

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 9]

Order Amending Rule 909; No. 276; Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a *Final Report* explaining the amendments to Rule of Criminal Procedure 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition). The amendments permit the judge to grant a 30-day extension of the dispositional time limits in Rule 909. If the judge fails to dispose of the petition within the time limits, the amendments provide a mechanism for notifying the judge that the time limits have expired and, absent action by the judge, for notifying the Supreme Court of the judge's failure to act. The *Final Report* follows the Court's Order.

Order

Per Curiam:

Now, this 12th day of February, 2002, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 30 Pa.B. 2575 (May 27, 2000), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 749), and a *Final Report* to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 909 is amended as follows.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2002.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 9. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 909. Procedures for Petitions in Death Penalty Cases; Stays of Execution of Sentences; Hearing; Disposition.

* * * * *

(B) Hearing; Disposition

(1) No more than 20 days after the Commonwealth files an answer pursuant to Rule 906(E)(1) or (E)(2), or if no answer is filed as permitted in Rule 906(E)(2), within 20 days after the expiration of the time for answering, the judge shall review the petition, the Commonwealth's answer, if any, and other matters of record relating to the defendant's claim(s), and shall determine whether an evidentiary hearing is required.

[(C)] (2) If the judge is satisfied from this review that there are no genuine issues concerning any material fact, [that] the defendant is not entitled to post-conviction collateral relief, and [that] no legitimate purpose would be served by any further proceedings,

[(1)] (a) the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal.

[(2)] (b) The defendant may respond to the proposed dismissal [by filing a request for oral argument] within 20 days of the date of the notice.

[(3)] (c) No later than 90 days from the date of the notice, or from the date of the [oral argument, if granted] defendant's response, the judge shall:

[(a)] (i) dismiss the petition [,] and issue an order to that effect [, and advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken];

[(b)] (ii) grant the defendant leave to file an amended petition; [and/] or

[(c)] (iii) order that an evidentiary hearing be held on a date certain.

[(D)] (3) If the judge determines that an evidentiary hearing is required, the judge shall enter an order setting a date certain for the hearing, which shall not be scheduled for fewer than 10 days or more than 45 days from the date of the order. The judge may, for good cause shown, grant leave to continue the hearing. No more than 90 days after the conclusion of the evidentiary hearing, the judge shall dispose of the petition.

(4) When the 90-day time periods in paragraphs (B)(2)(c) and (B)(3) must be delayed, the judge, for good cause shown, may enter an order extending the period for not longer than 30 days.

(5) If the judge does not act within the 90 days mandated by paragraphs (B)(2)(c) and (B)(3), or within the 30 day-extension permitted by paragraph (B)(4), the clerk of courts shall send a notice to the judge that the time period for disposing of the petition has expired. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(6) If the judge does not dispose of the defendant's petition within 30 days of the clerk of courts' notice, the clerk immediately shall send a notice of the judge's non-compliance to the Supreme Court. The clerk shall enter the date and time of the notice on the docket, and shall send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(7) When the petition for post-conviction collateral relief is dismissed by order of the court,

(a) the clerk immediately shall furnish a copy of the order by mail or personal delivery to the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any.

(b) The order shall advise the defendant of the right to appeal from the final order disposing of the petition, and of the time within which the appeal must be taken.

[(E) Failure of the judge to dispose of the petition within 90 days as required by paragraphs (C)(3) and (D) may result in the imposition of sanctions.]

Comment

* * * * *

Paragraph (B)(3) permits the judge to continue the hearing when there is good cause, such as when the judge determines that briefing and argument are necessary on any of the issues, or when there is a problem with securing the defendant's appearance.

It is intended that once a determination is made under paragraph (B)(3) of this rule that an evidentiary hearing is required, the provisions of Rule 908(C), (D), and (E) apply.

Paragraph (B)(4) was added in 2002 to permit the judge to enter an order for one 30-day extension of the 90-day time limit within which the judge must act pursuant to paragraphs (B)(2)(c) and (B)(3) of this rule. When the judge extends the time, the judge promptly must notify the clerk of courts of the extension order.

