

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

[204 PA. CODE CH. 213]

Proposed Amendments to the Case Records Public Access Policy of the Unified Judicial System

The Administrative Office of Pennsylvania Courts is considering recommending to the Supreme Court of Pennsylvania the adoption of amendments to the *Case Record Public Access Policy of the Unified Judicial System* that create a single, uniform method of filing confidential information throughout the courts of the Commonwealth as well as a few clarifying amendments.

Under consideration are proposed amendments to Sections 7.0(A) and (C) of the policy which would require litigants and attorneys to safeguard confidential information by using the Confidential Information Form. This would be a change for filers in the appellate courts and trial courts in seven counties which require the submission of filings with confidential information in two versions, a “Redacted Version” and “Unredacted Version.”

Additional proposed amendments are as follows:

- Section 7.0(A) requires filers to safeguard confidential information, even when applicable authority requires confidential information to be included;
- Sections 7.0(D) and 8.0(D) direct that the certification described in those sections is not required to appear on a separate piece of paper attached to each filing;
- The Commentary following Sections 7.0 and 8.0 reminds attorneys that Rules 1.1 and 1.6 of the Rules of Professional Conduct require familiarity and compliance with this policy; and
- Section 9.0(H) provides that an unredacted version of any document filed in accordance with a prior version of this policy is not accessible to the public.

Proposed new material is underlined and in bold-face type, and deleted material is bracketed and in bold-face type.

The Explanatory Report highlights the considerations in formulating this proposal. All interested persons are invited to submit suggestions, comments, or objections. In particular, comments regarding any impact upon affected constituencies and whether an implementation period of six months is sufficient are sought. All communications in reference to this proposal should be submitted no later than August 28, 2019 to:

Administrative Office of Pennsylvania Courts
ATTN: Public Access Comments
601 Commonwealth Avenue
P.O. Box 1500
Harrisburg, PA 17106
PublicAccessComments@pacourts.us

THOMAS B. DARR,
Court Administrator of Pennsylvania

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART VII. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

CHAPTER 213. COURT RECORDS POLICIES

Subchapter D. CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA

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

Section 1.0. Definitions.

A. “Abuse Victim” is a person for whom a protection order has been granted by a court pursuant to Pa.R.C.P. No. 1901 et seq. and 23 Pa.C.S. § 6101 et seq. or Pa.R.C.P. No. 1951 et seq. and 42 Pa.C.S. § 62A01 et seq. as well as Pa.R.C.P.M.D.J. No. 1201 et seq.

B. “Case Records” are (1) documents for any case filed with, accepted and maintained by a court or custodian; (2) dockets, indices, and documents (such as orders, opinions, judgments, decrees) for any case created and maintained by a court or custodian. This term does not include notes, memoranda, correspondence, drafts, worksheets, and work product of judges and court personnel. Unless otherwise provided in this policy, this definition applies equally to case records maintained in paper and electronic formats.

C. “Clerical errors” are errors or omissions appearing in a case record that are patently evident, as a result of court personnel’s action or inaction.

D. “Court” includes the Supreme Court, Superior Court, Commonwealth Court, Courts of Common Pleas, Philadelphia Municipal Court, and Magisterial District Courts.

E. “Court of Record” includes the Supreme Court, Superior Court, Commonwealth Court, Courts of Common Pleas, and Philadelphia Municipal Court.

F. “Court Facility” is the location or locations where case records are filed or maintained.

G. “Custodian” is any person responsible for maintaining case records or for processing public requests for access to case records.

H. “Docket” is a chronological index of filings, actions, and events in a particular case, which may include identifying information of the parties and counsel, a brief description or summary of the filings, actions, and events, and other case information.

I. “Financial Account Numbers” include financial institution account numbers, debit and credit card numbers, and methods of authentication used to secure accounts such as personal identification numbers, user names and passwords.

J. “Financial Source Documents” are:

1. Tax returns and schedules;
2. W-2 forms and schedules including 1099 forms or similar documents;
3. Wage stubs, earning statements, or other similar documents;
4. Credit card statements;

5. Financial institution statements;
6. Check registers;
7. Checks or equivalent; and
8. Loan application documents.

K. “Medical/psychological records” are records relating to the past, present, or future physical or mental health or condition of an individual.

L. “Minor” is a person under the age of eighteen.

M. “Party” is one who commences an action or against whom relief is sought in a matter.

N. “Public” is any person, member of the media, business, non-profit entity, organization or association. The term does not include a party to a case; the attorney(s) of record in a case; Unified Judicial System officials or employees if acting in their official capacities; or any federal, state, or local government entity, and employees or officials of such an entity if acting in their official capacities.

O. “Remote Access” is the ability to electronically search, inspect, print or copy information in a case record without visiting the court facility where the case record is maintained or available, or requesting the case record from the court or custodian pursuant to Section 4.0.

Commentary

Regarding Subsection B, “documents for any case filed with, accepted and maintained by a court or custodian” are those not created by a court or custodian, such as pleadings and motions. Indices are tools for identifying specific cases.

Regarding Subsection C, examples of clerical errors are the docket entry links to the wrong document or court personnel misspells a name in the caption.

Regarding Subsection G, the definition of “custodian” includes clerks of court, prothonotaries, clerks of orphans’ court and magisterial district judges, for example. The definition does not include those entities listed in Pa.R.A.P. 3191 who receive copies of briefs filed in an appellate court or a register of wills.

Regarding Subsection K, this definition is derived from the definition of “health information” provided in 45 C.F.R. § 160.103 (HIPAA). Examples of case records that would fall within this exclusion are: drug and alcohol treatment records, psychological reports in custody matters, and DNA reports.

Regarding Subsection M, *amici curiae* are not parties. See Pa.R.A.P. 531.

Regarding Subsection N, Unified Judicial System officials or employees include: judicial officers and their personal staff, administrative staff and other central staff, prothonotaries, clerks of the courts, clerks of the orphans’ court division, sheriffs, prison and correctional officials, and personnel of all the above.

Section 2.0. Statement of General Policy.

A. This policy shall govern access by the public to case records.

B. Security, possession, custody, and control of case records shall generally be the responsibility of the applicable custodian and designated staff.

C. Facilitating access by the public shall not substantially impede the orderly conduct of court business.

D. A court or custodian may not adopt more restrictive or expansive access protocols than provided for in this

policy. Nothing in this policy requires a court or custodian to provide remote access to case records. However, if a court or custodian chooses to provide remote access to any of its case records, access shall be provided in accordance with Section 10.0.

