

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 35]

Proposed Adoption of Pa.R.A.P. 3531—3561

The Superior Court of Pennsylvania plans to adopt as Rules of Appellate Procedure, §§ 3531—3561, concerning issuance and processing of wiretaps pursuant to the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §§ 5701 *et seq.* Currently, these provisions are substantially incorporated in the Superior Court's Operating Procedures, §§ 65.51—65.77.

Pursuant to Pa.R.J.A. No. 103(a)(1), this proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to final adoption by the Superior Court.

Every provision will become a binding Rule of Appellate Procedure upon final adoption by the Court unless changed in response to comments, suggestions, or objections submitted in response to this publication. The Court may also amend these proposed Rules *sua sponte* prior to final adoption.

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

JOSEPH D. SELETYN, ESQ.
Prothonotary, Superior Court of Pennsylvania
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All communications in reference to this proposal should be received within 90 days of the date of this publication. 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 Prothonotary will acknowledge receipt of all submissions.

On Behalf of the Superior Court

JOSEPH D. SELETYN,
Prothonotary

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE III. MISCELLANEOUS PROVISIONS

CHAPTER 35. BUSINESS OF THE SUPERIOR COURT

WIRETAPS

(Editor's Note: The following sections are proposed to be added and printed in regular type to enhance readability.)

Rule 3531. Definitions.

For purposes of Rules 3532—3561, the following words and phrases shall have the meanings set forth below:

Applicant—The Attorney General of Pennsylvania (or a deputy attorney general designated in writing) or a District Attorney (or an assistant district attorney designated in writing) of the county wherein the interception is to be made, who files an application pursuant to the Wiretap Act.

Assigned Judge—A judge of the Superior Court to whom the Supervising Judge assigns to consider an application filed under the Wiretap Act.

Issuing Judge—The judge of the Superior Court who signs a wiretap order.

Supervising Judge—A judge of the Superior Court, designated by the President Judge of the Superior Court, who administers wiretap applications.

Wiretap Act—The Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §§ 5701 *et seq.*

Rule 3532. Preemption.

Government officials are advised to consult the Wiretap Act. Any Rule of Appellate Procedure inconsistent with the Wiretap Act is preempted by the Wiretap Act.

Rule 3533. Confidential Docket Number.

The Applicant, not a law enforcement officer, shall call the Prothonotary or Deputy Prothonotary for a confidential docket number. All applications, affidavits, progress reports, and orders shall utilize the confidential docket number assigned to the matter.

Rule 3534. Assignment to a Particular Judge.

A. After receiving an assigned docket number from the Prothonotary or Deputy Prothonotary, the Applicant, not a law enforcement officer, shall call the Supervising Judge, inform him or her of the locale of the interception, and request assignment of a judge to consider the application. The Supervising Judge then shall assign a judge of the Superior Court via written order and inform the Applicant of the Assigned Judge.

B. All matters related to a docket number shall be presented to the Assigned/Issuing Judge. In extraordinary circumstances, where the Assigned/Issuing Judge is unavailable or is no longer a judge of the Superior Court, the Applicant or movant shall contact the Supervising Judge for assignment of a substitute judge. In true emergencies, where delay risks death or serious bodily injury, any judge of the Superior Court may issue any order permitted by law.

Rule 3535. Submission of Application to Assigned Judge.

The Applicant shall submit the application, affidavit, and proposed order to the Assigned Judge. If such documentation is to be presented in advance to the Assigned Judge electronically, the documentation shall be encrypted utilizing a security certificate supplied by the Assigned Judge. This *ex parte* proceeding need not be on the record if all the necessary information required by the Assigned Judge is contained in the application. However, any additional testimony or explanation, if supplied orally, must be made of record. A recording device utilizing a removable storage medium or court reporter may be used and must be provided by the Applicant. If a court reporter is used, the Assigned Judge shall direct the court reporter to transcribe the proceedings as expeditiously as possible and to submit the stenographic notes and original transcript to the Assigned Judge for sealing at the earliest possible moment. If a recording device is used, the storage medium shall immediately be turned over to the Assigned Judge and sealed. The Assigned Judge should instruct all present concerning the need for confidentiality.

Rule 3536. Content of Application—General.

An application under 18 Pa.C.S. § 5709 must be made upon the personal oath or affirmation of the Applicant and must contain the following:

A. A statement of the Applicant's authority to make the application.

B. A statement of the identity, State Police certification number, and qualifications of the investigative or law enforcement officer who will supervise the conduct of the interception and the identity of the agency which will conduct the interception.

C. An affidavit by the investigative or law enforcement officer who has knowledge of relevant information justifying the application, including a statement that the Applicant seeks authorization to intercept wire, oral, or electronic communications of the subject(s) of the investigation concerning one or more of the offenses listed in 18 Pa.C.S. § 5708.

D. A statement that the Applicant has discussed the above circumstances of the offenses with the officer who has conducted the investigation to date and has examined the officer's affidavit (which is attached and incorporated by reference).

E. A complete statement of the facts concerning all previous applications known to the Applicant made to any court for authorization to intercept a wire, electronic, or oral communication involving any of the same facilities or places specified in the application, or involving any person whose communication is to be intercepted, and the action taken by the court on each such application.

F. Where the application is for the renewal or extension of an order, a particular statement of facts showing the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

G. A request that, based on the facts and circumstances set forth in the application and the attached affidavit, the Assigned Judge issue an order pursuant to 18 Pa.C.S. § 5710 authorizing the designated officers to intercept wire, electronic, or oral communications to and from, or on, the described devices or at the described premises until the earlier of:

1. communications are intercepted which reveal:
 - i. the manner in which the subject(s) and others unknown have participated, are participating, or will participate in the commission of the enumerated offenses,
 - ii. the identities of their confederates, and
 - iii. the nature of their operation or criminal enterprise; or
2. a period of 30 days or less.

H. The application shall request that, pursuant to 18 Pa.C.S. § 5712(f), the order direct the communication service provider to furnish the Applicant forthwith with all information, facilities, and technical assistance (including in-progress traces) to accomplish the interception unobtrusively and with a minimum of interference with the services being afforded by the company to the subject(s) and that the company be compensated by the Applicant's office at the prevailing rates.

I. If it is reasonably necessary that law enforcement officers enter the described premises for the purpose of installing, maintaining, or removing intercepting devices, the Applicant shall request that, pursuant to 18 Pa.C.S. § 5712(g), the Assigned Judge authorize the entry of the

described premises or facilities by the designated officers as often as necessary solely for the purpose of installing, maintaining, or removing intercepting devices. Prior to such entry, the Issuing Judge must, if practical, be notified in writing of the time and method of each such entry. If prior notice is impractical, the Issuing Judge must be notified within 48 hours of entry.

J. In the event a pen register, mobile communications tracking information, trap and trace device, or telecommunication identification interception device has been or is being utilized to support the affidavit under this Rule, the Applicant shall, as part of the application, certify that the authority for the use of the pen register, mobile communications tracking information, trap and trace device, or telecommunication identification interception device which was or is being utilized was obtained pursuant to probable cause. A copy of the affidavit of probable cause submitted in support of the application for the pen register, mobile communications tracking information, trap and trace device, or telecommunication identification interception must accompany the application for the wiretap.

K. Any applications and all subsequent motions or petitions relating to an application must be presented to the Assigned/Issuing Judge by an attorney-at-law.

L. Form applications are available to assist the Applicant and may be obtained from the Supervising Judge.

Rule 3537. Content of Application—Target Specific Wiretaps.

An application for a target specific wiretap pursuant to 18 Pa.C.S. § 5712.1 that does not comply with 18 Pa.C.S. § 5712(a)(3) and/or 18 Pa.C.S. § 5709(3)(iv) and (v), shall set forth:

A. In the case of oral communications:

1. a full and complete statement as to why specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and
2. a request that the Assigned Judge find that specification is not practical.

B. In the case of wire or electronic communications:

1. the identity of the person believed to be committing the offense and whose communications are to be intercepted, and the facts showing there is probable cause to believe that the person's actions could have the effect of thwarting interception by changing facilities or devices.
2. a request that the Assigned Judge find that the purpose for the target specific order has been adequately shown.

C. In the event the affiant seeks a supplementary order for a target specific wiretap, such application shall contain:

1. The identity of the investigative or law enforcement officers or agency to whom the authority to intercept wire, electronic, or oral communication is given, and the name and official identity of the Applicant.
2. The identity of or a particular description of the person, if known, whose communications are to be intercepted.
3. The period of time during which the interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

4. The facts supporting a showing of reasonable suspicion that the target of the original order has in fact changed communications devices or facilities.