Paragraph (B)(5) addresses the situation in which the judge does not comply with the rule's time limits. The clerk of courts is required to give the judge notice that the 90-day time period, or the 30-day extension, has expired. Further non-compliance requires the clerk to bring the case to the attention of the Supreme Court, which is responsible for the administration of the unified judicial system.

It is expected, if there are extenuating circumstances why the judge cannot act within the time limits of the rule, the judge will provide a written explanation to the Supreme Court.

Paragraph (B)(7) requires the clerk to immediately notify the Prothonotary of the Supreme Court, the attorney for the Commonwealth, the defendant, and defense counsel, if any, that the petition has been denied. This notice is intended to protect the defendant's right to appeal.

The clerk of courts must comply with the notice and docketing requirements of Rule 114 with regard to any orders entered pursuant to this rule.

[It is intended that once a determination is made under this rule that an evidentiary hearing is required, the provisions of Rule 1508(c), (d), and (e) apply.]

Official Note: Previous Rule 1509 adopted February 1, 1989, effective July 1, 1989; renumbered Rule 910 August 11, 1997, effective immediately. Present Rule 1509 adopted August 11, 1997, effective immediately; amended July 23, 1999, effective September 1, 1999; renumbered Rule 909 and amended March 1, 2000, effective April 1, 2001; amended February 12, 2002, effective July 1, 2002.

Committee Explanatory Reports:

* * * * *

Final Report explaining the February 12, 2002 amendments concerning extensions of time and sanctions published with the Court's Order at 32 Pa.B. 1174 (March 2, 2002).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 909

**POST-CONVICTION COLLATERAL RELIEF
PETITION—DEATH PENALTY CASES
DISPOSITION: TIME LIMITS; EXTENSIONS;
SANCTIONS**

On February 12, 2002 effective July 1, 2002, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rule 909 (Procedures for Petitions in Death Penalty Cases: Stays of Execution of Sentence; Hearing; Disposition). The amendments permit the judge to grant a 30-day extension of the dispositional time limits in Rule 909. If the judge fails to dispose of the petition within the time limits, the amendments provide a mechanism for notifying the judge that the time limits have expired and, absent action by the judge, for notifying the Supreme Court of the judge's failure to act.

This proposal has a lengthy history, and underwent some major revisions before the Committee settled on the procedures in the final recommendation sent to the Court. Part I, Background, summarizes the development of the proposal, and explains how the Committee arrived at its final recommendation. Part II, Discussion, describes the changes to Rule 909.

I. BACKGROUND

In August 1997, the Court suspended the Capital Unitary Review Act ("CURA") and adopted correlative amendments to Chapter 900 of the Criminal Rules. These amendments included new Rule 909 (Procedures for Petitions in Death Penalty Cases: Hearing; Disposition) that set forth special procedures governing death penalty cases. The new procedures, inter alia, imposed time limits on the disposition of PCRA petitions in death penalty cases similar to the time limits that had been in CURA, 42 Pa.C.S. §§ 9575 and 9576. When the Court suspended "CURA," it requested that the Committee develop a proposal for amendments to new Rule 909 allowing for an extension of the dispositional time limits for cause shown.

A. The 1999 Proposal

Keeping in mind the principle purposes of the Rule 909 time limits—to reduce delays and promote judicial economy, thereby moving cases along expeditiously yet fairly—the Committee considered various means of addressing the extension question and the issue of sanctions for failure to comply with the time limits.

The extension question was easily resolved. After exploring alternative procedures that would have the judge file a petition for an extension with the president judge or the court administrator, the Committee concluded there was no reason for the judge not to be able to sua sponte order an extension if the judge determined there was good cause for the additional time. Throughout the rules, judges are given discretion to grant extensions in their cases, and we could not articulate any reason why the same would not apply in the context of decisions on post-conviction collateral relief petitions. The Committee, however, did not think the discretion should be unlimited, and agreed there should only be one extension and only for good cause shown. In addition, consistent with the principle of moving these cases along, the Committee concluded that one 30-day extension would afford the judge adequate additional time for the disposition of the petition.

