R.C.P. No. 1910.16-6.

Since the schedule in Pa.R.C.P. No. 1910.16-3 sets forth basic child support only, subdivision (e)(1)(ii) is necessary to reflect the operation of the SSR in spousal support and alimony *pendente lite* cases. It adjusts the basic guideline obligation, which would otherwise be calculated under the formula in Pa.R.C.P. No. 1910.16-4, so that the obligor's income does not fall below the SSR amount in these cases.

Previously, the SSR required that the obligor retain at least $748 per month. The SSR now requires that the obligor retain income of at least $867 per month, an amount equal to the 2008 federal poverty level for one person. When the obligor's monthly net income is less than $867, subdivision (e)(1)(iii) provides that the trier-of-fact must consider the parties' actual living expenses before awarding support. The guidelines assume that at this income level the obligor is barely able to meet basic personal needs. In these cases, therefore, entry of a minimal order may be appropriate. In some cases, it may not be appropriate to order support at all.

The schedule at Pa.R.C.P. No. 1910.16-3 sets forth the presumptive amount of basic child support to be awarded. If the circumstances warrant, the trier-of-fact may deviate from that amount under Pa.R.C.P. No. 1910.16-5 and may also consider a party's contribution to additional expenses, which are typically added to the basic amount of support under Pa.R.C.P. No. 1910.16-6. If, for example, the obligor earns only $900 per month but is living with his or her parents, or has remarried and is living with a fully-employed spouse, the trier-of-fact may consider an upward deviation under Pa.R.C.P. No. 1910.16-5(b)(3) or may order the party to contribute to the additional expenses under Pa.R.C.P. No. 1910.16-6. Consistent with the goals of the SSR, however, the trier-of-fact should ensure that the overall support obligation leaves the obligor with sufficient income to meet basic personal needs and to maintain the incentive to continue working so that support can be paid.

Subdivision (e) also has been amended to eliminate the application of *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), in high-income child support cases. In cases in which the parties' combined net monthly income exceeds $30,000, child support will be calculated in accordance with the three-step process in Pa.R.C.P. No. 1910.16-3.1(a).

Explanatory Comment—2013

The SSR has been increased to $931, the 2012 federal poverty level for one person. Subdivision (e) has been amended to require that when the obligor's income falls into the shaded area of the basic child support schedule in Pa.R.C.P. No. 1910.16-3, two calculations must be performed. One calculation uses only the obligor's income and the other is a regular calculation using both parties' incomes, awarding the lower amount to the obligee. The two-step process is intended to address those cases in which the obligor has minimal income and the obligee's income is substantially greater.

Explanatory Comment—2015

The rule has been amended to provide that a party's support obligation will be reduced by the child's Social Security derivative benefit amount if that party's retirement or disability created the benefit and the benefit is being paid to the household in which the child primarily resides or the obligee in cases of equally shared custody. In most cases, payment of the benefit to the obligee's household will increase the resources available to the child and the parties. The rule is intended to encourage parties to direct that the child's benefits be paid to the obligee.

Rule 1910.16-3. Support Guidelines. Basic Child Support Schedule.

The following schedule represents the amounts spent on children of intact families by combined monthly net income and number of children. Combined monthly net income is on the **schedule's** vertical axis **[of the schedule]** and **the** number of children is on the **schedule's** horizontal axis **[of the schedule]**. This schedule **[is used to find] determines** the basic child support obligation. Unless **[otherwise provided in these**

rules] these rules provide otherwise, the obligor's share of the basic support obligation shall be computed using **either** the formula set forth in **[Part I of]** Pa.R.C.P. No. **[1910.16-4] 1910.16-4(a)(1)(Part C) or (2)(Part I)**.

* * * * *

Rule 1910.16-3.1. Support Guidelines. **[High Income] High-Income** Cases.

(a) *Child Support Formula.* If the parties' combined monthly net income exceeds $30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The **[amount of]** support **amount** calculated pursuant to this three-step process shall not be less than the **[amount of]** support **amount** that would have been awarded if the parties' combined monthly net income was $30,000. The calculated amount **[shall be] is** the presumptive minimum **[amount of]** support **amount**.

(1) **[First, the] The** following formula shall be applied as a preliminary analysis in calculating the **[amount of]** basic child support **[to be] amount** apportioned between the parties according to their respective monthly net incomes:

One child: $2,839 + 8.6% of combined monthly net income above $30,000.

Two children: $3,902 + 11.8% of combined monthly net income above $30,000.

Three children: $4,365 + 12.9% of combined monthly net income above $30,000.

Four children: $4,824 + 14.6% of combined monthly net income above $30,000.

Five children: $5,306 + 16.1% of combined monthly net income above $30,000.

Six children: $5,768 + 17.5% of combined monthly net income above $30,000;

(2) **[And second, the trier of fact] The trier-of-fact** shall apply **[Part II and Part III of the formula at Rule 1910.16-4(a), making any applicable adjustments] the formulas in Pa.R.C.P. No. 1910.16-4(a)(1)(Part D) and (Part E) or (2)(Part II) and (Part III), adjusting** for substantial or shared custody pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-4(c) and **[allocations of] allocating** additional expenses pursuant to **[Rule] Pa.R.C.P. No.** 1910.16-6**, as appropriate**;

(3) **[Then, third, the trier of fact] The trier-of-fact** shall consider the factors in **[Rule] Pa.R.C.P. No.** 1910.16-5 in making a final child support award and shall make findings of fact on the record or in writing. After considering **[all of]** the factors in **[Rule] Pa.R.C.P. No.** 1910.16-5, the **[trier of fact] trier-of-fact** may adjust the amount calculated pursuant to subdivisions (1) and (2) **[above upward or downward]**, subject to the presumptive minimum.

(b) *Spousal Support and Alimony Pendente Lite.* In cases in which the parties' combined monthly net income exceeds $30,000, the **[trier of fact] trier-of-fact** shall apply the formula in **[Part IV of Rule 1910.16-4(a)] either Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) or (2)(Part IV)** as a preliminary analysis in calculating spousal support or alimony **[pendente lite]** ***pendente lite***. In determining **[the amount and duration of]** the final spousal support or alimony **[pendente lite award]** ***pendente lite* amount and duration**, the **[trier of fact] trier-of-fact** shall consider the factors in **[Rule] Pa.R.C.P. No.** 1910.16-5 and shall make findings of fact on the record or in writing.

[Explanatory Comment—2010

New Rule 1910.16-3.1 is intended to bring all child support cases under the guidelines and treat similarly situated parties similarly. Thus, high income child support cases no longer will be decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984). Economic data supports the amounts in the basic child support schedule up to combined net incomes of $30,000 per month. Above that amount, economic data are not readily available. Thus, for cases in which the parties' combined net monthly income is above $30,000, the formula first applies a fixed percentage to calculate the amount of support. The formula is an extrapolation of the available economic data to higher income cases. Spousal support and alimony pendente lite awards in high income cases are preliminarily calculated pursuant to the formula in Part IV of Rule 1910.16-4(a). However, in both high income child support and spousal support/alimony pendente lite cases, the trier of fact is required to consider the factors in Rule 1910.16-5 before entering a final order and to make findings of fact on the record or in writing. Pursuant to Rule 1910.11(c)(2), in all high income cases, the parties must submit an Income Statement and the Expense Statement at Rule 1910.27(c)(2)(B) to enable the trier of fact to consider the factors in Rule 1910.16-5.

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Rule 1910.16-4(c), regarding adjustments to support when the obligor has substantial or shared custody, apply in high income cases. Previously, when high income cases were decided pursuant to *Melzer v. Witsberger*, 505 Pa. 462, 480 A.2d 991 (1984), case law held that because the time and resources each parent provided to a child were factored into the *Melzer* formula, the reductions for substantial or shared parenting time did not apply to cases decided pursuant to *Melzer*. *See, e.g., Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008), *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high income cases, the prohibition against reductions for substantial or shared parenting time in such cases is no longer applicable.]

Explanatory Comment—2010

Pa.R.C.P. No. 1910.16-3.1 is intended to bring all child support cases under the guidelines and treat similarly situated parties similarly. Thus, high-income child support cases no longer will be decided pursuant to *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984). Economic data support the basic child support schedule up to combined net incomes of $30,000 per month. Above that amount, economic data are not readily available. Thus, for cases in which the parties' combined monthly net income is above $30,000, the formula first applies a fixed percentage to calculate the support amount. The formula is an extrapolation of the available eco-

nomic data to high-income cases. Spousal support and alimony *pendente lite* awards in high-income cases are preliminarily calculated pursuant to the formulas in either Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) or (2)(Part IV). However, in both high-income child support and spousal support and high-income child support and alimony *pendente lite* cases, the trier-of-fact is required to consider the factors in Pa.R.C.P. No. 1910.16-5 before entering a final order and to make findings of fact on the record or in writing. Pursuant to Pa.R.C.P. No. 1910.11(c)(2), in all high-income cases, the parties must submit an Income Statement and the Expense Statement at Pa.R.C.P. No. 1910.27(c)(2)(B) to enable the trier-of-fact to consider the factors in Pa.R.C.P. No. 1910.16-5.

Explanatory Comment—2011

The rule has been amended to clarify that the provisions of Pa.R.C.P. No. 1910.16-4(c), regarding support adjustments if the obligor has substantial or shared custody, apply in high-income cases. Previously, when high-income cases were decided pursuant to *Melzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), case law held that because the time and resources each parent provided to a child were factored into the Melzer formula, the substantial or shared parenting time reductions did not apply to cases decided pursuant to *Melzer*. *See, e.g., Sirio v. Sirio*, 951 A.2d 1188 (Pa. Super. 2008); *Bulgarelli v. Bulgarelli*, 934 A.2d 107 (Pa. Super. 2007). As *Melzer* no longer applies to calculate support in high-income cases, the prohibition against substantial or shared parenting time reductions in such cases is no longer applicable.

Rule 1910.16-4. Support Guidelines. Calculation of Support Obligation, Formula.

(a) The **[following formula shall be used]** **trier-of-fact shall use either the subdivision (1) or subdivision (2) formula** to calculate the obligor's share of basic child support, either from the schedule in **[Rule] Pa.R.C.P. No.** 1910.16-3 or the formula in **[Rule] Pa.R.C.P. No.** 1910.16-3.1(a), as well as spousal support and alimony **[pendente lite]** ***pendente lite*** obligations. In **[high income]** **high-income** cases, **[Part IV shall be used]** **the trier-of-fact shall use either the subdivision (1)(Part B) or subdivision (2)(Part IV) formula, as appropriate,** as a preliminary analysis in the calculation of spousal support or alimony **[pendente lite]** ***pendente lite*** obligations**[:].**

(1) The formula in Parts A through E is for an order entered on or after January 1, 2019, or for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite* in which the amendments to the Internal Revenue Code made by Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) expressly apply.

***Official Note*: Section 11051 of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) amended the Internal Revenue Code by repealing the alimony deduction—the amount of spousal support, alimony *pendente lite*, and alimony paid or received—from the payor's gross income and the alimony inclusion into the payee's gross income.**

***See* subdivision (2) for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite* in which the amendments to the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) do not apply to the modification.**

PART A. CALCULATION OF MONTHLY NET INCOME

		OBLIGOR	OBLIGEE
1.	**Total Gross Income per pay period (*See* Pa.R.C.P. No. 1910.16-2(a))**	_____	_____
2.	**Deductions (*See* Pa.R.C.P. No. 1910.16-2(c))**	(_____)	(_____)
3.	**Net Income (line 1 minus line 2)**	_____	_____
4.	**Conversion to Monthly Net Income (if pay period is other than monthly)**	_____	_____

PART B. SPOUSAL SUPPORT OR ALIMONY PENDENTE LITE

		Without Dependent Children	*With Dependent Children*
5.	**Obligor's Monthly Net Income (line 4)**	_____	_____
6.	**Obligor's child support, spousal support, alimony *pendente lite* or alimony obligations to children or former spouses who are not part of this action, if any. (*See* Pa.R.C.P. No. 1910.16-2(c)(2))**	(_____)	(_____)
7.	**Obligor's Net Income available for spousal support or alimony *pendente lite* (line 5 minus line 6)**	_____	_____

		Without Dependent Children	*With Dependent Children*
8.	Obligor's Net Income percentage for spousal support or alimony *pendente lite*	× 33%	× 25%
9.	Obligor's proportionate share of spousal support or alimony *pendente lite* (line 7 multiplied by line 8)		
10.	Obligee's Monthly Net Income (line 4)		
11.	Obligee's Net Income percentage for spousal support or alimony *pendente lite*	× 40%	× 40%
12.	Obligee's proportionate share of spousal support or alimony *pendente lite* (line 10 multiplied by line 11)		
13.	Preliminary Monthly Spousal Support or Alimony *Pendente Lite* amount (line 9 minus line 12—if the result is less than zero, enter a zero on line 13)		
14.	Adjustments for Part E Additional Expenses (*See* Pa.R.C.P. No. 1910.16-6)		
15.	Total Monthly Spousal Support or Alimony *Pendente Lite* Amount (line 13 plus or minus line 14, as appropriate)		

PART C - BASIC CHILD SUPPORT

		OBLIGOR	OBLIGEE
16.	Monthly Net Income (line 4 and add the child's monthly Social Security Disability or Retirement Derivative benefit amount, if any, to the Monthly Net Income of the party receiving the benefit pursuant to Pa.R.C.P. No. 1910.16-2(b)(2)(i) or (ii).		
17.	Preliminary Monthly Spousal Support or Alimony *Pendente Lite* amount, if any. (line 13)	(_____)	+
18.	Adjusted Monthly Net Income (for obligor, line 16 minus line 17; for obligee, line 16 plus line 17)		
19.	Combined Monthly Net Income (obligor's line 18 plus obligee's line 18)		
20.	Basic Child Support Obligation (determined from child support schedules in Pa.R.C.P. No. 1910.16-3 based on the number of children and line 19)		
21.	Net Income expressed as a percentage of Combined Monthly Net Income (line 18 divided by line 19 and multiplied by 100)	%	%
22.	Preliminary Monthly Basic Child Support Obligation (line 20 multiplied by line 21)		
23.	Child's Social Security Derivative Disability or Retirement Benefit. (if the benefits are paid to the obligee, enter the benefit amount on the line for the party whose retirement or disability created the child's benefit pursuant to Pa.R.C.P. No. 1910.16-2(b))		
24.	Adjusted Monthly Basic Child Support Obligation (line 22 minus line 23—if the result is less than zero, enter a zero on line 24)		

***PART D. SUBSTANTIAL OR SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE* (*See* subdivision (c))**

25.a.	**Percentage of time obligor spends with children (divide number of overnights with the obligor by 365 and multiply by 100)**	**%**
b.	**Subtract 30%**	**(30%)**
c.	**Difference (line 25a minus line 25b)**	**%**
d.	**Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (line 21 minus line 25c)**	**%**
e.	**Obligor's Preliminary Adjusted Basic Monthly Support Obligation (line 20 multiplied by line 25d)**	
f.	**Further adjustment, if necessary under subdivision (c)(2)**	
g.	**Obligor's Adjusted Basic Child Support Amount**	

PART E. ADDITIONAL EXPENSES (See Pa.R.C.P. No. 1910.16-6)

26.a.	**Obligor's Share of Child Care Expenses**	
b.	**Obligor's Share of Health Insurance Premium (if the obligee is paying the premium)**	
c.	**Obligee's Share of the Health Insurance Premium (if the obligor is paying the premium)**	**( )**
d.	**Obligor's Share of Unreimbursed Medical Expenses**	
e.	**Other Additional Expenses**	
f.	**Total Additional Expenses (add lines 26a, b, d, and e, then subtract line 26c)**	
27.	**Obligor's Total Monthly Support Obligation (line 24 or 25g plus line 26f, if applicable)**	

(2) The formula in Parts I through IV is for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite*.

