THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 81]

Proposed Amendments to the Pennsylvania Rules of Professional Conduct Regarding Fees

Notice is hereby given that the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") plans to recommend to the Supreme Court of Pennsylvania that it adopt amendments to Pennsylvania Rule of Professional Conduct ("RPC") 1.5 relating to fees, as set forth in Annex A. This proposed rule amendment adds a reference in the commentary to a recent American Bar Association ("ABA") formal opinion on the topic of fee division in contingency-fee matters when a lawyer is replaced.

On June 18, 2019, the ABA issued Formal Opinion 487 ("Fee Division with Client's Prior Counsel") to address fee splitting arrangements when a lawyer in a separate firm replaces the first lawyer in a contingency-fee case. The opinion underscores that a previous attorney, whose services are terminated without cause, may be entitled to a fee for services performed prior to discharge and that any proposed agreement between the initial attorney and successor attorney should be fully disclosed and discussed with the client. While this opinion is not binding precedent, it provides helpful guidance to successor counsel and predecessor counsel in this common situation. The original lawyer in a contingency-fee matter will often assert a lien on the proceeds. But if the client retains new counsel, that client may not understand there is a continuing obligation to pay the original lawyer for the value that lawyer contributed or was entitled to under the original fee agreement.

The Board proposes amending Comment (4) of RPC 1.5 to reference Formal Opinion 487, which will provide lawyers with an additional resource on the topic of splitting fees.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Executive Office, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3381), Email address Dboard.comments@pacourts.us on or before January 6, 2020.

By the Disciplinary Board of the Supreme Court of Pennsylvania

JESSE G. HEREDA,
Executive Director

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

Subchapter A. RULES OF PROFESSIONAL CONDUCT

§ 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

CLIENT-LAWYER RELATIONSHIP

Rule 1.5. Fees.

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:

(1) whether the fee is fixed or contingent;

(2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount involved and the results obtained;

(6) the time limitations imposed by the client or by the circumstances;

(7) the nature and length of the professional relationship with the client; and

(8) the experience, reputation, and ability of the lawyer or lawyers performing the services.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless:

(1) the client is advised of and does not object to the participation of all the lawyers involved; and

(2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client.

Comment:

* * * * *

Division of Fee

(4) A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee if the total fee is not illegal or excessive and the client is advised and does not object. It does not require disclosure to the client of the share that each lawyer is to receive. **For additional information, see ABA Formal Opinion 487—Fee Division with Client's Prior Counsel (June 18, 2019).**

* * * * *

[Pa.B. Doc. No. 19-1802. Filed for public inspection December 6, 2019, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 83]

Amendment of Rules 219(d)(2), (f), (h)(2), (j)(1) and (2), and (k) of the Pennsylvania Rules of Disciplinary Enforcement; No. 190 Disciplinary Rules Doc.

Order

Per Curiam

And Now, this 18th day of November, 2019, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania; the proposal having been submitted without publication in the interests of justice and efficient administration pursuant to Pa.R.J.A. No. 103(a)(3):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 219(d)(2), (f), (h)(2), (j)(1) and (2), and (k) of the Pennsylvania Rules of Disciplinary Enforcement are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective in 30 days.

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 219. Annual registration of attorneys.

* * * * *

(d) On or before July 1 of each year, all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures:

* * * * *

(2) Payment of the annual fee shall be made in one of two ways: a) electronically by credit or debit card at the time of electronic transmission of the form through the online system of the Attorney Registration Office, which payment shall include a nominal fee to process the electronic payment; or b) by check or money order drawn on a U.S. bank, in U.S. dollars using a printable, mail-in voucher. IOLTA, trust, escrow and other fiduciary account checks tendered in payment of the annual fee will not be accepted. If the annual fee form, voucher or payment is incomplete or if a **[check in]** payment of the annual fee has been returned to the Board unpaid, the annual fee shall not be deemed to have been paid until a collection fee, and one or both of the late payment penalties prescribed in subdivision (f) of this rule if assessed, shall also have been paid. The amount of the collection fee shall be established by the Board annually after giving due regard to the direct and indirect costs incurred by the Board during the preceding year for **[checks]** **payment** returned to the Board unpaid.

* * * * *

(f) Any attorney who fails to complete registration by July 16 shall be automatically assessed a non-waivable late payment penalty established by the Board. A second, non-waivable late payment penalty established by the Board shall be automatically added to the delinquent account of any attorney who has failed to complete registration by August 1, at which time the continued failure to comply with this rule shall be deemed a request to be administratively suspended. Thereafter, the Attorney Registration Office shall certify to the Supreme Court the name of every attorney who has failed to comply with the registration and payment requirements of this rule, and the Supreme Court shall enter an order administratively suspending the attorney. The Chief Justice may delegate the processing and entry of orders under this subdivision to the Court Prothonotary. Upon entry of an order of administrative suspension, the Attorney Registration Office shall transmit by certified mail, addressed to the last known mailing address of the attorney, or by electronic means, the order of administrative suspension and a notice that the attorney shall comply with Enforcement Rule 217 (relating to formerly admitted attorneys), a copy of which shall be included with the notice.

For purposes of assessing the late payment penalties prescribed by this subdivision (f), registration shall not be deemed to be complete until the Attorney Registration Office receives a completed annual fee form and satisfactory payment of the annual fee and of all outstanding collection fees and late payment penalties. If **[a check in]** payment of the delinquency has been returned to the Board unpaid, a collection fee, as established by the Board under subdivision (d)(2) of this rule, shall be added to the attorney's delinquent account and registration shall not be deemed to be complete until the delinquent account has been paid in full.

The amount of the late payment penalties shall be established by the Board annually pursuant to the provisions of subdivision (h)(3) of this rule.

(g) The Attorney Registration Office shall provide to the Board a copy of any certification filed by the Attorney Registration Office with the Supreme Court pursuant to the provisions of this rule.

(h) An attorney who has been administratively suspended pursuant to subdivision (f) for three years or less is not eligible to file the annual fee form electronically. The procedure for reinstatement is as follows:

* * * * *

(2) Upon receipt of the annual fee form, a verified statement showing compliance with Enforcement Rule 217 (relating to formerly admitted attorneys), and the payments required by paragraph (1), the Attorney Registration Office shall so certify to the Board and to the Supreme Court. Unless the formerly admitted attorney is subject to another outstanding order of suspension or disbarment or the order has been in effect for more than three years, the filing of the certification from the Attorney Registration Office with the Court Prothonotary shall operate as an order reinstating the person to active status.

Where **[a check in]** payment of the fees and late payment penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to administrative suspension, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under subdivision (d)(2) of this rule, shall also have been paid.