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

The issue of sanctions presented a more daunting task. The Committee was concerned that merely providing that failure to comply with the time limits may result in the imposition of sanctions without some explanation of the types of sanctions could result in confusion similar to the confusion generated by a comparable provision in former Rule 1405² that was subsequently amended in view of *Commonwealth v. Anders*, 725 A.2d 170 (Pa. 1999). The Committee's discussion concerning sanctions resulted in the members considering various means of insuring that the judge would act within the dispositional time limits set by the rules. After considerable debate, the Committee settled upon a deemed denied procedure comparable to the Rule 720 (Post-Sentence Procedures; Appeal) deemed denied procedure.

The Committee published this 1999 proposal at 29 Pa.B. 6462 (December 25, 1999),³ and received two publication responses expressing grave concerns about the deemed denied provision, particularly as it applied to death penalty cases. In view of the concerns about the application of the deemed denied provision to death penalty cases raised by the correspondents, as well as the members, the Committee agreed to reconsider the deemed denied provision to see whether a better alternative could be devised for death penalty cases.

B. *The 2000 Proposal*

The Committee considered several alternatives to the deemed denied procedure for addressing a judge's non-compliance with the time limits of the rule, and agreed that any procedure would have to establish some mechanism to monitor non-compliance, as well as provide an avenue for sanctions to be imposed. As to monitoring, the Committee agreed a viable option would be to require a court-related official within the judicial district, such as the attorney for the Commonwealth, clerk of courts, or court administrator, to watch the dispositional clock. In addition, recognizing that not all failures to meet dispositional time limits are willful, we agreed the new procedure should provide a judge with an opportunity to comply by providing the judge with (1) some reminder that the time was running out and (2) an opportunity to dispose of the petition after receiving the reminder before more severe consequences occur.

Concerning sanctions, the Committee considered various options, but concluded that the Supreme Court, with its general supervisory powers over judges and the unified judicial system, was the appropriate body to impose any sanctions for non-compliance on judges. To implement this concept, we agreed the new procedure would have to include a mechanism for notifying the Court when a judge has failed to act after receiving the reminder.

In discussing the various options, some members expressed concern about placing the burden of notice on the attorney for the Commonwealth. They pointed out that this notice procedure is one of judicial administration, and a judicial function should not be placed on the attorney for the Commonwealth. Furthermore, the members noted that the mere filing of a "failure to act" petition could result in some judges reacting negatively and taking action adverse to the Commonwealth. Finally, the Commonwealth is not always in a position to monitor

the time limits. In view of these considerations, the Committee rejected the attorney for the Commonwealth option.

As an alternative to placing the responsibility with the attorney for the Commonwealth, the Committee considered the clerk of courts for this responsibility. Because clerks of courts have the responsibility of maintaining the court records and dockets in criminal cases, and they already track time limits for judicial disposition of post-sentence motions pursuant to Rule 720, the Committee reasoned it would be easier for the clerks to assume this additional responsibility than, for example, the court administrator or other judicial officers. In addition, this option, in essence, removes any possibility of the retaliatory practices that was a concern of the Commonwealth. The members also noted that death penalty cases are relatively few in number, so adding this responsibility to the duties of the clerk of courts would not create an onerous burden, particularly outside Philadelphia.

On May 27, 2000, the Committee published for comment our Supplemental Report explaining the considerations in the development of this proposal. See 30 Pa.B. 2575 (May 27, 2000). We received three comments in response to the proposal expressing concern about the reaction of the judges to the clerks when they give the notice of non-compliance. The Committee reconsidered this portion of the proposal and a suggestion that the responsibility should be given to the court administrator, and concluded that the proposal should not be changed. The clerk of courts is the court official in the best position to monitor the time clock and therefore to alert the judge when the time has run. Building in an extra step, such as having the clerk give the court administrator notice when the time has run and then having the court administrator give the required notices seemed an unnecessary complication and contrary to the goals of the proposal.