Commentary

The *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* provides for access to the statewide case management systems’ web docket sheets and requests for bulk data.

Section 3.0. Access to Case Records.

All case records shall be open to the public in accordance with this policy.

Section 4.0. Requesting Access to Case Records.

A. When desiring to inspect or copy case records, a member of the public shall make an oral request to the applicable custodian, unless otherwise provided by a local rule or an order issued by a court of record.

B. When the information that is the subject of the request is complex or voluminous, the custodian may require a written request. If the requestor does not submit a written request when required, access may be delayed until the written request is submitted or a time when an individual designated by the custodian is available to monitor such access to ensure the integrity of the case records is maintained.

C. Requests shall identify or describe the records sought with specificity to enable the custodian to ascertain which records are being requested.

Commentary

Public access requests to the courts and custodians are routinely straightforward and often involve a limited number of records. Therefore, artificial administrative barriers should not be erected so as to inhibit making these requests in an efficient manner.

This policy provides the courts and custodians latitude to establish appropriate administrative protocols for viewing/obtaining case records remotely. However, the definition of “remote access” in Section 1.0 clarifies that a request under this section is neither necessary nor expected under this policy.

Nonetheless, Subsection B provides a custodian with the flexibility to require that a more complex request be submitted in writing to avoid misunderstandings and errors that can often result in more time being expended to provide the requested information than is necessary. This approach is not novel; submission of a written request form has been a longstanding practice under the Unified Judicial System’s *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*.

Subsection C does not require a requestor to identify a case by party or case number in order to have access to the files, but the request shall clearly identify or describe the records requested so that court personnel can fulfill the request.

Written requests should be substantially in the format designed and published by the Administrative Office of Pennsylvania Courts.

Section 5.0. Responding to Requests for Access to Case Records.

A. A custodian shall fulfill a request for access to case records as promptly as possible under the circumstances existing at the time of the request.

B. If a custodian cannot fulfill the request promptly or at all, the custodian shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied.

C. If a custodian denies a written request for access, the denial shall be in writing.

D. Except as provided in Subsection E, relief from a custodian's written denial may be sought by filing a motion or application with the court for which the custodian maintains the records.

E. Relief from a magisterial district court may be sought by filing an appeal with the president judge of the judicial district or the president judge's designee. Relief from a written denial by the Philadelphia Municipal Court may be sought by filing a motion with the president judge of Philadelphia Municipal Court or the president judge's designee.

Commentary

Given that most public access requests for case records are straightforward and usually involve a particular case or matter, custodians should process the same in an expeditious fashion.

There are a number of factors that can affect how quickly a custodian may respond to a request. For example, the custodian's response may be slowed if the request is vague, involves retrieval of a large number of case records, or involves information that is stored off-site. Ultimately, the goal is to respond timely to requests for case records.

In those unusual instances in which access to the case records cannot be granted in an expeditious fashion, the custodian shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied, which may include:

- the request involves such voluminous amounts of information that the custodian is unable to fulfill the same without substantially impeding the orderly conduct of the court or custodian's office;
- records in closed cases are located at an off-site facility;
- a particular file is in use by a judge or court staff. If a judge or court staff needs the file for an extended period of time, special procedures should be considered, such as making a duplicate file that is always available for public inspection;
- the requestor failed to pay the appropriate fees, as established pursuant to Section 6.0 of this policy, associated with the request;
- the requested information is restricted from access pursuant to applicable authority, or any combination of factors listed above.

With respect to Subsection D, an aggrieved party may seek relief from a denial of a written request for access consistent with applicable authority (for example, in an appellate court, Pa.R.A.P. 123 sets forth procedures for applications for relief under certain circumstances, or pertinent motion practice at the trial court level).

Section 6.0. Fees.

A. Unless otherwise provided by applicable authority, fees for duplication by photocopying or printing from electronic media or microfilm shall not exceed \$0.25 per page.

B. Except as provided in Subsection C, a custodian shall establish a fee schedule that is (1) posted in the court facility in an area accessible to the public, and (2) posted on the custodian's website.

C. Any fee schedule for a magisterial district court shall be established by the president judge of the judicial district by local rule pursuant to Pa.R.J.A. No. 103(c). The fee schedule shall be publicly posted in an area accessible to the public.

Commentary

Reasonable fees may be imposed for providing public access to case records pursuant to this policy and in accordance with applicable authority. This section does not authorize fees for viewing records that are stored at the court facility.

To the extent that the custodian is not the court, approval of the fee schedule by the court may be necessary.

An example of applicable authority setting forth photocopying fees is 42 Pa.C.S. § 1725(c)(1)(ii) that provides the Clerk of Orphans' Court of the First Judicial District shall charge \$3 per page for a copy of any record. *See also* 42 P.S. § 21032.1 (providing authority for the establishment of fees in orphans' court in certain judicial districts). In addition, the copying fees for appellate court records are provided for in 204 Pa. Code § 155.1. However, copies of most appellate court opinions and orders are available for free on the Unified Judicial System's website, www.pacourts.us.

Section 7.0. Confidential Information.

A. [Unless required by applicable authority or as provided in Subsection C, the] The following information is confidential and shall be not included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document:

1. Social Security Numbers;
2. Financial Account Numbers, except an active financial account number may be identified by the last four digits when the financial account is the subject of the case and cannot otherwise be identified;
3. Driver License Numbers;
4. State Identification (SID) Numbers;
5. Minors' names and dates of birth except when a minor is charged as a defendant in a criminal matter (see 42 Pa.C.S. § 6355); and
6. Abuse victim's address and other contact information, including employer's name, address and work schedule, in family court actions as defined by Pa.R.C.P. No. 1931(a), except for victim's name.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Information Form.

C. [Instead of using the Confidential Information Form, a court of record may adopt a rule or order permitting the filing of any document in two versions, a "Redacted Version" and "Unredacted Version." The "Redacted Version" shall not include any information set forth in Subsection A, while the "Unredacted Version" shall include the information.

Redactions must be made in a manner that is visibly evident to the reader. This Subsection is not applicable to filings in a magisterial district court] Reserved.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents." **The certification language may be inserted in the document to be filed, thereby obviating the need for a separate certification form.**

E. A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If a filed document fails to comply with the requirements of this section, a court of record may, upon motion or its own initiative, with or without a hearing, order the filed document sealed, redacted, amended or any combination thereof. A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing order the filed document redacted, amended or both.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

Commentary

[There is authority requiring information listed in Subsection A to appear on certain documents. For example, Pa.R.C.P. No. 1910.27 provides for inclusion of the plaintiff's and defendant's social security number on a complaint for support.]