***Official Note*: *See* subdivision (1) for an order entered on or after January 1, 2019, or for a modification of an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite* in which the amendments to the Internal Revenue Code made by Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97) expressly apply to the modification.**

PART I. BASIC CHILD SUPPORT

		OBLIGOR	OBLIGEE
1.	Total Gross Income Per Pay Period (*See* **Pa.R.C.P. No. 1910.16-2(a))**		
2.	**[Less]** Deductions (*See* **Pa.R.C.P. No. 1910.16-2(c))**	( )	( )
3.	Net Income **(line 1 minus line 2)**		
4.	Conversion to Monthly Amount (if pay period is other than monthly) Include **[amount of]** **the** child's monthly Social Security derivative benefit **amount**, if any, in the **[income of the party receiving it] monthly net income of the party receiving the benefit** pursuant to **[Rule 1910.16-2(b)(2)(A) or (B)]** **Pa.R.C.P. No. 1910.16-2(b)(2)(i) or (ii)**.		
5.	Combined Total Monthly Net Income **(obligor's line 4 plus obligee's line 4)**		

		OBLIGOR	OBLIGEE
6.	**[BASIC CHILD SUPPORT OBLIGATION]** **Basic Child Support Obligation** (determined from schedule at **[Rule]** **Pa.R.C.P. No.** 1910.16-3 based on number of children and line 5 **[combined monthly net income]**)		
7.	Net Income Expressed as a Percentage Share of Income (divide line 4 by line 5 and multiply by 100)	%	%
8.	Each Party's Preliminary Monthly Share of the Basic Child Support Obligation (multiply line 6 and 7)		
9.	**[Subtract]** Child's Social Security Derivative Disability or Retirement Benefit **[from the Monthly Share of Basic Child Support of the Party whose Retirement or Disability Created the Child's Benefits if the Benefits are Paid to the Obligee]** **(if the benefits are paid to the obligee, enter the benefit amount on the line for the party whose retirement or disability created the child's benefit)**		
10.	Each Party's Adjusted Monthly Share of the Basic Child Support Obligation **[(Not less than 0)]** **(line 8 minus line 9—if the result is less than zero, enter a zero on line 10)**		

*PART II. SUBSTANTIAL OR SHARED PHYSICAL CUSTODY ADJUSTMENT, IF APPLICABLE (***[See]** ***See*** subdivision (c) **[of this rule]**)

11. a.	Percentage of Time Obligor Spends with Children (divide number of overnights with the obligor by 365 and multiply by 100)	%	
b.	Subtract 30%	(%)	
c.	Obligor's Adjusted Percentage Share of the Basic Monthly Support Obligation (subtract result of calculation in line 11b from line 7)	%	
d.	Obligor's Preliminary Adjusted Share of the Basic Monthly Support Obligation (multiply line 11c and line 6)		
e.	Further adjustment, if necessary under subdivision (c)(2) **[of this rule]**		
f.	Obligor's Adjusted Share of the Basic Child Support Amount **(Total of line 11d and line 11e)**		

*PART III. ADDITIONAL EXPENSES (***[*see* Rule]** ***See* Pa.R.C.P. No.** 1910.16-6)

12. a.	Obligor's Share of Child Care Expenses		
b.	Obligor's Share of Health Insurance Premium (if the obligee is paying the premium)		
c.	**[Less]** Obligee's Share of the Health Insurance Premium (if the obligor is paying the premium)	( )	
d.	Obligor's Share of Unreimbursed Medical Expenses		
e.	Other Additional Expenses		
f.	Total Additional Expenses **(add lines 12a, b, d, and e, then subtract line 12c)**		
13.	Obligor's Total Monthly Support Obligation (add line 10 or 11f**[, if applicable,]** and line 12f, **if applicable**)		

PART IV. SPOUSAL SUPPORT OR APL with dependent children

14.	Obligor's Monthly Net Income (line 4)		
15.	**[Less]** Obligor's Support, Alimony **[Pendente Lite]** ***Pendente Lite*** or Alimony Obligations, **[if any,]** to Children or Former Spouses who are not part of this action, if any (**[see Rule]** ***See* Pa.R.C.P. No.** 1910.16-2(c)(2))	( )	
16.	**[Less]** Obligee's Monthly Net Income (line 4)	( )	

17.	Difference **(line 14 minus lines 15 and 16)**	_____
18.	**[Less]** Obligor's Total Monthly Child Support Obligation **[Without]** **without** Part II Substantial or Shared Custody Adjustment, if any (Obligor's line 10 plus line 12f)	(_____)
19.	Difference **(line 17 minus line 18)**	_____
20.	Multiply by 30%	× **[.]**30%
21.	**[AMOUNT OF MONTHLY SPOUSAL SUPPORT or APL]** **Monthly Spousal Support or APL Amount** **(line 19 multiplied by line 20)**	_____
Without Dependent Children		
22.	Obligor's Monthly Net Income (line 4)	_____
23.	**[Less]** Obligor's Support, Alimony **[Pendente Lite]** ***Pendente Lite*** or Alimony Obligations**[, if any,]** to Children or Former Spouses who are not part of this action, **if any ([see Rule] Pa.R.C.P. No.** 1910.16-2(c)(2))	(_____)
24.	**[Less]** Obligee's Monthly Net Income (line 4)	(_____)
25.	Difference **(line 22 minus lines 23 and 24)**	_____
26.	Multiply by 40%	× **[.]**40%
27.	**[PRELIMINARY AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL]** **Preliminary Monthly Spousal Support or APL amount** **(line 25 multiplied by line 26)**	_____
28.	Adjustments for Other Expenses (**[see Rule]** ***See*** **Pa.R.C.P. No.** 1910.16-6) **(line 12f)**	_____
29.	**[TOTAL AMOUNT OF MONTHLY SPOUSAL SUPPORT OR APL]** **Total Monthly Spousal Support or APL amount** **(line 27 plus or minus line 28, as appropriate)**	_____

* * * * *

(e) *Support Obligations When Custodial Parent Owes Spousal Support.* **[Where]** **If** children are residing with the spouse **(custodial parent)** obligated to pay spousal support or alimony **[pendente lite (custodial parent)]** ***pendente lite*** and the other spouse (non-custodial parent) has a legal obligation to support the children, the guideline **[amount of]** spousal support or alimony **[pendente lite shall be]** ***pendente lite*** **amount is** determined by offsetting the non-custodial parent's **[obligation for support of the children]** **child support amount** and the custodial parent's **[obligation of]** spousal support or alimony **[pendente lite]** ***pendente lite*** **amount**, and awarding the net difference either to the non-custodial parent as spousal support/alimony **[pendente lite]** ***pendente lite*** or to the custodial parent as child support as the circumstances warrant. **The calculation is a five-step process:**

[The calculation is a five-step process. First, determine the spousal support obligation of the custodial parent to the non-custodial parent based upon their net incomes from the formula for spousal support without dependent children. Second, recalculate the net income of the parties assuming the payment of the spousal support. Third, determine the child support obligation of the non-custodial parent for the children who are the subjects of the support action. Fourth, determine the recomputed support obligation of the custodial parent to the non-custodial parent by subtracting the non-custodial parent's child support obligation from Step 3 from the original support obligation determined in Step 1. Fifth, because the first step creates additional tax liability for the recipient non-custodial parent and additional tax deductions for the payor custodial parent and the third step involves an offset of the child support owed by the non-custodial parent against the spousal support or alimony pendente lite owed by the custodial parent, only that reduced amount will be taxable. Therefore, upon application of either party, the trier of fact may consider as a deviation factor the ultimate tax effect of the calculation.]

(1) Calculate the custodial parent's spousal support or alimony *pendente lite* obligation to the non-custodial parent based on the parties' monthly net incomes using the "without dependent chil-

dren" formula in either Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) or (2)(Part IV), as appropriate.

(2) Recalculate the parties' monthly net incomes by adjusting for the spousal support or alimony *pendente lite* payment paid or received in (1).

(3) Using the recomputed monthly net incomes from (2), calculate the non-custodial parent's child support obligation to the custodial parent.

(4) The final support amount is the difference calculated in (1) and (3).

(i) If the amount in (1) is greater than the amount in (3), the final amount is spousal support or alimony *pendente lite* payable to the non-custodial parent.

(ii) If the amount in (1) is less than the amount in (3), the final amount is child support payable to the custodial parent.

(5) If the proceeding is a modification of an order entered before January 1, 2019 that has federal tax consequences associated with spousal support or alimony *pendente lite* payments and the final order is spousal support or alimony *pendente lite* as in (4)(i), the offset spousal support or alimony *pendente lite* amount is federally taxable, and the trier-of-fact may deviate the final order due to the tax effect, as appropriate.

***Official Note*: *See* Pa.R.C.P. No. 1910.16-4.**

[(f) *Allocation. Consequences.*

(1) An order awarding child support and spousal support or child support and alimony *pendente lite* may be unallocated or may state the amount of support allocable to the spouse and the amount allocable to each child. The order shall clearly state whether it is allocated or unallocated even if the amounts calculated for child support and spousal support or child support and alimony *pendente lite* are delineated in the order. However, Part IV of the formula provided by these rules assumes that an order will be unallocated. Therefore, if the order is allocated, the formula set forth in this rule shall be utilized to determine the amount of support allocable to the spouse. If the allocation of an order utilizing the formula would be inequitable, the court shall make an appropriate adjustment. Also, if an order is allocated, an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances. The federal income tax consequences shall not be considered if the order is unallocated or the order is for spousal support or alimony *pendente lite* only.

***Official Note*: The 2005 amendment supersedes *Diament v. Diament*, 816 A.2d 256 (Pa. Super. 2003), to the extent that it held that the tax savings from payments for the benefit of a spouse alone or from an unallocated order for the benefit of a spouse and child must be considered in determining the obligor's available net income for support purposes. Pa.R.C.P. No. 1910.16-4(f)(1) states that the guidelines formula assumes that the order will be unallocated. The tax consequences of an order for a spouse alone or an unallocated order for the benefit of a spouse and child have already been built into the formula.**

(2) When the parties are in higher income brackets, the income tax considerations are likely to be a more significant factor in determining an award of support. A support award for a spouse and children is taxable to the obligee while an award for the children only is not. Consequently, in certain situations, an award only for the children will be more favorable to the obligee than an award to the spouse and children. In this situation, the trier of fact should utilize the method that results in the greatest benefit to the obligee.

If the obligee's net income is equal to or greater than the obligor's net income, the guideline amount for spouse and children is identical to the guideline amount for children only. Therefore, in cases involving support for spouse and children, whenever the obligee's net income is equal to or greater than the obligor's net income, the guideline amount indicated shall be attributed to child support only.

(3) Unallocated charging orders for child support and spousal support or child support and alimony *pendente lite* shall terminate upon the death of the obligee.

(4) In the event that the obligor defaults on an unallocated order, the court shall allocate the order for collection of child support pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S. §§ 7101 *et seq*. The court shall provide notice of allocation to the parties.

***Official Note*: This provision is necessary to comply with various state and federal laws relating to the enforcement of child support. It is not intended to affect the tax consequences of an unallocated order.]**

Explanatory Comment—2005

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Subdivision (e) governs spousal support obligations when the custodial parent owes spousal support. It has not been amended, other than to update the example to be consistent with the new schedule at Pa.R.C.P. No. 1910.16-3.

[Subdivision (f) states that the guidelines continue to presume that the order will be unallocated for tax purposes. However, language has been added to subdivision (f)(1), and a new Note has been inserted, to clarify that an obligor's tax savings from payment of a spousal support order or an unallocated order for a spouse and child should not be considered in calculating the obligor's available net income for support purposes. Subdivision (3) is intended to ensure alimony tax treatment of unallocated orders pursuant to § 71 of the Internal Revenue Code. Pa.R.C.P. No. 1910.19(d) provides that all spousal support and alimony *pendente lite* orders terminate upon the death of the obligee. Termination of a charging order does not affect arrears existing at that time. Subdivision (4) provides for administrative allocation of the order in two instances: 1) when the obligor defaults on the order and it becomes necessary to collect support by intercepting any income tax refunds that may be due and payable to obligor; and 2) when the obligor defaults and the order must be registered in an-

other state under the Uniform Interstate Family Support Act (UIFSA). As the Note indicates, this administrative allocation is not intended to affect the tax consequences of the unallocated order.]

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[Explanatory Comment—2018

The allocation of a support order is of great significance to the parties. The issue of allocation may arise in a support action if child support and spousal support or child support and alimony *pendente lite* are sought. The decision to allocate a support order will determine the party that pays the federal income tax, which affects the actual money available to the beneficiary of the order.

Allocation of a support order may not be appropriate in all cases. Rather, the decision to allocate must be based upon the facts of the particular case. Subdivision (f) makes clear that the court has the authority to allocate the order and that the decision rests in the discretion of the court. The court or the parties may raise the question of allocation.]

Rule 1910.16-6. Support Guidelines. **[Adjustments to the]** Basic Support Obligation **Adjustments**. **[Allocation of]** Additional Expenses **Allocation**.

The **[trier of fact]** **trier-of-fact** may allocate between the parties the additional expenses **[identified]** in subdivisions (a)—(e). **[If under the facts of the case an order for basic support is not appropriate, the trier of fact]** **If a basic support order is inappropriate under the facts of the case, the trier-of-fact** may allocate between the parties the additional expenses.

Except for the subdivisions (b)(4) and (e) expenses, the trier-of-fact shall calculate the parties' proportionate share of the additional expenses after adjusting the parties' monthly net income by the monthly spousal support or alimony *pendente lite* amount received or paid, and then dividing each party's adjusted monthly net income by the parties' combined monthly net income. However, the trier-of-fact shall not adjust the parties' monthly net incomes when apportioning the expenses in child support only cases.

(a) *Child care expenses.* **[Reasonable]** **The trier-of-fact shall allocate reasonable** child care expenses paid by the parties, if necessary to maintain employment or appropriate education in pursuit of income**[, shall be allocated between the parties in proportion to their monthly net incomes]**. The **[court]** **trier-of-fact** may order that the obligor's share is added to his or her basic support obligation, paid directly to the service provider, or paid directly to the obligee. When a party is receiving a child care subsidy through the Department of Human Services, the **[expenses to be]** **expense** allocated between the parties **[shall be]** **is** the amount actually paid by the party receiving the subsidy.

Example. Mother has primary custody of the parties' two children and Father has partial custody. Mother's monthly net income is $2,000 and Father's is $3,500. At their combined income level of $5,500, the basic monthly child support from the schedule in Pa.R.C.P. No. 1910.16-3 is $1,463 for two children. As Father's income is 64% of the parties' combined **monthly net** income, his share is $936. Mother incurs child care expenses of $400 per month and Father incurs $100 of such expenses **[each]** **per** month. The total **[amount of]** child care expenses, $500, will be apportioned between the parties, with Father paying 64%, or $320. As **[he]** **Father** is already paying $100 for child care while the children are in his partial custody, he would pay the remaining $220 to Mother for a total child support obligation of $1,156 ($936 + $220 = $1,156).

* * * * *

(b) *Health Insurance Premiums.*

[(1) A party's payment of a premium to provide health insurance coverage on behalf of the other party and/or the children shall be allocated between the parties in proportion to their net incomes, including the portion of the premium attributable to the party who is paying it, as long as a statutory duty of support is owed to the party who is paying the premium. If there is no statutory duty of support owed to the party who is paying the premium, the portion attributable to that person must be deducted from the premium as set forth in subdivision (2) below. If, prior to the entry of a divorce decree, a party's policy covers that party, a child, and a spouse and the spouse has separate additional coverage not needed to cover the child and/or the other party, the cost of the spouse's insurance premium shall not be allocated between the parties. If, prior to the entry of a divorce decree, a party provides coverage for that party and a child, but not the spouse, and the spouse has separate coverage, both parties' premiums shall be allocated between the parties in proportion to their respective incomes. If, prior to the entry of a divorce decree, each spouse has his or her own health insurance that does not cover the other party, and there are no children subject to the order, the cost of both parties' premiums shall be allocated between the parties in proportion to their respective incomes. If health insurance coverage for a child who is the subject of the support proceeding is being provided and paid for by a third party resident of either party's household, the cost shall be allocated between the parties in proportion to their net incomes. If the obligor is paying the premium, then the obligee's share is deducted from the obligor's basic support obligation. If the obligee is paying the premium, then the obligor's share is added to his or her basic support obligation. Employer-paid premiums are not subject to allocation.

(2) When the health insurance covers a party to whom no statutory duty of support is owed, even if that person is paying the premium as set forth in subdivision (1) above, or other persons who are not parties to the support action or children who are not the subjects of the support action, the portion of the premium attributable to them must be excluded from allocation. In the event that evidence as to this portion is not submitted by either party, it shall be calculated as follows. First, determine the cost per person by dividing the total cost of the premium by the number of persons covered under the policy. Second, multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of the support action. The resulting amount is excluded from allocation.

(2.1) The actual incremental amount of the premium which provides coverage for the subjects of the support order, if submitted by either party, shall be used in determining the amount of the premium to be allocated between the parties. If not submitted by either party, then the amount of the premium shall be divided by the number of persons covered to calculate the portion of the premium that provides coverage to each person.]

(1) The trier-of-fact shall allocate the health insurance premiums paid by the parties, including the premium attributable to the party paying the premium, provided that a statutory duty of support is owed to the party or child covered by the health insurance.

(i) If the party paying the health insurance premium is the obligor, the obligee's share is deducted from the obligor's basic support amount.

(ii) If the obligee is paying the health insurance premium, the obligor's share is added to his or her basic support amount.

iii) An allocation of health insurance premiums between the parties shall also include health insurance that is provided and paid by a third-party resident of either party's household (e.g., stepparent) for a child who is the subject of the support order.

(2) The trier-of-fact shall not allocate employer-paid premiums or premiums paid for a party, person, or child to whom no statutory duty of support is owed.

(i) If the parties present evidence of the excluded premium's actual amount—the amount attributed to a party, person, or child not owed a statutory duty of support—the trier-of-fact shall deduct the actual amount excluded from the total premium before allocating the health insurance premium between the parties.

(ii) If the parties do not present evidence of the excluded premium's actual amount, the trier-of-fact shall calculate the excluded amount as follows:

(A) determine the premium's cost per person by dividing the total premium by the number of persons covered under the policy;

(B) multiply the cost per person by the number of persons who are not owed a statutory duty of support, or are not parties to, or the subject of, the support action; and

(C) the resulting amount is excluded from allocation.

Example 1. If the parties are separated, but not divorced, and Husband pays $200 per month toward the cost of a health insurance policy provided through his employer which covers himself, Wife, the parties' child, and two additional children from a previous marriage, the portion of the premium attributable to the additional two children, if not otherwise verifiable or known with reasonable ease and certainty, is calculated by dividing $200 by five persons and then multiplying the resulting amount of $40 per person by the two additional children, for a total of $80 to be excluded from allocation. Deduct this amount from the total cost of the premium to arrive at the portion of the premium to be allocated between the parties—$120. Since Husband is paying the premium, and spouses have a statutory duty to support one another pursuant to 23 Pa.C.S. § 4321, Wife's percentage share of the $120 is deducted from Husband's support obligation. If Wife had been providing the coverage, then Husband's percentage share would be added to his basic support obligation.

* * * * *

(c) *Unreimbursed Medical Expenses.* **[Unreimbursed]** **The trier-of-fact shall allocate the obligee's or children's unreimbursed** medical expenses **[of the obligee or the children shall be allocated between the parties in proportion to their respective net incomes. Notwithstanding the prior sentence, there shall be no apportionment of]** **However, the trier-of-fact shall not allocate** unreimbursed medical expenses incurred by a party who is not owed a statutory duty of support by the other party. The **[court]** **trier-of-fact** may **[direct]** **order** that the obligor's **expense** share **[be]** **is** added to his or her basic support obligation, **[or paid directly to the obligee or]** **paid directly** to the health care provider**, or paid directly to the obligee**.

* * * * *

(4) If the trier of fact determines that out-of-network medical expenses were not obtained due to medical emergency or other compelling factors, the court may decline to assess any of such expenses against the other party.

