

THE COURTS

Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 7]

Amendment of Rule 701 of the Rules of Judicial Administration; No. 411 Judicial Administration Doc.

Order

Per Curiam

And Now, this 10th day of June, 2013, the proposal having been submitted without publication in the interests of justice and efficient administration, *It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 701 of the Pennsylvania Rules of Judicial Administration is amended in the following form.

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

Annex A

TITLE 201. RULES OF JUDICIAL ADMINISTRATION

CHAPTER 7. ASSIGNMENT OF JUDGES

ASSIGNMENT AND TRANSFER OF JUDGES

Rule 701. Assignment of judges to courts.

(A) *Conditions Applicable for the Certification of Senior Magisterial District Judges, Judges or Justices.*

(1) To be eligible for senior certification, a magisterial district [**justice**] **judge**, judge or justice:

(a) shall have served as a magisterial district [**justice**] **judge**, judge or justice, whether or not continuously or on the same court, by election or appointment for an aggregate period equaling [**a full term of office**] **ten years**;

(b) shall not have been defeated for reelection or retention; and

(c) shall be at least sixty-five years of age on the date on which he or she begins senior service, or have a combination of years of judicial service plus age that totals at least [**eighty**] **seventy for magisterial district judges or at least eighty for judges and justices**. However, this subsection (c) shall not apply to those serving in senior status as of the effective date of this rule.

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[Pa.B. Doc. No. 13-1106. Filed for public inspection June 21, 2013, 9:00 a.m.]

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 3, 9 AND 15]

Order Amending Rules 313, 901 and 1516 and Adopting Rule 1573 of the Rules of Appellate Procedure; No. 232 Appellate Procedural Rules Doc.

Order

Per Curiam

And Now, this 4th day of June, 2013, upon the recommendation of the Appellate Court Procedural Rules Committee; the proposal having been published for public comment at 42 Pa.B. 1360 (March 17, 2012):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pennsylvania Rules of Appellate Procedure 313, 901 and 1516 are amended and that proposed new Rule 1573 of the Pennsylvania Rules of Appellate Procedure is adopted, in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and the amendments herein shall be effective July 4, 2013.

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 3. ORDERS FROM WHICH APPEALS MAY BE TAKEN

INTERLOCUTORY APPEALS

Rule 313. Collateral Orders.

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Official Note: Rule 313 is a [**codification**] **codification** of existing case law with respect to collateral orders. See [**Pubar**] ***Pugar v. Greco***, 483 Pa. 68, 73, 394 A.2d 542, 545 (1978) (quoting *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949)). Examples of collateral orders include [**an order denying a pre-trial motion**] **orders denying pre-trial motions** to dismiss based on double jeopardy **in which the court does not find the motion frivolous**, *Commonwealth v. Brady*, 510 Pa. [**363**] **336**, 508 A.2d 286, 289—91 (1986) (allowing an immediate appeal from denial of double jeopardy claim under collateral order doctrine where trial court [**makes a finding that motion is not frivolous**]; [**does not make a finding of frivolousness**]; **if the trial court finds the motion frivolous, the defendant may secure review only by first filing a petition for review under Pa.R.A.P. 1573. See Commonwealth v. Orié**, 22 A.3d 1021 (Pa. 2011). Other examples of collateral orders are an order denying a petition to permit the payment of death taxes, *Hankin v. Hankin*, 338 Pa. Super. 442, 487 A.2d 1363 (1985); and an order denying a petition for removal of an executor, *Re: Estate of Georgianna*, 312 Pa. Super. 339, 458 A.2d 989

(1983), *aff'd*, 504 Pa. 510, 475 A.2d 744. Thorough discussions of the collateral order doctrine as it has been applied by Pennsylvania appellate courts are found in the following sources: Darlington, McKeon, Schuckers and Brown, 1 Pennsylvania Appellate Practice Second Edition, §§ 313:1—313:201 (1994) and Byer, *Appealable [orders] Orders* under the Pennsylvania Rules of Appellate Procedures in Practice and Procedures in Pennsylvania Appellate Courts (PBI No. 1994-869); Pines, Pennsylvania Appellate Practice: Procedural Requirements and the Vagaries of Jurisdiction, 91 Dick.L.Rev. 55, 107—115 (1986).

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ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 901. Scope of Chapter.

This chapter applies to all appeals from a trial court to an appellate court except:

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(6) An appeal which may be taken by petition for review pursuant to Rule 3331 (review of special prosecutions or investigations).

(7) An appeal which may be taken only by a petition for review pursuant to Rule 1573, which governs review when a trial court has denied a motion to dismiss on the basis of double jeopardy as frivolous.

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1516. Other Pleadings Allowed.