5. The facts supporting a showing of reasonable suspicion that the target of the original order is likely to use the additional facility or device or place for criminal purposes similar to or related to those specified in the original order.

Rule 3538. Content of Application—Mobile Communication Tracking, Pen Registers, Trap and Trace Devices, and Telecommunication Identification Interception Devices.

An application for an order authorizing the installation and usage of pen registers, trap and trace devices, telecommunication identification interception devices and the disclosure or production of mobile communication tracking information shall contain:

A. The Applicant's identity and the identity of the investigative or law enforcement agency conducting the investigation.

B. A certification by the Applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

C. An affidavit by an investigative or law enforcement officer which establishes probable cause for the issuance of an order or extension of an order under 18 Pa.C.S. § 5773.

Rule 3539. Content of Affidavit.

The investigative or law enforcement officer's affidavit shall contain the following:

A. The affiant's title, pertinent employment history, authority to conduct investigations, and experience in conducting investigations of similar offenses.

B. The name, qualifications, and State Police certification number of the officers who will supervise and conduct the interception of the communications as well as the agency which will conduct the interception.

C. The facts which, when viewed in light of the totality of the underlying circumstances, establish their intrinsic reliability.

D. The identity of the person or persons, if known, who are believed to be committing one or more of the crimes in 18 Pa.C.S. § 5708, and whose communications will be intercepted.

E. The particular type of communication to be intercepted; *e.g.*, in a gambling case, transmittal and acceptance of wagers placed on the outcome of sporting events and horse race results, line information, etc.

F. Except where an application is filed pursuant to Rule 3537

1. The character and location of the particular communication facilities involved or the particular place where the oral communications will be intercepted;

2. The facts and circumstances establishing probable cause to believe that the subject(s) has committed, is committing or will commit one of the crimes enumerated in 18 Pa.C.S. § 5708;

3. The facts and circumstances establishing probable cause to believe that the particular wire, electronic, or oral communications of the subject(s) concerning those offenses may be obtained through the proposed interception;

4. The facts and circumstances establishing probable cause to believe that the facilities from which, or the place where, the wire, electronic, or oral communications are to be intercepted, are, have been, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name(s) of, or commonly used by such subject(s).

G. The period of time (not to exceed 30 days) for which the interception will be needed, and if the character of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur and should be intercepted thereafter.

H. A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and failed or reasonably appear unlikely to succeed if tried or are too dangerous to employ, *e.g.*, standard visual or aural surveillance techniques, questioning of subject under an immunity grant, and/or use of search warrants.

I. The facts supporting these findings of probable cause should, whenever practical, be no more than 21 days old.

Rule 3540. Additional Testimony or Documentary Evidence.

The Assigned Judge may require the Applicant to provide additional testimony or documentary evidence during the *in camera* proceeding.

Rule 3541. Request for Identity of Informant.

Where, pursuant to 18 Pa.C.S. § 5710(b), the Assigned Judge requests the identity of an informant, such proceedings must be on the record save for any information that could lead to the identification of the informant.

Rule 3542. Orders—Notice of Confidentiality.

Upon consideration of the application, the Assigned Judge may enter an *ex parte* order authorizing the interception of wire, electronic, or oral communications that are being intercepted anywhere in the Commonwealth. All proposed orders shall include, on the first page, the following notice of confidentiality to third parties:

WIRETAP CONFIDENTIALITY
NOTICE

You have been served with an intercept order pursuant to Pennsylvania's Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. §§ 5701—5781 (the "Wiretap Act").

In order to implement wiretaps and electronic surveillance authorized by intercept orders, the assistance of third parties, those outside of law enforcement, is required. You have been made aware of an intercept order because your assistance is required to facilitate wiretapping or other surveillance in an on-going criminal investigation.

This is a very serious and highly confidential matter and must be treated with the utmost care and discretion. Except as specifically authorized under the Wiretap Act, IT IS A CRIME TO WILLFULLY USE OR DISCLOSE THE EXISTENCE OF AN INTERCEPT ORDER. SUCH USE OR DISCLOSURE IS PUNISHABLE BY IMPRISONMENT OF UP TO 2 YEARS, AND A FINE OF UP TO \$5,000.

The Wiretap Act provides as follows:

§ 5719. Unlawful use or disclosure of existence of order concerning intercepted communication

Except as specifically authorized pursuant to this subchapter any person who willfully uses or discloses the existence of an order authorizing interception of a wire, electronic or oral communication is guilty of a misdemeanor of the second degree.

(A misdemeanor of the second degree is punishable by imprisonment of up to two years, 18 Pa.C.S. § 1104, and a fine of up to \$5,000, *id.* § 1101.)

See also 18 Pa.C.S. §§ 5725, 5726 and 5717.

Rule 3543. Orders—Probable Cause Statement.

A proposed order, except those pertaining to supplementary target specific orders or orders under 18 Pa.C.S. §§ 5771—5773, shall be submitted by the Applicant to the Assigned Judge, and it shall state that based on the application, the Assigned Judge finds probable cause to believe the following:

A. The person(s) whose communication is to be intercepted is committing, has committed, or is about to commit the offense(s) set forth in the application.

B. Particular communications concerning such offense(s) may be obtained through such interception.

C. Normal investigative procedures with respect to such offense(s) have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ.

D. The facilities from which (or the place where) the wire, electronic or oral communications are to be intercepted, are, have been, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by, the subject(s).

E. The investigative or law enforcement officers or agency to be authorized to do the interception are qualified by training and experience to execute the interception sought and are certified under 18 Pa.C.S. § 5724.

F. The application is based on new evidence or information different from and in addition to the evidence or information offered to support any prior order for interception (other than a renewal or extension of an existing order).

Rule 3544. Orders—Supplementary Target Specific.

A proposed order for a supplementary target specific wiretap shall be submitted to the Assigned Judge, and it shall state that based on the application, the Assigned Judge finds reasonable suspicion that:

A. The target of the original target specific wiretap has in fact changed communication devices or facilities or is presently using additional communication devices, communications facilities, or places.

B. The target of the original target specific wiretap is likely to use the specified communications device or facility for criminal purposes similar to or related to those specified in the original order.

C. The Applicant will be responsible for the supervision of the interception.

Rule 3545. Orders—Mobile Communication Tracking, Installation and Use of a Pen Register, Trap and Trace Device, and Telecommunication Identification Interception Device.

A proposed order for mobile communication tracking, installation and use of a pen register, trap and trace

device, or a telecommunication identification interception device shall be submitted to the Assigned Judge, and it shall state:

A. There is probable cause to believe that information relevant to an ongoing criminal investigation will be obtained from the targeted telephone.

B. The identity, if known, of the person to whom is leased or in whose name is listed the targeted telephone, or, in the case of the use of a telecommunication identification interception device, the identity, if known, of the person or persons using the targeted telephone.

C. The identity, if known, of the person who is the subject of the criminal investigation.

D. If the order is for a pen register or trap and trace device only, the physical location of the targeted telephone.

E. A statement of the offense to which the information likely to be obtained by the pen register, trap and trace device, or the telecommunication identification interception device relates.

F. Direct, upon the request of the Applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register under 18 Pa.C.S. § 5771.

G. In the case of a telecommunication identification interception device, direct that all interceptions be recorded and monitored in accordance with 18 Pa.C.S. § 5714(a)(1) and (2) and (b).

H. The order authorizes the disclosure or production of mobile communication tracking information or installation and use of a pen register, trap and trace device, or a telecommunication identification interception device for a period not to exceed 60 days.

I. Extensions of such an order may be granted but only upon an application for an order under 18 Pa.C.S. § 5772 and upon the judicial finding required by 18 Pa.C.S. § 5772(a). The period of each extension shall be for a period not to exceed 30 days.

J. The order be sealed until otherwise ordered by the Issuing Judge.

K. The person owning or leasing the targeted telephone, or who has been ordered by the Issuing Judge to provide assistance to the Applicant, not disclose the existence of the mobile communication tracking, pen register, trap and trace device, or telecommunication identification interception device, or the existence of the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the Issuing Judge.

Rule 3546. Orders—Factual Statement.

After reciting the relevant facts, the order shall set forth the following:

A. The identity of the investigative or law enforcement officers or agency to whom authority to intercept is given, *i.e.*, the supervising officer named in the application along with all qualified members of the named agency.

B. The identity of the Applicant and, if the Applicant is a designee, the identity of the District Attorney or Attorney General.