[(5) In cases involving only spousal support or alimony pendente lite, the parties' respective net incomes for purposes of allocating unreimbursed medical expenses shall be calculated after the amount of spousal support or alimony pendente lite is deducted from the obligor's income and added to the obligee's income.]

***Official Note*:** If the trier of fact determines that the obligee acted reasonably in obtaining services which were not specifically set forth in the order of support, payment for such services may be ordered retroactively.

(d) *Private School Tuition. Summer Camp. Other Needs.* Expenditures for needs outside the scope of typical child-rearing expenses, e.g., private school tuition, summer camps, have not been factored into the Basic Child Support Schedule.

(1) If a party incurs an expense for a need not factored into the Basic Child Support Schedule and the **[court]** **trier-of-fact** determines the need and expense are reasonable, the **[court]** **trier-of-fact** shall allocate the expense **[between the parties in proportion to the parties' monthly net incomes]**. The **[court]** **trier-of-fact** may order that the obligor's **expense** share is added to his or her basic support obligation, paid directly to the service provider, or paid directly to the obligee.

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(e) *Mortgage Payment.* The guidelines assume that the spouse occupying the marital residence will be solely responsible for the mortgage payment, real estate taxes, and homeowners' insurance. Similarly, the **[court]** **trier-of-fact** will assume that the party occupying the marital residence will be paying the items listed unless the recommendation specifically provides otherwise.

(1) If the obligee is living in the marital residence and the mortgage payment exceeds 25% of the obligee's **monthly** net income (including amounts of spousal support, alimony **[pendente lite]** ***pendente lite,*** and child support), the **[court]** **trier-of-fact** may direct the obli-

gor to assume up to 50% of the excess amount as part of the total support **[award]** **amount**.

(2) If the obligor is occupying the marital residence and the mortgage payment exceeds 25% of the obligor's monthly net income (less any amount of spousal support, alimony **[pendente lite or]** ***pendente lite*, and** child support the obligor is paying), the **[court]** **trier-of-fact** may **[make an appropriate downward adjustment in]** **downwardly adjust** the obligor's support **[obligation]** **amount**.

(3) This rule shall not be applied after a final resolution of **[all]** **the** outstanding economic claims **in the parties' divorce action**.

(4) For purposes of this subdivision, the term "mortgage" shall include first mortgages, real estate taxes, and homeowners' insurance and may include **[any]** subsequent mortgages, home equity loans, and **[any]** other **marital** obligations **[incurred during the marriage which are]** secured by the marital residence.

[Explanatory Comment—2004

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to the Internal Revenue Code. 26 U.S.C.A. 21. By referring to the tax code in general, rather than incorporating current code provisions in the rule, any further amendments will be incorporated into the support calculation.

Explanatory Comment—2005

Rule 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. Subdivision (a) has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (a)(1), relating to the federal child care tax credit, was amended in 2004 to reflect recent amendments to the Internal Revenue Code. 26 U.S.C.A. § 21. By referring to the tax code in general, rather than incorporating current code provisions in the rule, any further amendments will be incorporated into the support calculation. Since the tax credit may be taken only against taxes owed, it cannot be used when the eligible parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the eligible parent does not qualify to receive the credit.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subsection (1) of the rule permits allocation of the entire premium, including the portion of the premium covering the party carrying the insurance, when the insurance benefits the other party and/or the children. Subsection (2) clarifies that, in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, so long as there is a statutory duty of support owed to that party, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. Subsection (2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action or owed a statutory duty of support. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier of fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first $250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of $250 per year per child are subject to allocation under this rule as an additional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first $250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed $250 per year. The definition of "medical expenses" includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule presumes allocation in proportion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines "mortgage" to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier of fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the discretion of the trier of fact based upon the circumstances of the case.

Explanatory Comment—2006

A new introductory sentence in Rule 1910.16-6 clarifies that additional expenses contemplated in the rule may be allocated between the parties even if the parties' respective incomes do not warrant an award of basic support. Thus, even if application of the formula at Rule 1910.16-4 results in a basic support obligation of zero, the court may enter a support order allocating between the parties any or all of the additional expenses addressed in this rule.

The amendment to subdivision (e) recognizes that the obligor may be occupying the marital residence

and that, in particular circumstances, justice and fairness may warrant an adjustment in his or her support obligation.

Explanatory Comment—2008

Federal and state statutes require clarification to subdivision (b) to ensure that all court orders for support address the children's ongoing need for medical care. In those instances where the children's health care needs are paid by the state's medical assistance program, and eligibility for the Children's Health Insurance Program ("CHIP") is denied due to the minimal income of the custodial parent, the obligor remains required to enroll the parties' children in health insurance that is, or may become, available that is reasonable in cost.

Government-sponsored health care plans represent a viable alternative to the often prohibitive cost of health insurance obtainable by a parent. Except for very low income children, every child is eligible for CHIP, for which the parent with primary physical custody must apply and which is based on that parent's income. A custodial parent may apply for CHIP by telephone or on the Internet. While co-premiums or co-pays increase as the custodial parent's income increases, such costs are generally modest and should be apportioned between the parties. Moreover, health care coverage obtained by the custodial parent generally yields more practical results, as the custodial parent resides in the geographic coverage area, enrollment cards are issued directly to the custodial parent, and claims may be submitted directly by the custodial parent.

Explanatory Comment—2010

Subdivision (e), relating to mortgages on the marital residence, has been amended to clarify that the rule cannot be applied after a final order of equitable distribution has been entered. To the extent that *Isralsky v. Isralsky*, 824 A.2d 1178 (Pa. Super. 2003), holds otherwise, it is superseded. At the time of resolution of the parties' economic claims, the former marital residence will either have been awarded to one of the parties or otherwise addressed.]

Explanatory Comment—2004

Subdivision (a), relating to the federal child care tax credit, has been amended to reflect recent amendments to the Internal Revenue Code, 26 U.S.C. § 21. By generally referencing the Tax Code, rather than incorporating current Code provisions in the rule, further amendments will be incorporated into the support calculation.

Explanatory Comment—2005

Pa.R.C.P. No. 1910.16-6 governs the treatment of additional expenses that warrant an adjustment to the basic support obligation.

Subdivision (a) relates to child care expenses. Subdivision (a) has been amended to require that child care expenses incurred by either party are to be allocated between the parties in proportion to their respective net incomes. Subsection (a)(1), relating to the federal child care tax credit, was amended in 2004 to reflect recent amendments to the Internal Revenue Code. 26 U.S.C. § 21. By referring to the Tax Code in general, rather than incorporating current Code provisions in the rule, any further amendments will be incorporated into the support calculation. Since the tax credit may be taken only against taxes owed, it cannot be used when the eligible parent does not incur sufficient tax liability to fully realize the credit. For this reason, subsection (2) provides that no adjustment to the total child care expenses may be made if the eligible parent does not qualify to receive the credit.

Subdivision (b) addresses health insurance premiums. The cost of the premiums is generally treated as an additional expense to be allocated between the parties in proportion to their net incomes. Subdivision (b)(1) of the rule permits allocation of the entire premium, including the portion of the premium covering the party carrying the insurance, when the insurance benefits the other party and/or the children. Subdivision (b)(2) clarifies that, in calculating the amount of the health care premium to be allocated between the parties, subdivision (b)(1) requires the inclusion of that portion of the health insurance premium covering the party who is paying the premium, so long as there is a statutory duty of support owed to that party, but not the portion of the premium attributable to non-parties and children who are not the subjects of the support order. Subdivision (b)(2) provides for proration of the premium when the health insurance covers other persons who are not subject to the support action or owed a statutory duty of support. Subdivision (b) also permits an alternative method for dealing with the cost of health insurance premiums in certain circumstances. While, in general, the cost of the premiums will be treated as an additional expense to be allocated between the parties in proportion to their net incomes, in cases in which the obligee has no income or minimal income, subsection (4) authorizes the trier-of-fact to reduce the obligor's gross income for support purposes by some or all of the amount of the health insurance premiums. This is to avoid the result under a prior rule in which the entire cost of health insurance would have been borne by the obligor, with no resulting reduction in the amount of support he or she would otherwise be required to pay under the support guidelines. The goal of this provision is to encourage and facilitate the maintenance of health insurance coverage for dependents by giving the obligor a financial incentive to maintain health insurance coverage.

Subdivision (c) deals with unreimbursed medical expenses. Since the first $250 of medical expenses per year per child is built into the basic guideline amount in the child support schedule, only medical expenses in excess of $250 per year per child are subject to allocation under this rule as an additional expense to be added to the basic support obligation. The same is true with respect to spousal support so that the obligee-spouse is expected to assume the first $250 per year of these expenses and may seek contribution under this rule only for unreimbursed expenses which exceed $250 per year. The definition of "medical expenses" includes insurance co-payments, deductibles and orthodontia and excludes chiropractic services.

Subdivision (d) governs apportionment of private school tuition, summer camp and other unusual needs not reflected in the basic guideline amounts of support. The rule presumes allocation in propor-

tion to the parties' net incomes consistent with the treatment of the other additional expenses.

Subdivision (e) provides for the apportionment of mortgage expenses. It defines "mortgage" to include the real estate taxes and homeowners' insurance. While real estate taxes and homeowners' insurance must be included if the trier-of-fact applies the provisions of this subdivision, the inclusion of second mortgages, home equity loans and other obligations secured by the marital residence is within the trier-of-fact's discretion based upon the circumstances of the case.

Explanatory Comment—2006

A new introductory sentence in Pa.R.C.P. No. 1910.16-6 clarifies that additional expenses contemplated in the rule may be allocated between the parties even if the parties' respective incomes do not warrant an award of basic support. Thus, even if application of either formula Pa.R.C.P. No. 1910.16-4 results in a basic support obligation of zero, the trier-of-fact may enter a support order allocating between the parties any or all of the additional expenses addressed in this rule.

The amendment of subdivision (e) recognizes that the obligor may be occupying the marital residence and that, in particular circumstances, justice and fairness may warrant an adjustment in his or her support obligation.

Explanatory Comment—2008

Federal and state statutes require clarification to subdivision (b) to ensure that all court orders for support address the children's ongoing need for medical care. In those instances where the children's health care needs are paid by the state's medical assistance program, and eligibility for the Children's Health Insurance Program ("CHIP") is denied due to the minimal income of the custodial parent, the obligor remains required to enroll the parties' children in health insurance that is, or may become, available that is reasonable in cost.

Government-sponsored health care plans represent a viable alternative to the often prohibitive cost of health insurance obtainable by a parent. Except for very low income children, every child is eligible for CHIP, for which the parent with primary physical custody must apply and which is based on that parent's income. A custodial parent may apply for CHIP by telephone or on the Internet. While co-premiums or co-pays increase as the custodial parent's income increases, such costs are generally modest and should be apportioned between the parties. Moreover, health care coverage obtained by the custodial parent generally yields more practical results, as the custodial parent resides in the geographic coverage area, enrollment cards are issued directly to the custodial parent, and claims may be submitted directly by the custodial parent.

Explanatory Comment—2010

Subdivision (e), relating to mortgages on the marital residence, has been amended to clarify that the rule cannot be applied after a final order of equitable distribution has been entered. To the extent that *Isralsky v. Isralsky*, 824 A.2d 1178 (Pa. Super. 2003), holds otherwise, it is superseded. At the time of resolution of the parties' economic claims, the former marital residence will either have been awarded to one of the parties or otherwise addressed.

Explanatory Comment—2018

The amendments provide for an adjustment to the parties' monthly net incomes prior to determining the percentage each party pays toward the expenses set forth in Pa.R.C.P. No. 1910.16-6. Previously, the Rules of Civil Procedure apportioned the enumerated expenses in Pa.R.C.P. No. 1910.16-6(a)—(d), with the exception of subdivision (c)(5), between the parties based on the parties' respective monthly net incomes as calculated pursuant to Pa.R.C.P. No. 1910.16-2. This apportionment did not consider the amount of support paid by the obligor or received by the obligee.

The amended rule adjusts the parties' monthly net incomes, upward or downward, by the spousal support/APL amount paid or received by that party prior to apportioning the expenses. This methodology is not new to the Rules of Civil Procedure. In Pa.R.C.P. No. 1910.16-6(c)(5)(rescinded), the parties' monthly net incomes in spousal support/APL-only cases were similarly adjusted prior to the apportionment of unreimbursed medical expenses. Likewise, Pa.R.C.P. No. 1910.16-6(e) considers the parties' monthly net income after the receipt or payment of the support obligation for purposes of determining a mortgage deviation. As the new procedure adopts the methodology in former subdivision (c)(5), that subdivision has been rescinded as delineating the spousal support only circumstance is unnecessary.

Lastly, the amendment consolidates Pa.R.C.P. No. 1910.16-6(b)(1), (2), and (2.1).

Rule 1910.18. Support Order. Subsequent Proceedings. **Modification of Spousal Support or Alimony *Pendente Lite* Orders Entered Before January 1, 2019.**

(a) Subsequent **support order modification or termination** proceedings **[to modify or terminate a support order pursuant to Rule] pursuant to Pa.R.C.P. No.** 1910.19 shall be brought in the court **[which] that** entered the order. If the action has been transferred pursuant to **[Rule] Pa.R.C.P. No.** 1910.2 following the entry of a support order, subsequent proceedings shall be brought in the court to which the action was transferred.

(b) Subsequent **support order enforcement** proceedings **[to enforce an order pursuant to Rule] pursuant to Pa.R.C.P. No.** 1910.20 may be brought in the court **[which] that** entered the support order or the court **[of a county]** to which the order has been transferred.

(c) Subdivision (a) shall not limit the **plaintiff's** right **[of the plaintiff]** to institute additional **support** proceedings **[for support]** in **[any] a** county of proper venue.

(d) Unless a modification provides that the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97), expressly applies, an order entered before January 1, 2019 that includes spousal support or alimony *pendente lite* is governed by the Pa.R.C.P. No. 1910.16-4(a)(2)(Part IV) formula.

***Official Note*: See Pa.R.C.P. No. 1910.16-4(a)(1)(Part B) or (2)(Part IV), as relevant.**

Rule 1910.19. Support. Modification. Termination. Guidelines as Substantial Change in Circumstances. Overpayments.

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(c) Pursuant to a petition for modification, the **[trier of fact]** **trier-of-fact** may modify or terminate the existing support order in any appropriate manner based **[upon]** **on** the evidence presented without regard to which party filed the petition for modification. If the **[trier of fact]** **trier-of-fact** finds that there has been a material and substantial change in circumstances, the order may be increased or decreased **[depending upon]** **based on** the **parties'** respective **monthly net** incomes **[of the parties]**, consistent with the support guidelines **[and],** existing law, **and Pa.R.C.P. No. 1910.18(d),** and **[each]** **the** party's custodial time with the child at the time the modification petition is heard.

* * * * *

(g) *Overpayments.*

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(2) *Order Terminated.* If there is an overpayment in any amount and there is no charging order in effect, within one year of the termination of the charging order, the former obligor may file a petition with the domestic relations section seeking recovery of the overpayment. A copy shall be served upon the former obligee as original process. The domestic relations section shall schedule a conference on the petition, which shall be conducted consistent with the rules governing support actions. The domestic relations section shall have the authority to enter an order against the former obligee for the amount of the overpayment in a monthly amount to be determined by the trier of fact after consideration of the former obligee's ability to pay.

(h) *Modification of a Support Order with Child Support and Spousal Support or Child Support and Alimony Pendente Lite Entered Before January 1, 2019.*

(1) In a subsequent modification proceeding of an order awarding child support and spousal support or child support and alimony *pendente lite*, as provided in Pa.R.C.P. No. 1910.18(d), the trier-of-fact may on its own motion or upon the motion of a party:

(i) make an unallocated award in favor of the spouse and one or more children; or

(ii) state the support amount allocable to the spouse and to each child.

(2) The trier-of-fact shall clearly state whether the order is allocated or unallocated even if the child support and spousal support or child support and alimony *pendente lite* amounts are delineated in the order.

(i) If the order is allocated, the Pa.R.C.P. No. 1910-16.4(a)(2)(Part IV) formula determines the spousal support amount.

(A) As the formula assumes an unallocated order, if the order's allocation utilizing the formula is inequitable, the trier-of-fact may adjust the order, as appropriate.

(B) In making an adjustment, the trier-of-fact shall consider the federal income tax consequences.

(C) If the parties are in higher income brackets, the income tax considerations are likely to be a more significant factor in determining a support amount.

(ii) If the order is unallocated or the order is for spousal support or alimony *pendente lite* only, the trier-of-fact shall not consider the federal income tax consequences.

***Official Note*: *See* 23 Pa.C.S. § 4348(d) for additional matters that must be specified in a support order if arrearages exist when the order is entered.**

(3) A support award for a spouse and children is taxable to the obligee while an award for the children only is not. Consequently, in certain situations, an award only for the children will be more favorable to the obligee than an award to the spouse and children. In this situation, the trier-of-fact should utilize the method that provides the greatest benefit to the obligee.

(4) If the obligee's monthly net income is equal to or greater than the obligor's monthly net income, the guideline amount for spouse and children is identical to the guideline amount for children only. Therefore, in cases involving support for spouse and children, whenever the obligee's monthly net income is equal to or greater than the obligor's monthly net income, the guideline amount indicated shall be attributed to child support only.

(5) Unallocated child support and spousal support or child support and alimony *pendente lite* orders shall terminate upon the obligee's death.

(6) In the event that the obligor defaults on an unallocated order, the trier-of-fact shall allocate the order for child support collection pursuant to the Internal Revenue Service income tax refund intercept program or for registration and enforcement of the order in another jurisdiction under the Uniform Interstate Family Support Act, 23 Pa.C.S. §§ 7101—7903. The trier-of-fact shall provide the parties with notice of allocation.

***Official Note*: This provision is necessary to comply with various state and federal laws relating to child support enforcement. It is not intended to affect an unallocated order's tax consequences.**

(7) An unallocated child support and spousal support or child support and alimony *pendente lite* order is a final order as to the claims covered in the order.