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, for example, cases filed under the Juvenile Act that are already protected by 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

Attorneys are reminded that Rules 1.1 and 1.6 of the Rules of Professional Conduct require familiarity and compliance with this policy.

While Pa.R.C.P. No. 1931 is suspended in most judicial districts, the reference to the rule is merely for definitional purposes.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

[Whether] When using a Confidential Information Form **[or filing a redacted and unredacted version of a document in a court of record]**, the drafter shall indicate where in the document confidential information has been omitted **by use of an alternate reference**. For example, the drafter could insert minors' initials in the document, while listing full names on the Confidential Information Form. If more than one child has the same initials, a different moniker should be used (e.g., child one, child two, etc.). **The Confidential Information Form published by the Administrative Office of Pennsylvania Courts includes alternate references that should be used by the drafter.**

[The option to file a redacted and unredacted version of a document does not apply to filings in a magisterial district court.] Most filings in magisterial district courts are completed on statewide forms designed by the Administrative Office of Pennsylvania Courts. Safeguarding the information set forth in this Section for magisterial district courts is achieved through the use of a Confidential Information Form **[(see Subsection A)]** in tandem with other administrative protocols (e.g., **[instituting]** a public access copy page **that shields confidential information was added** to the citation form set).

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system. Moreover, the certification is required on every document filed with a court or custodian regardless of whether the filing contains "confidential information" requiring safeguarding under this policy. **The certification is included on many forms that parties and attorneys file with the magisterial district courts. For documents e-filed through PACFile, available in the appellate courts and some common pleas courts, the filer can certify compliance by checking a box. In addition, the Administrative Office of Pennsylvania Courts included the certification on the Confidential Information Form as well as created a sample stand-alone certification form that parties and attorneys may use or simply incorporate the language into their filed documents. This form may be found on the Unified Judicial System's website, www.pacourts.us.**

With regard to Subsection E, a court or custodian is not required to review or redact documents filed by a party or attorney for compliance with this section. However, such activities are not prohibited.

With regard to Subsection F, any party may make a motion to the court of record to cure any defect(s) in any filed document that does not comport with this section.

With regard to Subsection G, any party may file a request form designed and published by the Administrative Office of Pennsylvania Courts with a magisterial district court when there is an allegation that a filing was made with that court that does not comply with this policy.

Section 8.0. Confidential Documents.

A. Unless required by applicable authority, the following documents are confidential and shall be filed with a court or custodian under a cover sheet designated "Confidential Document Form":

1. Financial Source Documents;
2. Minors' educational records;
3. Medical/Psychological records;
4. Children and Youth Services' records;
5. Marital Property Inventory and Pre-Trial Statement as provided in Pa.R.C.P. No. 1920.33;
6. Income and Expense Statement as provided in Pa.R.C.P. No. 1910.27(c); and
7. Agreements between the parties as used in 23 Pa.C.S. § 3105.

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority.

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Document Form.

C. Confidential documents submitted with the Confidential Document Form shall not be accessible to the public, except as ordered by a court. However, the Confidential Document Form or a copy of it shall be accessible to the public.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form "I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents." **The certification language may be inserted in the document to be filed, thereby obviating the need for a separate certification form.**

E. A court or custodian is not required to review any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If confidential documents are not submitted with the Confidential Document Form, a court of record may, upon motion or its own initiative, with or without a hearing, order that any such documents be sealed. A court of record may also impose appropriate sanctions for failing to comply with this section.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing, order that any such documents be sealed.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

Commentary

This section is not applicable to cases that are sealed or exempted from public access pursuant to applicable authority, such as Juvenile Act cases pursuant to 42 Pa.C.S. § 6307, and Pa.Rs.J.C.P. 160 and 1160.

Attorneys are reminded that Rules 1.1 and 1.6 of the Rules of Professional Conduct require familiarity and compliance with this policy.

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from attaching confidential documents to court-generated case records (e.g., orders, notices) when inclusion of such information

is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

Examples of "agreements between the parties" as used in Subsection (A)(7) include **the following types of agreements:** marital settlement [**agreements**], post-nuptial, pre-nuptial, [**ante-nuptial, marital settlement,**] and property settlement. See 23 Pa.C.S. § 3105 for more information about agreements between parties.

With regard to Subsection D, the certification of compliance is required whether documents are filed in paper form or via an e-filing system. Moreover, the certification is required on every document filed with a court or custodian regardless of whether the filing contains a "confidential document" requiring safeguarding under this policy. **The certification is included on many forms that parties and attorneys file with the magisterial district courts. For documents e-filed through PACFile, available in the appellate courts and some common pleas courts, the filer can certify compliance by checking a box. In addition, the Administrative Office of Pennsylvania Courts included the certification on the Confidential Document Form as well as created a sample stand-alone certification form that parties and attorneys may use or simply incorporate the language into their filed documents. This form may be found on the Unified Judicial System's website, www.pacourts.us.**

With regard to Subsection E, if the party or party's attorney fails to use a cover sheet designated "Confidential Document Form" when filing a document deemed confidential pursuant to this section, the document may be released to the public.

With regard to Subsection F any party may make a motion to the court of record to cure any defect(s) in any filed document that does not comport with this section.

With regard to Subsection G, any party may file a request form designed and published by the Administrative Office of Pennsylvania Courts with a magisterial district court when there is an allegation that a filing was made with that court that does not comply with this policy.

Section 9.0. Limits on Public Access to Case Records at a Court Facility.

The following information shall not be accessible by the public at a court facility:

A. Case records in proceedings under 20 Pa.C.S. § 711(9), including but not limited to case records with regard to issues concerning recordation of birth and birth records, the alteration, amendment, or modification of such birth records, and the right to obtain a certified copy of the same, except for the docket and any court order or opinion;

B. Case records concerning incapacity proceedings filed pursuant to 20 Pa.C.S. §§ 5501—5555, except for the docket and any final decree adjudicating a person as incapacitated;

C. Any Confidential Information Form [**or any Unredacted Version of any document**] as set forth in Section 7.0;

D. Any document filed with a Confidential Document Form as set forth in Section 8.0;

E. Information sealed or protected pursuant to court order;

F. Information to which access is otherwise restricted by federal law, state law, or state court rule; and

G. Information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice, as determined by the Court Administrator of Pennsylvania with the approval of the Chief Justice. The Court Administrator shall publish notification of such determinations in the *Pennsylvania Bulletin* and on the Unified Judicial System's website.