(a) *Appellate jurisdiction petitions for review.*—No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for review is filed pursuant to the Notes to Rules 341 or 1311 (seeking review of a trial court or other government unit’s refusal to certify an interlocutory order for immediate appeal), **Rule 1573 (review of orders finding an assertion of double jeopardy frivolous)**, Rule 1762 (regarding release in criminal matters), Rule 1770 (regarding placement in juvenile delinquency matters), Rule 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or Rule 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in Rule 123(b).

* * * * *

Official Note: The 2004 [and] , 2012, and 2013 amendments made clear that, with [six] limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court’s appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party. See Rule 1762(b)(2) regarding bail applications. See Rule 1770 regarding placement in juvenile delinquency matters.

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

REVIEW OF DETERMINATIONS BY A COURT OF COMMON PLEAS THAT A CLAIM OF DOUBLE JEOPARDY IS FRIVOLOUS

Rule 1573. Review of Orders in Which the Court Finds an Assertion of Double Jeopardy Frivolous.

(a) *General rule.*—Any party seeking review of a frivolousness determination by a court of common pleas under Pennsylvania Rule of Criminal Procedure 587 shall file a petition for review in the appellate court having jurisdiction over the matter. Review of a frivolousness determination under Pennsylvania Rule of Criminal Procedure 587 shall be governed by this chapter and ancillary provisions of these rules, except as otherwise prescribed by this rule. The time for filing is provided for in Pa.R.A.P. 1512(a)(1).

(b) *Contents.*—The contents of the petition for review are not governed by Pa.R.A.P. 1513. Instead, the petition for review need not be set forth in numbered paragraphs in the manner of a pleading, and shall contain the following (which shall, insofar as practicable, be set forth in the order stated):

(i) A statement of the basis for the jurisdiction of the appellate court.

(ii) The text of the order in question, and the date of its entry in the trial court. If the order is voluminous, it may, if more convenient, be appended to the petition.

(iii) A concise statement of the case containing the facts necessary to an understanding of the frivolousness issue(s) presented.

(iv) The question(s) presented, expressed in the terms and circumstances of the case but without unnecessary detail.

(v) A concise statement of the reasons why the trial court erred in its determination of frivolousness.

(vi) There shall be appended to the petition a copy of any opinions relating to the order sought to be reviewed, including findings of fact and conclusions of law in support of the frivolousness determination, as well as a copy of any transcripts or other record documents necessary to the appellate court’s review.

(vii) There shall be appended to the petition the verbatim texts of the pertinent provisions of constitutional provisions, statutes, ordinances, regulations or other similar enactments which the case involves.

(viii) There shall be appended to the petition any briefs filed in the trial court in support of the motion to dismiss.

(c) *Caption and parties.*—The parties in the trial court shall be named as parties in the appellate court. If there are multiple defendants but the order for which review is sought adjudicates the motion of only a single defendant, only that defendant may file a petition for review.

(d) *No supporting brief.*—All contentions in support of a petition shall be set forth in the body of the petition as prescribed by subparagraph (b)(v) of this rule. No separate brief in support of the petition for review will be received, and the prothonotary of the appellate court will refuse to file any petition for review to which is annexed or appended any brief other than the briefs filed in the trial court.

(e) *Essential requisites of petition.*—The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

(f) *Effect of filing petition.*—The filing of a petition for review shall not automatically stay the proceedings before the trial court. A petitioner may file an application for a stay in the trial or appellate court pending the determination of the petition for review, or the trial or appellate court may issue a stay *sua sponte*.

(g) *Answer to petition for review.*—If the Commonwealth does not intend to file an answer under this rule, it shall, within the time fixed by these rules for filing an answer, file a letter stating that it does not intend to file an answer to the petition for review. The failure to file an answer will not be construed as concurrence in the petition for review. The appellate court may, however, direct the Commonwealth to file an answer.

(h) Pa.R.A.P. 1531—1571 do not apply to petitions for review filed under this rule. Pa.R.A.P. 1514 does apply, except that no copy of the petition needs to be served upon the Attorney General.

(i) *Grant of petition for review and transmission of record.*—If the petition for review is granted, the prothonotary of the appellate court shall immediately give written notice of the entry of the order to the clerk of the trial court and to each party who has appeared in the appellate court. The grant of the petition for review shall operate as a stay of all trial court proceedings. The clerk of the trial court shall docket the notice in the same manner as a notice of appeal and shall mail that notice to all parties to the trial court proceeding. The certified record shall be transmitted and filed in accordance with Chapter 19 (preparation and transmission of the record and related matters). The times fixed by those provisions for transmitting the record shall run from the date of the entry of the order granting the petition for review. No party needs to file a separate notice of appeal.

(j) *Denial of petition for review.*—If the petition for review is denied, the prothonotary of the appellate court shall immediately give written notice of the order to the clerk of the trial court and to each party who has appeared in the appellate court.