(8) Motions for post-trial relief cannot be filed to the final order.

***Official Note*: The procedure relating to Motions for Reconsideration is set forth in Pa.R.C.P. No. 1930.2.**

Subdivision (h) incorporates Pa.R.C.P. No. 1910.16 (rescinded) and Pa.R.C.P. No. 1910.16-4(f)(rescinded) for subsequent modification proceedings due to the enactment of the Tax Cuts and Jobs Act of 2017 (Pub.L. No. 115-97).

* * * * *

[Pa.B. Doc. No. 19-39. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Order Adopting New Rule 490.1 and Revising the Comments of Rules 430, 455 and 456 of the Pennsylvania Rules of Criminal Procedure; No. 509 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 21st day of December, 2018, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 47 Pa.B. 1850 (April 1, 2017), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Pennsylvania Rule of Criminal Procedure 490.1 is adopted, and the Comments to Pennsylvania Rules of Criminal Procedure 430, 455, and 456 are revised, 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 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Warrant.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

A warrant for the arrest of the defendant shall be issued when:

(1) the citation or summons is returned undelivered; or

(2) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

(B) BENCH WARRANTS

(1) A bench warrant shall be issued when:

(a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or

(b) the defendant has failed to appear for the execution of sentence as required in Rule 454(F)(3).

(2) A bench warrant may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

(3) A bench warrant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of the fine and costs specified in the citation or summons; or

(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of the fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Comment

Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule **[400A]** **400** and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the defendant fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1). **[*See also* the Public School Code of 1949, 24 P.S. § 13-1333(b)(2) that permits the issuing authority to allege the defendant dependent.]**

A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. *See* Rule 451.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (B)(1)(b), formerly paragraph (A)(1)(d), was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a bench warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The bench warrant issued under paragraph (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. *See* Rule 456.

Except in cases brought pursuant to the Public School Code of 1949, 24 P.S. § 1-102 *et seq.*, in which the defendant is at least **[13]** **15** years of age but not yet 17, if the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of **[13]** **15** but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may **[allege]** **refer** the defendant **[dependent]** **for commencement of dependency proceedings** under 42 Pa.C.S. § 6303(a)(1). **[Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.]** ***See*** **24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.**

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

See Rule 431 for the procedures when a warrant of arrest is executed.

***Official Note*:** Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective February 1, 2008; Comment revised September 18, 2008, effective February 1, 2009; Comment revised January 17, 2013, effective May 1, 2013**; Comment revised December 21, 2018, effective May 1, 2019**.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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 February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the change to the Rule 454 reference in paragraph (B)(1)(b) with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Final Report explaining the January 17, 2013 revision of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 656 (February 2, 2013).

Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).

PART E. General Procedures in Summary Cases

Rule 455. Trial in Defendant's Absence.

(A) If the defendant fails to appear for trial in a summary case, the trial shall be conducted in the defendant's absence, unless the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the issuing authority may issue a warrant for the defendant's arrest.

(B) At trial, the issuing authority shall proceed to determine the facts and render a verdict.

(C) If the defendant is found not guilty, any collateral previously deposited shall be returned.

(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, and of the right to file an appeal within 30 days for a trial *de novo*. In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within 10 days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due may result in the issuance of an arrest warrant.

(E) Any collateral previously deposited shall be forfeited and applied only to the payment of the fine, costs, and restitution. When the amount of collateral deposited is more than the fine, costs, and restitution, the balance shall be returned to the defendant.

(F) If the defendant does not respond within 10 days to the notice in paragraph (D), the issuing authority may issue a warrant for the defendant's arrest.

Comment

In those cases in which the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence, the issuing authority may issue a warrant for the arrest of the defendant in order to have the defendant brought before the issuing authority for the summary trial. *See* Rule 430(B). The trial would then be conducted with the defendant present as provided in these rules. *See* Rule 454.

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

Paragraph (D) provides notice to the defendant of conviction and sentence after trial in absentia to alert the defendant that the time for filing an appeal has begun to run. *See* Rules 408(B)(3), 413(B)(3), and 423(B)(3).

See Rule 454(F) for what information must be included in a sentencing order when restitution is included in the sentence.

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least **[13]** **15** years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of **[13]** **15** but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (D) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may **[allege]** **refer** the defendant **[dependent]** **for commencement of dependency proceedings** under 42 Pa.C.S. § 6303(a)(1). **[Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.]** ***See*** **24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.**

If the defendant is 18 years of age or older and fails to pay or appear as required in paragraph (D), the issuing authority must proceed under these rules.

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

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

For arrest warrant procedures in summary cases, see Rules 430 and 431.

Official Note**:** Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended August 15, 2005, effective February 1, 2006; Comment revised January 17, 2013, effective May 1, 2013; Comment revised July 17, 2013, effective August 17, 2013 ; Comment revised March 9, 2016, effective July 1, 2016; amended June 10, 2016, effective August 1, 2016**; Comment revised December 21, 2018, effective May 1, 2019**.

Committee Explanatory Reports:

Final Report explaining the April 18, 1997 amendments mandating a summary trial in absentia with certain exceptions published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraphs (D) and (E) published with the Court's Order at 27 Pa.B. 5414 (October 1, 1997).

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

Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the August 15, 2005 amendments to paragraph (D) concerning notice of right to appeal published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Final Report explaining the January 17, 2013 revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 656 (February 2, 2013).

Final Report explaining the July 17, 2013 Comment vision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision cross-referencing the sentencing provisions in Rule 454(F) published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).

Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).

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

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

(C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing immediately to determine whether the defendant is financially able to pay as ordered.

(1) If the hearing cannot be held immediately, the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may set collateral as provided in Rule 523.

(2) If collateral is set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

(3) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a hearing longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.

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

(1) upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

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

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

(b) advise the defendant of the right to appeal within 30 days for a hearing *de novo* in the court of common pleas, and that if an appeal is filed:

(i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and

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

(c) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (D)(3)(a) through (D)(3)(c), and a copy of the order shall be given to the defendant.

(E) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

Comment

The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. *See* 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. *See* Rule 430(B)(4).

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least **[13]** **15** years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School **[Act]** **Code** of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of **[13]** **15** but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph **[(B)]** **(B)(4)** to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may **[allege]** **refer** the defendant **[dependent]** **for commencement of dependency proceedings** under 42 Pa.C.S. § 6303(a)(1). **[Pursuant to 24 P.S. § 13-1333(b)(2), the defendant's failure to pay is not a delinquent act and the issuing authority would not certify notice of the failure to pay to the common pleas court.]** ***See*** **24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.**

If the defendant is 18 years or older when the default in payment occurs, the issuing authority must proceed under these rules.

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

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

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. *See* 42 Pa.C.S. § 9730(b). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. *See Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). *See also Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). *See also* Rules 121 and 122 (dealing with appearance or waiver of counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. *See* 42 Pa.C.S. § 9730(b)(3).

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

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. *See* Chapter 1 Part D.

***Official Note*:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; Comment revised September 21, 2012, effective November 1, 2012; Comment revised January 17, 2013, effective May 1, 2013; amended April 10, 2015, effective July 10, 2015**; Comment revised December 21, 2018, effective May 1, 2019**.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (C) published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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 August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 3, 2004 amendment to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the September 21, 2012 Comment revision correcting the typographical error in the fourth paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Final Report explaining the January 17, 2013 revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 656 (February 2, 2013).

Final Report explaining the April 10, 2015 amendments concerning the setting of collateral published with the Court's Order at 45 Pa.B. 2045 (April 25, 2015).

Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).

PART H. Summary Case Expungement Procedures

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

Rule 490.1. Procedure for Obtaining Expungement of Truancy Cases; Expungement Order.

(A) PETITION FOR EXPUNGEMENT

(1) An individual who satisfies the requirements of 24 P.S. § 13-1333.3(h) for expungement of a summary truancy case may request expungement by filing a petition with the issuing authority by whom the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the school from which the petitioner had been found to be truant;

(g) the date on the citation or complaint, or the date of arrest, and, if available, and the criminal justice agency that made the arrest;

(h) the specific charges, as they appear on the charging document, to be expunged;

(i) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(j) that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(k) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) A copy of the petitioner's high school diploma, a Commonwealth secondary school diploma or another Department of Education-approved equivalent, or documentation that the petitioner is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 shall be attached to the petition.

(4) A copy of the petition shall be served on the affiant, the attorney for the Commonwealth and the school from which the petitioner had been found to be truant concurrently with filing.

(B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the school, the affiant, or the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The school's, affiant's, or attorney for the Commonwealth's consent or objection shall be filed with the issuing authority, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the school's, the affiant's, or the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the issuing authority shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the petitioner, the affiant and the attorney for the Commonwealth and the school from which the petitioner had been found to be truant shall be afforded an opportunity to be heard. Following the hearing, the issuing authority promptly shall enter an order granting or denying the petition.

(4) If the issuing authority grants the petition for expungement, the issuing authority shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) Except when the school, the affiant, or the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the issuing authority denies the petition for expungement, the issuing authority shall enter an order denying the petition and stating the reasons for the denial.

(6) The issuing authority shall issue the order granting or denying the petition in writing, with copies to the school, the affiant, and the attorney for the Commonwealth, and shall make the order a part of docket.

(C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the school from which the petitioner had been found to be truant;

(g) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(h) the specific charges, as they appear on the charging document, to be expunged;

(i) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(j) a statement that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement;

(k) the criminal justice agencies upon which certified copies of the order shall be served; and

(l) a directive to the Department of Transportation to expunge all administrative records related to the truancy conviction.

Additional information shall not be required by local rule or practice.

(2) The issuing authority shall serve a certified copy of the order to the school from which the petitioner had been found to be truant, the Pennsylvania Department of Transportation and to each criminal justice agency identified in the order.

Comment

This rule, adopted in 2018, provides the procedures for requesting and ordering expungement in summary truancy cases as provided in 24 P.S. § 13-1333.3(h). If the issuing authority finds the petitioner has satisfied the statutory conditions, the issuing authority shall grant the petition.

As provided by statute, expungement petitions in truancy cases may be filed in a magisterial district court, a court of common pleas, or the Philadelphia Municipal Court. *See* 24 P.S. § 13-1333.2. The use of the term "issuing authority" in this rule is intended to encompass all of these courts.

Although magisterial district courts are not courts of record, provisions requiring certain occurrences, such as the entry of the expungement order, to be made "on the record" may be accomplished in the magisterial district court by documentation of these occurrences in the case record and the case docket. *See* Rule 135.

Paragraph (A)(4) provides for service of the petition upon the affiant, the attorney for the Commonwealth, and the school from which the petitioner had been found to be truant. This is to provide an opportunity to challenge the petition and the facts supporting the petition.

See Rule 490 for the procedures for expungement of summary cases other than truancy. *See also* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: http://www.pacourts.us/forms/for-the-public.

"Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577. The term "petition" is used in recognition that motion practice usually is not conducted in magisterial district courts and that the expungement procedure under this rule is an exception to this general concept.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

***Official Note*:** Adopted December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

Final Report explaining new Rule 490.1 regarding procedures for expungement in truancy cases published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).

FINAL REPORT[1]

New Rule 490.1 and Revision of the Comments to Pa.Rs.Crim.P. 430, 455, and 456

Expungement of Summary Truancy Cases Notice of Impending Truancy Certification

On December 21, 2018, effective May 1, 2019, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule 490.1 (Procedure for Obtaining Expungement of Truancy Cases; Expungement Order) to provide procedures for the expungement of summary truancy cases as provided for by Act 138 of 2016 and revised the Comments to Rules 430 (Issuance of Warrant), 455 (Trial in Defendant's Absence), and 456 (Default Procedures: Restitution, Fines, and Costs) to correct statutory references contained in those Comments that have been affected by Act 138.

Act 138 of 2016 (hereafter "the Act") amended truancy protocols in Pennsylvania. The Act, in 24 P.S. § 13-1333.3, provides that a child convicted of the summary offense of truancy may request a court to expunge his/her record if certain conditions are met. These conditions are that the child has earned a high school diploma, a Commonwealth secondary school diploma, or another Department of Education-approved equivalent, or is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 and has satisfied any sentence including payment of fines and costs. It should be noted that this expungement procedure applies only to a summary conviction of a truant child not a summary conviction of a parent or guardian.

The intent of the Act is to provide a relatively easy method of expungement of a summary truancy conviction when a defendant has accomplished the requirements of the Act, primarily completion of high school or the equivalent. Recognizing that these type of cases would be relatively few in number, the Committee nonetheless agreed that the Criminal Rules should be amended to incorporate the procedures that address this particular form of expungement. In addition, the Committee noted that some of the general summary expungement procedures in Rule 490 would be unnecessary for "streamlined" truancy expungement. The Committee concluded that, rather than incorporating the new procedures into the current rule, it would be clearer to place the procedures for truancy expungement in a separate rule, now Rule 490.1, immediately following the general summary expungement procedures in Rule 490. The organization of

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

new Rule 490.1 mirrors Rule 490. This includes provisions regarding the petition for expungement, provisions for review and objection by the Commonwealth, and provisions for the expungement order, if granted.

Under the general summary expungement procedures of Rule 490, when a defendant is eligible for expungement, he or she must file a petition with the clerk of courts and the determination on expungement is made by a common pleas judge. Under the Act, the expungement petition may be filed and adjudicated by a "court," which is defined as "a magisterial district court, the Philadelphia Municipal Court or a Court of Common Pleas." While allowing these proceedings in the magisterial district courts, which are not courts of record, is problematic, this provision of the Act constitutes a grant of jurisdiction to the minor courts in these cases. Recognition of this grant of jurisdiction is provided in paragraph (A)(1) of the new rule by stating that the petition may be filed with "the issuing authority by whom the charges were disposed." Because the magisterial district courts are not of record, there was a concern regarding how some of the procedures of the new rule that are required to be "in open court on the record," such as one of the service of the petition options under Rule 114 and entry of the order, would be accomplished. This concern is addressed by requiring every action taken by a magisterial district judge on the expungement petition in a court proceeding to be reduced to writing with copies provided to the defendant and affiant. This has been included in paragraph (B)(6) of new Rule 490.1 that requires the order to be in writing with a copy being made part of the case record. This concept is further elaborated in the Comment.

Paragraph (A)(2) provides the contents of the petition. The contents are taken from the requirements of Rule 490. Most of the information in the Rule 490 petition is required to ensure that the proper case is identified and disposed. The same concern is present in truancy cases and so the information required in the petition under Rule 490.1 is the same as in Rule 490. The one exception in contents is the requirement for a Pennsylvania State Police criminal history to be attached. Since the Act conditions expungement of truancy offenses only on completion of high school or equivalent and satisfaction of the conditions of the original case, criminal history did not appear to be as relevant here as in other summary cases. The Committee concluded that this requirement should not be carried over into Rule 490.1.

It should be noted that the term "motion" as defined by Rule 103 includes petitions. The Committee's rationale for this definition was that all types of filing by the parties seeking relief should be treated uniformly with all of the standard procedures for motions applying. The term "petition" was used in the other expungement rules because it was the traditional terminology used in expungement and the Committee did not want to suggest that these were completely new procedures; for all intents and purposes, expungement petitions were motions. For the same reason, the term "petition" is used in Rule 490.1.

The new rule also provides for notice to the Commonwealth with the opportunity to respond. The Committee discussed, given the intended expedited nature of truancy expungement, whether this should be included at all. The Committee concluded that the truancy conviction remains a summary conviction and it would be inappropriate to deny the Commonwealth the opportunity to review and object prior to expungement of this criminal record. Therefore, paragraph (B) provides notice and response procedures identical to those in Rule 490.

Paragraph (C) contains the provisions related to the order granting the expungement. The contents of the order also are identical to those of Rule 490 for other summary expungement orders. As with the contents of the petition, the same concept, *i.e.* correct identification of the case, are at work here.

The Committee also concluded that the Act did not intend that the adjudicating court have unlimited discretion in denying the petition. Rather, the Committee concluded that if the petitioner provides confirmation of having completed the educational and other requirements stated in the Act, the court must grant the petition. Therefore, the Comment states that, "If the judge finds the petitioner has satisfied the statutory conditions, the judge shall grant the petition."

The Committee also examined the cross-references to the Public School Act of 1949 contained in the Comments to Rules 430, 455, and 456. Those Comments contain language regarding the procedures for dependency proceedings when a defendant under 17 has failed to pay the fine and costs in a summary case. The Comments refer to certain provisions in the Public School Act that have been changed by Act 138 of 2016. Specifically, the Comments refer to the old version of 24 P.S. § 13-1333(B)(2). Act 138 repealed that specific provision and the substance of it is now contained in 24 P.S. § 13-1333.3(f)(2). Additionally, the Comments describe the consequences of a failure to respond to the 10-day notice in these cases as permitting the issuing authority to "allege the defendant dependent." The Act removed this provision and now states that in such an event, the defendant may be referred to a probation officer for possible commencement of dependency proceedings. Finally, the Comments refer to defendants being charged who have "attained the age of 13 but is not yet 17." This has been changed by the Act as well and, as provided in 24 P.S. § 13-1333.1, a defendant may not be charged if under the age of 15. The language in these Comments therefore has been revised to reflect these changes as well as the provision in 24 P.S. § 13-133.3(f)(2) that provides for the adoption of a local policy for such referrals.

[Pa.B. Doc. No. 19-40. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5 AND 10]

Proposed Amendment of Pa.Rs.Crim.P. 542, 543 and 1003

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rules 542 (Preliminary Hearing; Continuances), 543 (Disposition of Case at Preliminary Hearing), and 1003 (Procedure in Non-Summary Municipal Court Cases) 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 Wednesday, May 1, 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 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 542. Preliminary Hearing; Continuances.

(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

(1) assume charge of the prosecution; and

(2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

(1) be represented by counsel;

(2) cross-examine witnesses and inspect physical evidence offered against the defendant;

(3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;

(4) offer evidence on the defendant's own behalf, and testify; and

(5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) At the preliminary hearing, the issuing authority shall determine from the evidence presented whether there is **[a *prima facie* case]** **probable cause** that (1) an offense has been committed and (2) the defendant has committed it.