C. The identity of, or a particular description of, the person(s), if known, whose communications are to be intercepted.

D. The character and location of the particular communication facilities as to which, or the particular place as to which, authority to intercept is granted, except where a target specific order is at issue.

E. A particular description of the type of communication to be intercepted and a statement of the particular offense(s) to which it relates.

F. The period of time during which such interception is authorized not to exceed 30 days, or 60 days in the cases of orders authorizing production or disclosure of mobile communication tracking, the installation and use of pen registers, trap and trace devices, or telecommunication identification interception devices, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained. The order shall state that such interception or tracking is authorized only for that period of time necessary under the circumstances to accomplish the objectives of the interception or tracking. The order shall require that the interception or tracking begin and terminate as soon as practicable and that the interception be conducted in such a manner as to minimize or eliminate interception of communications not otherwise subject to interception under the Wiretap Act and require reasonable efforts, whenever possible, to reduce the hours of interception.

G. The order shall require the Applicant to supervise the interception or tracking.

H. The order should require periodic progress reports to the Issuing Judge indicating the progress made toward achieving the objective of the interception or tracking and the need for continued interception.

I. If requested by the Applicant, the order shall direct the pertinent communications common carrier to furnish the Applicant with all information, facilities, and technical assistance necessary to accomplish the interception or tracking unobtrusively and with a minimum of interference with the services being afforded to the subject(s) of the interception. The order shall provide that the common carrier shall be compensated at prevailing rates.

J. If requested by the Applicant, the order shall authorize the entry of the subject premises or facilities (or other premises necessary to gain entry into the subject premises) by the law enforcement officers previously authorized in the order to conduct the interception as often as necessary solely for the purpose of installing, maintaining or removing an interception device. The order shall further provide that such entry is found to be reasonably necessary to accomplish the purposes of the Wiretap Act and shall require that the Issuing Judge be notified of the time and method of each such entry in advance, if practical, and in any event, within 48 hours of entry.

Rule 3547. Orders—Sealing Procedure.

The Issuing Judge shall note on the order the date and time at which it was signed. The original application, affidavit, and order should be placed in an envelope and sealed by the Issuing Judge. The seal should be in the form of an order signed by the Issuing Judge and affixed to the envelope by the Issuing Judge in such a manner as to prevent the removal of the contents without physically disturbing the seal. The confidential docket number should be placed on the envelope. Form sealing orders are available to assist the Applicant and may be obtained from the Supervising Judge.

Rule 3548. Duplicate Original for Communications Common Carrier.

At the time the original order is signed, a duplicate original should also be signed for presentation to the communications common carrier.

Rule 3549. Transmission of Sealed Materials.

The Assigned/Issuing Judge should then mail or hand deliver the envelope, after inserting it in another envelope marked "Confidential," to the appropriate Superior Court Prothonotary office set forth in the sealing order. Alternatively, the materials may be hand delivered by the Applicant.

Rule 3550. Renewal or Extension Procedure.

To obtain an extension pursuant to 18 Pa.C.S. § 5712(b), an application, affidavit, and proposed extension order shall be submitted to the Issuing Judge. The application must have all of the features contained in the original application and must also contain a particular statement of facts showing the results obtained to date from the interception or a reasonable explanation of the failure to obtain such results.

Rule 3551. Verbal Authorization—Application.

A. When permitted by 18 Pa.C.S. § 5713 and/or 18 Pa.C.S. § 5773 an Applicant may make a verbal, instead of written, application.

B. The verbal application should include as many of the elements of a written application and affidavit as can be provided under the emergency conditions. Application for such authorization should be made *in camera*, under oath, and on the record. Upon approval of the Assigned Judge, the application may be made by electronic means, e.g., telephone, Skype, or FaceTime. Moreover, whenever the application proceedings cannot be recorded stenographically, the Applicant shall, with the permission of all speaking parties, record the proceedings.

1. The verbal application must include sufficient facts for the Assigned Judge to find that an emergency situation exists with respect to the investigation of an offense designated in 18 Pa.C.S. § 5708, and

i. The investigation involves conspiratorial activities characteristic of organized crime; or

ii. A substantial danger to life or limb exists.

2. As a result of the facts supporting these findings, authorization for immediate interception of wire, electronic, or oral communications is needed before a written application could, with due diligence, be submitted and acted upon by the Assigned Judge.

Rule 3552. Verbal Authorization—Order.

If the Assigned Judge finds that the statutory requirements are satisfied, he or she may verbally authorize the interception of wire, electronic, or oral communications conditioned upon the filing within 48 hours of a written application for an interception order.

Rule 3553. Verbal Authorization—Required Written Application.

A. The written application and affidavit required by Rule 3552 shall include, in addition to the normal requirements, a recitation of the date, time, place, and circumstances of the verbal authorization.

B. If the Issuing Judge, after granting verbal authorization, denies a subsequent written application, the Applicant shall, in writing, request that the Issuing Judge cause an inventory to be served as provided in 18 Pa.C.S.

§ 5716. Similarly, if a subsequent written application is not made or, if made, is denied, the Applicant shall, in writing, request the Issuing Judge to seal and retain any recordings of communications intercepted pursuant to verbal authorization.

Rule 3554. Progress Reports.

If the Issuing Judge orders progress reports pursuant to 18 Pa.C.S. § 5712(d), such reports shall be submitted to the Issuing Judge in a manner consistent with Rule 3535. The Issuing Judge shall seal and file the progress reports in the same manner as applications, set forth in Rule 3547.

Rule 3555. Final Reports.

At the termination of the interception, the Applicant must submit a final report consisting of a complete written list of names of persons intercepted (if known), and evidence of offenses discovered, including those offenses not set forth in the application or order. Where communications relating to offenses other than those specified in the application or order are intercepted, the contents of those communications and any evidence derived therefrom must be included in the final report. In addition to the final report, the Applicant shall immediately, upon the termination of interception, submit all monitor's records and recordings to the Issuing Judge for sealing.

Rule 3556. Service of Inventory.

Within a reasonable time, but no later than 90 days after termination of the period of the order or any extension(s) or renewal(s) thereof or the date of denial of an order, the Applicant shall file an application with the Issuing Judge seeking an order that an inventory be served upon persons named in the order as provided in 18 Pa.C.S. § 5716(a) or shall file an application with the Issuing Judge seeking an order that postpones such service pursuant to 18 Pa.C.S. § 5716(b).

Rule 3557. 30-Day Report of Assigned Judge.

Within 30 days after the expiration of an order (or an extension or renewal), or the denial of an order confirming verbal approval of interception, the Applicant shall provide to the Issuing Judge a completed WT-2B form, which is provided by the Administrative Office of United States Courts, for his or her signature. After reviewing the form and making any necessary corrections, the Issuing Judge shall send a copy of the WT-2B form to the Administrative Office of Pennsylvania Courts, the Administrative Office of United States Courts, and the Supervising Judge.

Rule 3558. Unsealing—Motions.

A. A motion by an interested party to unseal an application, report, order, or other material previously placed under seal shall be in writing and shall be presented to the Issuing Judge. The Issuing Judge, upon good cause shown, may order an application, report, order, or other material (or portions thereof) within the Prothonotary's file to be unsealed and may impose such conditions or limitations thereon as may be necessary to safeguard the confidentiality of such information.

B. The Prothonotary, without express written permission from the Issuing Judge, shall not surrender original materials constituting a part of his or her file.

C. The motion should identify with particularity the following:

1. The specific application, report, order, or other materials sought to be unsealed.

2. The purpose for which the order is sought.

3. If the application, report, order, or other materials under seal is/are sought for a trial or other criminal proceeding, the motion shall state the type of proceeding, court docket number(s), the name(s) of the party(ies) involved, the forum, the date(s) and approximate length of time for which such application, report, order, or other materials will be utilized and name(s) and designation(s) of the person(s) having access to the unsealed application, report, order, or other materials.

4. If the application, report, order, or other materials under seal is/are sought for the purpose of disclosure to law enforcement or investigative officers in connection with a criminal investigation, the name(s) of the investigative or law enforcement officer(s) shall be set forth together with his/her/their designation(s), his/her/their authority to conduct said investigation, the purpose of the investigation and the approximate date(s) and length of time for which such application, report, order or other materials are sought.

Rule 3559. Unsealing—Orders.