H. The unredacted version of any document filed in accordance with a prior version of this policy.

Commentary

Unless constrained by applicable authority, court personnel and jurists are advised to refrain from inserting confidential information in or attaching confidential documents to court-generated case records (e.g., orders, notices) when inclusion of such information is not essential to the resolution of litigation, appropriate to further the establishment of precedent or the development of law, or necessary for administrative purposes. For example, if a court's opinion contains confidential information and, therefore, must be sealed or heavily redacted to avoid release of such information, this could impede the public's access to court records and ability to understand the court's decision.

With respect to Subsection F, Pennsylvania Rule of Appellate Procedure 104(a), Pa.R.A.P. 104(a), provides that the appellate courts may make and amend rules of court governing their practice. The Administrative Office of Pennsylvania Courts shall from time to time publish a list of applicable authorities that restrict public access to court records or information. This list shall be published on the Unified Judicial System's website and in the *Pennsylvania Bulletin*. In addition, all custodians shall post this list in their respective court facilities in areas accessible to the public and on the custodians' websites.

With respect to Subsection G, the Administrative Office of Pennsylvania Courts shall include any such determinations in the list of applicable authorities referenced above. The same provision appears in the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*. The provision is intended to be a safety valve to address a future, extraordinary, unknown issue of statewide importance that might escape timely redress otherwise. It cannot be used by parties or courts in an individual case.

Section 10.0. Limits on Remote Access to Case Records.

A. The following information shall not be remotely accessible by the public:

1. The information set forth in Section 9.0;
2. In criminal cases, information that either specifically identifies or from which the identity of jurors, witnesses (other than expert witnesses), or victims could be ascertained, including names, addresses and phone numbers;
3. Transcripts lodged of record, excepting portions of transcripts when attached to a document filed with the court;

4. *In Forma Pauperis* petitions;

5. Case records in family court actions as defined in Pa.R.C.P. No. 1931(a), except for dockets, court orders and opinions;

6. Case records in actions governed by the Decedents, Estates and Fiduciaries Code, Adult Protective Services Act and the Older Adult Protective Services Act, except for dockets, court orders and opinions; and

7. Original and reproduced records filed in the Supreme Court, Superior Court or Commonwealth Court as set forth in Pa.R.A.P. 1921, 1951, 2151, 2152, and 2156.

B. With respect to Subsections A(5) and A(6), unless otherwise restricted pursuant to applicable authority, dockets available remotely shall contain only the following information:

1. A party's name;
2. The city, state, and ZIP code of a party's address;
3. Counsel of record's name and address;
4. Docket number;
5. Docket entries indicating generally what actions have been taken or are scheduled in a case;
6. Court orders and opinions;
7. Filing date of the case; and
8. Case type.

C. Case records remotely accessible by the public prior to the effective date of this policy shall be exempt from this section.

Commentary

Remote access to the electronic case record information residing in the Pennsylvania Appellate Court Case Management System (PACMS), the Common Pleas Case Management System (CPCMS) and the Magisterial District Judges System (MDJS) is provided via web dockets, available on <https://ujportal.pacourts.us/>, and is governed by the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania*.

Depending upon individual court resources, some courts have posted online docket information concerning civil matters. If a court elects to post online docket information concerning family court actions and actions governed by the Decedents, Estates and Fiduciaries Code, Adult Protective Services Act and the Older Adult Protective Services Act, the docket may only include the information set forth in Subsection B. This information will provide the public with an overview of the case, its proceedings and other pertinent details, including the court's decision. Release of such information will enhance the public's trust and confidence in the courts by increasing awareness of the procedures utilized to adjudicate the claims before the courts as well as the material relied upon in reaching determinations. This provision does not impact what information is maintained on the docket available at the court facility.

Access to portions of transcripts when attached to a document filed with the court in family court actions is governed by Subsection A(5). While Pa.R.C.P. No. 1931 is suspended in most judicial districts, the reference to the rule is merely for definitional purposes.

Section 11.0. Correcting Clerical Errors in Case Records.

A. A party, or the party's attorney, seeking to correct a clerical error in a case record may submit a written request for correction.

1. A request to correct a clerical error in a case record of the Supreme Court, Superior Court or Commonwealth Court shall be submitted to the prothonotary of the proper appellate court.

2. A request to correct a clerical error in a case record of a court of common pleas, the Philadelphia Municipal Court, or a magisterial district court shall be submitted to the applicable custodian.

B. The request shall be made on a form designed and published by the Administrative Office of Pennsylvania Courts.

C. The requestor shall specifically set forth on the request form the information that is alleged to be a clerical error and shall provide sufficient facts, including supporting documentation, that corroborate the requestor's allegation that the information in question is in error.

D. The requestor shall provide copies of the request to all parties to the case.

E. Within 10 business days of receipt of a request, the custodian shall respond in writing to the requestor and all parties to the case in one of the following manners:

1. The request does not contain sufficient information and facts to determine what information is alleged to be in error, and no further action will be taken on the request.

2. The request does not concern a case record that is covered by this policy, and no further action will be taken on the request.

3. A clerical error does exist in the case record and the information in question has been corrected.

4. A clerical error does not exist in the case record.

5. The request has been received and an additional period not exceeding 30 business days is necessary to complete a review of the request.

F. A requestor may seek review of the custodian's response under Subsections E(1)—(4) within 10 business days of the mailing date of the response.

1. The request for review shall be submitted on a form that is designed and published by the Administrative Office of Pennsylvania Courts.

2. The request shall be reviewed by the judge(s) who presided over the case. However, if the request for review concerns a magisterial district court's decision, it shall be reviewed by the president judge or his/her designee.

Commentary

Case records are as susceptible to clerical errors and omissions as any other public record. The power of the court to correct errors in its own records is inherent. *E.g.*, *Jackson v. Hendrick*, 746 A.2d 574 (Pa. 2000). It is important to emphasize that this section does not provide a party who is dissatisfied with a court's decision, ruling or judgment a new avenue to appeal the same by merely alleging there is an error in the court's decision, ruling or judgment. Rather, this section permits a party to "fix" information that appears in a case record which is not, for one reason or another, correct.