II. DISCUSSION

A. *Extensions of the 90-Day Time Limit on Disposition*

New paragraph (B)(4) of Rule 909 provides for an extension of the 90-day time limits set forth in paragraphs (B)(2)(c) and (B)(3). Because there are cases in which a judge needs additional time to fully and fairly consider all the information before disposing of a petition, we agreed that the rules should include some type of safety valve for these exceptional circumstances. However, we also agreed we did not want the extensions to become a means for circumventing the time limits, and, therefore, have limited the extensions to one 30-day extension.

The Comment makes it clear that the judge must notify the clerk of courts when an extension is granted. This notification ensures the clerk is aware that the 90-day time limit has been extended and the notice requirements are not triggered until the 30-day extension has expired.

B. *Notice of Non-compliance With Time Limits*

The rule changes include two notice procedures when a judge fails to comply with the dispositional time limits in this rule. The first notice is to the judge. New paragraph (B)(5) requires the clerk of courts to send a notice to the judge that the 90-day time limit, or the 30-day extension, has elapsed. To encourage compliance, and recognizing there may be legitimate reasons why the judge did not meeting the time limits in Rule 909, the new procedure includes a 30-day grace period for disposition of the petition between the time the clerk gives the judge the reminder notice and the time the clerk is to send notice to

² Former Rule 1405 has been renumbered Rule 704.

³ The 1999 proposal included changes to Rules 907 and 908, applying the time limits, extension provision, and deemed denied provision to non-capital punishment PCRA cases. The Committee tabled further action on the 1999 proposal as it applies to Rules 907 and 908, and intends to monitor how the provisions in death penalty cases work in practice. If the proposed procedures accomplish the goal of moving these cases along and reduces judicial delay in disposition of the petitions, without imposing unnecessary burdens on the clerks of courts or the Court, we plan to evaluate the feasibility of a comparable proposal for all PCRA cases.

the Court. This 30-day grace period must be indicated in the clerk's notice to the judge.

To ensure there is a record of this notice, new paragraph (B)(5) requires the clerk of courts to make a docket entry of the date and time of the notice. In addition, the clerk must send a copy of the notice to the attorney for the Commonwealth, the defendant, and defense counsel, if any.

The second notice is to the Supreme Court. New paragraph (B)(6) requires the clerk of courts to send a notice to the Supreme Court in those few cases in which the judge has not disposed of the petition within the 30-day grace period after the clerk's notice. Again, to ensure there is a record of the notice, new paragraph (B)(6) requires the clerk to make a docket entry of the date and time of the notice, and to send copies of the notice to the parties.

The Committee is aware that there may be cases in which the judge has a legitimate reason for not complying with the time limits. However, we agreed that the Supreme Court should be the one to make this determination. Accordingly, the Comment includes a provision suggesting that, in those cases in which the judge has a reason for the non-compliance, the judge should provide the Court with a written explanation for the delay.

Correlative to the above changes, current paragraph (E) has been deleted as no longer necessary.

C. "Housekeeping" Changes

In the course of our discussions, the Committee agreed to several changes that are editorial or "housekeeping" in nature. First, the term "legitimate" has been added before "purpose" in paragraph (B)(2) for purposes of clarification.

Next, the phrase "by filing a request for oral argument" has been deleted from paragraph (B)(2)(b). During our reexamination of Rule 909, we considered this requirement, and agreed that the form of answer need not be limited to a request for oral argument, although the judge may hear argument in the appropriate case. Conforming paragraph (B)(2)(c) to this change, the phrase "oral argument, if granted" would be deleted, and replaced by "defendant's response."

In addition, the last phrase of paragraph (B)(2)(c)(i) concerning the requirement that the judge advise the defendant of his or her right to appeal has been moved into a separate paragraph, new paragraph (7). Paragraph (7) includes provisions concerning distributing copies of the judge's order dismissing the petition and the appellate notice requirements. We thought it made more sense to have this be a separate provision to emphasize these important requirements.