A. The Issuing Judge may, upon good cause shown by the said motion, order unsealed the application, report, order, or other materials which is/are the subject of the motion for the purpose(s) set forth therein. If the motion to unseal is granted, the order authorizing unsealing shall be limited to the application, report, order, or other materials which is/are the subject of the motion. The unsealing order shall be valid for a period not to exceed 20 days or the length of the trial or other criminal proceeding or investigation, whichever period is shorter.

B. The Issuing Judge may entertain a motion to extend the life of the unsealing order and may grant same upon good cause shown. If the motion to extend is granted, the unsealing order may be extended for a period not to exceed 20 days. The motion to extend must be filed before the expiration of a previously granted motion or extension(s) therefor and should state with particularity the reason(s) for the extensions.

C. The Issuing Judge may also entertain a motion to extend the scope of a previously granted unsealing order. The motion to extend shall be filed before the termination of the trial or other criminal proceeding or investigation for which the application, order, or other materials was/were initially unsealed.

Rule 3560. Responsibility for Unsealed Documents.

After the application, report, order, or other material(s) has/have been turned over to the custody of the requesting party(ies) designated in the motion the said requesting party(ies) shall assume complete responsibility for and the safekeeping of such application, order, report, or other materials for the entire duration of the time set forth in the said unsealing order and, further, shall assume responsibility for the safe return of such application, order, report, or other materials to the Prothonotary.

Rule 3561. Return of Documents to Prothonotary.

The application, report, order, or other materials subject to the unsealing shall be returned to the Prothonotary within 48 hours of the expiration of the life of the unsealing order or within 48 hours of the termination of the trial or other criminal proceeding or investigation, whichever event occurs sooner, unless a timely motion to

extend the life of the unsealing order or to extend the scope of a previously granted unsealing order has been filed and granted.

[Pa.B. Doc. No. 19-181. Filed for public inspection February 8, 2019, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 1000, 2000 AND 2250]

Order Amending Rules 1007, 1018, 1033 and 2252 and Adopting Rule 2005 of the Pennsylvania Rules of Civil Procedure; No. 688 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 24th day of January, 2019, upon the recommendation of the Civil Procedural Rules Committee; the proposal having been published for public comment at 47 Pa.B. 3076 (June 3, 2017):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 1007, 1018, 1033, and 2252 of the Pennsylvania Rules of Civil Procedure are amended and Rule 2005 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 April 1, 2019.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS

Subchapter A. CIVIL ACTION

VENUE AND PROCESS

Rule 1007. Commencement of Action.

An action may be commenced by filing with the prothonotary:

- (1) a *praecipe* for a writ of summons, or
- (2) a complaint.

Official Note: For the form of the writ of summons, see Rule 1351[, *infra*].

See Rule 205.5 governing the requirement for filing a cover sheet with the pleading commencing the action.

Rule 2005(b) does not authorize the filing of a *praecipe* for a writ of summons if an unknown defendant is to be identified by a Doe designation.

PLEADINGS

Rule 1018. Caption.

Every pleading shall contain a caption setting forth the name of the court, the number of the action and the name of the pleading. The caption of a complaint shall set forth the form of the action and the names of all the parties, **including a Doe designation for an unknown defendant as provided in Rule 2005**, but in other pleadings

it is sufficient to state the name of the first party on each side in the complaint with an appropriate indication of other parties.

Official Note: Civil Actions and proceedings shall be captioned “Court of Common Pleas of _____ County—Civil Action” or other appropriate form of action.

The caption of all legal papers filed in a medical professional liability action must contain the designation “Civil Action—Medical Professional Liability Action.” See Rule 1042.16.

The caption of all legal papers filed in a civil action by and against a minor must designate the minor by the initials of his or her first and last name. See Rule 2028.

Rule 1033. Amendment.

(a) A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, add a person as a party, correct the name of a party, or otherwise amend the pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted.

(b) An amendment correcting the name of a party against whom a claim has been asserted in the original pleading relates back to the date of the commencement of the action if, within [**ninety**] **90** days after the period provided by law for commencing the action, the party received notice of the institution of the action such that it will not be prejudiced in maintaining a defense on the merits and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.

(c) An amendment substituting the actual name of a defendant for a Doe designation as provided in Rule 2005 relates back to the date of the commencement of the action if, within the time provided by Rule 401 for service, the defendant named by the amendment has received actual or constructive notice of the commencement of the action such that it will not be prejudiced in maintaining a defense on the merits and the defendant knew or should have known that the action would have been brought against it but for lack of knowledge of the defendant’s actual name.

CHAPTER 2000. ACTIONS BY REAL PARTIES IN INTEREST

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

Rule 2005. Unknown Defendant. Doe Designation.

(a) This rule shall only apply to *in personam* actions.

(b) The plaintiff or joining party may designate an unknown defendant by a Doe designation in a complaint provided that:

- (1) a defendant’s actual name is unknown to the plaintiff or joining party after having conducted a reasonable search with due diligence;
- (2) the Doe designation is averred to be fictitious;
- (3) a factual description of the unknown defendant is averred with sufficient particularity for identification; and
- (4) the plaintiff or joining party avers that a reasonable search to determine the actual name has been conducted.

Official Note: This rule does not authorize use of a Doe designation in an action commenced by a writ of summons.

The unknown defendant should be designated by a Doe designation such as John Doe or Jane Doe.

(c) Within 20 days after the actual name of the defendant has been identified, the plaintiff or joining party shall file a motion to amend the complaint pursuant to this rule and Rule 1033 by replacing the Doe designation with the defendant's actual name. An affidavit shall be attached to the motion describing the nature and extent of the investigation that was made to determine the identity of the defendant, and the date upon and the manner in which the defendant's actual name was identified.

Official Note: Rule 1033 and this rule govern the requirements for amending a complaint to replace a Doe designation with the actual name of a defendant.

(d) The court shall grant a motion to amend filed pursuant to subdivision (c) unless the court finds that the party seeking the amendment failed to exercise due diligence in identifying the actual name of the defendant.

(e) A defendant introduced to an action by its actual name in an amended complaint, after the filing of a motion pursuant to subdivision (c) and the court's ruling, may respond by preliminary objection challenging compliance with this rule, asserting prejudice or any other ground set forth in Rule 1028.

(f) No subpoena in aid of discovery relating to a defendant identified by a Doe designation may be issued or be served without leave of court upon motion stating with particularity from whom information is sought and how the discovery will aid in identification of the unknown defendant. In deciding the motion, the court shall weigh the importance of the discovery sought against unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party from whom the discovery is sought, and prejudice to any person or entity suspected of being the unknown defendant. Leave to serve a subpoena in aid of discovery does not preclude a challenge to the subpoena by the person or entity served.

(g) No final judgment may be entered against a defendant designated by a Doe designation.

CHAPTER 2250. JOINDER OF ADDITIONAL DEFENDANTS

Rule 2252. Right to Join Additional Defendants.

(a) Except as provided by Rule 1706.1, any party may join as an additional defendant any person not a party to the action who may be

(1) solely liable on the underlying cause of action against the joining party, or

Official Note: The term "underlying cause of action" refers to the cause of action set forth in the plaintiff's complaint or the defendant's counter-claim.

(2) [Rescinded.

(3) Rescinded.

(4)] liable to or with the joining party on any cause of action arising out of the transaction or occurrence or series of transactions or occurrences upon which the underlying cause of action against the joining party is based.

Official Note: [Paragraph (4)] Subdivision (a)(2) permits a joining party to join an additional defendant

who may be liable over on the underlying cause of action against the joining party or jointly and severally liable with the joining party.

The joinder of an additional defendant in a class action is limited by Rule 1706.1 to the grounds set forth in that rule.

(b) The joining party may file as of course a *praecipe* for a writ or a complaint.

Official Note: Rule 2005(b) does not authorize the filing of a praecipe for a writ of summons if an unknown defendant is to be identified by a Doe designation.

(1) If the joinder is by writ, the joining party shall file a complaint within twenty days from the filing of the *praecipe* for the writ. If the joining party fails to file the complaint within the required time, any other party may seek a rule to file the complaint and an eventual judgment of *non pros* in the manner provided by Rule 1037(a) for failure to file a complaint.

(2) The complaint, in the manner and form required of the initial pleading of the plaintiff in the action, shall set forth the facts relied upon to establish the liability of the joined party and the relief demanded.

Official Note: For the form of notice to defend in a complaint to join an additional defendant, see Rule 1018.1.

(c) The writ to join an additional defendant shall be directed to the additional defendant and shall be substantially in the following form:

Commonwealth of Pennsylvania

County of _____

(Caption)

To _____ : (Name of Additional Defendant)

You are notified that _____
(Name(s) of Defendant(s))

has (have) joined you as an additional defendant in this action, which you are required to defend.