* * * * *

(j) *Inactive Status*: An attorney who is not engaged in practice in Pennsylvania, has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct, or is not required by virtue of his or her practice elsewhere to maintain active licensure in the Commonwealth may request inactive status or continue that status once assumed. The attorney shall be removed from the roll of those classified as active until and unless such inactive attorney makes a request under paragraph (2) of this subdivision (j) for an administrative return to active status and satisfies all conditions precedent to the grant of such request; or files a petition for reinstatement under subdivision (d) of Enforcement Rule 218 (relating to procedure for reinstatement of an attorney who has been on inactive status for more than three years, or who is on inactive status and had not been on active status at any time within the prior three years) and is granted reinstatement pursuant to the provisions of that Enforcement Rule.

(1) An inactive attorney under this subdivision (j) shall continue to file the annual form required by subdivision (d), shall file the form through the online system identified in subdivision (a), and shall pay an annual fee of $100.00 in the manner provided in subdivision (d)(2). Noncompliance with this provision will result in the inactive attorney incurring late payment penalties, incurring a collection fee for any **[check in]** payment that has been returned to the Board unpaid, and being placed on administrative suspension pursuant to and in accordance with the provisions of subdivision (f) of this rule.

(2) *Administrative Change in Status from Inactive Status to Active Status*: An attorney on inactive status may request a resumption of active status form from the Attorney Registration Office. The form must be filed by mail or delivered in person to the Attorney Registration Office. Resumption of active status shall be granted unless the inactive attorney is subject to an outstanding order of suspension or disbarment, unless the inactive attorney has sold his or her practice pursuant to Rule 1.17 of the Pennsylvania Rules of Professional Conduct (see Enforcement Rule 218(h)), unless the inactive status has been in effect for more than three years, or unless the inactive attorney had not been on active status at any time within the preceding three years (see Enforcement Rule 218(h)), upon the payment of:

(i) the active fee for the assessment year in which the application for resumption of active status is made or the difference between the active fee and the inactive fee that has been paid for that year; and

(ii) any collection fee or late payment penalty that may have been assessed pursuant to subdivision (f), prior to the inactive attorney's request for resumption of active status.

Where **[a check in]** payment of fees and penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to inactive status, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under subdivision (d)(2), shall also have been paid.

***Official Note*:** Subdivisions (h), (i) and (j) of this rule do not apply if, on the date of the filing of the request for reinstatement, the formerly admitted attorney has not been on active status at any time within the preceding three years. See Enforcement Rule 218(h)(l).

(k) *Administrative Change in Status From Administrative Suspension to Inactive Status*: An inactive attorney who has been administratively suspended for failure to file the annual form and pay the annual fee required by subdivision (j)(1) of this rule, may request an administrative change in status form from the Attorney Registration Office. The form must be filed by mail or delivered in person to the Attorney Registration Office and said Office shall change the status of an attorney eligible for inactive status under this subdivision upon receipt of:

* * * * *

Where **[a check in]** payment of the fees and penalties has been returned to the Board unpaid, the Attorney Registration Office shall immediately return the attorney to administrative suspension, and the arrears shall not be deemed to have been paid until a collection fee, as established by the Board under subdivision (d)(2), shall also have been paid.

* * * * *

[Pa.B. Doc. No. 19-1803. Filed for public inspection December 6, 2019, 9:00 a.m.]

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

[204 PA. CODE CH. 83]

Proposed Amendments to the Pennsylvania Rules of Disciplinary Enforcement Regarding Filing Fees and Penalties in Reinstatement Matters

Notice is hereby given that the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") plans to recommend to the Supreme Court of Pennsylvania that it adopt amendments to Rule 218 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.") relating to the Board's ability to charge filing fees and assess penalties on unpaid taxed expenses in reinstatement matters, as set forth in Annex A.

Rule 218 governs reinstatement to the practice of law and sets forth the procedures for an attorney to regain an active license. Certain classes of attorneys must file a petition in order to be reinstated by the Supreme Court. Rule 218(f)(1) requires an attorney who files a petition for reinstatement to pay simultaneously a non-refundable filing fee. The rule includes a schedule of fees for petitioners who are disbarred or suspended for more than one year ($1,000); administratively suspended for more than three years ($500); and inactive or retired for more than three years ($250). The basis for imposing a filing fee is to offset the administrative expenses incurred by the Board in processing reinstatement petitions.

Pursuant to Rule 301(h), Pa.R.D.E., an attorney who has been transferred to disability inactive status must petition for reinstatement under Rule 218; however, the fee schedule in Rule 218(f)(1) does not require these attorneys to pay a filing fee. The Board proposes amending the fee schedule set forth in Rule 218(f)(1) to impose a non-refundable filing fee on an attorney who petitions for reinstatement from inactive status that was imposed under Rule 301. The Board proposes a fee of $250, in keeping with the filing fee paid by attorneys who petition for reinstatement from inactive or retired status for more than three years and as a matter of equity in maintaining uniform filing requirements for petitioners.

Pursuant to Rule 218(g)(1), an attorney who has been suspended for one year or less is not required to file a petition for reinstatement and instead, must file with the Board a verified statement demonstrating compliance with the terms and conditions of the suspension order and Rule 217, Pa.R.D.E. (related to formerly admitted attorneys).

The Board proposes amending Rule 218(g)(1) to require that an attorney seeking reinstatement from a suspension of one year or less pay a non-refundable filing fee of $250 at the time of the filing of the compliance statement. Similar to the rationale for imposing a filing fee on attorneys who petition for reinstatement, requiring attorneys who file a compliance statement to pay a non-refundable filing fee will counteract administrative burdens associated with reviewing the statements.

Pursuant to Rule 218(f)(2), the Supreme Court has the discretion to direct that a petitioner in a reinstatement matter pay expenses incurred in the reinstatement proceeding. Disciplinary Board Rule § 93.111 provides that these expenses may include items such as court reporter fees and transcripts, fees and expenses of expert and other witnesses, service of pleadings and briefs, and publication notices. The Board proposes amending Rule 218(f) to add new subparagraph (3) to allow the Board to assess penalties on petitioner-attorneys who fail to timely pay the taxed expenses.

The Board's proposed amendment provides that failure to pay taxed expenses within 30 days of the Supreme Court Order shall result in the assessment of a penalty, levied monthly, at a rate of 0.8% of the unpaid principal balance, or such other rate as the Court may establish. The Board retains discretion to reduce the penalty or waive it in its entirety for good cause shown. This proposal is intended to incentivize prompt payment of the taxed expenses. We note that currently, the Board has authority under Rule 208(g)(5) to assess penalties on unpaid taxed expenses and administrative fees in discipline matters. With the proposed rule change, the Board seeks authority from the Court to assess similar penalties in reinstatement matters.

Interested persons are invited to submit written comments by mail or facsimile regarding the proposed amendments to the Executive Office, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, PO Box 62625, Harrisburg, PA 17106-2625, Facsimile number (717-231-3381), Email address Dboard.comments@pacourts.us on or before January 6, 2020.