Official Note: The trial court's determination and the procedure for determining a motion to dismiss on double jeopardy grounds is set forth in Pa.R.Crim.P. 587. If a trial court denies such a motion without expressly finding that the motion is frivolous, the order is immediately appealable by means of a notice of appeal under Pa.R.A.P. 313. If, however, the trial court finds the motion to be frivolous, appellate review can be secured only if the appellate court grants a petition for review. See *Commonwealth v. Orié*, 22 A.3d 1021 (Pa. 2011); *Commonwealth v. Brady*, 510 Pa. 336, 508 A.2d 286 (1986). If the Superior Court does not grant the petition for review, the defendant may file a petition for allowance of appeal with the Supreme Court.

Where the petition for review of the determination of frivolousness is granted, the grant automatically initiates a separate appeal on the merits from the order denying the pretrial motion seeking dismissal of criminal charges on double jeopardy grounds.

A party may seek (or a court may *sua sponte* issue) a stay of the trial court proceedings pending review of the frivolousness determination. Otherwise, the trial court may proceed while the petition for review is pending. See Pa.R.A.P. 1701(d). Where the petition for review of the determination of frivolousness is granted, the grant automatically stays further proceedings in the trial courts.

[Pa.B. Doc. No. 13-1107. Filed for public inspection June 21, 2013, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1930]

Order Adopting Rule 1930.8 of the Rules of Civil Procedure; No. 580 Civil Procedural Rules Doc.

Order

Per Curiam

And Now, this 5th day of June, 2013, upon the recommendation of the Domestic Relations Procedural Rules Committee; the proposal having been published for public comment in the *Pennsylvania Bulletin*, 42 Pa.B. 6247 (October 6, 2012):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1930.8 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 in 30 days on July 5, 2013.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY

Rule 1930.8. Self-Represented Party.

(a) A party representing himself or herself shall enter a written appearance which shall state an address, which need not be his or her home address, where the party agrees that pleadings and other legal papers may be served, and a telephone number through which the party may be contacted. The entry of appearance may include a facsimile number as provided by Pa.R.C.P. No. 1012.

(b) A self-represented party is under a continuing obligation to provide current contact information to the court, to other self-represented parties, and to attorneys of record.

(c) When a party has an attorney of record, the party may assert his or her self-representation by:

(1) Filing a written entry of appearance and directing the prothonotary/court clerk to remove the name of his or her counsel of record with contemporaneous notice to said counsel, or

(2) Filing an entry of appearance with the withdrawal of appearance signed by his or her attorney of record.

(d) The self-represented party shall provide a copy of the entry of appearance to all self-represented parties and attorneys of record.

(e) The assertion of self-representation shall not delay any stage of the proceeding.

Explanatory Comment—2013

Withdrawal of appearance by counsel of record is governed by Pa.R.C.P. No. 1012. Service of original process in domestic relations matters is governed by Pa.R.C.P. No. 1930.4. Service of legal papers other than original process is governed by Pa.R.C.P. No. 440.

[Pa.B. Doc. No. 13-1108. Filed for public inspection June 21, 2013, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5 AND 6]

Order Amending Rule 587 and Revising the Comments to Rules 580 and 605 of the Rules of Criminal Procedure; No. 431 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 4th day of June, 2013, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 42 Pa.B. 1369 (March 17, 2012), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 967), 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 the amendments to Pennsylvania Rule of Criminal Procedure 587 are adopted and the revisions to the Comments to Pennsylvania Rules of Criminal Procedure 580 and 605 are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 4, 2013.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART G(1). Motion Procedures

Rule 580. Disposition of Pretrial Motions.

Unless otherwise provided in these rules, all pretrial motions shall be determined before trial. Trial shall be postponed by the court for the determination of pretrial motions, if necessary.

Comment

See Rule 587(B) for the procedures for motions to dismiss on double jeopardy grounds.

Official Note: Rule 309 adopted June 30, 1964, effective January 1, 1965; renumbered Rule 310 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; renumbered Rule 580 March 1, 2000, effective April 1, 2001; **Comment revised June 4, 2013, effective July 4, 2013.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the June 4, 2013 revision of the Comment adding a citation to Rule 587 concerning motions to dismiss on double jeopardy grounds published with the Court's Order at 43 Pa.B. 3331 (June 22, 2013).

Rule 587. Motion for Dismissal.

(A) *Untimely Filing of Information.*

(1) Upon motion and a showing that an information has not been filed within a reasonable time, the court

may order dismissal of the prosecution, or in lieu thereof, make such other order as shall be appropriate in the interests of justice.

[(B)] (2) The attorney for the Commonwealth shall be afforded an opportunity to respond.