Date _____

Seal of Court _____
(Name of Prothonotary (Clerk))

By _____
(Deputy)

[(d) Rescinded.]

Official Note: See Rule 1031.1 governing cross-claims for the procedure to assert a claim against a person already a party to an action.

EXPLANATORY COMMENT

The Supreme Court of Pennsylvania has adopted new Rule 2005 governing the naming of unknown, or John/Jane Doe, defendants in a complaint. Currently, the Rules of Civil Procedure are silent as to the use of Doe defendants in litigation; however, case law shows that the naming of Doe defendants has occurred. Rule 2005 is intended to fill this gap by standardizing the procedure in which to assert a cause of action against a Doe defendant.

The rule requires a complaint using a John/Jane Doe or similar designation to describe the defendant with sufficient particularity for identification. The rule imposes a duty on the plaintiff or joining party to exercise due diligence in identifying the actual name of the defendant both before and after the complaint is filed. While a

sufficient description of an unknown defendant is typically fact specific to a particular case, it may include the physical characteristics of the unknown defendant, the position or title of the job performed by the unknown defendant, the alleged conduct of the unknown defendant, and how the unknown defendant is connected to the action.

Once served, the previously designated Doe defendant may challenge the filing party's due diligence by filing preliminary objections, asserting prejudice or any other ground set forth in Rule 1028. A defendant originally named by a Doe designation is not precluded from asserting nor is the grant of a motion to amend determinative of a defense based on a statute of limitations or repose.

It is important to note that designating a Doe defendant as a mere placeholder or as use as a class of defendants, *e.g.*, John Doe Defendants 1–10, is not a valid use of Rule 2005. The rule is not intended to create a practice of naming Doe defendants as a catch-all category in the event a probable defendant is not named in a complaint. Rule 2005 requires the information in the complaint concerning the Doe defendant to sufficiently describe that defendant for all intents and purposes except by its actual name.

Rule 2005 is not intended to affect the substantive rights of any litigant. The ability to substitute the actual name of the Doe defendant after the expiration of the statute of limitations does not impermissibly extend it. Rule 2005 does not extend the time for filing an action as prescribed by the applicable statute of limitations.

The rule is intended solely to provide a procedural mechanism to substitute the actual name of a Doe-designated defendant where the action has been filed within the limitations period and the defendant has been adequately described in the complaint to demonstrate that it was *that defendant* against whom the action was asserted.

*By the Civil Procedural
Rules Committee*

DAVID L. KWASS,
Chair

[Pa.B. Doc. No. 19-182. Filed for public inspection February 8, 2019, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

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

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

Amended Order

Per Curiam

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

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

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

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

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

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B(1). EDUCATION AND HEALTH OF JUVENILE

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

Rule 148. Educational Stability and Removal from Home.

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

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

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

Comment

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

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

In paragraph (C), circumstances indicating that it may not be in the best interest for the juvenile to attend a public school includes the security and safety of the juvenile and treatment needs. Paragraph (C) is intended to codify the presumption that a juvenile is to attend public school while in placement absent evidence demonstrating that it is not in the best interest of the juvenile or protective of the community to do so. The bundling of

residential services and educational services should not be permitted without a court order authorizing such.

For release of information to school, see Rule 163.

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

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 148 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019).

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 163. Release of Information to School.

* * * * *

Comment

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

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

* * * * *

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

Committee Explanatory Reports:

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

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

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

Final Report explaining the amendments to Rule 163 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019).

PART D(2). JUVENILE PROBATION OFFICERS

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

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

- 1) take children, juveniles, and minors into custody pursuant to:
 - a) the Juvenile Act, 42 Pa.C.S. §§ 6304 and 6324;
 - b) the Child Protective Services Law (CPSL), 23 Pa.C.S. [§] §§ 6301 *et seq.*;
 - c) a bench warrant as set forth in Rules 140, 141, and 1140; or
 - d) Rule 1202;

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

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

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

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

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

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

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

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

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

11) regularly oversee and visit juveniles in placement facilities;

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

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

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

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

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

- 1) the Juvenile Act;
- 2) the Pennsylvania Rules of Juvenile Court Procedure;
- 3) the Child Protective Services Law (CPSL); and
- 4) any local procedures.

Comment

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

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

When a child, juvenile, or minor is not under the court's supervision, the juvenile probation officer, as a duly authorized officer, may take a child, juvenile, or minor into custody pursuant to the Child Protective Services

Law (CPSL), 23 Pa.C.S. § 6315 and the Juvenile Act, 42 Pa.C.S. §§ 6304(a)(3) and (5) and 6324(1), (3), and (4).

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

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

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

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

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

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

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

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

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

this paragraph is intended to preclude the use of diversionary programs to address the nonpayment of fines or costs.

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

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

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

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

Committee Explanatory Reports:

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

Final Report explaining the amendments to Rule 195 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

Rule 512. Dispositional Hearing.

* * * * *

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

- 1) its disposition;
- 2) the reasons for its disposition;
- 3) the terms, conditions, and limitations of the disposition; and
- 4) if the juvenile is removed from the home:
 - a) the name or type of any agency or institution that shall provide care, treatment, supervision, or rehabilitation of the juvenile[, and];
 - b) its findings and conclusions of law that formed the basis of its decision consistent with 42 Pa.C.S. §§ 6301 and 6352, including why the court found that the out-of-home placement ordered is the least restrictive type of placement that is consistent with the protection of the public and best suited to the juvenile's treatment, supervision, rehabilitation, and welfare; **and**

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

- 5) whether any evaluations, tests, counseling, or treatments are necessary;
- 6) any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when

appropriate, the court shall appoint an educational decision maker pursuant to Rule 147; and

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

Comment

* * * * *

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

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 512 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 37 Pa.B. 2506 (June 2, 2007).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2319 (May 7, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 2684 (May 28, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 41 Pa.B. 3180 (June 25, 2011).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 47 Pa.B. 2313 (April 22, 2017).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 47 Pa.B. 2969 (May 27, 2017).

Final Report explaining the amendments to Rule 512 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019).

Subpart B. DEPENDENCY MATTERS

CHAPTER 11. GENERAL PROVISIONS

PART B(1). EDUCATION AND HEALTH OF CHILD

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

Rule 1146. Notice of Truancy Hearing.

Upon receiving written notice of a hearing regarding a citation or complaint for truancy against a child or a person in parental relation pursuant to 24 P.S. § 13-1333.1 when the child is the subject of a dependency proceeding, the county agency shall serve a copy of the notice upon the dependency court and parties.

Comment

Pursuant to 24 P.S. § 13-1333.2(b)(1), the court in which a truancy citation or complaint is filed shall provide the county agency with written notice of the hearing. For definition of "person in parental relation," see 24 P.S. § 13-1326.

The President Judge may adopt local rules coordinating jurisdiction and proceedings between the judge of the court where the citation or complaint was filed and the dependency court judge. Coordination may include, but is not limited to, the entry of an order staying the truancy proceeding for further consideration by the dependency court.

Official Note: Rule 1146 adopted December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1146 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019).

Rule 1147. Educational Decision Maker.

A. *Generally.* At any proceeding or upon motion, the court shall appoint an educational decision maker for the child if it determines that:

- 1) the child has no guardian; or
- 2) the court, after notice to the guardian and an opportunity for the guardian to be heard, has made a determination that it is in the child's best interest to limit the guardian's right to make decisions regarding the child's education.

B. *Notice of hearings.* The educational decision maker shall receive notice of all proceedings.

C. *Duties and responsibilities.* The educational decision maker shall:

- 1) make appropriate inquiries and take appropriate actions to ensure that:
 - a) issues concerning the child's educational stability are addressed;
 - b) school discipline matters are addressed;
 - c) the child is receiving appropriate education that will allow the child to meet state standards, including any necessary services concerning special education in the least restrictive environment, or remedial services;

d) the child, who is [**sixteen**] **fourteen** years of age or older, is receiving the necessary educational services to transition to [**independent living**] **successful adulthood**;

e) the child, who is receiving services concerning special education, is engaged in transition planning with the school entity beginning no later than the school year in which the child turns fourteen; and

f) the child, who is aging out of care within ninety days, has a transition plan that addresses the child's educational needs, and if applicable, the plan is coordinated with the child's transition planning concerning special education under the Individuals with Disabilities Education Act.