(E) **[Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense, including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.]** **HEARSAY**

(1) The forms of hearsay enumerated in this paragraph, that otherwise are inadmissible at trial, shall be admissible at a preliminary hearing and shall be considered by the issuing authority in determining whether the probable cause required by paragraph (D) has been established. These forms of hearsay shall include evidence relating to:

(a) ownership of, non-permitted use of, damage to, or value of property;

(b) authenticity of a written instrument;

(c) scientific/laboratory/forensic/expert reports; and

(d) chain of custody and foundational evidence relating to exhibits.

(2) Within the discretion of the issuing authority, the following forms of hearsay may be admissible at a preliminary hearing and considered by the issuing authority in determining whether the probable cause required by paragraph (D) has been established:

(a) the testimony of a victim or eyewitness where the Commonwealth has shown cause that requiring appearance at the preliminary hearing will cause an undue hardship upon the victim or eyewitness and is presented in the form of a writing signed and adopted by the declarant; or is a verbatim contemporaneous electronic recording of an oral statement; and

(b) evidence of a purely technical nature that is not included in paragraph (1).

(3) In no case shall all of the elements of the case be established by hearsay alone.

(4) Any hearsay evidence that is presented at the preliminary hearing pursuant to paragraphs (E)(1)(a) and (E)(2)(a) of this rule only shall be admitted at the preliminary hearing if the representative of the Commonwealth avers that a representative of the Commonwealth has communicated with the hearsay declarant, and determined that this declarant is available to testify at trial.

(5) If hearsay is offered at the preliminary hearing but the issuing authority refuses to admit it, the issuing authority may grant a continuance of the preliminary hearing.

(F) In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, the issuing authority shall not proceed on the summary offense except as provided in Rule 543(F).

(G) CONTINUANCES

(1) The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

(a) the grounds for granting each continuance;

(b) the identity of the party requesting such continuance; and

(c) the new date, time, and place for the preliminary hearing, and the reasons that the particular date was chosen.

When the preliminary hearing is conducted in the court of common pleas, the judge shall record the party to which the period of delay caused by the continuance shall be attributed and whether the time will be included in or excluded from the computation of the time within which trial must commence in accordance with Rule 600.

(2) The issuing authority shall give notice of the new date, time, and place for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

(a) The notice shall be in writing.

(b) Notice shall be served on the defendant either in person or by first class mail.

(c) Notice shall be served on defendant's attorney of record and the attorney for the Commonwealth either by personal delivery, or by leaving a copy for or mailing a copy to the attorneys at the attorneys' offices.

Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

This rule was amended in 2019 to change the term describing the standard to be used by the issuing authority when weighing the evidence presented at the preliminary hearing from "*prima facie*" to "probable cause." The change was made because there is no material difference between the level of evidence that constitutes a *prima facie* case and that constitutes probable cause. Because the latter is more commonly understandable, the change was made to remove any confusion. The change in terminology is not intended to change the burden on the Commonwealth with regard to establishing the case at the preliminary hearing.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of **[a *prima facie* case] probable cause**, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, **[460 Pa. 336,]** 333 A.2d 755 (**Pa.** 1975). This amendment was made to preserve the limited function of a preliminary hearing.

Paragraph (E) **[was amended in 2013 to reiterate] reiterates** that traditionally our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, especially with regard to the use of hearsay to establish **[the elements of a *prima facie* case] probable cause that an offense has been committed and the defendant has committed it**. *See* the Pennsylvania Rules of Evidence generally, but in particular, Article VIII. Accordingly, **those forms of** hearsay **contained in paragraph (E)(1)(a)—(d)**, whether written or oral, **[may] should be permitted to** establish the elements of any offense. **[The presence of witnesses to establish these elements is not required at the preliminary hearing. *But compare*] *See*** *Commonwealth ex rel. Buchanan v. Verbonitz*, **[525 Pa. 413,]** 581 A.2d 172 (Pa. 1990) (plurality) **[(disapproving reliance on hearsay testimony as the sole basis for establishing a *prima facie* case)] (in which five Justices held that "fundamental due process requires that no adjudication be based solely on hearsay evidence.")**. *See also* Rule 1003 concerning preliminary hearings in Philadelphia Municipal Court.

Paragraph (E)(2) provides that, within the discretion of the issuing authority, hearsay may be permitted to establish any element of the offense in two situations: (1) where the Commonwealth has shown that requiring the appearance of the witness, either victim or eyewitness, would cause an undue hardship on that witness; and (2) evidence of a purely technical nature that is not the testimony of an eyewitness or evidence describing the criminal behavior, or identifying the perpetrators of the crime and not included in paragraph (1). Probable cause cannot be established solely on the basis of hearsay evidence. Nothing in this rule is intended to preclude the use at the preliminary hearing of hearsay evidence that would be admissible at trial under other provisions of law. When providing the averment required under paragraph (E)(4) that a representative of the Commonwealth has confirmed the witness' availability for trial, that representative does not need to be the same individual representing the Commonwealth at the preliminary hearing.

Under the provisions of paragraph (E)(5), it is expected that when an issuing authority refuses to admit hearsay that is offered at the preliminary hearing pursuant to paragraph (E) of this rule, the issuing authority should grant a continuance if it is the first occasion when this hearsay has been offered at the preliminary hearing.

If the case is held for court, the normal rules of evidence will apply at trial.

For the procedures when a defendant fails to appear for the preliminary hearing, see Rule 543(D).

In cases in which summary offenses are joined with misdemeanor, felony, or murder charges, pursuant to paragraph (F), during the preliminary hearing, the issuing authority is prohibited from proceeding on the summary offenses, or adjudicating or disposing of the summary offenses except as provided in Rule 543(F).

For the contents of the transcript, see Rule 135.

See Chapter 5 Part E for the procedures governing indicting grand juries. Under these rules, a case may be presented to the grand jury instead of proceeding to a preliminary hearing. *See* Rule 556.2.

***Official Note*:** Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted

June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and *Comment* revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended January 27, 2011, effective in 30 days; amended June 21, 2012, effective in 180 days; amended October 1, 2012, effective July 1, 2013; amended April 25, 2013, effective June 1, 2013**; amended , 2019, effective , 2019**.

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining new Rule 141 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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 August 24, 2004 amendments concerning notice published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the March 9, 2006 amendments to paragraph (D) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 1, 2007 amendments deleting the certified mail service requirement from paragraph (E)(2)(b) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Court's Order of January 27, 2011 adding new paragraphs (D) and (E) concerning hearsay at the preliminary hearing published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the June 21, 2012 revision of the Comment concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the October 1, 2012 amendments to paragraph (G)(1) concerning computation of time and (G)(2) concerning notice of continuance published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).

Final Report explaining the April 25, 2013 amendments to paragraph (E) concerning hearsay at preliminary hearings published with the Court's Order at 43 Pa.B. 2562 (May 11, 2013).

Report explaining the proposed amendments to paragraph (E) concerning hearsay at preliminary hearings published for comment at 49 Pa.B. 206 (January 12, 2019).

Rule 543. Disposition of Case at Preliminary Hearing.

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

(B) If the issuing authority finds that the Commonwealth has established **[a *prima facie* case]** **probable cause** that an offense has been committed and the defendant has committed it, the issuing authority shall hold the defendant for court on the offense(s) on which the Commonwealth established **[a *prima facie* case]** **probable cause**. If there is no offense for which **[a *prima facie* case]** **probable cause** has been established, the issuing authority shall discharge the defendant.

(C) When the defendant has appeared and has been held for court, the issuing authority shall:

(1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 529(A);

(3) if the defendant has not submitted to the administrative processing and identification procedures as authorized by law, such as fingerprinting pursuant to Rule 510(C)(2), make compliance with these processing procedures a condition of bail; and

(4) advise the defendant that, if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including the trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.

(D) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice of the preliminary hearing by a summons served pursuant to Rule 511, a warrant of arrest shall be issued pursuant to Rule 509(2)(d).

(2) If the issuing authority finds that there was cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date, time, and place as provided in Rule 542(G)(2). The issuing authority shall not issue a bench warrant.

(3) If the issuing authority finds that the defendant's absence is without cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority.

(a) In these cases, the issuing authority shall proceed with the case in the same manner as though the defendant were present.

(b) If the preliminary hearing is conducted and the case held for court, the issuing authority shall

(i) give the defendant notice by first class mail of the results of the preliminary hearing and that a bench warrant has been requested; and

(ii) pursuant to Rule 547, transmit the transcript to the clerk of courts with a request that a bench warrant be issued by the court of common pleas and, if the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), with a notice to the court of common pleas of the defendant's noncompliance.

(c) If the preliminary hearing is conducted and the case is dismissed, the issuing authority shall give the defendant notice by first class mail of the results of the preliminary hearing.

(d) If a continuance is granted, the issuing authority shall give the parties notice of the new date, time, and place as provided in Rule 542(G)(2), and may issue a bench warrant. If a bench warrant is issued and the warrant remains unserved for the continuation of the preliminary hearing, the issuing authority shall vacate the bench warrant. The case shall proceed as provided in paragraphs (D)(3)(b) or (c).

(E) If the Commonwealth does not establish **[a *prima facie* case]** **probable cause** of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the issuing authority shall dismiss the complaint.

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

(1) If the Commonwealth establishes **[a *prima facie* case]** **probable cause** pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

(2) If the Commonwealth does not establish **[a *prima facie* case]** **probable cause** pursuant to paragraph (B), upon the request of the Commonwealth, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(3) If the Commonwealth withdraws all the misdemeanor, felony, and murder charges, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(G) Except as provided in Rule 541(D), once a case is bound over to the court of common pleas, the case shall not be remanded to the issuing authority.

Comment

This rule was amended in 2019 to change the term describing the standard to be used by the issuing authority when weighing the evidence presented at the preliminary hearing from "*prima facie*" to "probable cause." The change was made because there is no material difference between the level of evidence that constitutes a *prima facie* case and that constitutes probable cause. Because the latter is more commonly understandable, the change was made to remove any confusion. The change in terminology is not intended to change the burden on the Commonwealth with regard to establishing the case at the preliminary hearing.

Paragraph (B) was amended in 2011 to clarify what is the current law in Pennsylvania that, based on the evidence presented by the Commonwealth at the preliminary hearing, the issuing authority may find that the Commonwealth has not made out **[a *prima facie* case]** **probable cause** as to the offense charged in the complaint but has made out **[a *prima facie* case]** **probable cause** as to a lesser offense of the offense charged. In this case, the issuing authority may hold the defendant for court on that lesser offense only. The issuing authority, however, may not *sua sponte* reduce the grading of any charge.

See Rule 1003 (Procedure In Non-Summary Municipal Court Cases) for the preliminary hearing procedures in Municipal Court, including reducing felony charges at the preliminary hearing in Philadelphia.

Paragraph (C) reflects the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. *See* Rules 509 and 510.

Paragraph (C)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. *See* Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) ("[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'").

If the administrative processing and identification procedures as authorized by law, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, that ordinarily occur following an arrest are not completed previously, when bail is set at the conclusion of the preliminary hearing, the issuing authority must order the defendant to submit to the administrative processing and identification procedures as a condition of bail. *See* Rule 527 for nonmonetary conditions of release on bail.

If a case initiated by summons is held for court after the preliminary hearing is conducted in the defendant's absence pursuant to paragraph (D)(2) and the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), the issuing authority must include with the transmittal of the transcript a notice to the court of common pleas that the defendant has not complied with the fingerprint order. *See* Rule 547.

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. *See* Rule 571.

Paragraphs (D)(2) and (D)(3) were amended in 2013 changing the phrase "good cause" to "cause" in reference to whether the defendant's absence at the time of the preliminary hearing permits the preliminary hearing to proceed in the defendant's absence. This amendment is not intended as a change in the standard for making this determination. The change makes the language consistent with the language in Rule 602 describing the standard by which a defendant's absence is judged for the trial to proceed in the defendant's absence. In both situations, the standard is the same.

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540(G)(2) or in a summons served as provided in Rule 511, and (2) whether the defendant had cause explaining the absence.

If the issuing authority determines that the defendant did not receive notice, the issuing authority must issue an arrest warrant as provided in Rule 509, and the case will proceed pursuant to Rules 516 or 517. *See* paragraph (D)(1).

If the issuing authority determines that there is cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. *See* paragraph (D)(2). For the procedures when a preliminary hearing is continued, see Rule 542(G).

If the issuing authority determines that the defendant received service of the summons as defined in Rule 511

and has not provided cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without cause, paragraph (D)(3)(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 542(A), (B), (C) and Rule 543(A), (B), (C), and (D)(3)(b) or (c); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 542(G); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority may issue a bench warrant as provided in paragraph (D)(3)(d), and must send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)(3)(b)(ii) requires the issuing authority to include with the Rule 547 transmittal a request that the court of common pleas issue a bench warrant if the case is held for court.

In addition to the paragraph (D)(3)(b) notice requirements, the notice may include the date of the arraignment in common pleas court.

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

See Rule 571 (Arraignment) for notice of arraignment requirements.

Rule 542(F) specifically prohibits an issuing authority at a preliminary hearing from proceeding on any summary offenses that are joined with misdemeanor, felony, or murder charges, except as provided in paragraph (F) of this rule. Paragraph (F) sets forth the procedures for the issuing authority to handle these summary offenses at the preliminary hearing. These procedures include the issuing authority (1) forwarding the summary offenses together with the misdemeanor, felony, or murder charges held for court to the court of common pleas, or (2) disposing of the summary offenses as provided in Rule 454 by accepting a guilty plea or conducting a trial whenever (a) the misdemeanor, felony, and murder charges are withdrawn, or (b) **[a *prima facie* case]** **probable cause** is not established at the preliminary hearing and the Commonwealth requests that the issuing authority proceed on the summary offenses.

Under paragraph (F)(2), in those cases in which the Commonwealth does not intend to refile the misdemeanor, felony, or murder charges, the Commonwealth may request that the issuing authority dispose of the summary offenses. In these cases, if all the parties are ready to proceed, the issuing authority should conduct the summary trial at that time. If the parties are not prepared to proceed with the summary trial, the issuing authority should grant a continuance and set the summary trial for a date and time certain.

In those cases in which **[a *prima facie* case]** **probable cause** is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the defendant unless there are outstanding detainers against the defendant that would prevent the defendant's release.

Paragraph (G) emphasizes the general rule that once a case has been bound over to the court of common pleas, the case is not permitted to be remanded to the issuing authority. There is a limited exception to the general rule in the situation in which the right to a previously waived preliminary hearing is reinstated and the parties agree, with the consent of the common pleas judge, that the preliminary hearing be held before the issuing authority. *See* Rule 541(D).

Nothing in this rule would preclude the refiling of one or more of the charges, as provided in these rules.

See Rule 313 for the disposition of any summary offenses joined with misdemeanor or felony charges when the defendant is accepted into an ARD program on the misdemeanor or felony charges.

***Official Note*:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended February 12, 2010, effective April 1, 2010; amended January 27, 2011, effective in 30 days; *Comment* revised July 31, 2012, effective November 1, 2012; amended October 1, 2012, effective July 1, 2013; amended May 2, 2013, effective June 1, 2013**; amended , 2019, effective 2019**.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 18 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the October 8, 1999 renumbering of Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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 August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the December 30, 2005 changes adding references to bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the March 9, 2006 amendments adding new paragraphs (E) and (F) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

Final Report explaining the May 1, 2007 changes clarifying the procedures when a defendant fails to appear published with the Court's Order at 37 Pa.B. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraphs (C) and (D)(2)(c) concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. 3971 (July 26, 2008).

Final Report explaining the February 12, 2010 amendments adding new paragraph (G) prohibiting remands to the issuing authority published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Court's Order adopting the January 27, 2011 amendments to paragraph (B) concerning prima facie case published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(F)(2) to Rule 540(G)(2) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the October 1, 2012 amendments to paragraphs (D)(2) and (D)(3)(d) adding "place" to "date and time" for preliminary hearing notices published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).

Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

Report explaining the proposed amendments change the terminology "prima facie" to "probable cause" published for comment at 49 Pa.B. 206 (January 12, 2019).

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

PART A. Philadelphia Municipal Court Procedures

Rule 1003. Procedure in Non-Summary Municipal Court Cases.

(A) INITIATION OF CRIMINAL PROCEEDINGS

(1) Criminal proceedings in court cases shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a felony or misdemeanor is committed in the presence of the police officer making the arrest; or

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law; or

(c) an arrest without a warrant upon probable cause when the offense is a felony.

(2) Private Complaints

(a) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the attorney for the Commonwealth:

(i.) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(ii.) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the President Judge of Municipal Court, or the President Judge's designee, for review of the decision. Appeal of the decision of the Municipal Court shall be to the Court of Common Pleas.

(B) CERTIFICATION OF COMPLAINT

Before an issuing authority may issue process or order further proceedings in a Municipal Court case, the issuing authority shall ascertain and certify on the complaint that:

(1) the complaint has been properly completed and executed; and

(2) when prior submission to an attorney for the Commonwealth is required, an attorney has approved the complaint.

The issuing authority shall then accept the complaint for filing, and the case shall proceed as provided in these rules.

(C) SUMMONS AND ARREST WARRANT PROCEDURES

When an issuing authority finds grounds to issue process based on a complaint, the issuing authority shall:

(1) issue a summons and not a warrant of arrest when the offense charged is punishable by imprisonment for a term of not more than 1 year, except as set forth in paragraph (C)(2);

(2) issue a warrant of arrest when:

(a) the offense charged is punishable by imprisonment for a term of more than 5 years;

(b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons;

(c) the summons has been returned undelivered;

(d) a summons has been served and disobeyed by a defendant;

(e) the identity of the defendant is unknown;

(f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or

(3) when the offense charged does not fall within the categories specified in paragraph (C)(1) or (2), the issuing authority may, in his or her discretion, issue a summons or a warrant of arrest.