(B) *Double Jeopardy.*

(1) A motion to dismiss on double jeopardy grounds shall state specifically and with particularity the basis for the claim of double jeopardy and the facts that support the claim.

(2) A hearing on the motion shall be scheduled in accordance with Rule 577 (Procedures Following Filing of Motion). The hearing shall be conducted on the record in open court.

(3) At the conclusion of the hearing, the judge shall enter on the record a statement of findings of fact and conclusions of law and shall issue an order granting or denying the motion.

(4) In a case in which the judge denies the motion, the findings of fact shall include a specific finding as to frivolousness.

(5) If the judge makes a finding that the motion is frivolous, the judge shall advise the defendant on the record that a defendant has a right to file a petition for review of that determination pursuant to Rule of Appellate Procedure 1573 within 30 days of the order denying the motion.

(6) If the judge denies the motion but does not find it frivolous, the judge shall advise the defendant on the record that the denial is immediately appealable as a collateral order.

Comment

Cf. Pa.R.J.A. 1901 concerning termination of inactive cases.

[See Rule 575 for the procedures governing motions and answers.]

A motion filed pursuant to this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, a dismissal of the prosecution pursuant to paragraph [(A)] (A)(1) would include the dismissal of the summary offense. *See* the Comment to Rule 502 (Instituting Proceedings in Court Cases).

“Hearing,” as used in paragraph (B)(2) includes the taking of testimony, or the hearing of argument, or both. *See* Rule 115 for the procedures for the recording and transcribing of the hearing.

Paragraph (B)(4) requires the judge to make a specific finding whether the motion is being dismissed as frivolous. The judge should expressly cite on-point controlling case law that would make the claim frivolous. *See, e.g., Commonwealth v. Gains*, 383 Pa.Super. 208, 217, 556 A.2d 870, 874 (1989) (“A frivolous claim is a claim clearly and palpably without merit; it is a claim which presents no debatable question.”). A mere adverse decision of the case does not mean the matter is frivolous.

Although the judge is required to advise the defendant of his or her appellate rights in paragraphs (B)(5) and (B)(6) upon dismissing the mo-

tion, nothing in this rule is intended to preclude the defendant from proceeding to trial without first appealing the double jeopardy question. *See, e.g., Commonwealth v. Lee*, 490 Pa. 346, 350, 416 A.2d 503, 504 (1980) (“Unquestionably, appellant could have sought immediate appellate review of the question involved. For whatever reason, however, appellant proceeded to trial without first appealing the double jeopardy question. We believe that a defendant may choose to proceed to trial and if convicted, still challenge the propriety of the pretrial motion to dismiss on double jeopardy grounds on appeal.” (citations omitted)).

For the procedures for challenging the denial of the motion to dismiss on double jeopardy grounds when the judge makes a finding that the motion is frivolous, see Rule of Appellate Procedure 1573.

Pursuant to Rule of Appellate Procedure 1701(d), the filing of a petition for review does not affect the judge’s power to proceed further in the case while the petition for review is pending.

Official Note: Rule 316 adopted June 30, 1964, effective January 1, 1965; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; renumbered Rule 315 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; renumbered Rule 587 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised March 9, 2006, effective September 1, 2006; **amended June 4, 2013, effective July 4, 2013.**

Committee Explanatory Reports:

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Final Report explaining the June 4, 2013 provisions of the new paragraph (B) concerning motions to dismiss on double jeopardy grounds published with the Court’s Order at 43 Pa.B. 3331 (June 22, 2013).

CHAPTER 6. TRIAL PROCEDURES IN COURT CASES

PART A. General Provisions

Rule 605. Mistrial.

* * * * *

Comment

This rule replaces the practice of moving for the withdrawal of a juror.

Examples of “manifest necessity” can be found in *Commonwealth v. Stewart*, 456 Pa. 447, 317 A.2d 616 ([Pa.] 1974); *Commonwealth v. Brown*, 451 Pa. 395, 301 A.2d 876 ([Pa.] 1973); *United States ex rel. Russo v. Superior Court of New Jersey*, Law Division, Passaic County, 483 F.2d 7 (3rd Cir. 1973), *cert. denied*, 414 U.S. 1023 (1973); *United States v. Tinney*, 473 F.2d 1085 (3rd Cir. 1973), *cert. denied*, 412 U.S. 928 (1973); *United States v. Jorn*, 440 U.S. 470 (1971); and *United States v. Perez*, 9 Wheat. 579 (1824); see also *Illinois v. Somerville*, 410 U.S. 458 (1973).

See Rule 587(B) for the procedures when a motion to dismiss on double jeopardy grounds is filed.

Official Note: Rule 1118 adopted January 24, 1968, effective August 1, 1968; amended June 28, 1974, effective September 1, 1974; renumbered Rule 605 and amended March 1, 2000, effective April 1, 2001; **Comment revised June 4, 2013, effective July 4, 2013.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court’s Order at 30 Pa.B. [1477] 1478 (March 18, 2000).