- 2) address the child's educational needs by:
 - a) meeting with the child at least once and as often as necessary to make decisions regarding education that are in the **child's** best interests [**of the child**];

b) participating in special education and other meetings, and making decisions regarding all matters affecting the child's educational needs in a manner consistent with the child's best interests;

c) making any specific recommendations to the court relating to:

i) the timeliness and appropriateness of the child's educational placement;

ii) the timeliness and appropriateness of the child's transitional planning; and

iii) services necessary to address the child's educational needs;

d) appearing and testifying at court hearings when necessary; and

e) having knowledge and skills that ensure adequate representation of the child.

Comment

A child in dependent care is to have a clearly identified, legally authorized educational decision maker. This is a particular concern for highly mobile children whose caregivers may change and whose guardian may be unavailable. An educational decision maker's responsibilities may include, but are not limited to: ensuring educational stability as mandated by 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; ensuring prompt enrollment in a new school as required pursuant to 22 Pa. Code § 11.11(b); facilitating access to a full range of school programs; advocating for the child in school discipline matters; ensuring meaningful transition planning as required by 42 Pa.C.S. § 6351 and 42 U.S.C. § 675(5)(H); and for a child eligible for special education, ensuring access to appropriate services including transition planning beginning no later than age fourteen. *See* 24 P.S. §§ 13-1371, 13-1372, 20 U.S.C. [§] §§ 1400 *et seq.* *See* paragraph (A) and (C).

An educational decision maker appointed pursuant to this rule who represents a child who is also adjudicated delinquent is to review Rule 147.

A court is not to appoint an educational decision maker if there is a parent, guardian, or other authorized person (*e.g.*, foster parent, relative with whom the child lives or surrogate parent appointed under the IDEA) who is competent, willing, and available to make decisions regarding the child's education and who is acting in the child's best interest regarding all educational matters. *See* Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. [§] §§ 1400 *et seq.* (2004). A court should limit the authority of a parent to make decisions regarding education only to the extent necessary to protect the child's interest and can reinstate the parent or change the educational decision maker at any time.

Unless limited by the court in its appointment order, an educational decision maker: 1) is responsible for making all decisions concerning education, including special education, for the child; and 2) can consent to or prohibit the release of information from the child's school records as a parent in accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g and 34 C.F.R. § 99.3 (1974). The educational decision maker may be a family member, a family friend, a mentor, a foster parent, a former foster parent, a Court Appointed Special Advocate, or, if an educational decision maker for special education is not needed, a child welfare professional. Except as otherwise provided by the IDEA, it is within the discretion of the court to appoint an educational decision maker and whom to appoint. In all cases, however, an educa-

tional decision maker appointed by the court should be familiar with a child's educational rights or is to agree to be trained regarding these issues.

If the child is or may be eligible for special education, an educational decision maker is to be appointed in accordance with the standards and procedures set forth in federal and state laws concerning special education. *See* IDEA, 20 U.S.C. §§ 1400, 1401(23), and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519. The IDEA recognizes a court's authority to appoint persons to make decisions concerning special education for a child. However, such decision makers cannot be the State or employees of any agency that is involved in the education or care of the child. 34 C.F.R. § 300.519(c), (d)(2)(i).

The educational decision maker should refer to the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and the McKinney-Vento Homeless Assistance Act, 42 U.S.C. [§] §§ 11431 *et seq.* (1989) for guidance in educational stability. Specifically, the educational decision maker is to: a) ensure the right to remain in the same school regardless of a change in placement when it is in the child's best interest; b) facilitate immediate enrollment in a new school when a school change is in the child's best interest; and c) ensure that school proximity is considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*

The educational decision maker is to also ensure: a) that the child receives an appropriate education, including, as applicable, any necessary special education, early intervention, or remedial services; *see* 24 P.S. §§ 13-1371, 13-1372, 55 Pa. Code § 3130.87, 20 U.S.C. [§] §§ 1400 *et seq.*; b) that the child receives educational services necessary to support the child's transition to [**independent living pursuant to 42 Pa.C.S. § 6351**] **successful adulthood** if the child is [**sixteen**] **fourteen** or older **pursuant to 42 Pa.C.S. § 6351(F)(8)**; and c) that the educational decision maker participates in the development of a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

The authority of the court to appoint an educational decision maker is derived from the broad powers of the court to issue orders that "provide for the care, protection, safety, and wholesome mental and physical development of children." 42 Pa.C.S. § 6301(b)(1.1). The IDEA also requires that each child who is eligible for special education has an active parent or other identified person who can participate in the process concerning special education. *See* IDEA, 20 U.S.C. §§ 1401(23) and 1415(b)(2); 34 C.F.R. §§ 300.30, 300.45, and 300.519.

Official Note: Rule 1147 adopted April 29, 2011, effective July 1, 2011. **Amended December 21, 2018, effective May 1, 2019.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1147 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 1147 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019).

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

Rule 1148. Educational Stability and Placement.

A. *General Rule.* Any order resulting in the placement of a child or a change in placement shall address the educational stability of the child.

B. *School of Origin.* A child in placement shall remain in their school of origin unless the court finds remaining in the school of origin is not in the child's best interest. If the court finds that it is not in the best interest of the child to remain in the school of origin, then the court may order the child to be enrolled in another school that best meets the child's needs.

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

Comment

This rule is intended to apply at any point in a dependency proceeding when the child is in placement, including pre-dispositional placement and post-dispositional modification of a dependent child's placement. This rule is intended to complement rather than supersede the requirements of Rule 1512(D)(1)(i).

In paragraph (B), the best interest determination should be based on factors including the appropriateness of the current educational setting considering the child's needs and the proximity of the school of origin relative to the placement location. This paragraph is not intended to usurp the administrative process contemplated by the Elementary and Secondary Education Act of 1965, *as amended*, 20 U.S.C. § 6311(g)(1)(E). This paragraph is intended to facilitate educational stability while the child remains under the jurisdiction of the Juvenile Court and to codify the presumption that a child is to remain in their school of origin absent evidence that it is not in the child's best interest to do so.

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

A court may consider an Individualized Education Program, Service Agreement, or administrative determination in making findings pursuant to this Rule.

Official Note: Rule 1148 adopted December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1148 published with the Court's Order at 49 Pa.B. 610 (February 9, 2019).

FINAL REPORT¹**Amendment of Pa.R.J.C.P. 163, 195, 512, and 1147
New Pa.R.J.C.P. 148, 1146, and 1148**

On December 21, 2018, the Supreme Court amended Rules of Juvenile Court Procedure 163, 195, 512, and 1147, and adopted new Rules 148, 1146, and 1148 to improve the educational stability of juveniles and chil-

dren, effective May 1, 2019. The changes consist of three components: 1) changes to implement the Act of November 3, 2016, P.L. 1061, concerning truancy matters; 2) changes to update Rule 1147 in light of Act 94 of 2015, P.L. 559, which amended 42 Pa.C.S. § 6351(F)(8); and 3) the creation of procedures for the judicial determination of the delivery of educational services for dependent/delinquent youth in placement.

This proposal was previously published for comment at 47 Pa.B. 3336 (June 7, 2017). Following the review and deliberation on all the comments received, the Committee revised the proposal in several aspects.

Truancy

In 2016, Pennsylvania substantially revised its truancy laws. Section 5 of the Act of November 3, 2016, P.L. 1061, amended Section 1333.3(F)(2) of the Public School Code, 24 P.S. § 13-1333.3(f)(2). In response, the Committee proposed amending Rule 195 to add paragraph (A)(13) to recognize that a juvenile probation officer (JPO) may receive allegations that a child has also failed to satisfy penalties arising from a truancy citation. Consistent with the statute, the Rule first required a local rule permitting the receipt of these allegations. It is contemplated that the local rule would provide guidance as to further actions of the juvenile probation officer with regard to those allegations.

A commenter suggested that Rule 195 should discuss the purpose for which the JPO may receive allegations. The Committee concluded that the statute, 24 P.S. § 13-1333.3(f)(2), speaks for itself. While the statute does not explicitly provide for diversionary programs, the Committee saw merit in the continued use of diversionary programs when the President Judge via local rule approved such a program. Accordingly, the Committee revised the Comment to Rule 195 to specifically reference the availability of diversionary programs.

The Committee believed the truancy legislation also provided an opportunity to coordinate actions between the dependency court and the court where a truancy citation is filed when a dependent child or a "person in parental relation" to the child is charged with truancy. As amended, 24 P.S. § 13-1333.2(b)(1) requires the court to send a hearing notice to the county agency when a truancy citation is filed. Utilizing this notice mechanism, Rule 1146 would require the county agency to then provide notice of the hearing to the dependency court and the parties. Thereafter, the dependency court judge and the truancy court judge could coordinate proceedings.