By the Disciplinary Board of the Supreme Court of Pennsylvania

JESSE G. HEREDA,
Executive Director

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart B. DISCIPLINARY ENFORCEMENT

CHAPTER 83. PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

Subchapter B. MISCONDUCT

Rule 218. Reinstatement.

* * * * *

(f)(1) At the time of the filing of a petition for reinstatement with the Board, a non-refundable reinstatement filing fee shall be assessed against a petitioner-attorney. The filing fee schedule is as follows:

Reinstatement from disbarment or suspension for more than one year:..... $1,000

Reinstatement from administrative suspension (more than three years):..... $500

Reinstatement from inactive/retired status (more than three years):..... $250

Reinstatement from inactive status pursuant to Enforcement Rule 301:..... $250

(2) The Supreme Court in its discretion may direct that the necessary expenses incurred in the investigation and processing of the petition for reinstatement be paid by the petitioner-attorney. After the Supreme Court Order is entered, the annual fee required by Rule 219(a) for the current year shall be paid to the Attorney Registration Office.

(3) Failure to pay taxed expenses within thirty days of the entry of the Supreme Court Order shall result in the assessment of a penalty, levied monthly at the rate of 0.8% of the unpaid principal balance, or such other rate as established by the Supreme Court, from time to time. The Board for good cause shown, may reduce the penalty or waive it in its entirety.

(g)(1) Upon the expiration of any term of suspension not exceeding one year and upon the filing thereafter by the formerly admitted attorney with the Board of a verified statement showing compliance with all the terms and conditions of the order of suspension and of Enforcement Rule 217 (relating to formerly admitted attorneys), **along with the payment of a non-refundable filing fee of $250,** the Board shall certify such fact to the Supreme Court, which shall immediately enter an order reinstating the formerly admitted attorney to active status, unless such person is subject to another outstanding order of suspension or disbarment.

* * * * *

[Pa.B. Doc. No. 19-1804. Filed for public inspection December 6, 2019, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1920]

Proposed Amendment of Pa.R.C.P. No. 1920.17

The Domestic Relations Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania an amendment to Pa.R.C.P. No. 1920.17 for the reasons set forth in the accompanying publication 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:

Bruce J. Ferguson, Counsel
Domestic Relations Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
Fax: 717-231-9531
domesticrules@pacourts.us

All communications in reference to the proposal should be received by February 7, 2020. 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 Domestic Relations Procedural Rules Committee

WALTER J. McHUGH, Esq.,
Chair

Annex A

Title 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1920. ACTIONS OF DIVORCE OR FOR ANNULMENT OF MARRIAGE

Rule 1920.17. **[Discontinuance. Withdrawal of Complaint.]** **Withdrawing Complaint and Discontinuing Divorce. Withdrawing Claims Raised in Pleadings.**

[(a) The plaintiff may withdraw the divorce complaint and discontinue the divorce action by praecipe that includes a certification that:

(1) no ancillary claims or counterclaims have been asserted by either party; and

(2) grounds for divorce have not been established.

(b) A party may withdraw a claim of equitable distribution only:

(1) by written consent of both parties filed with the court, or

(2) after filing and serving on the other party a written notice that the party intends to withdraw the claim of equitable distribution 20 days after service of the notice.]

(a) The plaintiff may withdraw the divorce complaint and discontinue the divorce action by:

(1) a praecipe, which includes a certification that the parties have not:

(i) raised equitable division of marital property or custody as an ancillary claim;

(ii) filed a counterclaim; or

(iii) established grounds for divorce; or

(2) a motion, which has been served on the defendant, if the parties have:

(i) raised equitable division of marital property or custody as an ancillary claim;

(ii) filed a counterclaim; or

(iii) established grounds for divorce.

(b) A party raising an ancillary claim may withdraw the claim by a praecipe, except that:

(1) a party raising an equitable division of marital property claim may withdraw the claim only:

(i) with the parties' written and filed agreement, including as required by Pa.R.C.P. No. 1920.42(a)(4), (b)(4), or (c)(4);

(ii) the opposing party's written consent; or

(iii) after filing and serving on the opposing party a notice that the party intends to withdraw the equitable division claim 20 days after service of the notice.

***Official Note*: *See* subdivision (c) for the notice.**

(2) a party raising a custody count in a divorce action may withdraw the custody claim as provided in Pa.R.C.P. No. 1915.3-1(b).

(c) The notice required in subdivision **[b above]** **(b)(1)(iii)** shall be substantially in the following form:

(Caption)

NOTICE OF INTENTION TO WITHDRAW CLAIM FOR EQUITABLE **[DISTRIBUTION]** **DIVISION OF MARITAL PROPERTY**

TO: _____
(PLAINTIFF) (DEFENDANT)

(Plaintiff) (Defendant) intends to withdraw **[(his) (her)]** **the** pending claim for equitable **[distribution of property twenty]** **division of marital property 20** days after the service of this notice. Unless you have already filed **[with the court a written claim for equitable distribution]** **ancillary claims, which are permitted under the Divorce Code, including equitable division of marital property**, you should do so within **[twenty]** **20** days of the service of this notice, or you may lose the right to assert **[a claim for equitable distribution. If]** **those ancillary claims, if the court enters** a decree in divorce **[is entered and you have**

not filed a claim for equitable distribution, you will forever lose the right to equitable distribution of property].

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

_____
(Name)

_____
(Address)

_____
(Telephone)

(d) ***Death of a Party.*** **[In the event one party dies during the course of the divorce proceeding, no decree of divorce has been entered and grounds for divorce have been established, neither the complaint nor economic claims can be withdrawn except by the consent of the surviving spouse and the personal representative of the decedent. If there is no agreement, the economic claims shall be determined pursuant to the Divorce Code.]**

(1) If a party dies after the parties have established grounds for divorce but before the court has entered the divorce decree:

(i) The surviving spouse or the decedent's personal representative cannot withdraw the complaint or an ancillary claim absent the parties' written consent.

(ii) The Divorce Code shall determine the disposition of the ancillary claims unless:

(A) the parties have an agreement that resolves the ancillary claims raised in the pleadings; or

(B) the parties have withdrawn the complaint or ancillary claims as provided in subdivision (d)(1)(i).

***Official Note*: *See* 23 Pa.C.S. § 3323(g) for establishing grounds for divorce when a party dies during the pendency of the divorce action.**

(iii) If **[no]** **a** personal representative has **not** been appointed within one year of the decedent's death, **[then,]** upon motion of the surviving party, the court may allow the withdrawal or dismissal of the complaint **[and/or any]** **or the** pending **[economic]** **ancillary** claims.

(2) If a party dies before the parties have established grounds for divorce, the divorce action shall abate, and the Probate, Estates, and Fiduciary Code, 20 Pa.C.S. §§ 101 *et seq*, shall determine the property rights.

***Official Note*: *See In re Estate of Bullotta*, 838 A.2d 594 (Pa. 2003).**

To the extent that *Tosi v. Kizis*, 85 A.3d 585 (Pa. Super. 2014) holds that 23 Pa.C.S. § 3323(d.1) does not prevent the plaintiff in a divorce action from discontinuing the divorce action following the death of the defendant after grounds for divorce have been established, it is superseded.