A final consideration arose during the Committee's discussions of the time limits and the notice procedures. We noted that the addition of the time limits to Rule 909 has generated questions about whether a PCRA hearing may be continued to allow, for example, for briefing and argument on certain points or for time to have a defendant returned from a state prison facility, and what effect that would have on the time limits. The Committee agreed that, because the time limits are dispositional time limits and run from the conclusion of any hearing, the hearing could be continued without impacting on the time limits. However, because of the questions the Committee had received, as part of this proposal, a Comment

provision has been included making it clear that the judge may continue a hearing and the 90-day time limit would not start to run until after the hearing is concluded.

[Pa.B. Doc. No. 02-332. Filed for public inspection March 1, 2002, 9:00 a.m.]

Title 246—MINOR COURT CIVIL RULES

[246 PA. CODE CHS. 300 AND 500]

Order Amending or Revising the Notes to Rules 314 and 504 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices; No. 131; Magisterial Docket No. 1; Book No. 2

The Minor Court Rules Committee has prepared a *Final Report* explaining the amendments or revisions to the Notes to Rules 314 and 504 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices, effective February 12, 2002. These rule changes provide clarification regarding dismissal and reinstatement of complaints in civil and landlord/tenant matters. The changes also provide for several technical or "housekeeping" amendments to these rules. The *Final Report* follows the Court's Order.

Order

Per Curiam:

And Now, this 12th day of February, 2002, upon the recommendation of the Minor Court Rules Committee; the proposal having been published before adoption at 30 Pa.B. 6547 (December 23, 2000), and a *Final Report* to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 314 and 504 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices are amended or the Notes thereto are revised as follows.

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

Annex A

TITLE 246. MINOR COURT CIVIL RULES

PART I. GENERAL

CHAPTER 300. CIVIL ACTION

Rule 314. Return, Waiver and Failure of Service; Reinstatement.

* * * * *

C. The appearance of a defendant in person or by representative or the filing by [**him**] a defendant of a claim in the case shall be deemed a waiver of any defect in service but not a waiver of a defect in venue.

D. If the complaint is not served on the defendant in time to permit holding a hearing within [**sixty (60)**] 60 days of the filing of the complaint, the district justice shall dismiss the complaint without prejudice.

E. Upon written request of the plaintiff, a complaint **that has been dismissed without prejudice for failure to make service pursuant to subdivision D of**

this rule may be reinstated at any time and any number of times. The date of reinstatement shall be the date upon which the request for reinstatement [**was**] is filed.

Official Note:

* * * * *

Subdivision E [**will permit**] provides for the reinstatement, upon written request of the plaintiff, of a complaint [**which**] that has been dismissed without prejudice for failure [**of**] to make service under subdivision D. Compare Pa.R.C.P. No. [**1010(b)**] **401(b)**. The written request for reinstatement may be in any form and may consist of a notation on the permanent copy of the complaint form, "Reinstatement of complaint requested," [,] subscribed by the plaintiff. The district justice shall mark all copies of the reinstated complaint, "Complaint reinstated. Request for reinstatement filed on _____ (date)." If it is necessary to use a new form [**or form sets**] for the reinstated complaint, the reinstated complaint, except for service portions thereof, shall be an exact copy of the original complaint, although signatures may be typed **or printed** with the mark "s/" indicating an actual signature. The language in subdivision E that a complaint may be reinstated "at any time" will permit reinstatement after a faulty service without waiting for further proceedings in the case. Reinstatement must occur within the period of the statute of limitations from the date of the last filing or reinstatement. Since a reinstated complaint is merely a continuation of the original action, there is no filing fee for reinstating a complaint. **However, there may be additional server costs for service of the reinstated complaint.**

Amended October 17, 1975, effective in 90 days; amended effective March 24, 1977; amended April 25, 1979, effective in 30 days; June 30, 1982 effective 30 days after July 17, 1982; March 27, 1992, effective June 25, 1992 [**The March 27, 1992, Order provided in part: "In promulgating this Order, the Court recognizes that the District Justice Automation Project will be affected by said Rule changes and that, therefore, those Rules which affect the Project will become effective as the District Justice offices are brought on-line"**]; amended February 12, 2002, effective immediately.

CHAPTER 500. ACTIONS FOR THE RECOVERY OF POSSESSION OF REAL PROPERTY

Rule 504. Setting the Date for Hearing; Delivery for Service.