(D) PRELIMINARY ARRAIGNMENT

(1) When a defendant has been arrested within Philadelphia County in a Municipal Court case, with or without a warrant, the defendant shall be afforded a preliminary arraignment by an issuing authority without unnecessary delay. If the defendant was arrested without a warrant pursuant to paragraph (A)(1)(a) or (b), unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

(2) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When counsel for the defendant is present, the

defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.

(3) At the preliminary arraignment, the issuing authority:

(a) shall not question the defendant about the offense(s) charged;

(b) shall give the defendant's attorney, or if unrepresented the defendant, a copy of the certified complaint;

(c) if the defendant was arrested with a warrant, the issuing authority shall provide the defendant's attorney, or if unrepresented the defendant, with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant's attorney, or if unrepresented the defendant, shall be given copies no later than the first business day after the preliminary arraignment; and

(d) also shall inform the defendant:

(i) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(ii) of the day, date, hour, and place for the trial, which shall not be less than 20 days after the preliminary arraignment, unless the issuing authority fixes an earlier date for the trial upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth, and that failure to appear without cause at any proceeding for which the defendant's presence is required, including trial, may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence, and a warrant of arrest shall be issued;

(iii) in a case charging a felony, unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2, of the date, time, and place of the preliminary hearing, which shall not be less than 14 nor more than 21 days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and that failure to appear without cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and that the case shall proceed in the defendant's absence, and a warrant of arrest shall be issued;

(iv) if a case charging a felony is held for court at the time of the preliminary hearing, that failure to appear without cause at any proceeding for which the defendant's presence is required, including trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence, and a warrant of arrest shall be issued; and

(v) of the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

(4) After the preliminary arraignment, if the defendant is detained, he or she shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail, as provided by law.

(E) PRELIMINARY HEARING IN CASES CHARGING A FELONY

(1) Except as provided in **[paragraphs]** **paragraph** (E)(2) **[and (E)(3)]**, in cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 542 (Preliminary Hearing; Continuances) and Rule 543 (Disposition of Case at Preliminary Hearing).

[(2) At the preliminary hearing, the issuing authority shall determine whether there is a *prima facie* case that an offense has been committed and that the defendant has committed it.

(a) Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established.

(b) Hearsay evidence shall be sufficient to establish any element of an offense including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

(3)] **(2)** If **[a *prima facie* case]** **probable cause** is not established on any felony charges, but is established on any misdemeanor or summary charges, the judge shall remand the case to Municipal Court for trial.

(F) ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Courts shall accept bail at any time prior to the Municipal Court trial.

Comment

The 2004 amendments make it clear that Rule 1003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 1001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.

See Chapter 5 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.

The 2004 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 502 (Means of Instituting Proceedings in Court Cases).

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary cases in Municipal Court with the statewide procedures for private complaints in Rule 506 (Approval of Private Complaints). In all cases in which the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

The procedure set forth in paragraph (C)(3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, *etc.*

If the attorney for the Commonwealth exercises the options provided by Rule 202, Rule 507, or both, the attorney must file the certifications required by paragraphs (B) of Rules 202 and 507 with the Court of Common Pleas of Philadelphia County and with the Philadelphia Municipal Court.

For the contents of the complaint, see Rule 504.

Under paragraphs (A) and (D), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before the defendant may be detained. *See Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Within the meaning of paragraph (D)(2), counsel is present when physically with the defendant or with the issuing authority.

Under paragraph (D)(2), the issuing authority has discretion to order that a defendant appear in person for the preliminary arraignment.

Under paragraph (D)(2), two-way simultaneous audio-visual communication is a form of advanced communication technology.

See Rule 130 concerning *venue* when proceedings are conducted pursuant to this rule using advanced communication technology.

Paragraph (D)(3)(c) requires that the defendant's attorney, or if unrepresented the defendant, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 540(C). *See also* Rules 208(A) and 513(A).

Paragraph (D)(3)(c) includes a narrow exception which permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. *See Commonwealth v. Fenstermaker*, **[515 Pa. 501,]** 530 A.2d 414 (**Pa.** 1987).

The 2012 amendment to paragraph (D)(3)(d)(iii) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur. *See* Rule 556.2. *See* also Rule 556.11 for the procedures when a case will be presented to the indicting grand jury.

Paragraphs (D)(3)(d)(ii) and (D)(3)(d)(iv) require that, in all cases at the preliminary arraignment, the defendant be advised of the consequences of failing to appear for any court proceeding. *See* Rule 602 concerning a defendant's failure to appear for trial. *See also Commonwealth v. Bond*, 693 A.2d 220 (Pa. Super. 1997) ("[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'").

Under paragraph (D)(4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

Paragraphs (D)(3)(d)(iii) and (E) make it clear that, with some exceptions, the procedures in Municipal Court for both preliminary hearings and cases in which the defendant fails to appear for the preliminary hearing are the same as the procedures in the other judicial districts.

This rule was amended in 2019 to change the term describing the standard to be used by the issuing authority when weighing the evidence presented at the preliminary hearing from "*prima facie*" to "probable cause." The change was made because there is no material difference between the level of evidence that constitutes a *prima facie* case and that constitutes probable cause. Since the latter is more commonly understandable, the change was made to remove any confusion. The change in terminology is not intended to change the burden on the Commonwealth with regard to establishing the case at the preliminary hearing.

Paragraph (E) was amended in **[2013 to reiterate that traditionally our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, especially with regard to the use of hearsay to establish the elements of a *prima facie* case. *See* the Pennsylvania Rules of Evidence generally, but in particular, Article VIII. Accordingly, hearsay, whether written or oral, may establish the elements of any offense. The presence of witnesses to establish these elements is not required at the preliminary hearing. *But compare Commonwealth ex rel. Buchanan v. Verbonitz*, 525 Pa. 413, 581 A.2d 172 (1990) (plurality) (disapproving reliance on hearsay testimony as the sole basis for establishing a *prima facie* case). *See also* Rule 542.] 2019 to clarify that the use of hearsay at preliminary hearings must be in accordance with Rule 542(E).**

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

***Official Note*:** Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; *Comment* revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective

January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended August 15, 2005, effective February 1, 2006; amended April 5, 2010, effective April 7, 2010; amended January 27, 2011, effective in 30 days; amended June 21, 2012, effective in 180 days, *Comment* revised July 31, 2012, effective November 1, 2012; amended April 25, 2013, effective June 1, 2013; amended May 2, 2013, effective June 1, 2013**; amended , 2019, effective , 2019**.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published at 22 Pa.B. 18 (January 4, 1992). Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).

Final Report explaining the August 28, 1998 amendments published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

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 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the August 24, 2004 changes clarifying preliminary arraignment and preliminary hearing procedures in Municipal Court cases published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the August 15, 2005 amendments to paragraphs (A)(2)(b)(ii) and (D)(3)(d)(ii) published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Court's Order adopting the April 5, 2010 amendments to paragraph (D)(3)(d) published at 40 Pa.B. 2012 (April 17, 2010).

Court's Order of January 27, 2011, amending paragraph (E) concerning hearsay and reducing felony charges at preliminary hearing published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the June 21, 2012 amendments to paragraph (D)(3)(d)(iii) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

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

Final Report explaining the April 25, 2013 amendments to paragraph (E) concerning hearsay published with the Court's Order at 43 Pa.B. 2562 (May 11, 2013).

Final Report explaining the May 2, 2013 amendments concerning proceedings conducted in the defendant's absence published with the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

Report explaining the proposed amendments to paragraph (E) concerning hearsay at preliminary hearings published for comment at 49 Pa.B. 206 (January 12, 2019).

REPORT

Proposed Amendment of Pa.Rs.Crim.P. 542, 543, and 1003

USE OF HEARSAY AT PRELIMINARY HEARINGS

The Committee, at the Court's direction, undertook an examination of the nature of the Commonwealth's burden at preliminary hearings and the extent to which hearsay evidence may be used in satisfying that burden in light of the Court's dismissal of the appeal in *Commonwealth v. Ricker*, 170 A.3d 494 (Pa. 2017). The relevant provisions regarding the admissibility of hearsay at the preliminary hearing are contained in Rule 542 (Preliminary Hearing; Continuances) with similar provisions for preliminary hearings in the Philadelphia Municipal Court contained in Rule 1003 (Procedure in Non-Summary Municipal Court Cases).

As a starting point, the Committee examined the history of the provision contained in Paragraph (E) of Rule 542. The current rule provisions regarding hearsay at preliminary hearings were developed in several stages. In 2011, the Court amended Rules 542 and 1003 to provide that "Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense requiring proof of the ownership of, non-permitted use of, damage to, or value of property." The Comments to both rules explain that the use of hearsay is not limited to these elements and offenses.

Following these amendments, there were reports of some issuing authorities interpreting this language as limiting the use of hearsay in preliminary hearings to property offenses, despite the language in the Comment indicating that the rule was not intended to be thus limited. In 2013, on the Committee's recommendation, the Court adopted changes to clarify this misconception, adding the phrase "including, but not limited to" to the statement in Rule 542(E) that provides that hearsay evidence may be used to "establish any element of an offense requiring proof of the ownership of, non-permitted use of, damage to, or value of property."[1] Additionally, a cross-reference to *Commonwealth ex rel. Buchanan v. Verbonitz*, 581 A.2d 172 (Pa. 1990), was added to the Comment. *Verbonitz* stands for the proposition that, while the Commonwealth is permitted to use hearsay to establish the elements of the offense for purposes of the preliminary hearing, the Commonwealth may not establish its case exclusively by hearsay. However, in 2015, in *Commonwealth v Ricker*, 120 A.3d 349 (Pa. Super. 2015), the Superior Court held that hearsay evidence alone may be used to establish the Commonwealth's case at the preliminary hearing. As noted above, the Supreme Court of Pennsylvania subsequently dismissed the grant of appeal as improvidently granted. *Commonwealth v Ricker*, 170 A.3d 494 (Pa. 2017).

[1] A similar amendment was made to Rule 1003 describing the use of hearsay evidence in felony preliminary hearings in the Philadelphia Municipal Court.

The Committee also looked at practice in other states. It was clear that there is a wide diversity in the manner in which hearsay evidence is permitted in preliminary examinations. Some states, such as Tennessee where the rules of evidence are strictly applied, are very restrictive in the use of hearsay. Other states, such as Alabama and California, permit very wide latitude in using hearsay evidence to establish probable cause at the preliminary examinations. Given this wide variety of practices and the procedural differences that many of these states have with Pennsylvania, the Committee concluded that, while some of these practices were illuminating, no single state's procedures were an adequate model. The Committee therefore concentrated efforts on finding the procedures that would be best suited for Pennsylvania.

As an initial point, the Committee examined the question of the Commonwealth's *prima facie* burden at the preliminary hearing and whether it implicated constitutional confrontation rights. The Committee concluded that there was no material difference between the *prima facie* standard and probable cause, particularly because the question of witness credibility is not at issue at the preliminary hearing. Therefore, the term "*prima facie*" has been replaced with the term "probable cause" in Rules 542 and 1003 to clarify any confusion. The Comments of both rules would be revised to provide further explanation with the added provision that the change in terminology is not intended to change the burden on the Commonwealth with regard to establishing the case at the preliminary hearing. Similar changes also would be made to Rule 543 (Disposition of Case at Preliminary Hearing).

The Committee believes that any confrontation right at the preliminary hearing is based in the rule and the definition of that right is a matter of policy. The Committee concluded that the current language of Rule 542(E) is inadequate. The consensus of the Committee was that establishment of a *prima facie* case by hearsay alone, as held by the Superior Court in *Ricker*, was not appropriate. The Committee believes that *Verbonitz*, despite being ostensibly a plurality decision, is still good law and stands for the proposition that a *prima facie* case may not be found exclusively on hearsay evidence.

Current paragraph (E) of Rule 542 would be removed under the proposal. It would be replaced by a more detailed description of how hearsay would be permitted to be used. First, the rule would specify certain categories of evidence that always could be presented by hearsay at the preliminary hearing. This would be evidence of a technical or administrative nature, such as laboratory reports or evidence of the ownership and non-permitted use of property. New paragraph (E)(1) of Rule 542 would contain the list of these forms of hearsay that would always be admissible at the preliminary hearing.

The Committee agreed that there should also be certain forms of hearsay evidence that could be admissible at the discretion of the issuing authority. Ultimately, the Committee agreed that there should be two categories of discretionary hearsay. These would be contained in a new paragraph (E)(2) added to Rule 542.

Paragraph (E)(2)(a) would permit the admission of victim and eyewitness testimony by hearsay when appearance at the preliminary hearing would cause an undue hardship for the witness. The rule would require the Commonwealth to make a showing as to this hardship and the hearsay would be required to be in the form of either a writing signed and adopted by the witness or a verbatim contemporaneous electronic recording of the oral statement of the witness. The latter requirement is adapted from the language of Rule of Evidence 803.1(B) and (C). The Committee debated whether to include a definition of "undue hardship" but ultimately decided that this was a fact-specific concept and best left to be determined in a case-by-case manner.

The other category of discretionary hearsay, contained in paragraph (E)(2)(b), would be other hearsay of a "purely technical" nature, if not contained in the allowances already listed in paragraph (E)(1). This was intended as a catch-all for other forms of technical evidence that were not considered when the list in paragraph (E)(1) was developed. The term "purely technical" would be further defined in the Comment as that which "is not the testimony of an eye witness or evidence describing the criminal behavior, or identifying the perpetrators of the crime" and not included in paragraph (E)(1).

The rule would also require that, in the case of victim or eyewitness testimony or of witness testimony of ownership of, non-permitted use of, damage to, or value of property, the representative of the Commonwealth at the preliminary hearing must certify that a representative of the Commonwealth has communicated with the hearsay declarant and that the declarant is available to testify at trial. A statement in the Comment would clarify that the communication to verify the witness' availability may be by any representative of the Commonwealth, not just the representative at the preliminary hearing.

With regard to the denial of discretionary hearsay, paragraph (E)(5) would state that the issuing authority may grant a continuance when proffered hearsay is refused. Comment language would be added to indicate that it is expected that the continuance should be granted if this is the first time that the hearsay had been offered.

The rule also would contain an admonition that not all of the elements of an offense can be established exclusively by hearsay alone. The cross-reference to *Verbonitz* in the Comment would be retained but a new parenthetical added that more clearly reflects the holding in the case.

The Committee also considered the applicability of these changes to felony preliminary hearings in the Philadelphia Municipal Court. As mentioned above, Rule 1003(E) provides the authority for the use of hearsay at preliminary hearings held in the Philadelphia Municipal Court. The current language in the rule itself is somewhat different than that contained in current Rule 542(E), reflecting the specific problem that the 2013 amendments were meant to address, *i.e.*, the refusal of some Municipal Court judges to admit hearsay evidence regarding ownership or permissive use. The language in the Comment is virtually identical to that contained in the current Rule 542 Comment. The Committee concluded that there was no reason why the use of hearsay should be different in Municipal Court preliminary hearings. Therefore, the proposal would remove the current specific hearsay provisions from Rule 1003(E) and would refer to Rule 542. The Comment to Rule 1003 would be modified to state that the use of hearsay would be governed by Rule 542.

[Pa.B. Doc. No. 19-41. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CHS. 1, 5 AND 11]

Order Amending Rules 163, 195, 512 and 1147 and Adopting Rules 148, 1146 and 1148 of the Pennsylvania Rules of Juvenile Court Procedure; No. 784 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 21st day of December, 2018, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published for public comment at 47 Pa.B. 3336 (June 17, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

1) Pennsylvania Rules of Juvenile Court Procedure 163, 195, 512, and 1147 are amended; and

2) Pennsylvania Rules of Juvenile Court Procedure Rules 148, 1146, and 1148 are adopted in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on May 1, 2019.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B(1). EDUCATION AND HEALTH OF JUVENILE

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

Rule 148. Educational Stability & Removal from Home.

A. *General Rule.* Any order resulting in the removal of the juvenile from home or a change in placement shall address the educational stability of the juvenile.

B. *School of Origin.* A juvenile removed from home shall remain in their school of origin unless the court finds remaining in the school of origin is not in the juvenile's best interest or protective of the community. If the court finds that it is not in the best interest for the juvenile or protective of the community to remain in the school of origin, then the court may order the juvenile to be enrolled in another school that best meets the juvenile's needs.

C. *Another School.* If a court orders the juvenile to be enrolled in another school pursuant to paragraph (B), then the juvenile shall attend a public school unless the court finds that a public school is not in the best interest of the juvenile or protective of the community.

Comment

This rule is intended to apply at any point in a delinquency proceeding when the juvenile is removed from home, including pre-dispositional detention placement and post-dispositional modification resulting in the juvenile's out of home placement or a change to that placement. This rule is intended to complement rather than supersede the requirements of Rule 512(D)(6).

In paragraph (B), the best interest determination should be based on factors including the appropriateness of the current educational setting considering the juvenile's needs, the proximity of the school of origin relative to the placement location, and the protection of the community. This paragraph is intended to facilitate educational stability while the juvenile remains under the jurisdiction of the Juvenile Court and to codify the presumption that a juvenile is to remain in their school of origin absent evidence that it is not in the best interest of the juvenile or protective of the community to do so.

In paragraph (C), circumstances indicating that it may not be in the best interest for the juvenile to attend a public school includes the security and safety of the juvenile and treatment needs. Paragraph (C) is intended to codify the presumption that a juvenile is to attend public school while in placement absent evidence demonstrating that it is not in the best interest of the juvenile or protective of the community to do so. The bundling of residential services and educational services should not be permitted without a court order authorizing such.

For release of information to school, see Rule 163.

***Official Note*:** Rule 148 adopted December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 148 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 163. Release of Information to School.

* * * * *

Comment

For educational stability of juvenile when removed from home, see Rule 148.