Particularly in the context of Internet publication of court records, a streamlined process is appropriate for addressing clerical errors to allow for prompt resolution of oversights and omissions. For example, to the extent that a docket in a court's case management system incorrectly reflects a court's order, or a scanning error occurred with regard to an uploaded document, such clerical inaccura-

cies may be promptly corrected by the appropriate court staff, upon notification, without a court order. Since 2007, the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* has provided a similar procedure for any errors maintained on the web docket sheets of the PACMS, CPCMS and MDJS. The procedure has successfully addressed clerical errors on docket entries in a timely and administratively simple manner.

A party or party's attorney is not required to utilize the procedures set forth in this section before making a formal motion for correction of a case record in the first instance. Alleged inaccuracies in orders and judgments themselves must be brought to the attention of the court in accordance with existing procedures.

This section is not intended to provide relief for a party's or attorney's failure to comply with Sections 7.0 and 8.0 of this policy. Sections 7.0 and 8.0 already provide for remedial action in the event that non-compliance occurs.

With respect to this section, a custodian includes, but is not limited to, the county prothonotaries, clerks of orphans' court, clerks of the court, and magisterial district judges.

A log of all corrections made pursuant to this section may be maintained by the custodian, so that there is a record if an objection is made in the future. Such a log should remain confidential. It is suggested that custodians include a registry entry on the case docket when a request is received and a response is issued.

Section 12.0. Continuous Availability of Policy.

A copy of this policy shall be continuously available for public inspection in every court and custodian's office and posted on the Unified Judicial System's website.

EXPLANATORY REPORT

Proposed Amendments to the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania

Following the Supreme Court's Order of March 26, 2018, effective July 1, 2018, to amend and retitle the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* ("Policy") to include all courts of limited jurisdiction within its scope, the Court directed the Administrative Office of Pennsylvania Courts to propose a single, statewide approach for the treatment of confidential information by litigants and attorneys within all courts of this Commonwealth. The Administrative Office referred this matter for further study to the Committee established to monitor issues related to the implementation of this Policy.

Section 7.0(A) of the Policy defines "confidential information" as: social security numbers, financial account numbers (with a noted exception), driver license numbers, state identification numbers, minors' names and dates of birth (with a noted exception), and in family court actions an abuse victim's address and other contact information.

Currently, Section 7.0(C) of the Policy permits a court, other than a magisterial district court, to issue a rule or order requiring the filing of any document in two versions, a "Redacted Version" and "Unredacted Version," or to use a Confidential Information Form to safeguard confidential information. Sixty counties have protocols requiring litigants and attorneys to use the Confidential Information Form in the trial courts, while seven counties (including the largest three), the intermediate appellate

courts and the Supreme Court elected to require redacted/unredacted filings. For more detailed information, go to <http://www.pacourts.us/public-records/public-records-policies>. The Confidential Information Form is used in the magisterial district courts.

In order to achieve a uniform approach at all levels of court throughout the Commonwealth, the Committee is evaluating proposing amendments to Sections 7.0(A) and (C) of the Policy which would require litigants and attorneys to safeguard confidential information by using the Confidential Information Form.

There are several advantages to implementing this approach. Filers would only need to learn one method of safeguarding confidential information for any case filed in any court statewide. All of the magisterial district courts as well as the courts of common pleas of sixty counties are currently utilizing this method. Those counties represent a majority of new case filings statewide in the courts of common pleas. Many of those counties chose this option based upon limited record storage requirements (both physical and electronic) and the lack of fiscal and technical resources to implement electronic record keeping that could obviate storage concerns.

The Committee is aware that such a proposal would require court staff and filers in the appellate courts as well as in the trial courts of Allegheny, Beaver, Cambria, Montgomery, Northumberland, Philadelphia, and Washington counties to transition from the redacted/unredacted method to the Confidential Information Form method. The Committee realizes that there are likely to be associated costs and an implementation “learning curve.”

Further, the Committee proposes amendments to Section 7.0(A) to clarify that if applicable authority (i.e. rule, statute) requires confidential information, as defined in Section 7.0, to appear on certain documents, the filer must still follow the respective protocols to safeguard that information. Specifically, the litigant or attorney would only include the confidential information on the Confidential Information Form and use an “alternate reference” in the document filed with the court.

To clarify existing requirements, the Committee also proposes amendments to Sections 7.0(D) and 8.0(D) of the Policy to provide that the certification described in those Sections is not required to appear on a separate piece of paper attached to each filing. Rather, the certification has been included on many forms used in the courts such as the Confidential Information Form, Confidential Document Form, various magisterial district court forms, PACFile screens, etc. Thus, if a person is filing a form wherein the certification currently exists, there is no need to file a separate certification form. However, the Administrative Office of Pennsylvania Courts has created a sample Certification Form that parties and attorneys may use as a stand-alone document or incorporate in their documents when needed. This form is available on the Unified Judicial System’s website, www.pacourts.us.

In addition, proposed language to the Commentary following Sections 7.0 and 8.0 reminds attorneys that Rules 1.1 and 1.6 of the Rules of Professional Conduct require familiarity and compliance with this Policy. Proposed Section 9.0(H) provides that any unredacted version of any document filed in accordance with a prior version of this Policy is not accessible to the public.

If adopted by the Supreme Court, the amendments to this Policy would apply to all documents for any case filed with a court or custodian on or after the effective date of the amended Policy. See Sections 7.0(H) and 8.0(H).

[Pa.B. Doc. No. 19-956. Filed for public inspection June 28, 2019, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Order Adopting Rule 1065.1 of the Pennsylvania Rules of Civil Procedure; No. 699 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 17th day of June, 2019, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 48 Pa.B. 7624 (December 15, 2018):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1065.1 of the Pennsylvania Rules of Civil Procedure is adopted in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective June 19, 2019.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter D. ACTION TO QUIET TITLE

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

Rule 1065.1. Notice. Claim for Adverse Possession.

(a) This rule governs an action to quiet title of property pursuant to Section 5527.1 of the Judicial Code, 42 Pa.C.S. § 5527.1.

Official Note: Section 5527.1 of the Judicial Code permits a party to seek to acquire title to real property by commencing an action to quiet title if the party has adversely possessed the real property for a period of not less than ten years.

(b) As used in this rule,

“plaintiff” means the possessor of real property who is seeking to quiet title to real property that he or she has adversely possessed for a period of not less than ten years.