Final Report explaining the June 4, 2013 revision of the Comment adding a citation to Rule 587 concerning motions to dismiss on double jeopardy grounds published with the Court’s Order at 43 Pa.B. 3331 (June 22, 2013).

FINAL REPORT¹

Amendments to Pa.R.Crim.P. 587 and Revisions to the Comments to Pa.Rs.Crim.P. 580 and 605

Motion to Dismiss Based on Double Jeopardy Grounds

On June 4, 2013, effective July 4, 2013, upon the joint recommendation of the Criminal Procedural Rules Committee (“Criminal Committee”) and the Appellate Court Procedural Rules Committee (“Appellate Committee”), the Court adopted the amendment of Rule of Criminal Procedure 587 and correlative revisions to the Comments to Rules of Criminal Procedure 580 and 605. The rule changes clarify the procedures when a defendant files a motion to dismiss based on double jeopardy grounds. The Court also adopted new Rule of Appellate Court Procedure 1573 and correlative changes to Rules of Appellate Procedure 313 and 1516 to clarify the appeal procedures when a defendant’s motion to dismiss based on double jeopardy has been denied. These changes were developed in response to the Court’s directive in *Commonwealth v. Orié*, 610 Pa. 552, 22 A.3d 1021 (2011).

I. Background

In *Commonwealth v. Orié*, 610 Pa 552, 22 A.3d 1021 (2011), the Court clarified the appropriate procedures for an appellate court to follow when a trial court dismisses a defendant’s pre-trial double jeopardy challenge as frivolous. The Court asked the Appellate Court Procedural Rules Committee and the Criminal Procedural Rules Committee to evaluate the Court’s proposed procedural framework for possible further refinement.

The two Committees established a joint subcommittee to study the issue. During the subcommittees’ discussions of the *Orié* case and the Court’s directive, the members noted that there is no uniformity in how motions to dismiss on double jeopardy grounds currently are handled at the trial level. They reasoned that this lack of uniformity contributes to the confusion that the Court was addressing in *Orié*. The subcommittees accordingly recommended, to which the Committees agreed, that it would be helpful to the bench and bar if the Criminal Rules were amended to specify the procedures to be followed in the court of common pleas when a defendant files a motion to dismiss based on double jeopardy grounds.

II. Discussion of the Criminal Rule Changes

The amendments are designed to incorporate into the procedures governing motions to dismiss on double jeopardy grounds the factors the Committees considered most important. These are: (1) protecting a defendant’s rights,

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.

(2) creating a record at the trial level for purposes of appeal and preserving all parties' positions, and (3) ensuring the defendant understands his or her appeal rights.

The new procedures embodying these factors have been added to Rule 587 (Motion for Dismissal) as new paragraph (B). Paragraph (B)(1) requires that the motion state specifically and with particularity the basis for the claim of double jeopardy and the facts supporting the claim. This requirement is comparable to the motion requirements in Rule 575(A)(2)(c).

Paragraph (B)(2) requires that there be a hearing conducted in open court. A hearing on the record is vital to preserve the parties' positions for appeal purposes. As elaborated in the Comment, the "hearing" in this context may include (1) taking testimony, (2) taking testimony and presenting arguments, or (3) merely presenting arguments as the judge determines necessary in a given case.

Paragraph (B)(3) requires that the judge enter on the record findings of fact and conclusions of law at the conclusion of the hearing and issue an order granting or denying the motion. Paragraph (B)(4) adds the requirement from *Orie* and prior cases that if the judge denies the motion, the judge also must make specific findings as to frivolousness. The members of the Criminal Committee noted, anecdotally, that frequently judges will deny the motion to dismiss on double jeopardy grounds without making a finding with regard to frivolousness unless or until a defendant challenges the denial of the motion, and that some judges do not explain the basis for finding the motion frivolous. Recognizing that these practices are a source of confusion and that they cause problems for defendants and appellate courts when such motions are denied, the amendments require the trial judge to make a specific finding as to frivolousness at the time the judge decides the double jeopardy motion, and further require a trial judge to make a contemporaneous record of the judge's reasons for his or her findings. Furthermore, the Rule 587 Comment has been revised to include a cross-reference to *Commonwealth v. Gains*, 383 Pa. Super. 208, 217, 556 A.2d 870, 874 (1989), to provide guidance about what constitutes a frivolous claim. The Comment explains that "a 'frivolous claim is a claim clearly and palpably without merit; it is a claim which presents no debatable question'" and a "mere adverse decision in the case does not mean the matter is frivolous."