Pursuant to paragraph (B), the juvenile probation office is required to provide notice to the building principal or his or her designee for maintaining court records separately from official school records. Some school districts have established local policies relating to the receipt of this information that requires the information to be provided to a school district official other than a building principal. That individual should be regarded as the building principal's designee with respect to the provisions of this rule.

* * * * *

***Official Note*:** Rule 163 adopted April 1, 2005, effective October 1, 2005. Amended May 21, 2012, effective August 1, 2012. Amended July 28, 2014, effective September 29, 2014. **Rule 163 amended December 21, 2018, effective May 1, 2019.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 163 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 163 published with the Court's Order at 42 Pa.B. 3203 (June 9, 2012).

Final Report explaining the amendments to Rule 163 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

Final Report explaining the amendments to Rule 163 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

PART D(2). JUVENILE PROBATION OFFICERS

Rule 195. Powers, Duties, and Training of a Juvenile Probation Officer.

A. *Powers and Duties of a Juvenile Probation Officer.* Subject to any limitation imposed by the court, a juvenile probation officer shall:

1) take children, juveniles, and minors into custody pursuant to:

a) the Juvenile Act, 42 Pa.C.S. §§ 6304 and 6324;

b) the Child Protective Services Law (CPSL), 23 Pa.C.S. **[§]** **§§** 6301 *et seq.*;

c) a bench warrant as set forth in Rules 140, 141, and 1140; or

d) Rule 1202;

2) authorize detention or shelter care for a juvenile, and the shelter care of a child, pursuant to 42 Pa.C.S. §§ 6304, 6325, or 6331;

3) receive and examine written allegations unless the District Attorney has elected to receive and approve all written allegations pursuant to Rule 231(B);

4) make appropriate referrals for informal adjustment, consent decree, or other diversionary programs;

5) file petitions if diversionary programs are not appropriate unless the District Attorney has elected to file all petitions pursuant to Rule 330(A);

6) make investigations, reports, including social studies pursuant to Rule 513, and recommendations to the court;

7) make appropriate referrals to private and public agencies, psychological or psychiatric providers, drug and alcohol facilities or programs, or any other necessary treatments or programs;

8) communicate to the court and parties, and facilitate any special needs, including health and education, of the juvenile;

9) supervise and assist a juvenile placed on probation or a child under the court's protective supervision or care;

10) search the person and property of juveniles pursuant to 42 Pa.C.S. § 6304(a.1);

11) regularly oversee and visit juveniles in placement facilities;

12) report suspected child abuse pursuant to 23 Pa.C.S. § 6311; **[and]**

13) receive allegations that a child has failed to satisfy penalties for violating compulsory school attendance, as permitted by local rule; and

[13)] **14)** perform any other functions as designated by the court.

B. *Limitations on* **[** ***powers and duties*** **]** ***Powers and Duties***. The President Judge of each judicial district may limit the power and duties of its juvenile probation officers by local rule.

C. *Training.* **[No later than January 1, 2012 or within]** **Within** 180 days after being appointed or employed, a juvenile probation officer shall be trained on:

1) the Juvenile Act;

2) the Pennsylvania Rules of Juvenile Court Procedure;

3) the Child Protective Services Law (CPSL); and

4) any local procedures.

Comment

Pursuant to paragraph (A)(1), a juvenile probation officer has the authority to take children, juveniles, and minors into custody pursuant to the Juvenile Act, the CPSL, a bench warrant, or Rule 1202. 23 Pa.C.S. **[§]** **§§** 6301 *et seq.* and 42 Pa.C.S. **[§]** **§§** 6301 *et seq.*

When a juvenile is under the court's supervision, the juvenile probation officer may take a juvenile into custody pursuant to the Juvenile Act, 42 Pa.C.S. §§ 6304(a)(3) and (5) and 6324(1) through (5), and bench warrants as set forth in Rules 140, 141, and 1140.

When a child, juvenile, or minor is not under the court's supervision, the juvenile probation officer, as a duly authorized officer, may take a child, juvenile, or minor into custody pursuant to the Child Protective Services Law (CPSL), 23 Pa.C.S. § 6315 and the Juvenile Act, 42 Pa.C.S. §§ 6304(a)(3) and (5) and 6324(1), (3), and (4).

A properly commissioned juvenile probation officer is vested with all the powers and duties as set forth in 42 Pa.C.S. § 6304 and the power to take a child into protective custody as a duly authorized officer of the court pursuant to 42 Pa.C.S. § 6324 unless the President Judge has limited such authority pursuant to paragraph (B).

The President Judge may adopt a local rule, pursuant to the procedures of Rule 121 **and Pa.R.J.A. No. 103(d)**, limiting the authority granted by the commission to juvenile probation officers. In determining whether to limit the authority of juvenile probation officers, the President Judge should consider the training and experience necessary to perform the various duties as provided in this rule. For example, the President Judge may choose to prohibit juvenile probation officers from taking a child into protective custody who is believed to be in imminent danger from his or her surroundings, but who is not under the court's supervision as a delinquent or dependent child. *See* 42 Pa.C.S. § 6324.

In situations when a juvenile probation officer takes a child into protective custody who is in imminent danger from his or her surroundings pursuant to 42 Pa.C.S. § 6325, 23 Pa.C.S. § 6315, and Rule 1202, the juvenile probation officer should take the appropriate steps to ensure the child's safety, immediately contact the county agency, and document for the county agency the circumstances which necessitated protective custody. *See* Rule 1202 and its Comment.

The juvenile probation officer may also supervise or assist a child placed in his or her protective supervision or care by the court. *See* 42 Pa.C.S. § 6304.

Pursuant to paragraph (A)(3), the juvenile probation officer is to receive written allegations from local law enforcement agencies to determine if a case may proceed to juvenile court. However, pursuant to Rule 231(B), the District Attorney of any county may require initial receipt and approval of written allegations before a delinquency proceeding may be commenced. *See* Rule 231(B).

Pursuant to paragraph (A)(6) and (7), the juvenile probation officer is to prepare reports compiling the juvenile's information for the court and make the necessary referrals to programs supported by a need revealed during the investigation.

Pursuant to paragraph (A)(8), the juvenile probation officer is to communicate the information to all parties before approaching the court. *See* Rule 136 for *ex parte* communication.

Pursuant to paragraph (A)(11), the juvenile probation officer is to oversee all juveniles ordered to placement facilities. Juvenile probation officers should visit all juveniles in placement facilities on a regular basis to determine if: 1) the juvenile is receiving the appropriate treatment; and 2) the facility is meeting the needs of the child. The Juvenile Court Judges' Commission Standards Governing Aftercare Services recommend that all juveniles be visited on a monthly basis. The juvenile probation officer is to report any irregularities or controversies to the court and all parties as soon as they are made known to the juvenile probation officer.

Pursuant to paragraph (A)(13), the President Judge may adopt a local rule to permit the juvenile probation office to receive allegations that a child has failed to pay fines or costs related to a truancy conviction. *See* 24 P.S. § 13-1333.3(f)(2). Nothing in this paragraph is intended to preclude the use of diversionary programs to address the nonpayment of fines or costs.

Pursuant to paragraph **[(A)(13)]** **(A)(14)**, a juvenile probation officer may perform any other function designated by the court to carry out the purposes of the Juvenile Act.

Pursuant to paragraph (C), the juvenile probation officer is to be trained in the Juvenile Act, the Pennsylvania Rules of Juvenile Court Procedure, the CPSL, and any local procedures. The training is to occur within 180 days of the juvenile probation officer's appointment or employment. It is best practice for juvenile probation officers to receive training within the first ninety days of employment. It is also best practice that juvenile probation officers receive specialized training and educational updates on a continuing basis.

Specialized training for juvenile probation officers should include delinquency and dependency procedures and areas that address their duties as officers of the court.

***Official Note*: Rule 195 adopted May 20, 2011, effective July 1, 2011. Amended December 21, 2018, effective May 1, 2019.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 195 published with the Court's Order at 41 Pa.B. 2839 (June 4, 2011).

Final Report explaining the amendments to Rule 195 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

* * * * *

D. *Court's Findings*. The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 515. On the record in open court, the court shall state:

1) its disposition;

2) the reasons for its disposition;

3) the terms, conditions, and limitations of the disposition; and

4) if the juvenile is removed from the home:

a) the name or type of any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile**[, and]**;

b) its findings and conclusions of law that formed the basis of its decision consistent with 42 Pa.C.S. §§ 6301 and 6352, including why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare; **and**

c) the provision of educational services for the juvenile pursuant to Rule 148;

5) whether any evaluations, tests, counseling, or treatments are necessary;

6) any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 147; and

7) any findings necessary to identify, monitor, and address the juvenile's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed.

Comment

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***Official Note*: Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 16, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012. Amended April 6, 2017, effective September 1, 2017. Amended May 11, 2017, effective October 1, 2017. Amended December 21, 2018, effective May 1, 2019.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2506 (June 2, 2007).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2684 (May 28, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 47 Pa.B. 2313 (April 22, 2017).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 47 Pa.B. 2969 (May 27, 2017).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 49 Pa.B. 213 (January 12, 2019).

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART B(1). EDUCATION AND HEALTH OF CHILD

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

Rule 1146. Notice of Truancy Hearing.

Upon receiving written notice of a hearing regarding a citation or complaint for truancy against a child or a person in parental relation pursuant to 24 P.S. § 13-1333.1 when the child is the subject of a dependency proceeding, the county agency shall serve a copy of the notice upon the dependency court and parties.

Comment

Pursuant to 24 P.S. § 13-1333.2(b)(1), the court in which a truancy citation or complaint is filed shall provide the county agency with written notice of the hearing. For definition of "person in parental relation," see 24 P.S. § 13-1326.

The President Judge may adopt local rules coordinating jurisdiction and proceedings between the judge of the court where the citation or complaint was filed and the dependency court judge. Coordination may include, but is not limited to, the entry of an order staying the truancy proceeding for further consideration by the dependency court.

***Official Note*:** Rule 1146 adopted December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1146 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

Rule 1147. Educational Decision Maker.

A. *Generally.* At any proceeding or upon motion, the court shall appoint an educational decision maker for the child if it determines that:

1) the child has no guardian; or

2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the child's best interest to limit the guardian's right to make decisions regarding the child's education.

B. *Notice of hearings.* The educational decision maker shall receive notice of all proceedings.

C. *Duties and responsibilities.* The educational decision maker shall:

1) make appropriate inquiries and take appropriate actions to ensure that:

a) issues concerning the child's educational stability are addressed;

b) school discipline matters are addressed;

c) the child is receiving appropriate education that will allow the child to meet state standards, including any necessary services concerning special education in the least restrictive environment, or remedial services;

d) the child, who is **[sixteen]** **fourteen** years of age or older, is receiving the necessary educational services to transition to **[independent living]** **successful adulthood**;

e) the child, who is receiving services concerning special education, is engaged in transition planning with the school entity beginning no later than the school year in which the child turns fourteen; and

f) the child, who is aging out of care within ninety days, has a transition plan that addresses the child's educational needs, and if applicable, the plan is coordinated with the child's transition planning concerning special education under the Individuals with Disabilities Education Act.

2) address the child's educational needs by:

a) meeting with the child at least once and as often as necessary to make decisions regarding education that are in the **child's** best interests **[of the child]**;

b) participating in special education and other meetings, and making decisions regarding all matters affecting the child's educational needs in a manner consistent with the child's best interests;

c) making any specific recommendations to the court relating to:

i) the timeliness and appropriateness of the child's educational placement;

ii) the timeliness and appropriateness of the child's transitional planning; and

iii) services necessary to address the child's educational needs;

d) appearing and testifying at court hearings when necessary; and

e) having knowledge and skills that ensure adequate representation of the child.

Comment

A child in dependent care is to have a clearly identified, legally authorized educational decision maker. This is a particular concern for highly mobile children whose caregivers may change and whose guardian may be unavailable. An educational decision maker's responsibilities may include, but are not limited to: ensuring educational stability as mandated by 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; ensuring prompt enrollment in a new school as required pursuant to 22 Pa. Code § 11.11(b); facilitating access to a full range of school programs; advocating

for the child in school discipline matters; ensuring meaningful transition planning as required by 42 Pa.C.S. § 6351 and 42 U.S.C. § 675(5)(H); and for a child eligible for special education, ensuring access to appropriate services including transition planning beginning no later than age fourteen. *See* 24 P.S. §§ 13-1371, 13-1372, 20 U.S.C. **[§]** **§§** 1400 *et seq*. *See* paragraph (A) and (C).

An educational decision maker appointed pursuant to this rule who represents a child who is also adjudicated delinquent is to review Rule 147.

A court is not to appoint an educational decision maker if there is a parent, guardian, or other authorized person (*e.g.*, foster parent, relative with whom the child lives or surrogate parent appointed under the IDEA) who is competent, willing, and available to make decisions regarding the child's education and who is acting in the child's best interest regarding all educational matters. *See* Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. **[§]** **§§** 1400 *et seq.* (2004). A court should limit the authority of a parent to make decisions regarding education only to the extent necessary to protect the child's interest and can reinstate the parent or change the educational decision maker at any time.

Unless limited by the court in its appointment order, an educational decision maker: 1) is responsible for making all decisions concerning education, including special education, for the child; and 2) can consent to or prohibit the release of information from the child's school records as a parent in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.3 (1974). The educational decision maker may be a family member, a family friend, a mentor, a foster parent, a former foster parent, a Court Appointed Special Advocate, or, if an educational decision maker for special education is not needed, a child welfare professional. Except as otherwise provided by the IDEA, it is within the discretion of the court to appoint an educational decision maker and whom to appoint. In all cases, however, an educational decision maker appointed by the court should be familiar with a child's educational rights or is to agree to be trained regarding these issues.

If the child is or may be eligible for special education, an educational decision maker is to be appointed in accordance with the standards and procedures set forth in federal and state laws concerning special education. *See* IDEA, 20 U.S.C. §§ 1400, 1401(23), and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519. The IDEA recognizes a court's authority to appoint persons to make decisions concerning special education for a child. However, such decision makers cannot be the State or employees of any agency that is involved in the education or care of the child. 34 C.F.R. § 300.519(c), (d)(2)(i).

The educational decision maker should refer to the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and the McKinney-Vento Homeless Assistance Act, 42 U.S.C. **[§]** **§§** 11431 *et seq.* (1989) for guidance in educational stability. Specifically, the educational decision maker is to: a) ensure the right to remain in the same school regardless of a change in placement when it is in the child's best interest; b) facilitate immediate enrollment in a new school when a school change is in the child's best interest; and c) ensure that school proximity is considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq*.

The educational decision maker is to also ensure: a) that the child receives an appropriate education, including, as applicable, any necessary special education, early intervention, or remedial services; see 24 P.S. §§ 13-1371, 13-1372, 55 Pa. Code § 3130.87, 20 U.S.C. **[§]** **§§** 1400 *et seq.*; b) that the child receives educational services necessary to support the child's transition to **[independent living pursuant to 42 Pa.C.S. § 6351]** **successful adulthood** if the child is **[sixteen]** **fourteen** or older **pursuant to 42 Pa.C.S. § 6351(F)(8)**; and c) that the educational decision maker participates in the development of a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

The authority of the court to appoint an educational decision maker is derived from the broad powers of the court to issue orders that "provide for the care, protection, safety, and wholesome mental and physical development of children." 42 Pa.C.S. § 6301(b)(1.1). The IDEA also requires that each child who is eligible for special education has an active parent or other identified person who can participate in the process concerning special education. *See* IDEA, 20 U.S.C. §§ 1401(23) and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519.

***Official Note*:** Rule 1147 adopted April 29, 2011, effective July 1, 2011. **Amended December 21, 2018, effective May 1, 2019.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1147 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 1147 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

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

Rule 1148. Educational Stability & Placement.

A. *General Rule.* Any order resulting in the placement of a child or a change in placement shall address the educational stability of the child.

B. *School of Origin.* A child in placement shall remain in their school of origin unless the court finds remaining in the school of origin is not in the child's best interest. If the court finds that it is not in the best interest of the child to remain in the school of origin, then the court may order the child to be enrolled in another school that best meets the child's needs.

C. *Another School.* If a court orders the child to be enrolled in another school pursuant to paragraph (B), then the child shall attend a public school unless the court finds that a public school is not in the best interest of the child.

Comment

This rule is intended to apply at any point in a dependency proceeding when the child is in placement, including pre-dispositional placement and post-dispositional modification of a dependent child's placement. This rule is intended to complement rather than supersede the requirements of Rule 1512(D)(1)(i).

In paragraph (B), the best interest determination should be based on factors including the appropriateness of the current educational setting considering the child's needs and the proximity of the school of origin relative to the placement location. This paragraph is not intended to

usurp the administrative process contemplated by the Elementary and Secondary Education Act of 1965, *as amended*, 20 U.S.C. § 6311(g)(1)(E). This paragraph is intended to facilitate educational stability while the child remains under the jurisdiction of the Juvenile Court and to codify the presumption that a child is to remain in their school of origin absent evidence that it is not in the child's best interest to do so.

In paragraph (C), circumstances indicating that it may not be in the best interest for the child to attend a public school include the security and safety of the child and treatment needs. Paragraph (C) is intended to codify the presumption that a child is to attend public school while in placement absent evidence demonstrating that it is not in the best interest of the child to do so. The bundling of residential services and educational services should not be permitted without a court order authorizing such.

A court may consider an Individualized Education Program, Service Agreement, or administrative determination in making findings pursuant to this Rule.

***Official Note*:** Rule 1148 adopted December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1148 published with the Court's Order at 49 Pa.B. 208 (January 12, 2019).

FINAL REPORT[1]

Amendment of Pa.R.J.C.P. 163, 195, 512, and 1147 New Pa.R.J.C.P. 148, 1146, and 1148

On December 21, 2018, the Supreme Court amended Rules of Juvenile Court Procedure 163, 195, 512, and 1147, and adopted new Rules 148, 1146, and 1148 to improve the educational stability of juveniles and children, effective May 1, 2019. The changes consist of three components: 1) changes to implement the Act of November 3, 2016, P.L. 1061, concerning truancy matters; 2) changes to update Rule 1147 in light of Act 94 of 2015, P.L. 559, which amended 42 Pa.C.S. § 6351(F)(8); and 3) the creation of procedures for the judicial determination of the delivery of educational services for dependent/delinquent youth in placement.