Based upon the comments, the Committee realized that the proposed language may be interpreted to require notice be given to the dependency court in truancy matter. That was not the intention. Post-publication, Rule 1146 was revised to clarify that the county agency need only serve a copy of the truancy notice on the court and parties if there was an open dependency matter.

Education Decision Makers (Rule 1147)

Act 94 of 2015 amended 42 Pa.C.S. § 6351(F)(8) to require at each permanency hearing a judicial determination of the services needed to assist a child who was 14 years of age or older to successfully transition to adulthood. The amendment lowered the age of applicability from 16 years of age to 14. This amendment was incorporated into Rule 1608(D)(1)(k) on December 9, 2015.

Rule 1147(C)(1)(d), regarding the duties of educational decision makers ("EDMs"), requires EDMs to inquire and act to ensure that a child 16 years of age or older is

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

receiving the necessary educational services to transition to independent living. Upon review of the legislation, the Committee believed that “services” in Section 6351(F)(8) of the Juvenile Act included “educational services” as used in Rule 1147. Accordingly, the Committee proposed to amend Rule 1147 and the Comment to reflect that interpretation, including the lower age.

Educational Stability (Rule 148 and 1148)

The Elementary and Secondary Education Act of 1965, *as amended*, 20 U.S.C. § 6311(g)(1)(E), requires that a child in placement remain in their school of origin unless it is not in the child’s best interest. In response, the Committee proposed new Rule 1148 to establish a procedural requirement for the court to conduct a best interest analysis if a child in placement was not to remain in their school of origin. The Rule’s purpose was to maintain the child’s educational stability. Further, this requirement would extend beyond dependency proceedings to include the removal of a juvenile from home in delinquency proceedings via new Rule 148. Both Rule 148 and Rule 1148 would be applicable to any order resulting in the placement of a child or the removal of a juvenile from home.

Several commenters suggested “or a change in placement” be added to paragraph (A) of Rules 148 and 1148 so that educational needs were addressed not just upon removal, but also when there was a change in placement. The Committee agreed and revised the text to add this suggestion.

There was a suggestion to strike “community’s best interest” in paragraph (B) of Rule 148. The Committee believed that the court was required to consider the protection of the community in delinquency matters and it was a sufficiently important factor when considering educational needs that it should be specifically included in the rule text. The language was revised from “community’s best interest” to “protective of the community” to more closely reflect the language of the Juvenile Act. This revision was made to paragraph (B) and (C).

A commenter recommended adding a new paragraph (E) that would require the court’s decision regarding the juvenile’s schooling to be in a separate order and served on the school responsible for educating the juvenile. The Committee did not favor requiring a separate order—a separate order was not needed in every case so it did not seem efficient to require a separate order in every case. There may be times when a separate order is necessary to avoid disclosing unnecessary details to the school, but the courts have the discretion to enter such orders. Notwithstanding, the Committee favored including a citation to Rule 148 in the Comment to Rule 163 (Release of Information to School) to indicate that sharing educational stability information was permitted.

Rule 1148 is the dependency analog to Rule 148. While the procedures set forth in both rules are very similar, the stakeholders in delinquency and dependency proceedings differ, which is reflected in the comments to Rule 1148. It is beyond countenance that the court is obligated to ensure the stability and appropriateness of a child’s education. *See, e.g.*, Pa.R.J.C.P. 1512(D)(1)(i); Pa.R.J.C.P. 1609(E)(1)-(2). The commentary accompanying the Rules requires the court to address the child’s educational stability, including 1) the child’s right to remain in the same school regardless of a change in placement when it is in the child’s best interest; 2) the immediate enrollment when a school change is in the child’s best interest; and 3) consideration of the school’s proximity in all placement

changes. The changes brought by the Every Student Succeeds Act, Pub.L. 114-95, amending 20 U.S.C. § 6311, only serve to reinforce what is already required by the Rules—once the child is subject to juvenile court jurisdiction, the court is required to make educational decisions in the child’s best interest.

[Pa.B. Doc. No. 19-183. Filed for public inspection February 8, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BERKS COUNTY

Amendments to Local Rules; No. 19-1 Prothonotary

Order

And Now, this 17th day of January, 2019, the following amendments to Berks County Orphan’s Court Rules 2.5A; 2.7A; 14.1A; 14.3A; 14.4A; 14.8A; and 14.8B and new Orphan’s Court Rules 2.6A; 2.6B and 2.6C shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*, in accordance with Pa.R.J.A. No. 103(c)(5)(iii) and No. 103(d)(5)(iii).

(New language is bold and underscored, and deleted language is shown bracketed and bold.)

The District Court Administrator is *Ordered* and *Directed* to:

1. Submit one (1) copy of this Order, including the amended rules, to the appropriate Rules Committee of the Supreme Court of Pennsylvania for review.
2. Distribute two (2) copies of this Order, including the amended rules, and one (1) disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) copy of this Order, including the amended rules, with the Administrative Office of Pennsylvania Courts contemporaneously with publishing the local rules in the *Pennsylvania Bulletin*.
4. Compile the local rules within the complete set of local rules available on the Berks County Court website no later than 30 days following publication in the *Pennsylvania Bulletin*.
5. Distribute one (1) copy of this Order, including the amended rules to the Berks County Prothonotary’s Office so they can keep them continuously available for public inspection and copying.

THOMAS G. PARISI,
President Judge

CHAPTER II. ACCOUNTS, OBJECTIONS AND DISTRIBUTIONS

Rule 2.5A. [**Audit Date**] **Notice of Account Contents.**

[**Accounts for audit shall be called on the first Wednesday of each month at 9:00 a.m. in the courtroom as posted. Special days for audit may be appointed at the call or order of the court. Accounts shall be scheduled for audit on the audit date next following the expiration of 30 days after filing the account.]**

The notice of account shall also contain the following in substantively similar form:

(a) The account has been filed with the Clerk of the Orphans' Court Division;

(b) Any objections to the account must be made in writing and filed with the Clerk of the Orphans' Court Division any time prior to the date set forth for submission by the Clerk to the Court for review but no later than the close of business of the last business day prior to the submission to the Court;

(c) The account will be submitted to the Court on the _____ day of _____ and final confirmation thereof and an adjudication may be entered if written objections are not filed with the Clerk prior to that date; and

(d) A statement that if the person does not agree with the accountant's accounting or has an objection to any transaction shown in the account or omitted from the account the person must file with the Clerk of the Orphans' Court Division objections thereto in writing in conformity with the Pennsylvania Orphans' Court Rules and the Berks County Orphans' Court Rules, otherwise the court may assume the person has no objections to the account and he or she is in agreement with the accountant's interpretation.

Rule 2.6A. Required Documents.

No account shall be accepted for filing and advertisement unless accompanied by the Supreme Court-approved Petition for Adjudication/ Proposed Statement of Distribution.

Rule 2.6B. Advertising of Accounts.

The Clerk shall advertise the list of all accounts to be submitted for audit for two (2) consecutive weeks the last two (2) Thursdays of every month all accounts filed with the Clerk prior to the date of submission to the Court. The advertising required of the Clerk shall include the following:

(a) Name of the estate, trust, guardianship;

(b) The name and capacity of the accountant;

(c) The name of the counsel for the accountant; and

(d) With the following statement: The following accounts have been filed and may be examined in the Clerk of the Orphans' Court office. If you desire to object, you must file objections in writing with the Clerk on or before the close of business of the last business day before submission to the Court. The account will be filed by the Clerk of the Orphans' Court Division with the Court for adjudication and confirmation on the first Wednesday of the month following advertisement and distribution may be ordered or authorized without further notice if no objections are filed prior to that date.

Rule 2.6C. Submission of Account to the Court.

On the first Wednesday of every month, the Clerk shall submit to the Court all advertised accounts and petitions for adjudication and additional documentation, if any, to which no objection has been filed or hearing requested or required. The Court shall audit those accounts and may then confirm the accountings finally, order a hearing, or enter any adjudication, decree, order or award directing distribution as law and justice may require. The

Clerk shall also submit to the Court a list of all advertised accounts to which an objection was filed or a hearing has been requested. A conference or hearing will then be scheduled in regard to those accounts as the Court by special rule or general order may direct with notice given to all counsel of record and to such other persons as the Court may direct.

Rule 2.7A. Objections to Accounts or Petitions for Adjudication/Statements of Proposed Distribution—Order.