Comment—2020

The rule has been revised to include in subdivision (b)(1) that the party may withdraw an equitable division claim by praecipe if the parties have a written agreement, the opposing party otherwise consents in writing, or after filing and serving the subdivision (c) notice on the opposing party. The Notice warns the opposing party that the moving party intends to withdraw the equitable division claim 20 days after service of the Notice and informs the opposing party to file ancillary claims, including equitable division, prior to the entry of a divorce decree in order to preserve his or her rights.

Also, as a child custody claim is permitted in a divorce complaint under the Divorce Code, subdivision (b)(2) is added to address withdrawing a custody count. Pa.R.C.P. No. 1920.32 requires a custody claim raised in a divorce action to following the custody practices and procedures, and Pa.R.C.P. No. 1915.3-1(b) provides specific limitations on withdrawing a custody action. As such, subdivision (b)(2) has been added to clarify that a party desiring to withdraw a custody claim raised in a divorce pleading must do so consistent with Pa.R.C.P. No. 1915.3-1(b).

Subdivision (d) has been rewritten to include the current subdivision into (d)(1) and adding (d)(2). In subdivision (d)(1), if a party in a divorce action dies prior to the court entering a decree but after the parties had established grounds for divorce, the Divorce Code would dispose of the ancillary claims raised in the pleadings. Subdivision (d)(2) addresses how a divorce action would proceed if a party dies prior to establishing grounds for divorce as set forth in case law, *In re Estate of Bullotta*, 838 A.2d 594 (Pa. 2003).

PUBLICATION REPORT

RULE PROPOSAL 177

The Domestic Relations Procedural Rules Committee (Committee) is proposing an amendment to Pa.R.C.P. No. 1920.17. Specifically, the proposed amendment will delineate the practice of withdrawing divorce complaints and claims raised in divorce pleadings.

Currently, Pa.R.C.P. No. 1920.17(a) provides procedures for withdrawing and discontinuing a divorce complaint and action by praecipe if the parties have not raised ancillary claims or counterclaims and grounds for divorce have not been established. Pa.R.C.P. No. 1920.17(b) addresses how a party may withdraw a claim for equitable distribution of marital property. Subdivision (b) indicates that the claim can be withdrawn with the consent of the parties or by filing and serving on the opposing party the notice in subdivision (c).

The point of inquiry was whether the rules should include a procedure for withdrawing a divorce complaint when the parties have raised claims or counterclaims. The current rule does not address this circumstance, which could be interpreted to mean that those actions with claims or counterclaims cannot be withdrawn and discontinued, which may be inconsistent with Pa.R.C.P. No. 229(a) that provides, "[a] discontinuance shall be the

exclusive method of voluntary termination of an action, in whole or part, by the plaintiff before commencement of trial."

The proposed amendment rewrites subdivision (a), detailing the circumstances in which a plaintiff may withdraw and discontinue a divorce complaint and action by praecipe in subdivision (a)(1). The Committee proposes adding subdivision (a)(2) that details procedures for withdrawing and discontinuing a complaint and action by motion, including the circumstance that initiated the Committee's interest in this Rule Proposal.

In conjunction with the rewriting of subdivision (a), the Committee is proposing a rewrite of subdivision (b), as well, that currently addresses only withdrawing a claim for equitable division of marital property. The current subdivision (b) allows a party to withdraw the equitable division claim by consent of the parties or by serving the subdivision (c) notice on the opposing party. However, the current subdivision does not identify the pleading necessary to initiate the withdrawal.

Instead, the Committee proposes in subdivision (b)(1) that the withdrawing party may do so by praecipe if the parties have a written agreement, the opposing party otherwise consents in writing, or after filing and serving the subdivision (c) notice on the opposing party. The Notice warns the opposing party that the moving party intends to withdraw the equitable division claim 20 days after service of the Notice and warns the opposing party to file ancillary claims, including equitable division, prior to the entry of a divorce decree in order to preserve his or her rights.

Also, as a child custody claim is permitted in a divorce complaint under the Divorce Code, the Committee believed withdrawing a custody count should be included in this rule, especially since Pa.R.C.P. No. 1915.3-1(b) limits withdrawing a custody action and Pa.R.C.P. No. 1920.32 requires a custody claim raised in a divorce action to following the custody practices and procedures. As such, the Committee proposes adding subdivision (b)(2) to clarify that a party desiring to withdraw a custody claim raised in a divorce pleading must do so consistent with Pa.R.C.P. No. 1915.3-1(b).

Finally, the Committee proposes an amendment to subdivision (d), which addresses the death of a party in a pending divorce action. The proposed amendment rewrites the current subdivision (d) into subdivision (d)(1) and into a more detailed outline format. The current rule provides that if a party in a divorce action dies prior to the court entering a decree but after the parties had established grounds for divorce, the Divorce Code would dispose of the ancillary claims raised in the pleadings. However, the rule is silent on how a divorce action would proceed if a party dies prior to establishing grounds for divorce. The Committee proposes adding subdivision (d)(2) to address that circumstance as set forth in case law, *In re Estate of Bullotta*, 838 A.2d 594 (Pa. 2003).

Accordingly, the Committee invites all comments, objections, concerns, and suggestions regarding this proposed rulemaking.

[Pa.B. Doc. No. 19-1805. Filed for public inspection December 6, 2019, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Proposed Amendment of Pa.R.Crim.P. 431

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 431 (Procedure When Defendant Arrested with Warrant) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

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

All communications in reference to the proposal should be received by no later than Friday, February 14, 2020. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee

BRIAN W. PERRY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 431. Procedure When Defendant Arrested With Warrant.

(A) When a warrant is issued pursuant to Rule 430 in a summary case, the warrant shall be executed by a police officer as defined in Rule 103.

(1) If the warrant is executed between the hours of 6 a.m. and 10 p.m., the police officer shall proceed as provided in paragraphs (B) or (C).

(2) If the warrant is executed outside the hours of 6 a.m. and 10 p.m., unless the time period is extended by the president judge by local rule enacted pursuant to Rule 105, the police officer shall call the proper issuing authority to determine when the issuing authority will be available pursuant to Rule 117.

(B) *Arrest Warrants Initiating Proceedings*

(1) When an arrest warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant; or

(c) if the defendant is unable to pay, cause the defendant to be taken without unnecessary delay before the proper issuing authority.

(2) When the police officer accepts fine and costs, or collateral under paragraphs (B)(1)(a) or (b), the officer shall issue a receipt to the defendant setting forth the amount of fine and costs, or collateral received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant is taken before the issuing authority under paragraph (B)(1)(c),

(a) the defendant shall enter a plea; and

(b) if the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

(i) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, 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 fix the amount of collateral to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial; or

(ii) the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged, in which event 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 fix the amount of collateral to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

(iii) In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority shall consider the factors listed in Rule 523. The amount of collateral shall not exceed the full amount of the fine and costs.

