

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL

[234 PA. CODE CH. 1400]

Order Amending Rule 1409 and Approving Comment Revisions to Rules 1405 and 1410: Sentencing; No. 213; Doc. No. 2

#### Amendatory Order

*Per Curiam:*

Now, this 22nd day of November, 1996, upon the recommendation of the Criminal Procedural Rules Committee,

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that the Comment to Rule of Criminal Procedure 1409, as it appears in Order No. 213 (September 26, 1996) (26 Pa.B. 4898 (October 12, 1996)), is hereby corrected to read as follows:

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1400. SENTENCING

**Rule 1409. Violation of Probation, Intermediate Punishment, or Parole: Hearing and Disposition.**

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**Comment:** This rule addresses Gagnon II revocation hearings only, and not the procedures for determining probable cause (Gagnon I). See *Gagnon v. Scarpelli*, 411 U.S. 778 (1973).

Paragraph (A) requires that the Gagnon II proceeding be initiated by a written request for revocation filed with the clerk of courts.

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

This rule does not govern parole cases under the jurisdiction of the Pennsylvania Board of Probation and Parole, but applies only to the defendants who can be paroled by a judge. See [Act of June 11, 1911, P. L. 1059, § 1, as amended by the Acts of May 5, 1921, P. L. 379, § 1, and May 11, 1923, P. L. 204, § 1,] 61 P. S. § 314. See also *Georgevich v. Court of Common Pleas of Allegheny County*, [510 Pa. 285,] 507 A.2d 812 (Pa. 1986).

This rule was amended in 1996 to include sentences of intermediate punishment. See 42 Pa.C.S. §§ 9763 and 9773.

Rules 1405 and 1410 do not apply to revocation cases.

Issues properly preserved at the sentencing proceeding need not, but may, be raised again in a motion to modify sentence in order to preserve

them for appeal. In deciding whether to move to modify sentence, counsel must carefully consider whether the record created at the sentencing proceeding is adequate for appellate review of the issues, or the issues may be waived. See *Commonwealth v. Jarvis*, 663 A.2d 790, 791-2, n. 1 (Pa. Super. 1995). As a general rule, the motion to modify sentence under paragraph (D) gives the sentencing judge the earliest opportunity to modify the sentence. This procedure does not affect the court's inherent powers to correct an illegal sentence or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. See, e.g., *Commonwealth v. Jones*, 554 A.2d 50 (Pa. 1989) (sentencing court can, sua sponte, correct an illegal sentence even after the defendant has begun serving the original sentence) and *Commonwealth v. Cole*, 263 A.2d 339 (Pa. 1970) (inherent power of the court to correct obvious and patent mistakes).

Once a sentence has been modified or reimposed pursuant to a motion to modify sentence under paragraph (D), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify sentence in order to preserve an issue for appeal, as long as the issue was properly preserved at the time sentence was modified or reimposed.

This *Amendatory Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective January 1, 1997.

[Pa.B. Doc. No. 96-2085. Filed for public inspection December 13, 1996, 9:00 a.m.]

## Title 249—PHILADELPHIA RULES

### PHILADELPHIA COUNTY

Amendment of Phila.Civ.R. No. ★1303(g) and (j);  
President Judge General Court Regulation No. 96-4

#### Order

*And Now*, this 26th day of November, 1996, the Board of Judges of Philadelphia County having voted to amend Phila.Civ.R. No. ★1303(g) and (j), at the Board of Judges' meeting held on November 21, 1996, *It Is Hereby Ordered* that Phila.Civ.R. No. ★1303(g) and (j) is amended as follows.

This General Court Regulation is issued in accordance with Phila.Civ.R. No. ★51 and Pa.R.C.P. No. 239 and shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*. As required by Pa.R.C.P. No. 239, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedure Rules Committee. Copies of the

Order shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library, and the law library for the First Judicial District.

ALEX BONAVIDACOLA,  
*President Judge*

**Rule ★1303. Scheduling of Arbitration Hearings, Relistings, Consolidations.**

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(g) *Transfer from Arbitration to Major List.* A case filed as an Arbitration case may be certified as a major case **[ by obtaining court approval upon the filing of a Miscellaneous Arbitration Application, substantially in the form set forth hereunder. ] only with court approval. A Petition for Approval to Transfer from Arbitration to Day Forward must be filed with the Prothonotary. [ The request to Transfer ] The Petition for Approval to Transfer will not be granted if it is made immediately before the Arbitration hearing date and it appears that the requisite pleadings have not been filed.**

\* \* \* \* \*

(j) *Failure to Serve Initial Pleading or Complaint.* If **[ the initial pleading has not been served or if ]** a complaint has not been filed or served by the date of the scheduled hearing, **[ the case will be nonprossed ] the case will be assigned to an arbitration panel with instructions to enter an award in favor of the defendant, unless counsel has complied with Phila.Civ.R.No. ★1303(b)(5)(i) and obtained a relisting prior to the Arbitration Hearing date.**

[Pa.B. Doc. No. 96-2086. Filed for public inspection December 13, 1996, 9:00 a.m.]

# Title 255—LOCAL COURT RULES

## CHESTER COUNTY

### Amendments to Rules of Civil Procedure

#### Order

*And Now*, this 27th day of November, 1996, the attached Amendment to the Chester County Rules of Civil Procedure are hereby adopted effective December 1, 1996.

*By the Court*

THOMAS G. GAVIN,  
*President Judge*

**Rule 1910.10.A. Hearing Procedure. Hearing Officers.**

(1) This court chooses to use the procedures set forth in Pa.R.C.P. 1910.12 **[ Copies of the Pennsylvania Support Guidelines shall be available at the Chester County Domestic Relations Office. ], except for those cases in which a motion for a separate listing pursuant to Pa.R.C.P. 1910.12(c) has been granted. Cases separately listed pursuant to Pa.R.C.P. 1910.12(c) shall be scheduled for hearing before the Court pursuant to Pa.R.C.P. 1910.11.**

[Pa.B. Doc. No. 96-2087. Filed for public inspection December 13, 1996, 9:00 a.m.]