Paragraphs (B)(5) and (B)(6) require that the judge advise the defendant on the record of his or her appellate rights. When the judge makes a finding that the motion is frivolous, paragraph (B)(5) requires the judge to advise the defendant that he or she has the right to file a petition for review within 30 days of the order denying the motion. When the judge denies the motion but does not find it frivolous, paragraph (D)(6) requires the judge to advise the defendant the denial is immediately appealable as a collateral order under the Appellate Rules.

One issue related to the defendant's appellate rights concerned the consequences of a defendant failing to challenge a denial of a motion to dismiss on double jeopardy grounds. Although a failure to file a timely appeal from a final order (and from some interlocutory orders) will result in waiver, case law has recognized that because of the constitutional ramifications of a double jeopardy claim, a defendant may bring a challenge immediately or may defer a challenge to a denial of such a motion until the conclusion of the trial. As an aid to the bench and bar, the Rule 587 Comment has been revised to include a cross-reference to *Commonwealth v. Lee*, 490

Pa. 346, 350, 416 A.2d 503, 504 (1980), a case in which the Court explained that a defendant may, but does not have to, challenge a denial of the double jeopardy motion immediately after the entry of the order denying the motion and may wait until the conclusion of the trial to appeal.

The Comment also includes a cross-reference to the new Appellate Rule provisions concerning petitions for review set forth in new Rule of Appellate Procedure 1573. As a further aid to the bench and bar, the Comment includes a cross-reference to Rule of Appellate Procedure 1701(d) to make it clear that the filing of a petition for review does not affect the judge's power to proceed further in the case while the petition for review is pending.

Finally, cross-references to the new Criminal Rule provisions in Rule 587 have been added to the Comments to Rules 580 (Disposition of Pretrial Motions) and 605 (Mistrial).

III. Discussion of Appellate Rule Changes

As noted above, the Court also adopted new Rule of Appellate Procedure 1573 and correlative changes to Rules of Appellate Procedure 313 and 1516 to clarify the appeal procedures when a defendant's motion to dismiss based on double jeopardy has been denied. A different process for securing review is employed when a judge denies a motion to dismiss on double jeopardy grounds without a finding of frivolousness than when the judge determines that the motion was frivolous in addition to being non-meritorious.

New Pa.R.A.P. 1573 provides the parameters and procedure for seeking review when a motion to dismiss on double jeopardy grounds is ruled to be frivolous. If the trial court does not make a determination that the claim is frivolous, a defendant would continue to file a notice of appeal pursuant to the collateral order rule in Pa.R.A.P. 313. The note to Pa.R.A.P. 313 has been revised to cross-reference the Pa.R.A.P. 1573 procedures for petitions for review in this situation. Pa.R.A.P. 901 and Pa.R.A.P. 1516 and its note also are amended to make it clear that the proper document is a petition for review and not a notice of appeal.

[Pa.B. Doc. No. 13-1109. Filed for public inspection June 21, 2013, 9:00 a.m.]

Title 25—LOCAL COURT RULES

ARMSTRONG COUNTY

Adoption of New Local Rules of Court—2002; No. CP-03-AD-0000189-2002

Order of Court

And Now, this 4th day of June, 2013, it is hereby *Ordered* as follows:

1. A new Local Rule of Civil Procedure numbered 1915.4-3.1 is hereby promulgated to read as follows:

Rule 1915.4-3.1. Conciliation Conference Facilitator.

(a) The Court may appoint a conciliation conference facilitator upon its own motion or upon the motion of a party. The motion of a party must be in writing and filed with the Prothonotary.

(b) If the Court appoints a conciliation conference facilitator upon its own motion, payment therefor shall be made by the Prothonotary from moneys collected pursuant to 23 Pa.C.S. § 3902(a)

(c) A party who files a motion for the appointment of a conciliation conference facilitator shall file it at the same time that a conciliation conference date and time are first requested. The party shall simultaneously deliver to the Prothonotary a check or money order in the amount of \$125.00, made payable to the then-designated facilitator, to pay for the cost of the facilitator's attendance.

2. An amended Local Rule of Civil Procedure numbered 1915.4-3 is hereby promulgated to read as follows:

Rule 1915.4-3.2. Pretrial Conference.

(a) If at the conciliation conference, the parties cannot agree upon a resolution of all the issues and a trial before a judge becomes necessary, the Court Administrator shall cause a pretrial conference to be scheduled to occur within ninety (90) days after the date the conciliation conference was held.

(b) The Court will schedule a trial date at the pretrial conference, and a date for an additional pretrial conference when appropriate. The parties must attend each pre-trial conference.

3. An amended Local Rule of Civil Procedure numbered 1915.7 is hereby promulgated to read as follows:

Rule 1915.7. Consent Order. Final and Temporary.

(a) If at any time during the course of a custody proceeding the parties agree upon a resolution of all the issues and are then available to consent in writing to an order reflecting the same, they shall so notify the Court. The Court will make its staff available to the parties and their lawyers for the immediate preparation of a final consent order.