* * * * *

Official Note:

The hearing date in subdivision (1) of this rule [**was**] is required to be set not less than seven days from the filing of the complaint because of the requirement [**of Pa. R.C.P.D.J. No.**] in Rule 506(B) that service be made at least five days before the hearing. It was thought that the requirement that the [**complaint be served**] hearing be held not more than fifteen days from the filing of the complaint should provide ample time to make the type of service required in these cases. [**However, the complaint may be reinstated upon written request of the plaintiff as in trespass and assumpsit cases. See Pa. R.C.P.D.J. No. 314 (E) and the Note to Pa. R.C.P.D.J. No. 314.**]

The notice for the defendant set forth in subdivision (4) of this rule varies somewhat from the notice required in [**trespass and assumpsit**] civil actions under [**Pa. R.C.P.D.J. No.**] Rule 305. There are a number of reasons for this. First, there can be no default judgment in these possessory actions and, secondly, it was thought that cross-complaints of defendants in these cases should be limited to those arising out of the occupancy of the premises.

Amended Oct. 17, 1975, effective in 90 days; June 30, 1982, effective 30 days after July 17, 1982; March 28, 1996, effective March 29, 1996; **Note revised February 12, 2002, effective immediately.**

FINAL REPORT¹

Amendments or Revisions to the Notes to Rules 314 and 504 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices

CLARIFICATION REGARDING DISMISSAL AND REINSTATEMENT OF COMPLAINTS IN CIVIL AND LANDLORD/TENANT MATTERS

On February 12, 2002, effective immediately, upon recommendation of the Minor Court Rules Committee, the Supreme Court of Pennsylvania amended or revised the Notes to Rules 314 and 504 of the Rules of Conduct, Office Standards and Civil Procedure for District Justices.

I. Background

In the course of drafting other proposed rule changes, the Committee had occasion to consider whether or not a landlord/tenant complaint could be reinstated after it had been dismissed because the plaintiff failed to appear at the hearing. Upon review and discussion, the Committee found that there was confusion regarding the proper use of "dismissal" as a disposition, and when a complaint could properly be reinstated after having been dismissed. Accordingly, the Committee recommended amendments or Note revisions, as explained below, to clarify these procedures.

In conjunction with the clarification regarding dismissal and reinstatement, the Committee also recognized the need for several technical or "housekeeping" amendments to Rules 314 and 504.

II. Discussion of Rule Changes

A. Clarification Regarding Dismissal Upon Failure of the Plaintiff to Appear for Landlord/Tenant Hearing and Related Amendments to Rules 314 and 504

As noted above, the Committee considered whether or not a landlord/tenant complaint could be reinstated after it had been dismissed because the plaintiff failed to appear at the hearing.

The Committee noted that the Note to Rule 504 (referring to a landlord/tenant complaint) states, in part, ". . . the complaint may be reinstated upon written request of the plaintiff as in trespass and assumpsit cases. See Pa. R.C.P.D.J. No. 314(E) and the Note to Pa. R.C.P.D.J. No. 314." Pa. R.C.P.D.J. No. 504, Note. The Committee further noted, however, that both Rule 314E and Rule 504 refer to reinstatement in the context of failure to make service. Neither of these rules would seem to expressly permit the reinstatement of a landlord/tenant complaint after it is dismissed because the plaintiff fails to appear for the hearing. After discussion, the Committee agreed that the rules should not provide for reinstatement.

¹ The Committee's Final Report should not be confused with the official Committee Notes to the Rules. Also, the Supreme Court of Pennsylvania does not adopt the Committee's Notes or the contents of the Committee's explanatory Final Reports.

ment of a landlord/tenant complaint after it has been dismissed because the plaintiff failed to appear for the hearing. Rather, the Committee agreed that, if the plaintiff wishes to proceed after such a dismissal, the plaintiff must file a new complaint.