(iv) If collateral has been 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.

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

(c) If the defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

(C) *Bench Warrants*

(1) When a bench warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant;

(c) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; **[or]**

(d) if the defendant is unable to pay, promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(3)**[.]**; **or**

(e) if the warrant was issued for a defendant who had failed to appear for execution of sentence as provided in Rules 430(B)(1)(b) and 454(F)(3), promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(4).

(2) When the defendant pays the restitution, fine, and costs, or collateral pursuant to paragraph (C)(1), the police officer shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant does not pay the restitution, fine, and costs, or collateral, the defendant promptly shall be taken before the proper issuing authority when available pursuant to Rule 117 for a bench warrant hearing. The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(4) When the defendant has been arrested for failure to appear for execution of sentence as provided in Rules 430(B)(1)(b) and 454(F)(3), the defendant promptly shall be taken before the issuing authority who issued the bench warrant for a bench warrant hearing. The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

Comment

For the procedure in court cases following arrest with a warrant initiating proceedings, see Rules 516, 517, and 518. *See also* the Comment to Rule 706 (Fines or Costs) that recognizes the authority of a common pleas court judge to issue a bench warrant for the collection of fines and costs and provides for the execution of the bench warrant as provided in either paragraphs (C)(1)(c) or (C)(1)(d) and (C)(2) of this rule.

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

Nothing in paragraph (A) is intended to preclude the issuing authority when issuing a warrant pursuant to Rule 430 from authorizing in writing on the warrant that the police officer may execute the warrant at any time and bring the defendant before that issuing authority for a hearing under these rules.

For what constitutes a "proper" issuing authority, see Rule 130.

Delay of trial under paragraph (B)(3)(b)(ii) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements).

Although the defendant's trial may be delayed under this rule, the requirement that an arrested defendant be taken without unnecessary delay before the proper issuing authority remains unaffected.

When the police must detain a defendant pursuant to this rule, 61 P.S. § 1154 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and county correctional institutions."

In cases in which a defendant who is under 18 years of age has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. *See* the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302. Following the certification, the case is to proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

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

For the procedures required before a bench warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 430(B)(4). When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

For the procedures when a bench warrant is issued in court cases, see Rule 150.

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.

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

For the procedures in summary cases within the jurisdiction of the Philadelphia Municipal Court and the Philadelphia Municipal Court Traffic Division, see Chapter 10.

***Official Note*: Rule 76 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; Comment revised March 9, 2006, effective August 1, 2006; Comment revised May 7, 2014, effective immediately; amended April 10, 2015, effective July 10, 2015; amended , 2019, effective , 2019.**

Committee Explanatory Reports:

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

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

Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraphs (B)(3) and (C) 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 August 7, 2003 changes to paragraph (D) and Comment concerning defendants under the age of 18 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 procedures for warrants that initiate proceedings and bench warrants procedures in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the March 9, 2006 Comment revision adding the cross-reference to Rule 706 published with the Court's Order at 36 Pa.B. 1396 (March 25, 2006).

Final Report explaining the May 7, 2014 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

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

Report explaining the proposed amendment concerning bench warrant hearing for defendants who have failed to appear for execution of sentence published for comment at 49 Pa.B. 7172 (December 7, 2019).

REPORT

Proposed Amendment of Pa.R.Crim.P. 431

EXECUTION OF BENCH WARRANTS ISSUED FOR EXECUTION OF SENTENCE IN SUMMARY CASES

The Committee has recently been presented with the question regarding whether a bench warrant hearing is required when a defendant is arrested pursuant to a bench warrant issued for a defendant who has failed to appear for execution of sentence of incarceration in a summary case. Rule 430(B) provides the authority for the issuance of bench warrants in summary cases. Paragraph (B)(1)(b) permits the issuance of a bench warrant when ". . . the defendant has failed to appear for the execution

of sentence as required in Rule 454(F)(3). Rule 454(F)(3) states that at the time of sentencing, the issuing authority shall:

> (3) 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 advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued. . .

Rule 431(C) provides procedures for the execution of a summary bench warrant. However, most of these relate to the situation in which the defendant only owes case fines and costs and includes provision for the payment of these assessments to the arresting officer. The rule does not address the situation where the defendant is being arrested for failure to appear for execution of sentence.

The Committee has learned that the practice in some counties has been that a defendant in such circumstances is taken directly to the prison to begin sentencing without first being presented to the issuing authority for a bench warrant hearing. The argument in favor of not having bench warrant hearings in these circumstances is that there is nothing for the issuing authority to determine at such a hearing because the defendant has already been sentenced. In other words, what exactly would take place at such a hearing, other than perhaps allowing the defendant to explain to the issuing authority why they failed to present themselves for execution of their sentence, which would have no effect on the existing sentence.

The Committee reviewed the history of the development of these summary bench warrant provisions. The Final Report when the current version of Rule 431(C) was adopted seems to contemplate only the situation when case assessments are owed. *See* 35 Pa.B. 3911 (July 16, 2005). It would be unusual for the Committee to intend an exception to the general requirement of having bench warrants hearings and for such an exception to be mentioned specifically in the rules or Comments.

The Committee considered the potential problems of permitting the execution of a bench warrant in these circumstances without holding a bench warrant hearing. There is no danger that a defendant who had been tried and sentenced *in absentia* would be incarcerated in these circumstances without a hearing since Rule 455(A) precludes trials *in absentia* in summary cases when the issuing authority "determines that there is a likelihood that the sentence will be imprisonment. . . ." Nonetheless, there may be circumstances when taking an arrestee directly to prison is problematic. It is possible that a case of mistaken identity, identity theft, or administrative or other error could result in the incorrect person being arrested. The prison might not be in the position to correctly identify such an error whereas the issuing authority who had more familiarity with the case and more extensive case records would be in a better position.

The Committee concluded that the better practice would be to follow the normal bench warrant procedures, *i.e.* taking the defendant before the issuing authority for a bench warrant hearing, when arrested for failure to appear for execution of sentence. However, because the concerns, such as mistaken identity, in this situation would best be rectified by a magistrate familiar with the case, the rule would require that the defendant be taken before the issuing authority who originally had issued the bench warrant.

Therefore, a new paragraph (C)(1)(e) would be added to Rule 431 that specifically would require the defendant to be taken for a bench warrant hearing if arrested for failure to appear for execution of sentence. Additionally, a new paragraph (C)(4) would provide that the defendant be taken before the original issuing authority when for bench warrant hearing in these types of arrest situations.

[Pa.B. Doc. No. 19-1806. Filed for public inspection December 6, 2019, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 5]

Proposed Amendment of Pa.R.Crim.P. 573

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 573 (Pretrial Discovery and Inspection) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

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

All communications in reference to the proposal should be received by no later than Friday, February 14, 2020. 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 G. Procedures Following Filing of Information

Rule 573. Pretrial Discovery and Inspection.