“defendant” means the owner, the owner’s heirs, successors, and assigns, of the real property as recorded in the most recent deed filed in the Recorder of Deeds Office at the courthouse in the county in which the real property is located.

(c) Upon satisfying the requirements of Section 5527.1(a)-(b) of the Judicial Code and commencing an

action to quiet title, the plaintiff shall provide to the defendant the notice set forth in subdivision (d) of this rule.

(d) The notice shall be substantially in the following form:

(CAPTION)

**Notice Required by Section 5527.1
of the Judicial Code**

To the above-named defendant:

The plaintiff in the above-captioned matter has filed an action to quiet title pursuant to Section 5527.1 of the Judicial Code, 42 Pa.C.S. § 5527.1, seeking to acquire title by adverse possession of real property described as follows:

Street Address

City, State, Postal Zip Code

Deed Reference

Uniform Parcel Identifier or Tax Parcel Number

Metes and Bounds Description

If you wish to challenge the claim of adverse possession, you must respond to the action to quiet title within one year after this complaint and notice are served by commencing an action in ejectment against the plaintiff.

EXPLANATORY COMMENT

New Rule 1065.1 sets forth the form notice required by Section 5527.1 of the Judicial Code, 42 Pa.C.S. § 5527.1. Section 5527.1 provides for a ten-year limitation for adverse possession of real property under certain circumstances after which the adverse possessor may seek to acquire title to real property by filing an action to quiet title. Section 5527.1(c) requires the adverse possessor to provide notice relating to the respondent record owner's ability to cure the adverse possession. Section 5527.1(c)(3) directs that the notice is to be provided in a form approved by rule of the Pennsylvania Supreme Court and must include the following information: (1) that the record owners or their heirs, successors, and assigns shall have one year in which to respond to the quiet title action by commencing an action in ejectment against the adverse possessor to dispute the claim of adverse possession, (2) the metes and bounds description of the property, (3) deed reference, (4) street address, (5) postal zip code, and (5) uniform parcel identifier or tax parcel number. New Rule 1065.1 is intended to incorporate the requirements of Section 5527.1(c).

*By the Civil Procedural
Rules Committee*

DAVID L. KWASS,
Chair

[Pa.B. Doc. No. 19-957. Filed for public inspection June 28, 2019, 9:00 a.m.]

**Title 234—RULES OF
CRIMINAL PROCEDURE**

[234 PA. CODE CHS. 1 AND 4]

**Proposed Amendment of Pa.Rs.Crim.P. 117 and
456**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail) and Rule 456 (Default Procedures: Restitution, Fines, and Costs) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

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

All communications in reference to the proposal should be received by no later than Friday, August 30, 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 1. SCOPE OF RULES, CONSTRUCTION
AND DEFINITIONS, LOCAL RULES**

PART A. Business of the Courts

**Rule 117. Coverage: Issuing Warrants; Preliminary
Arraignments and Summary Trials; and Setting
and Accepting Bail.**

(A) The president judge of each judicial district shall ensure sufficient availability of issuing authorities to provide the services required by the Rules of Criminal Procedure as follows:

(1) continuous coverage for the issuance of search warrants pursuant to Rule 203 and arrest warrants pursuant to Rule 513;

(2) coverage using one or a combination of the systems of coverage set forth in paragraph (B) to:

(a) conduct summary trials or set collateral in summary cases following arrests with a **bench** warrant issued pursuant to Rule 430(A) as provided in Rule 431(B)(3) and following arrests without a warrant as provided in Rule 441(C), **and release defendants on recognizance or set collateral following arrests with a warrant issued pursuant to Rule 430(B)(3)(b) or Rule 456(B) as provided in Rule 456(C)**;

(b) conduct preliminary arraignments without unnecessary delay whenever a warrant of arrest is executed within the judicial district pursuant to Rule 516;

(c) set bail without unnecessary delay whenever an out-of-county warrant of arrest is executed within the judicial district pursuant to Rule 517(A);

(d) accept complaints and conduct preliminary arraignments without unnecessary delay whenever a case is initiated by an arrest without warrant pursuant to Rule 519(A)(1); and

(3) coverage during normal business hours for all other business.

(B) The president judge, taking into consideration the rights of the defendant and the judicial district's resources and coverage needs, by local rule promulgated pursuant to Rule 105, shall establish one or a combination of the following systems of coverage to provide the services enumerated in paragraph (A)(2):

(1) a traditional on-call system providing continuous coverage;

(2) an "after-hours court" or a "night court" staffed by an on-duty issuing authority and staff;

(3) a regional on-call system; or

(4) a schedule of specified times for after-hours coverage when the "duty" issuing authority will be available to conduct business.

(C) The president judge of each judicial district, by local rule promulgated pursuant to Rule 105, shall ensure that coverage is provided pursuant to Rule 520(B) to admit defendants to bail on any day and at any time in any case pending within the judicial district.

Comment

By this rule, the Supreme Court is clarifying the responsibility of president judges in supervising their respective judicial districts to ensure compliance with the statewide Rules of Criminal Procedure to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority. *See also* Rule 116 (General Supervisory Powers of President Judge) and Rule 131 (Location of Proceedings Before Issuing Authority).

Paragraph (A), derived from former Rule 132(A) (Continuous Availability), clarifies that it is the president judge's responsibility to make sure that there are issuing authorities available within his or her judicial district (1) on a continuous basis to issue search and arrest warrants, paragraph (A)(1); (2) pursuant to one or a combination of the systems of coverage enumerated in paragraph (B) to conduct summary trials and preliminary arraignments, and perform related duties, paragraph (A)(2); and (3) during normal business hours to conduct all other business of the minor judiciary, paragraph (A)(3). It is expected that the president judge will continue the established procedures in the judicial district or establish new procedures to ensure sufficient availability of issuing authorities consistent with this paragraph.

By providing the alternate systems of coverage in paragraph (B), this rule recognizes the differences in the geography and judicial resources of the judicial districts.

An issuing authority is "available" pursuant to paragraph (A) when he or she is able to communicate in person or by using advanced communication technology ("ACT") with the person requesting services pursuant to this rule. *See* Rule 103 for the definition of ACT. Concerning the use of ACT, *see* Rule 118 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). *See also* Rules 203, 513, 518, and 540 providing for the use of ACT to request and obtain warrants and conduct preliminary arraignments.