(b) If after a conciliation conference the parties cannot agree upon a resolution of all the issues, counsel and the parties shall, within seven (7) days after such conference, submit to the Court a proposed temporary order providing for the occurrence of those things agreed upon at the conciliation conference. The proposed temporary order shall not contain a provision for the scheduling of a hearing before the Court. The completed Conciliation Conference Checklist shall be attached to the proposed temporary order.

4. It is further *Ordered* that the Comment to L.R.C.P. No. 1915.7 be deleted in its entirety.

5. A new Local Rule of Civil Procedure numbered 1915.14 is hereby promulgated to read as follows:

Rule 1915.14. Disobedience of Order Directing Custody Evaluation.

If a party fails to submit to a child custody evaluation; fails to cause a household member to submit a child custody evaluation; or fails to pay his or her share of the costs thereof, the Court may dismiss the complaint or impose other appropriate sanctions.

6. An amended Local Rule of Orphans Court Procedure numbered 3.5G is hereby promulgated to read as follows:

Rule 3.5G. Motion for Judgment on the Pleadings. Motion for Summary Judgment.

The practice and procedure relating to motions for judgment on the pleadings and motions for summary

judgment shall be governed by the pertinent Pennsylvania Rules of Civil Procedure, as implemented by the Local Rules of Civil Procedure, including those requiring the filing of proposed scheduling orders. Notice in advance of the filing of such a motion is not required.

7. The Court Administrator shall take all steps required by Pa.R.J.C.P. No. 121 for the publication, distribution and dissemination of the amendments and supplements provided for herein.

8. This Order shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

KENNETH G. VALASEK,
President Judge

[Pa.B. Doc. No. 13-1110. Filed for public inspection June 21, 2013, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Andrew D. Schildiner, having been disbarred from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated January 7, 2013, the Supreme Court of Pennsylvania issued an Order on June 5, 2013, disbaring Andrew D. Schildiner, from the Bar of this Commonwealth, effective July 5, 2013. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 13-1111. Filed for public inspection June 21, 2013, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Michael T. Brown, having been indefinitely suspended from the practice of law in the State of Maryland by Order of the Court of Appeals of Maryland dated December 12, 2012, the Supreme Court of Pennsylvania issued an Order dated June 5, 2013 suspending Michael T. Brown from the practice of law in this Commonwealth consistent with the Court of Appeals in Maryland. 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,
Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 13-1112. Filed for public inspection June 21, 2013, 9:00 a.m.]

SUPREME COURT

Reestablishment of the Magisterial Districts within the 3rd Judicial District; No. 358 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 10th day of June 2013, upon consideration of the Petition to Reestablish the Magisterial Districts of the 3rd Judicial District (Northampton County) of the Commonwealth of Pennsylvania, it is hereby *Ordered and Decreed* that the Petition, which provides for the elimination of Magisterial District 03-2-07, within Northampton County, to be effective January 4, 2016, is granted; and that the Petition, which provides for the realignment of Magisterial Districts 03-2-03, 03-2-05, 03-2-06, 03-2-08, 03-2-10, 03-2-11, 03-3-01, 03-3-02, and 03-3-03, within Northampton County, to be effective January 4, 2016, is granted; and that the Petition, which also provides for the reestablishment of Magisterial Districts 03-1-04, 03-2-01, 03-2-04, 03-2-09, and 03-2-12, within Northampton County, to be effective immediately, is granted.

Said Magisterial Districts shall be as follows:

Magisterial District 03-1-04 Magisterial District Judge James J. Narlesky	City of Bethlehem (Ward 14) Hanover Township
Magisterial District 03-2-01 Magisterial District Judge Roy A. Manwaring	City of Bethlehem (Wards 6—9)
Magisterial District 03-2-03 Magisterial District Judge Joseph K. Barner	Bethlehem Township
Magisterial District 03-2-04 Magisterial District Judge David W. Tidd	Hellertown Borough Lower Saucon Township
Magisterial District 03-2-05 vacant	City of Easton (Wards 1—5)
Magisterial District 03-2-06 Magisterial District Judge Daniel G. Corpora	City of Easton (Wards 6, 9, 10, 11, and 12) Glendon Borough Williams Township
Magisterial District 03-2-08 Magisterial District Judge John Capobianco	Bath Borough Nazareth Borough Stockertown Borough East Allen Township Lower Nazareth Township Upper Nazareth Township
Magisterial District 03-2-09 Magisterial District Judge Jacqueline M. Taschner	Tatamy Borough Forks Township Palmer Township
Magisterial District 03-2-10 Magisterial District Judge Nancy Matos Gonzalez	City of Bethlehem (Wards 1—4)
Magisterial District 03-2-11 Magisterial District Judge Patricia A. Romig-Passaro	City of Bethlehem (Wards 5, 15, 16, and 17) Freemansburg Borough
Magisterial District 03-2-12 Magisterial District Judge Richard H. Yetter, III	City of Easton (Wards 7 & 8) West Easton Borough Wilson Borough

Magisterial District 03-3-01
Magisterial District Judge
Robert A. Hawke

North Catasauqua Borough
Northampton Borough
Walnutport Borough
Allen Township
Lehigh Township
Moore Township
(Klecknersville &
Beersville Voting
Districts)

Magisterial District 03-3-02
Magisterial District Judge
Douglas H. Schlegel, Sr.