This proposal was previously published for comment at 47 Pa.B. 3336 (June 7, 2017). Following the review and deliberation on all the comments received, the Committee revised the proposal in several aspects.

Truancy

In 2016, Pennsylvania substantially revised its truancy laws. Section 5 of the Act of November 3, 2016, P.L. 1061, amended Section 1333.3(F)(2) of the Public School Code, 24 P.S. § 13-1333.3(f)(2). In response, the Committee proposed amending Rule 195 to add paragraph (A)(13) to recognize that a juvenile probation officer (JPO) may receive allegations that a child has also failed to satisfy penalties arising from a truancy citation. Consistent with the statute, the Rule first required a local rule permitting the receipt of these allegations. It is contemplated that the local rule would provide guidance as to further actions of the juvenile probation officer with regard to those allegations.

A commenter suggested that Rule 195 should discuss the purpose for which the JPO may receive allegations. The Committee concluded that the statute, 24 P.S. § 13-1333.3(f)(2), speaks for itself. While the statute does not explicitly provide for diversionary programs, the Committee saw merit in the continued use of diversionary programs when the President Judge via local rule approved such a program. Accordingly, the Committee revised the Comment to Rule 195 to specifically reference the availability of diversionary programs.

The Committee believed the truancy legislation also provided an opportunity to coordinate actions between the dependency court and the court where a truancy citation is filed when a dependent child or a "person in parental relation" to the child is charged with truancy. As amended, 24 P.S. § 13-1333.2(b)(1) requires the court to send a hearing notice to the county agency when a truancy citation is filed. Utilizing this notice mechanism, Rule 1146 would require the county agency to then provide notice of the hearing to the dependency court and the parties. Thereafter, the dependency court judge and the truancy court judge could coordinate proceedings.

Based upon the comments, the Committee realized that the proposed language may be interpreted to require notice be given to the dependency court in truancy matter. That was not the intention. Post-publication, Rule 1146 was revised to clarify that the county agency need only serve a copy of the truancy notice on the court and parties if there was an open dependency matter.

Education Decision Makers (Rule 1147)

Act 94 of 2015 amended 42 Pa.C.S. § 6351(F)(8) to require at each permanency hearing a judicial determination of the services needed to assist a child who was 14 years of age or older to successfully transition to adulthood. The amendment lowered the age of applicability from 16 years of age to 14. This amendment was incorporated into Rule 1608(D)(1)(k) on December 9, 2015.

Rule 1147(C)(1)(d), regarding the duties of educational decision makers ("EDMs"), requires EDMs to inquire and act to ensure that a child 16 years of age or older is receiving the necessary educational services to transition to independent living. Upon review of the legislation, the Committee believed that "services" in Section 6351(F)(8) of the Juvenile Act included "educational services" as used in Rule 1147. Accordingly, the Committee proposed to amend Rule 1147 and the Comment to reflect that interpretation, including the lower age.

Educational Stability (Rule 148 and 1148)

The Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. § 6311(g)(1)(E), requires that a child in placement remain in their school of origin unless it is not in the child's best interest. In response, the Committee proposed new Rule 1148 to establish a procedural requirement for the court to conduct a best interest analysis if a child in placement was not to remain in their school of origin. The Rule's purpose was to maintain the child's educational stability. Further, this requirement

[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.

would extend beyond dependency proceedings to include the removal of a juvenile from home in delinquency proceedings via new Rule 148. Both Rule 148 and Rule 1148 would be applicable to any order resulting in the placement of a child or the removal of a juvenile from home.

Several commenters suggested "or a change in placement" be added to paragraph (A) of Rules 148 and 1148 so that educational needs were addressed not just upon removal, but also when there was a change in placement. The Committee agreed and revised the text to add this suggestion.

There was a suggestion to strike "community's best interest" in paragraph (B) of Rule 148. The Committee believed that the court was required to consider the protection of the community in delinquency matters and it was a sufficiently important factor when considering educational needs that it should be specifically included in the rule text. The language was revised from "community's best interest" to "protective of the community" to more closely reflect the language of the Juvenile Act. This revision was made to paragraph (B) and (C).

A commenter recommended adding a new paragraph (E) that would require the court's decision regarding the juvenile's schooling to be in a separate order and served on the school responsible for educating the juvenile. The Committee did not favor requiring a separate order—a separate order was not needed in every case so it did not seem efficient to require a separate order in every case. There may be times when a separate order is necessary to avoid disclosing unnecessary details to the school, but the courts have the discretion to enter such orders. Notwithstanding, the Committee favored including a citation to Rule 148 in the Comment to Rule 163 (Release of Information to School) to indicate that sharing educational stability information was permitted.

Rule 1148 is the dependency analog to Rule 148. While the procedures set forth in both rules are very similar, the stakeholders in delinquency and dependency proceedings differ, which is reflected in the comments to Rule 1148. It is beyond countenance that the court is obligated to ensure the stability and appropriateness of a child's education. *See, e.g.*, Pa.R.J.C.P. 1512(D)(1)(i); Pa.R.J.C.P. 1609(E)(1)-(2). The commentary accompanying the Rules requires the court to address the child's educational stability, including 1) the child's right to remain in the same school regardless of a change in placement when it is in the child's best interest; 2) the immediate enrollment when a school change is in the child's best interest; and 3) consideration of the school's proximity in all placement changes. The changes brought by the Every Student Succeeds Act, Pub.L. 114-95, amending 20 U.S.C. § 6311, only serve to reinforce what is already required by the Rules—once the child is subject to juvenile court jurisdiction, the court is required to make educational decisions in the child's best interest.

[Pa.B. Doc. No. 19-42. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BEDFORD COUNTY

Local Rules Relating to Compulsory Arbitration; Misc. Doc. No. 60305 for 2018

Order of Court

And now, December 20, 2018, Bedford County Local Rule of Civil Procedure 1302 is amended as follows:

Rule 1302. List of Arbitrators; Appointment of Board; Compensation.

1. The Prothonotary of Bedford County shall maintain a list of available arbitrators in accordance with the applicable provisions of the Rules of Civil Procedure.

2. The Prothonotary of Bedford County shall make all appointments of arbitrators in cases being submitted to compulsory arbitration, subject to the applicable provisions of the Rules of Civil Procedure.

3. The chairman of the board of arbitration shall be paid the sum of **$275.00** for a hearing lasting one-half (1/2) day. Each other member shall be paid the sum of **$200.00** for a hearing lasting one-half (1/2) day. In the event a hearing lasts a full day, the chairman shall be paid **$375.00** and each member shall be paid the sum of **$300.00**. In the event the matter is settled and no hearing is held, the chairman only shall be paid the sum of **$125.00** for work performed in preparation for the hearing. Payment shall be made by the County of Bedford.

This amendment shall become effective thirty (30) days from date of publication in the *Pennsylvania Bulletin*.

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

1. Forward one (1) copy of this Order to the Administrative Office of Pennsylvania Courts via e-mail to adminrules@pacourts.us.

2. Upon written notification from the Civil Rules Committee that the amended Local Rule is not inconsistent with the statewide rule, send two (2) paper copies of this Order together with one (1) electronic copy in a Microsoft Word format only to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of this amended Local Rule on the Bedford County Court website at www.bedfordcountypa.org and thereafter compile the amended Local Rule within the complete set of Local Rules no later than thirty (30) days after the amended Local Rule becomes effective.

4. File one (1) copy of the Local Rule in the Office of the Prothonotary of Bedford County and in the Bedford County Law Library for public inspection and copying.

By the Court

THOMAS S. LING,
President Judge

[Pa.B. Doc. No. 19-43. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 21st day of December, 2018, Dauphin County Local Rule of Civil Procedure 1910.11 is amended as follows:

Rule 1910.11. Domestic Relations Cases—Demand for Hearing De Novo Before the Court.

1. A Demand for Hearing De Novo before the Court, in accordance with Pa.R.C.P. 1910.11, shall be filed in the Domestic Relations Office **[accompanied by a filing fee of $15.00]**.

2. A Demand for Hearing shall be substantially in the form set forth below and shall be accompanied by the following:

a. Prior Court Involvement Statement in accordance with Local Rule 1931. This form is available at http://www.dauphincounty.org/government/courts/self_help_center/index.php.

b. Seminar Attendance Order, in the form set forth below in accordance with Local Rule 1930. This form is available at http://www.dauphincounty.org/government/courts/self_help_center/index.php.

c. Self-Represented Party Entry of Appearance in accordance with Local Rule 1930.8 if the party filing the Demand for Hearing De Novo is not represented by counsel. This form is available at http://www.dauphincounty.org/government/courts/self_help_center/index.php.

3. The Domestic Relations Office shall obtain from the Court Administrator's Office the dates to insert in the Seminar Attendance Order and prepare an Order for Court Hearing.

4. The Domestic Relations Office will mail the Seminar Attendance and Hearing Orders to all parties.

5. All Demands for Hearing De Novo shall be substantially in the following form. This form is available at http://www.dauphincounty.org/government/courts/self_help_center/index.php.

	:	IN THE COURT OF COMMON PLEAS
	:	DAUPHIN COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	PACSES CASE NUMBER
	:	
Defendant	:	DOCKET NO.

DEMAND FOR HEARING DE NOVO BEFORE THE COURT

1. I _____ am appealing the Order issued following my Domestic Relations Conference in the above-captioned case and demand a Hearing De Novo before the Court regarding the following:
Print Name

Date of order: _____ Monthly Amount of Support Order $_____.____

2. The reason(s) for my Demand for Hearing De Novo is/are as follows:

_____

_____

_____

_____

_____

3. I have attached:

[(a) Filing Fee of $15.00.

(b)](a) Prior Court Involvement Statement (form available at http://www.dauphincounty.org/government/courts/self_help_center/index.php).

[(c)](b) Seminar Attendance Order (form available at http://www.dauphincounty.org/government/courts/self_help_center/index.php).

[(d)](c) Self-Represented Party Entry of Appearance (form available at http://www.dauphincounty.org/government/courts/self_help_center/index.php).

4. I have provided a copy of this form to all other attorneys or other self-represented parties at the following addresses as listed below: (Use reverse side if you need more space)

Name _____ Address _____

Name _____ Address _____

Signature of person requesting the Hearing or their attorney:

Print Name: _____ Date: _____

These amendments shall be effective thirty (30) days from date of publication.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 19-44. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

LEHIGH COUNTY

Establishing Uniform Costs for the Retail Theft Class Administered by the Adult Probation/ Parole Office; No. AD-10-2018

Order

And Now, this 20th day of December, 2018, the following Administrative Order establishing uniform costs in criminal cases for certain services rendered by the Adult Probation/Parole Office of Lehigh County is promulgated and is effective for all such services rendered in any criminal case thirty (30) days after publication in the *Pennsylvania Bulletin*.

It Is Further Ordered that the District Court Administrator for the 31st Judicial District is directed to:

1. File the original with the Clerk of Judicial Records.

2. File one (1) certified copy of this order with the Administrative Office of Pennsylvania Courts.

3. File two (2) certified copies and one electronic version with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. Forward one (1) copy for publication in the *Lehigh County Law Journal*.

RETAIL THEFT CLASS

Every person who attends the Retail Theft class administered by the Lehigh County Adult Probation and Parole Department shall pay a fee of $25.00 for such program in addition to any other applicable costs of prosecution, fines, restitution and other costs.

By the Court

EDWARD D. REIBMAN,
President Judge

[Pa.B. Doc. No. 19-45. Filed for public inspection January 11, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WAYNE COUNTY

Representation of Indigent Parties by Pro Bono Legal Counsel; No. 61-CIVIL-2017

Order

And Now, this 21 day of December, 2018, upon consideration of the Wayne County Bar Association Pro Bono Plan "Access to Justice" that was adopted unanimously by the Wayne County Bar Association on November 22, 2017, and it being the express intention of this Court to support the pro bono work of the members of the bar, *It Is Hereby Ordered* that the following Local Rule of Civil Procedure is *Adopted* by this Court:

Local Rule 1012. Entry of Appearance. Withdrawal of Appearance. Notice.

1. Every attorney who has agreed to represent an individual pro bono in a matter pending before this Court shall be permitted to withdraw his/her appearance in such matter before its conclusion upon certification that s/he has completed all duties and responsibilities incident to her/his representation and fully complied with the terms of this Local Rule.

2. To make a limited appearance pursuant to this Local Rule, counsel must enter her/his appearance on an approved Praecipe for Entry of Limited Appearance form, attached Exhibit A, which confirms that the attorney is providing free legal service to the party, sets forth with particularity those duties to be rendered for the party, and confirms counsel's belief that the party is unable to pay the costs of a lawyer, as provided by Pa.R.C.P. 240(d)(1).

3. If an attorney has agreed to represent an indigent client pro bono in a matter that has been previously scheduled for a hearing or other court appearance at a time in conflict with the pro bono attorney's pre-existing obligations, the attorney may request a reasonable continuance to allow said attorney to prepare for and participate in the hearing. Before making such request, the pro bono attorney shall contact all parties and obtain from them their consent (or objection) and a date or dates to which the matter may be rescheduled. In the absence of objection, the request for continuance shall be granted without hearing or further Order of this Court; if there is objection, counsel shall present a Motion to Continue in Motions Court.

4. In matters where the client will represent her/himself following pro bono counsel's withdrawal, counsel must use an approved Substitution of Appearance form, attached Exhibit B, to withdraw her/his appearance, which shall include the certifications required by paragraph 1 of this Order and a certificate of service that Notice of Withdrawal of Appearance has been delivered to the client. In instances where pro bono counsel is being replaced by private counsel (pro bono or otherwise), counsel should use standard entry and withdrawal forms.

5. In matters where the Rules of Civil Procedure require leave of Court to be obtained before withdrawal may occur, counsel shall provide a Motion to Withdraw along with a proposed Rule upon all parties to show cause why said withdrawal should not be permitted. The Rule shall be returnable with any answer in opposition to be filed within twenty (20) days. In the absence of any

timely-filed answer in opposition, counsel shall present a Rule Absolute granting the petition as being uncontested and entering the withdrawal. In matters in which leave of Court is not required by the Rules of Civil Procedure, withdrawal shall be effective upon the filing of the Praecipe.

6. Except in such cases where said information has been deemed confidential, any entry of appearance by a self-represented party shall set forth the current address and telephone number of the formerly represented client.

7. This Order shall constitute leave of Court for the Prothonotary to enter the withdrawal of pro bono counsel upon satisfaction of the above requirements.

The Effective Date of this Local Rule is 30 days after the date of publication in the *Pennsylvania Bulletin*.

The District Court Administrator is directed to:

1. File one (1) certified copy of this Order with the Administrative Office of Pennsylvania Courts;

2. Submit two (2) certified copies of this Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* along with a copy of this Order on a CD-ROM or other agreed upon alternate format;

3. Publish a copy of this Order on the Wayne County Court of Common Pleas website;

4. Compile the local rule within the complete set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*.

By the Court

JANINE EDWARDS,
President Judge

Exhibit A

IN THE COURT OF COMMON PLEAS OF WAYNE COUNTY
COMMONWEALTH OF PENNSYLVANIA
22nd JUDICIAL DISTRICT

PLAINTIFF NAME Plaintiff	:	
v.	:	No. _____
DEFENDANT NAME Defendant	:	

PRAECIPE FOR ENTRY OF LIMITED APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my limited appearance on behalf of _____ , Plaintiff/Defendant in the above matter. I hereby certify that I have accepted this representation as a pro bono volunteer attorney through the Wayne County Bar Association Pro Bono Program. Pursuant to Pa.R.Civ.P. 240(d)(1), I further certify that I believe the party is unable to pay the costs of this proceeding, including my fees. My representation will end, by agreement with my client, upon _____ [specify terms].

Upon completion of the above duties and consistent with the agreement, I may withdraw my appearance by filing the Entry of Appearance of Withdrawal of Appearance form with the Prothonotary or, if Court approval is required, by filing a Motion to Withdraw stating the reasons for withdrawal and attaching a proposed Order. Upon filing my withdrawal or motion to withdraw as counsel, I shall provide a copy of the same to my client and shall certify the address at which my client may receive additional notices after my withdrawal.

Respectfully submitted,

Date: _____

_____
Name
Attorney ID. No. _____
Address
Telephone Number.

Exhibit B

IN THE COURT OF COMMON PLEAS OF WAYNE COUNTY
COMMONWEALTH OF PENNSYLVANIA
22nd JUDICIAL DISTRICT

PLAINTIFF NAME Plaintiff	:	
v.	:	No. _____
DEFENDANT NAME Defendant	:	

ENTRY OF APPEARANCE OF SELF-REPRESENTED PARTY

I, _____ , [ ] Plaintiff [ ] Defendant, will be representing myself in this lawsuit from now on. Please WITHDRAW the appearance of my attorney, named below, as my attorney of record.

I understand that I am under a continuing obligation to provide current contact information to the court, to other self-represented parties, and to attorneys of record. All pleadings and legal papers can be served on me at the address listed below, which may or may not be my home address as allowed by court rule:

Print Name: _____

Address: _____

Telephone number: _____

Dated: _____ Signed: _____

WITHDRAWAL OF COUNSEL OF RECORD

Kindly WITHDRAW my appearance for the filing party. I hereby certify that I have completed all duties I agreed to perform in my Pro Bono engagement for this client, and in the Limited Entry of Appearance I filed in this case. I also certify that on behalf of the filing party, I am this day serving a true and correct copy of this document on all parties (including the party named above) and/or their counsel of record, by first class mail, postage prepaid.

Date:

_____

Counsel for the above filing party
Attorney ID No.
Address

[Pa.B. Doc. No. 19-46. Filed for public inspection January 11, 2019, 9:00 a.m.]