Nothing in this rule limits an issuing authority from exercising sound judicial discretion, within the parameters established by the president judge pursuant to paragraph (B), in deciding how to respond to a request for services outside normal business hours. *See, e.g.*, Rule 509, paragraphs (1) and (2), that authorize the use of summonses instead of warrants in certain court cases; and Rule 519(B) that requires the police officer to release a defendant arrested without a warrant in certain specified court cases.

In determining which system of coverage to elect, the president judge must consider the rights of the defendant, *see, e.g. Commonwealth v. Duncan*, 514 Pa. 395, 525 A.2d 1177 (1987), and the judicial district's resources and coverage needs, as well as the obligations of the police and attorney for the Commonwealth to ensure the defendant is brought before an issuing authority without unnecessary delay as required by law, *see, e.g.*, Rules 431, 441, 516, 517, and 519. *See also Commonwealth v. Perez*, 577 Pa. 360, 845 A.2d 779 (2004).

When the police must detain a defendant pursuant to these rules, 61 P.S. § 798 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and city or county prisons."

The proceedings enumerated in paragraph (A)(2) include (1) setting bail before verdict pursuant to Rule 520(A) and Rule 540, and either admitting the defendant to bail or committing the defendant to jail, and (2) determining probable cause whenever a defendant is arrested without a warrant pursuant to Rule 540(E).

Pursuant to paragraph (C), the president judge also is responsible for making sure there is an issuing authority or other designated official available within the judicial district on a continuous basis to accept bail pursuant to Rule 520(B). The president judge, by local rule, may continue established procedures or establish new procedures for the after-hours acceptance of deposits of bail by an issuing authority, a representative of the office of the clerk of courts, or such other individual designated by the president judge. *See* Rule 535(A). Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside normal business hours.

When the president judge designates another official to accept bail deposits, that official's authority is limited under this rule to accepting the bail deposit, and under Rule 525 to releasing the defendant upon execution of the bail bond. Pursuant to Rule 535(A), the official is authorized only to have the defendant execute the bail bond and to deliver the bail deposit and bail bond to the issuing authority or clerk of courts.

The local rule requirements in paragraphs (B) and (C):

(1) ensure there is adequate notice of (a) the system of coverage, thereby providing predictability in the issuing authority's duty schedule, and (b) the official authorized to accept bail; (2) promote the efficient administration of justice; and (3) provide a means for the Supreme Court to monitor the times and manner of coverage in each judicial district.

The local rules promulgated pursuant to this rule should include other relevant information, such as what are the normal business hours of operation or any special locations designated by the president judge to conduct business, that will assist the defendants, defense counsel, attorneys for the Commonwealth, police, and members of the public.

Concerning other requirements for continuous coverage by issuing authorities in Protection from Abuse Act cases, see 23 Pa.C.S. § 6110 and Pa.R.C.P.D.J. 1203.

Official Note: Former Rule 117 adopted September 20, 2002, effective January 1, 2003; renumbered Rule 118 June 30, 2005, effective August 1, 2006. New Rule 117 adopted June 30, 2005, effective August 1, 2006; Comment revised July 31, 2012, effective November 1, 2012[.] ; **amended** , **2019, effective** , **2019.**

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

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

Report explaining the proposed amendment adding proceedings related to Rule 456 warrant to paragraph (A)(2)(a) published for comment at 49 Pa.B. 3310 (June 29, 2019).

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART E. General Procedures in Summary Cases

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 **bench** 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**] a **bench** 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 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 Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 15 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B) 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 refer the defendant for commencement of dependency proceedings under 42 Pa.C.S. § 6303(a)(1). 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.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Pursuant to Rule 117(B), when establishing the system of coverage best suited for the judicial district, the president judge may require defendants arrested on warrants issued pursuant to this rule after hours to be taken to the established night court, on-call, or duty issuing authority for a determination whether the defendant should be released on recognizance or be

required to post collateral for release. If released, the defendant will be given a notice to appear in the proper issuing authority's office the next business day. The defendant will also be permitted to pay the full amount of fines and costs.

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[.] **amended, 2019, effective, 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).

Report explaining the proposed amendment concerning execution of warrants after normal business hours published for comment at 49 Pa.B. 3310 (June 29, 2019).

REPORT

Proposed Amendment of Pa.Rs.Crim.P. 117 and 456

RULE 117 AVAILABILITY AND PAYMENT DETERMINATION HEARINGS

The Committee has recently received inquiries related to the handling of delays in payment determination hearings when the defendant is arrested after normal business hours. In particular, the question was whether a "duty issuing authority," as provided under Rule 117, may conduct a hearing to determine release upon recognizance or to set collateral for a defendant arrested pursuant to Rule 456 (Default Procedures: Restitution, Fines, and Costs). The question arose because Rule 456 does not contain the statements regarding how after-hours arrests should be handled such as are contained in Rule 431 (Procedures When Defendant Arrested with Warrant).

Rule 117 requires that each president judge must ensure coverage by issuing authorities for various vital magisterial functions. Paragraph (A)(1) mandates continuous coverage, *i.e.*, 24 hours-a-day, for the issuance of search and arrest warrants. Paragraph (A)(2) provides

that the president judge may establish a system of coverage to ensure that other functions such as preliminary arraignments and the setting of bail are accomplished without unnecessary delay. Paragraph (B) provides for the types of systems that may be utilized, including on-call, night court, and duty magistrate options.

Rule 431 provides the procedures following the execution of arrest and bench warrants in summary cases that are issued pursuant to Rule 430.¹ Rule 431(C) establishes the procedures that follow the execution of a bench warrant. A defendant's first option is to pay the amount owed on the summary case to the police officer executing the warrant. Paragraph (C)(3) provides that, if the defendant cannot pay the police officer, he or she shall be taken before the "proper issuing authority when available pursuant to Rule 117 for a bench warrant hearing." The Comment to Rule 431 refers to Rule 130 (Venue) for the meaning of "proper issuing authority." The Comment further states:

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Pursuant to Rule 117(B), when establishing the system of coverage best suited for the judicial district, the president judge may require defendants arrested on summary case bench warrants after hours to be taken to the established night court where the defendant would be given a notice to appear in the proper issuing authority's office the next business day or be permitted to pay the full amount of fines and costs.