Accordingly, the Committee considered the broader issue of the proper use of dismissal as a disposition, and, as it relates to landlord/tenant cases, recommended the following:

1. deleting from the Note to Rule 504 the provision regarding reinstatement and the reference to Rule 314E. The Committee does not believe that these references are necessary in the landlord/tenant rules because, unlike the civil action rules, the landlord/tenant rules do not provide for the dismissal of a complaint for failure to make service. Indeed, the Committee believes that no such provision is necessary because of the nature of service in landlord/tenant cases (first class mail and posting being all that is necessary for good service). By deleting the reference to reinstatement in Rule 504, the Committee hopes to eliminate any confusion about reinstatement after a landlord/tenant complaint is dismissed because the plaintiff fails to appear.

2. amending Rule 314E to make absolutely clear that reinstatement under this rule applies only to complaints that have been dismissed without prejudice for failure to make service pursuant to Rule 314D.

B. *Technical and "Housekeeping" Amendments*

In conjunction with the substantive changes discussed above, the Committee identified a number of technical and "housekeeping" amendments needed in Rules 314 and 504.

In the Note to Rule 504, the Committee recommended a change to the second sentence of the first paragraph to substitute the phrase "complaint be served" with the phrase "hearing be held" to make the language in the note consistent with the rule. The existing reference to complaint being served "...not more than fifteen days from the filing of the complaint..." is not consistent with the rule and has created some confusion.²

In both rules, the Committee recommended minor changes to correct citation form and cross references, to address gender neutrality issues in the rules, and to make references to other rules more consistent.

[Pa.B. Doc. No. 02-333. Filed for public inspection March 1, 2002, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Deferment of PHICO Insurance Company Cases by Reason of Order of Liquidation; Administrative Doc. 02 of 2002

Order

And Now, this 6th day of February, 2002, upon consideration of the Order of Liquidation entered by the

² This particular change was actually considered by the Committee in 1997 and was identified as the Committee's Recommendation No. 1 of 1997. However, for unknown reasons, the Committee never published the recommendation and there is some confusion as to whether or not it was "officially" submitted to the Supreme Court for approval. Therefore, this change was incorporated into this Recommendation and replaces Recommendation No. 1 of 1997.

Pennsylvania Commonwealth Court dated February 1, 2002 pursuant to the petition of the Insurance Commissioner of the Commonwealth of Pennsylvania, it is hereby *Ordered* and *Decreed* that all cases in which PHICO Insurance Company is a named party shall be placed in deferred status.

It is further *Ordered* and *Decreed* that all actions currently pending against an insured of PHICO Insurance Company shall be placed in deferred status.

By the Court

JOHN W. HERRON,
Administrative Judge

This Administrative Docket is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration, Docket No. 1, Phila. Civ. ★51 and Pa. R.C.P. 239, and shall become effective immediately. As required by Pa. R.C.P. 239, the original Administrative Docket shall be filed with the Prothonotary in a docket maintained for Administrative Dockets issued by the Administrative Judge of the Trial Division and copies shall be submitted to the Administrative Office of Pennsylvania Courts, The Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Administrative Docket shall also be submitted to *American Lawyer Media*, *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District. The Administrative Docket is also available on the Court's web site at <http://courts.phila.gov>.

[Pa.B. Doc. No. 02-334. Filed for public inspection March 1, 2002, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Live Scan Processing Fee; Misc. 134 January 02

Administrative Order

And Now, this 4th day of February, 2002, effective immediately, the Clerk of Courts is directed to assess a one-hundred-fifty-dollar (\$150.00) Live Scan Processing Fee against any defendant who was processed at a Live Scan site in Montgomery County on or after the effective date of this Order and is either:

1. convicted of any misdemeanor or felony upon their entry of a plea of guilty or nolo contendere, or after a guilty verdict at trial; or
2. admitted to the Accelerated Rehabilitative Disposition (ARD) program.

The first Thirty-Five Thousand Dollars (\$35,000) of the Live Scan Processing Fee, collected pursuant to this Order, shall go directly to the County of Montgomery to off-set the cost of installation of the video conferencing equipment associated therewith. Thereafter, the Live Scan Processing Fee shall be divided as follows: one-third (\$50) to the County of Montgomery, two-thirds (\$100) to the municipality supporting the Live Scan facility.