(A) **[INFORMAL]** **INITIATION OF DISCOVERY**

Before any **motion for** disclosure or discovery can be **[sought] filed** under these rules by either party, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information **and material** required or requested under these rules as to which there is no dispute. When there are items requested by one party which the other party has refused to disclose **within a reasonable time**, the demanding party may make appropriate motion. Such motion shall be made within **[14] 30** days after arraignment, unless the time for filing is extended by the court. In such motion the party must set forth the fact that a good faith effort to discuss the **[requested] information and** material has taken place and proved unsuccessful. Nothing in this provision shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

(B) DISCLOSURE BY THE COMMONWEALTH

(1) MANDATORY:

In all court cases, **[on request by the defendant, and]** subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the defendant's attorney all of the following **[requested]** items or information**[, provided they are material to the instant case]**. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items.

(a) **[Any evidence] Information** favorable to the accused **[that is material either to guilt or to punishment] including information that tends to exculpate the defendant, to mitigate the level of the defendant's culpability, to support a potential defense, or that tends to impeach a prosecution witness's credibility**, and is within the possession or control of the attorney for the Commonwealth**, regardless of the form that information takes and whether the attorney for the Commonwealth credits the information**;

(b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;

(c) the defendant's prior criminal record;

(d) the circumstances **[and],** results**, and any related documentation or notes** of any identification **or attempted identification** of the defendant by voice, photograph, or in-person identification**, and the circumstances, results, and any related documentation or notes of any identification or attempted identification of any other person conducted during the investigation of the instant case**;

(e) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the defendant that are within the possession or control of the attorney for the Commonwealth;

(f) any tangible objects, including documents, **law enforcement notes or reports made in response to and in investigation of the current case,** photographs, **audio, video, or other electronic recordings,** fingerprints, or other tangible **[evidence] information**; and

(g) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

(2) DISCRETIONARY WITH THE COURT:

(a) In all court cases, except as otherwise provided in Rules 230 (Disclosure of Testimony Before Investigating Grand Jury) and 556.10 (Secrecy; Disclosure), if the defendant files a motion for pretrial discovery, the court may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:

(i) the names **[and],** addresses, **and the criminal record** of eyewitnesses;

(ii) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses the Commonwealth intends to call at trial;

(iii) all written and recorded statements, and substantially verbatim oral statements, made by co-defendants, and by co-conspirators or accomplices, whether such individuals have been charged or not; and

(iv) any other **[evidence] information** specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interests of justice.

(b) If an expert whom the attorney for the Commonwealth intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare, and that the attorney for the Commonwealth disclose, a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(c) Nothing in this rule is intended to limit disclosure of the foregoing information by agreement with the opposing party.

(C) DISCLOSURE BY THE DEFENDANT

(1) In all court cases, if the Commonwealth files a motion for pretrial discovery, upon a showing of materiality to the preparation of the Commonwealth's case and that the request is reasonable, the court may order the defendant, subject to the defendant's rights against compulsory self-incrimination, to allow the attorney for the Commonwealth to inspect and copy or photograph any of the following requested items:

(a) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, that the defendant intends to introduce as evidence in chief, or were prepared by a witness whom the defendant intends to call at the trial, when results or reports relate to the testimony of that witness, provided the defendant has requested and received discovery under paragraph (B)(1)(e); and

(b) the names and addresses of eyewitnesses whom the defendant intends to call in its case-in-chief, provided that the defendant has previously requested and received discovery under paragraph (B)(2)(a)(i).

(2) If an expert whom the defendant intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the

expert prepare and the defendant disclose a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(D) CONTINUING DUTY TO DISCLOSE

(1) The obligations of the parties under this rule extend to material and information in the possession or control of members of the parties' staff and of any others either who regularly report to or, with reference to the current case, have reported to the parties.

(2) The attorney for the Commonwealth shall make reasonable efforts to ensure that material and information favorable to the defendant is provided to the attorney for the Commonwealth's office by the police or other investigative personnel. The attorney for the Commonwealth shall report to the Court, with notice to the defense, if the police or other investigative personnel fails to provide to the attorney for the Commonwealth information within its possession that would be discoverable if in the possession of the attorney for the Commonwealth.

(3) If the attorney for the Commonwealth is aware that information that would be discoverable if in the possession of the attorney for the Commonwealth is in the possession or control of a governmental agency not reporting directly to the prosecution, the prosecution should disclose the fact of the existence of such information to the defense.

(4) If a governmental agency not reporting directly to the attorney for the Commonwealth or a police department fails to provide information within its possession that would be discoverable if in the possession of the attorney for the Commonwealth, a motion to compel the disclosure of this information may be filed by either the attorney for the Commonwealth or the defense.

(5) If, prior to or during trial, either party discovers additional **[evidence] information** or material previously **required to be disclosed,** requested**,** or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party shall promptly notify the opposing party or the court of the additional **[evidence] information**, material, or witness.

(E) REMEDY

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing **into** evidence **information or material** not disclosed, other than testimony of the defendant, or it may enter such other order**, including an order of dismissal or a finding of contempt against the party that has failed to comply,** as it deems just under the circumstances.

(F) PROTECTIVE ORDERS

Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court *in camera*. If the court enters an order granting relief following a showing *in camera*, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

(G) WORK PRODUCT

Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the Commonwealth or the attorney for the defense, or members of their legal staffs.

Comment

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U.S. 83 (1963), and the refinements of the *Brady* standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 103. ***See also Commonwealth v. Green*, 640 A.2d 1242 (Pa. 1994); *Commonwealth v. Johnson*, 815 A.2d 563 (Pa. 2002); *Commonwealth v. Paddy*, 800 A.2d 294 (Pa. 2002); *Commonwealth v. Smith*, 985 A.2d 886 (Pa. 2009).**

See Rule 556.10(B)(5) for discovery in cases indicted by a grand jury.

The attorney for the Commonwealth should not charge the defendant for the costs of copying pretrial discovery materials. However, nothing in this rule is intended to preclude the attorney for the Commonwealth, on a case-by-case basis, from requesting an order for the defendant to pay the copying costs. In these cases, the trial judge has discretion to determine the amount of costs, if any, to be paid by the defendant.

Paragraph (A) was amended in 2019 to recognize the more common practice of the parties to provide mandatory discovery information to the opposing party as a matter of course. This had previously been called "informal discovery." However, this terminology was changed to recognize that the first step in discovery should be the voluntary disclosure of mandatory discovery information without the need for there to be a solicitation by the opposing party. In the event that there is a disagreement between the parties, the process for seeking a motion to compel discovery is available as provided in the rule.

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

See Rule 569 (Examination of Defendant by Mental Health Expert) for the procedures for the examination of the defendant by the mental health expert when the defendant has given notice of an intention to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant.