(a) Objections to accounts may be made at any time prior to the close of business on the first Tuesday of each month (or the first Monday of each month should the first Tuesday of each month be a holiday) to the Court by the Clerk by filing such objections in writing in the Clerk of the Orphans' Court Division.

(b) Objections to an account not filed for submission to the Court, of an account filed without a Petition for Adjudication/Statement of Proposed Distribution or ordered by the Court shall be filed within twenty (20) days from service of a copy of the account filed with the Clerk.

(c) A proposed order for the scheduling of a reply date and a status conference or hearing date shall be attached to all objections to accounts or Petitions for Adjudication/Statements of Proposed Distribution. The proposed order shall be in the following form:

(CAPTION)

ORDER

AND NOW, (month) _____, 20____, [the above-captioned matter is scheduled for a status conference on _____, 20____ at _____ a.m./p.m. in the chambers of the undersigned.] upon consideration of the foregoing objections filed in the above-captioned matter, it is hereby ORDERED that:

(1) Accountant shall file a Response to the Objections within _____ days of this Order;

and

(2) A status conference shall be held on _____, 20____ at _____ a.m./p.m. in the chambers of the undersigned.

OR

(3) A hearing is to occur on the _____, 20____ at _____ a.m./p.m. in a courtroom to be assigned in Berks County Courthouse/Services Center located at 6th and Court Streets, Reading, Pennsylvania.

Counsel are directed to meet prior to this [conference] conference/hearing to reduce fact questions and legal issues to a minimum; and, further shall be authorized to settle at said meeting and later [conference] conference/hearing.

BY THE COURT:

_____, J.

CHAPTER XIV. GUARDIANSHIPS OF INCAPACITATED PERSONS

Rule [14.2F] 14.1A. Allowances From an Incapacitated Person's Estate.

(a) In General. Petitions for allowances from an incapacitated person's estate, when necessary, shall be governed by the appropriate provisions of B.C.O.C.R. 5.6A, and as hereinafter provided.

(b) Contents of Petition. The petition shall set forth the following:

(1) the name of the guardian, the date of the guardian's appointment, if the petitioner is not the guardian, petitioner's relationship to the incapacitated person, and, if not related, the nature of the petitioner's interest;

(2) a summary of the inventory, the date it was filed and the nature and present value of the estate;

(3) the address and the occupation, if any, of the incapacitated person;

(4) the names and addresses of the incapacitated person's dependents, if any;

(5) a statement of all claims of the incapacitated person's creditors, known to the petitioner;

(6) a statement of the requested distribution and the reasons therefor; and

(7) a statement of all previous distributions allowed by the court.

(c) Restrictions Governing Allowance. If any portion of the incapacitated person's estate is received from the United States Veterans Administration or its successor, notice of the request for allowance shall be given to this agency.

Rule [14.2B] 14.3A. Evaluation.

If a petition to adjudicate an individual as an incapacitated person is filed with a request that the alleged incapacitated person be directed to submit to an evaluation of his or her capacity, the petitioner shall propose a specific expert to conduct the evaluation. No evaluator shall be proposed without first obtaining the proposed evaluator's consent to serve.

Rule [14.2A] 14.4A. Representation of alleged incapacitated person.

No petitioner or person alleged to have been acting against the best interests of the alleged incapacitated person shall attempt to obtain counsel for an alleged incapacitated person, except that a petitioner may contact an attorney who is known to the petitioner to have a previous professional relationship with the alleged incapacitated person. The Area Agency on Aging is exempt from the restriction of seeking counsel for the alleged incapacitated person to the extent such practice is required by statute or regulation. If the alleged incapacitated person or non-petitioning next of kin do not obtain counsel for the alleged incapacitated person, the court shall appoint counsel in its discretion upon receipt of the notification required by 20 Pa.C.S.A. § 5511(a).

Rule [14.2D] 14.8A. Mental Health Commitment Form.

Promptly upon appointment, a court-appointed guardian shall submit a completed Commonwealth of Pennsylvania Notification of Mental Health Commitment (Form SP 4-131) to the court.

Rule [14.2E] 14.8B. Guardian Acknowledgment.

Promptly upon appointment, a court-appointed guardian shall initial, sign and file a Guardian Acknowledgment of Duties and Liabilities form, as follows:

IN RE: : IN THE COURT OF COMMON PLEAS
an incapacitated person : OF BERKS COUNTY, PENNSYLVANIA
: ORPHANS' COURT DIVISION
: No.

GUARDIAN ACKNOWLEDGMENT OF DUTIES AND LIABILITIES

I, the undersigned court-appointed guardian, acknowledge that as guardian I have broad, but not unlimited, powers, duties, and liabilities as set forth generally in 20 Pa.C.S.A. § 5501 et seq. and more specifically acknowledge my duties and liabilities under 20 Pa.C.S.A. § 5521 and as follows:

As Guardian of the Person, I shall:

- Assert the rights and best interests of my ward.
• Respect to the greatest possible extent my ward's expressed wishes and preferences.
• Where appropriate, develop a plan of supportive services to meet my ward's needs.
• Encourage my ward to participate in all decisions which affect my ward, to act on his or her own behalf whenever he or she is able to do so, and to develop or regain, to the maximum extent possible, capacity to manage his or her personal affairs.

As Guardian of the Estate, I shall:

- Take possession of, maintain, and administer each asset of my ward, and make all reasonable expenditures and efforts to preserve the estate.
• Within three months, file an inventory of my ward's real and personal property and a statement of any property that I expect to acquire thereafter.

In addition to the above duties, as Guardian (either of the person or the estate), I shall:

- Exercise my powers for the benefit of my ward.
• Keep the ward's assets separate from my assets
• Exercise reasonable caution and prudence.

- Keep a full and accurate record of all actions, receipts, and disbursements on behalf of the ward. _____
- File an annual report on forms available in the Register of Wills/Clerk of the Orphans' Court attesting to the information required by 20 Pa.C.S.A. § 5521(c). I shall file a final report within 60 days of my ward's death or adjudication of capacity. _____
- Report any change of my address to the court within ten (10) days. _____

As Guardian of the person and/or the estate, I understand and acknowledge that any breach of my duty to my ward, such as but not limited to asset misappropriation, may result in civil and even criminal liability. _____

Date: _____

Guardian's Signature: _____

[Pa.B. Doc. No. 19-184. Filed for public inspection February 8, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ERIE COUNTY

Adoption of Custody Hearing Officer Program; Doc. No. 90051-17

Order

And now, this 22nd day of January, 2019, it having been determined that the "Custody Hearing Officer Pilot Program" is an effective process for custody actions filed in Erie County, it is hereby *Ordered* that the interim amendments to the Erie County Local Rules of Civil Procedure set forth in the Honorable John J. Trucilla's Order of November 20th, 2017, implementing that program are made final.

This Order shall be processed in accordance with Pa.R.J.A. 103(d) and shall be effective February 22, 2019 or thirty (30) days after the date of publication in the *Pennsylvania Bulletin*, whichever occurs later.

By the Court

JOSEPH M. WALSH, III,
Judge

[Pa.B. Doc. No. 19-185. Filed for public inspection February 8, 2019, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONROE COUNTY

Amendment of Local Rules of Civil Procedure in Custody, Divorce and Domestic Relations; 57 AD 2019

Order

And Now, this 24th day of January, 2019, it is *Ordered* that effective immediately, the following Monroe County Rules of Civil Procedure in Custody, Divorce and Domestic Relations are rescinded in their entirety: 1910.4, 1920.3, and 1930.3.

Local Rules 1910.4 and 1930.3 are promulgated as new rules.

The aforementioned new rules shall 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

Rule 1910.4. Commencement of Action.

The Domestic Relations Section (DRS) of the Court of Common Pleas of the 43rd Judicial District, Monroe County, Pennsylvania shall be the filing office for all original complaints for support and alimony pendente lite and all subsequent filings pertaining to those actions.

The Monroe County Prothonotary shall serve as the keeper of the original records of all filings made through DRS.

Rule 1930.3. Testimony by Electronic Means.

All requests by a party or witness to participate by electronic means in a proceeding in an action in child support, spousal support or alimony pendente lite shall be made by written petition filed in the DRS.

All requests by a party or witness to participate by electronic means in a proceeding in an action in divorce, custody or paternity shall be made by written petition filed with the Monroe County Prothonotary.

[Pa.B. Doc. No. 19-186. Filed for public inspection February 8, 2019, 9:00 a.m.]