By the Court

S. GERALD CORSO,
President Judge

[Pa.B. Doc. No. 02-335. Filed for public inspection March 1, 2002, 9:00 a.m.]

WESTMORELAND COUNTY

Rules of Civil Procedure W609 and W611; No. 3 of 2002

Order

And Now this 8th day of February, 2002, it is *Hereby Ordered* that current Westmoreland Rules of Civil Procedure W609 and W611 are rescinded, and new Rules W609 and W611 are adopted.

By the Court

CHARLES H. LOUGHRAN,
President Judge

Rule W609. Bill of Costs.

(a) The following items shall be considered as record costs in a case.

- (1) Fees paid for filing pleadings;
- (2) Fees paid for service of pleadings;
- (3) Fees paid to court reporters for the cost of the original and/or one copy of deposition transcripts;
- (4) Fees paid to videotape operators for the taking of videotape depositions;
- (5) Fees for subpoenas served on witnesses for attendance at oral or videotape depositions, provided the depositions have been taken;
- (6) Statutory per diem witness fees and mileage paid to witnesses whose oral or videotape depositions have been taken;
- (7) Statutory per diem witness fees and mileage paid to witnesses who have appeared and testified at trial;
- (8) Any other costs specifically permitted by statute or Rule of the Pennsylvania Supreme Court.

(b) A bill of costs listing those items sought to be recovered as record costs in an action must be filed with the Prothonotary, as the case may be, within 10 days of

- (1) the entry of a verdict by jury;
- (2) a final order or decree by a judge sitting without a jury in law or in equity;
- (3) the day on which the Prothonotary makes the notation on the docket, in an arbitration case where record costs have been awarded, that notice of entry of the arbitration award has been provided as required by Pa.R.C.P. 1307(a)(3).

A certificate that a copy of the bill of costs has been served on the opposing party or that party's counsel of record shall be filed with the bill of costs.

(c) Objections to items or amounts listed in the bill of costs must be filed by the opposing party or that party's counsel of record within 10 days of receipt of a copy of the bill of costs, in which event the trial judge, or judge assigned by the court administrator, shall enter an order specifying which costs are allowable.

COMMENT: Although it has been the custom in this county that the defendant pay record costs as part of a settlement, case law holds that, absent an agreement between counsel regarding the payment of record costs,

the court has no authority to award costs to either party upon settlement. *Mancine v. Bilesimo, Jr.*, 69 W.L.J. 145 (1987).

With regard to recovery of cost in an arbitration case, see *Sillings v. Protected Home Mutual Life Ins. Co.*, 84 W.L.J. 7 (2001).

Rule W611. Papers and Records.

(a) Papers and documents filed in the Prothonotary's office should be on white paper approximating 8 1/2 inches by 11 inches, with printed matter 6 1/2 inches by 9 1/2 inches.

(b) Papers and documents, including original documents, should be filed without "blue backs" or other covers, and should be bound in the upper left hand corner with a single binder clip or staple. No tape should be used to cover the top of the paper or document.

(c) The front page of the document should indicate the total number of pages, including exhibits, submitted for filing. (For example: Page 1 of 10).

(d) The court administrator and members of a judge's staff may remove records from the Prothonotary's office for official court business. In addition, referees, auditors, masters, attorneys and other similar officers appointed by the court shall have authority to remove records from the Prothonotary's office. All such records shall be returned within three months after their taking unless the court authorizes a longer retention.

(e) Except as provided in section (d), no record shall be removed from the Prothonotary's office except upon subpoena duces tecum or order of court.

COMMENT: See Pennsylvania Rules of Civil Procedure 205.1 through 205.4 regarding the filing of legal papers.

[Pa.B. Doc. No. 02-336. Filed for public inspection March 1, 2002, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that David Lowe Madeira having been suspended from the practice of law in the State of Illinois for a period of sixty days, the Supreme Court of Pennsylvania issued an Order dated February 14, 2002 suspending David Lowe Madeira from the practice of law in this Commonwealth for a period of sixty days, effective March 16, 2002. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
*Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 02-337. Filed for public inspection March 1, 2002, 9:00 a.m.]