For purposes of this rule, "information" means any evidence, document, item, or other material or data concerning the case.

Included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

Pursuant to paragraphs (B)(2)(b) and (C)(2), the trial judge has discretion, upon motion, to order an expert who is expected to testify at trial to prepare a report. However, these provisions are not intended to require a prepared report in every case. The judge should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

Whenever the rule makes reference to the term "identification," or "in-person identification," it is understood that such terms are intended to refer to all forms of identifying a defendant by means of the defendant's person being in some way exhibited to a witness for the purpose of an identification: *e.g.*, a line-up, stand-up, show-up, one-on-one confrontation, one-way mirror, *etc*. The purpose of this provision is to make possible the assertion of a rational basis for a claim of improper identification based upon *Stovall v. Denno*, 388 U.S. 293 (1967), and *United States v. Wade*, 388 U.S. 218 (1967).

This rule is not intended to affect the admissibility of evidence that is discoverable under this rule or evidence that is the fruits of discovery, nor the standing of the defendant to seek suppression of such evidence. *See* Rule 211 for the procedures for disclosure of a search warrant affidavit(s) that has been sealed.

Paragraph (C)(1), which provided the requirements for notice of the defenses of alibi, insanity, and mental infirmity, was deleted in 2006 and moved to Rules 567 (Notice of Alibi Defense) and 568 (Notice of Defense of Insanity or Mental Infirmity).

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the defendant as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon the Commonwealth any right of appeal not presently afforded by law.

It should also be noted that as to material which is discretionary with the court, or which is not enumerated in the rule, if such information contains exculpatory **[evidence]** **information** as would come under the *Brady* rule, it *must* be disclosed. Nothing in this rule is intended to limit in any way disclosure of **[evidence]** **information** constitutionally required to be disclosed.

Paragraph (B)(1)(a) was amended in 2019 to remove the provision of "materiality" from the requirement of mandatory disclosure by the prosecution of information favorable to the defense. While originally intended to convey the idea that the information was relevant to the case at issue, the term had become more narrowly defined in practice and used as an obstacle for disclosure. Additionally, paragraph (B)(1)(a) requires disclosure of favorable information regardless of the form in which that information might be or whether the attorney for the Commonwealth believes that the information is credible.

Paragraph (D) was amended in 2019 to clarify that the obligation of the parties to provide required discovery extends to the offices of the attorneys for the Commonwealth and defense counsel, including those who regularly report to the respective attorneys. Additionally, the attorney for the Commonwealth has the obligation to obtain favorable materials relevant to the case from the police or other investigating entities that report to the prosecution. The attorney for the Commonwealth does not have an obligation to seek out favorable information affirmatively from governmental agencies that do not report to the prosecution but must inform the defense if they learn that favorable information is in the possession of those governmental agencies. For purposes of this rule, such governmental agencies may include, but are not limited to, child and youth agencies, child protective agencies, and the Department of Corrections. If discoverable information in the possession of the police or a governmental agency is being withheld, either the prosecution or defense may seek an order from the court to compel the information's disclosure.

The limited suspension of Section 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5720, see Rule 1101(E), is intended to insure that the statutory provision and Rule 573(B)(1)(g) are read in harmony. A defendant may seek discovery under paragraph (B)(1)(g) pursuant to the time frame of the rule, while the disclosure provisions of Section 5720 would operate within the time frame set forth in Section 5720 as to materials specified in Section 5720 and not previously discovered.

***Official Note*:** Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004; amended January 27, 2006, effective August 1, 2006; amended June 21, 2012, effective in 180 days**; amended , 2020, effective , 2020**.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the May 13, 1996 amendments published with the Court's Order at 26 Pa.B. 2488 (June 1, 1996).

Final Report explaining the July 28, 1997 Comment revision deleting the references to the ABA Standards published with the Court's Order at 27 Pa.B. 3997 (August 9, 1997).

Final Report explaining the August 28, 1998 Comment revision concerning disclosure of remuneration published with the Court's Order at 28 Pa.B. 4883 (October 3, 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 March 3, 2004 amendments to paragraphs (A), (C)(1)(a), and (C)(1)(b), and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the March 26, 2004 Comment revision concerning costs of copying discovery materials published with the Court's Order at 34 Pa.B. 1933 (April 10, 2004).

Final Report explaining the January 27, 2006 changes to paragraph (C) deleting the notice of defenses of alibi, insanity, and mental infirmity published with the Court's Order at 36 Pa.B. 700 (February 11, 2006).

Final Report explaining the June 21, 2012 amendments concerning discovery when case is indicted by grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Report explaining the proposed amendments concerning discovery of favorable information obligations published for comment at 49 Pa.B. 7177 (December 7, 2019).

REPORT

Proposed Amendment of Pa.R.Crim.P. 573

MANDATORY DISCLOSURE OF FAVORABLE MATERIALS IN DISCOVERY

The Committee has been studying possible improvements to the discovery procedures regarding the mandatory disclosure of *Brady* materials, *i.e.*, information favorable to the defendant.[1] This inquiry was prompted by a recently adopted procedure in New York State that provides for the issuance of "*Brady* Orders" to remind prosecutors of their constitutional obligations to disclose exculpatory materials and to remind defense attorneys of their obligations of providing effective assistance. Additionally, the Committee reviewed suggested rule changes from the Pennsylvania Innocence Project ("Innocence Project") that proposed the adoption of the concept of "open file discovery."

The New York procedures, found in New York Uniform Rules for Courts Exercising Criminal Jurisdiction 200.16 and 200.27, 22 NYCRR 200.16 and 200.27, require that, in all criminal cases, when the defense counsel has provided the prosecution with a written discovery request, the trial court shall issue an order reminding the prosecution of its obligation to make timely disclosures of information favorable to the defense. These orders set out a broad list of materials that could be included in the definition of "favorable" materials and place on the prosecution a duty to disclose them in a timely fashion and "to learn of such favorable information that is known to others acting on the government's behalf in the case. . . ." Personal sanctions may be imposed against prosecutors who commit "willful and deliberate" misconduct. The orders directed to defense counsel go beyond matters of discovery and address matters of professional responsibility in the general handling of the case.

The Committee reviewed the requirements of the New York procedures and compared them to the requirements of Rule 573 and Rule of Professional Conduct 3.8(d) (Special Responsibilities of a Prosecutor). The Committee concluded that issuing a *Brady* order be included for every case, as in the New York procedures, would result in only "boilerplate" paperwork of little substantive value. Additionally, the Committee believes that the provisions of the New York procedures regarding defense counsel obligations were more a matter of professional responsibility and should not be included in a procedural rule. However, the Committee did conclude that some of the concepts regarding the prosecution's duties as defined in the New York procedures might be worthwhile to incorporate into Pennsylvania discovery practice as discussed below.