Rule 456 contains the procedures when a defendant defaults on payment of summary case assessments and includes the option of issuing a warrant when the defendant fails respond to the 10-day notice to appear before the issuing authority to explain the reason for the default. Rule 456(C) provides the procedures for payment determination hearings when the defaulting defendant responds to a 10-notice or has been arrested pursuant to the warrant issued for failing to respond to the 10-day notice. Paragraph (C) states that a hearing to determine whether the defendant is financially able to pay be held "immediately." Paragraph (C)(1) recognizes that, if a hearing cannot be held immediately, the issuing authority should release the defendant on recognizance or, if believed necessary, may set collateral. Paragraph (C)(3) provides that if the defendant cannot post collateral, the defendant may be held no longer than 72 hours without a payment determination hearing being held. Although Rule 456 does not use the term "proper issuing authority," the rule and the Final Report when these provision were adopted, 35 Pa.B. 3911 (July 16, 2005), clearly contemplates that these actions will be taken by the issuing authority who had issued the 10-day notice and the warrant.

Rule 456 does not specifically provide that a judicial officer other than the one that issued the warrant may hold the recognizance/collateral hearing.² Similarly, Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting

¹ Rule 430(B)(3) provides for the issuance of bench warrants when (a) the defendant pleads guilty by mail and the money forwarded with the plea is less than the amount of the fine and costs in the citation, (b) the defendant has been sentenced to pay case assessments and has defaulted on the payment, or (c) the issuing authority has tried and sentenced the defendant *in absentia* to pay case assessments and the collateral deposited by the defendant is less than the amount of the assessments imposed.

² Rule 150 that provides procedures for bench warrants issued in court cases is also clear that, upon arrest, the defendant must be brought before the judicial officer who issued the warrant or "another judicial officer designated by the president judge. . .to conduct bench warrant hearings."

Bail) does not include payment determination hearings or recognizance/collateral hearings under Rule 456 as functions mandated for continuous coverage systems. This is complicated by the fact that Rule 456 does not provide for a specific time limit for the holding of a recognizance/collateral determination.

This has resulted in the interpretation in some jurisdictions, which utilize duty magisterial district judge (MDJ) systems, that a duty MDJ cannot make a recognizance/collateral determination under Rule 456 and that the only time limitation in this entire process is the 72-hour limit on incarceration contained in Paragraph (C)(3).

It was suggested that Rule 117 be amended to clarify this point by adding payment determination hearings and collateral/recognizance determinations to the list of functions contained in Rule 117(A)(2)(a) that can be undertaken by a duty MDJ. It also was suggested that the Comment to Rule 456 be revised to cross-reference to this proposed language in Rule 117.

The Committee concluded that a duty magistrate should be able to conduct the recognizance/collateral determination so as to not detain a defendant unduly. Therefore, a clarification in this area would be beneficial and has been added to Rule 117(A)(2)(a). However, the Committee believes that the payment determination hearings should not be included since this may result in a defendant having their payment determination hearing held by an MDJ who had not been the sentencing judge who would not have the same familiarity with the case and the defendant's circumstances.

Additionally, the Committee believes that, rather than a simple cross-reference to Rule 117 being added to the Rule 456 Comment, additional detail would be helpful. Therefore, language would be added to the Comment to Rule 456 to more clearly state that the duty or night court issuing authority could make the recognizance/collateral determination and provide notice that the defendant must appear before the proper issuing authority on the next business day. This language is derived from the Comment to Rule 430 noted above. This would be added in conjunction with the proposed change to Rule 117.

Generally, the rules have termed warrants issued to initiate a case as "arrest warrants" and all other warrants as "bench warrants." Rule 456 is somewhat vague regarding the nature of the warrant being issued. The Committee concluded that such warrants fall within the definition of a bench warrant and bench warrant procedures would be applicable in these situations. Therefore, this terminology would be clarified in the text of Rule 456.

[Pa.B. Doc. No. 19-958. Filed for public inspection June 28, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONROE COUNTY

Amendment of Local Orphans' Court Rules; 61 AD 2019

Order

And Now, this 12th day of June, 2019, it is *Ordered* that the Orphans' Court Rules of the Court of Common Pleas of the 43rd Judicial District of Pennsylvania,

Monroe County, are amended to include 14.3 and 14.8, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It Is Further Ordered that the District Court Administrator shall:

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

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

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

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

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

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

By the Court

MARGHERITA PATTI-WORTHINGTON,
President Judge

CHAPTER XIV—GUARDIANSHIP OF INCAPACITATED PERSONS

Rule 14.3. Alternative Proof of Incapacity; Expert Report in Lieu of In-Person or Deposition Testimony of Expert.

(a)(1) In a contested matter where no demand has been made for the testimony of the expert, the court may still require in-person or deposition testimony which shall be determined at time of hearing.

(a)(2) In an emergency guardianship proceeding, where a temporary guardian is sought pending a final hearing, an expert report may be offered in lieu of testimony, provided the petitioner(s) have attached a copy of the expert report concerning incapacity to the petition for guardianship.

Rule 14.8. Guardianship Reporting, Monitoring, Review and Compliance.

(a) *Reporting.*

6. In addition to the requirements of the Pa. O.C. Rules for Guardianship Reporting, the guardian shall, within ten (10) days of the appointment as guardian, file a "List of Interested Parties Requiring Notice," using Form G-14.8(a)(6) provided in the Appendix to these rules, which shall include the names and addresses of all interested parties entitled to copies of the inventory, the annual reports of the guardian, and court orders. The interested parties shall be as determined by the court at the guardianship hearing. The Clerk of Orphans' Court shall mail a copy of all court orders to everyone set forth in the "List of Interested Parties Requiring Notice." The guardian shall send a copy of the inventory and the annual reports of the guardian to everyone set forth in the "List of Interested Parties Requiring Notice."

7. The guardian shall notify the Clerk of Orphans' Court of any change in address for the guardian and/or incapacitated person within thirty (30) days of the change.

8. Upon the death of the incapacitated person, the guardian shall file a notice of death within sixty (60) days

of the date of death, and otherwise comply with the requirements of Pa. O.C. Rule 14.8(a)(4).

APPENDIX—GUARDIANSHIPS

Form G-14.8(a)(6)

IN RE: _____ : NO. _____ O.C. _____
 :
 _____, :
 :
 An Alleged Incapacitated Person :
 :
 :

LIST OF INTERESTED PARTIES REQUIRING NOTICE

The following parties were determined by the court to be interested parties and shall receive a copy of the inventory, annual reports and all court orders in this matter:

NAME	ADDRESS
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

GUARDIAN NAME

ADDRESS

TELEPHONE #

[Pa.B. Doc. No. 19-959. Filed for public inspection June 28, 2019, 9:00 a.m.]