The Innocence Project proposed the adoption of "open file discovery," which, in concept, is the practice of automatically granting the defense access to all unprivileged information that, with due diligence, is known or should be known to the prosecution, law enforcement agencies acting on behalf of the prosecution, or other agencies such as forensics testing laboratories working for the prosecution. Such a policy reduces discretionary decisions in determining what evidence should be disclosed to the defense, effectively providing access to the prosecution's entire file. Open discovery has its roots in the 1994 American Bar Association (ABA) standards for criminal discovery, which recognized a growing trend toward expanding pretrial discovery in criminal cases.

In particular, the Innocence Project proposed eliminating the provision, contained in current Rule 573(A), requiring efforts at informal discovery, relying instead on provisions for broad mandatory disclosure by the prosecution. Their proposal also would establish an open file requirement for the Commonwealth that would include a detailed definition of the term "file," the contents of which must be disclosed, as well as other forms of information that must be disclosed even if not with the prosecution's case file. It would impose a duty of due diligence to ensure that all offices involved in the investigation of the case disclose the required information. The current provisions regarding discretionary discovery would be removed as unnecessary since discovery essentially would be mandatory. Also suggested was a statement of the Commonwealth's *Brady* obligations, derived from the New York procedures, to be added to the Comment to Rule 573. As with its review of the New York procedures, the Committee believes that adoption of the entirety of the Innocence Project's proposal would not be warranted but did conclude that incorporation of a number of the suggested concepts into discovery practice would be beneficial.

The Committee, therefore, is proposing that Rule 573 be amended in a number of particulars. First, the changes attempt to better define the duties of the parties to provide favorable information in a timely fashion and the remedies when such disclosure is not made. This would include a change in terminology of what is to be provided from "evidence" to "information" to indicate the broader scope of materials to be turned over. The rule changes would also provide more detail in describing some of the types of information, such as that relating to identification, to be disclosed to the defense. The changes would also remove the requirement that *Brady* information be "material." Rather, the rule would be changed to rely on whether the information could be considered

[1] *See Brady v. Maryland*, 373 U.S. 83 (1963), the seminal U.S. Supreme Court case that established the obligation on the part of the prosecution to turn over exculpatory evidence to the defense.

favorable, and require that such information be disclosed regardless of the form that information takes and whether the prosecutor credits the information. The proposed changes would more clearly define the duty of prosecutors to discover and disclose evidence favorable to the defense, including obligating the prosecution to make reasonable efforts to obtain information relating to the defendant and the offenses charged that is in the possession of investigative personnel as well as define the organizations covered by this obligation. The Rule 573 Comment would also be revised to cross-reference some of the key caselaw in defining *Brady* obligations.

In developing these proposed changes, the Committee first examined the language in paragraph (A) of Rule 573, currently titled "Informal Discovery," and concluded that it does not adequately describe current discovery practice. The most common practice is for prosecutors to make available most of their investigative file to the defense at a fairly earlier stage in the proceeding without the need for a formal request by the defense. The Committee initially agreed that it is unnecessary to retain the caption "informal discovery" but did believe that the provisions in paragraph (A) regarding filing a motion to seek relief when there is a dispute about compliance should be retained.

Ultimately, the Committee concluded that the rule should retain some language regarding voluntary discovery of mandatory information but should not be defined by a formal request of discoverable materials. The Committee also believes that the current 14-day time limit for filing any motion to compel when voluntary compliance has failed places an unrealistic burden on both the prosecution and defense and should be increased to 30 days following the arraignment. To these ends, paragraph (A) would be retitled to "Initiation of Discovery" and paragraph (A) would be revised to indicate that discovery among the parties should be the first step and that the involvement of the trial court occur when there is a dispute over discovery. The language in paragraph (A) also would be modified to emphasize that mandatory discovery should proceed without the need for a formal request to be lodged. Comment language would be added to explain this concept further.

Paragraph (B)(1), regarding mandatory disclosure by the Commonwealth, would be modified in several ways. This would include a more detailed definition of "favorable information" as any information that "tends to exculpate the defendant, to mitigate the level of the defendant's culpability, to support a potential defense, or that tends to impeach a prosecution witness's credibility." The requirement that the defense must first request mandatorily discoverable information also would be removed.

Furthermore, the requirement that the information must be "material" would be eliminated. The Committee concluded that this terminology was originally intended to convey the idea that the information was relevant to the case at issue. However, it appears that this term had become more narrowly defined in practice and used in some cases as an obstacle to disclosure.

The changes to paragraph (B)(1) would also include an expanded description of the types of information that should be considered favorable. For example, the prosecution would be required to disclose the circumstances of identification and attempted identifications of the defendant and other persons during the investigation of the instant case as well as notes and reports by investigative personnel concerning identifications made in response to the investigation of the instant case. Finally, paragraph (B)(1) would state that the disclosure of favorable information is required regardless of the form in which that information might be or whether the attorney for the Commonwealth believes that the information is credible.

Paragraph (B)(2), regarding discovery of prosecution information that is discretionary with the court, and Paragraph (C), defining disclosures by the defendant, would remain effectively unchanged. However, a new paragraph (B)(2)(c) would recognize the practice of disclosure by agreement among opposing counsel of discretionarily discoverable information.

The Committee also is proposing a number of changes to paragraph (D) that would better define the continuing duty of the parties to disclose favorable information, with particular emphasis on the Commonwealth's obligations. New paragraph (D)(1) would state that the duty to disclose extends to the parties' staff or others who report to the parties. New paragraph (D)(2) would obligate the attorney for the Commonwealth to make reasonable efforts to obtain information relating to the defendant and the offenses charged that is in the possession of the police and other investigative personnel. The Committee is not proposing to place an affirmative obligation on the attorney for the Commonwealth to seek out favorable information in the possession of other governmental agencies other than the police or other investigative personnel. These "other governmental agencies" would include entities outside of the control of the attorney for the Commonwealth, such as the Department of Corrections and child and youth services agencies. As provided in new paragraph (D)(3), the attorney for the Commonwealth must advise the defense of the existence of such information when the Commonwealth becomes aware of it. These duties would be further elaborated in the Comment to Rule 573.

Several members of the Committee identified a problem of police departments who either fail to provide discoverable information to the attorney for the Commonwealth or provide such information at a late date despite efforts by the attorney for the Commonwealth, thus necessitating a delay in trial. To address this problem, new paragraph (D)(2) would require the attorney for the Commonwealth to alert the trial judge when there is difficulty in obtaining information from the police or other investigative personnel and, in paragraph (D)(4), to permit all parties to the case, including the attorney for the Commonwealth, to seek an order to compel this disclosure.

Paragraph (E), regarding remedies for failure to abide by the rule, would be modified to state that the sanctions that may be imposed include dismissal and contempt. The Committee also concluded that the substantive interpretation of *Brady* obligations would be more effectively addressed by adding to the Rule 573 Comment cross-references to the key United States Supreme Court and Pennsylvania Supreme Court cases that define the *Brady* obligation.

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