Chapman Borough
Wind Gap Borough
Bushkill Township
Moore Township (Phillips &
Eastern Voting Districts)
Plainfield Township
(Belfast, Kesslersville,
and Plainfield Church
Voting Districts)

Magisterial District 03-3-03
Magisterial District Judge
Todd M. Strohe

Bangor Borough
East Bangor Borough
Pen Argyl Borough
Portland Borough
Roseto Borough
Lower Mt. Bethel Township
Plainfield Township
(Delabole Voting District)
Upper Mt. Bethel Township
Washington Township

[Pa.B. Doc. No. 13-1113. Filed for public inspection June 21, 2013, 9:00 a.m.]

Reestablishment of the Magisterial Districts within the 5th Judicial District; No. 357 Magisterial Rules Doc.

Order

Per Curiam

And Now, this 3rd day of June 2013, upon consideration of the Petition to Reestablish the Magisterial Districts of the 5th Judicial District (Allegheny County) of the Commonwealth of Pennsylvania, it is hereby *Ordered and Decreed* that the Petition, which provides for the realignment of Magisterial Districts 05-2-43, 05-3-06 and 05-3-13, within Allegheny County, to be effective October 1, 2013, is granted; and that the Petition, which also provides for the reestablishment of Magisterial Districts 05-2-01, 05-2-02, 05-2-03, 05-2-04, 05-2-05, 05-2-06, 05-2-07, 05-2-08, 05-2-10, 05-2-11, 05-2-12, 05-2-13, 05-2-14, 05-2-15, 05-2-16, 05-2-17, 05-2-18, 05-2-19, 05-2-20, 05-2-21, 05-2-22, 05-2-23, 05-2-25, 05-2-26, 05-2-27, 05-2-28, 05-2-31, 05-2-32, 05-2-35, 05-2-36, 05-2-38, 05-2-40, 05-2-42, 05-2-47, 05-3-02, 05-3-03, 05-3-04, 05-3-05, 05-3-09, 05-3-10, 05-3-12, 05-3-14, and 05-3-17, within Allegheny County, to be effective immediately, is granted.

Said Magisterial Districts shall be as follows:

Magisterial District 05-2-01 Magisterial District Judge Tara L. Smith	Avalon Borough Bellevue Borough Ben Avon Borough Ben Avon Heights Borough Emsworth Borough Kilbuck Township Ohio Township
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Magisterial District 05-2-02 Magisterial District Judge Richard G. Opiela	West View Borough Ross Township	Magisterial District 05-2-19 Magisterial District Judge Blaise P. Larotonda	Dormont Borough Mt. Lebanon Township
Magisterial District 05-2-03 Magisterial District Judge Robert P. Dzvonic	Etna Borough Millvale Borough Reserve Township Shaler Township	Magisterial District 05-2-20 Magisterial District Judge Robert C. Wyda	Bethel Park Borough Upper St. Clair Township
Magisterial District 05-2-04 Magisterial District Judge Elissa M. Lang	Aspinwall Borough Blawnox Borough Fox Chapel Borough Sharpsburg Borough Indiana Township O'Hara Township	Magisterial District 05-2-21 Magisterial District Judge Maureen McGraw-Desmet	Bridgeville Borough Collier Township South Fayette Township
Magisterial District 05-2-05 Magisterial District Judge Carolyn S. Bengel	Brackenridge Borough Tarentum Borough East Deer Township Fawn Township Harrison Township	Magisterial District 05-2-22 Magisterial District Judge Gary M. Zyra	Green Borough Heidelberg Borough Scott Township
Magisterial District 05-2-06 Magisterial District Judge Leonard J. Hromyak	Verona Borough Penn Hills Township Wilkins Township	Magisterial District 05-2-23 Magisterial District Judge Dennis R. Joyce	Carnegie Borough Crafton Borough Ingram Borough Pennsbury Village Borough Rosslyn Farms Borough Thornburg Borough
Magisterial District 05-2-07 Magisterial District Judge Jeffrey L. Herbst	Monroeville Borough Pitcairn Borough	Magisterial District 05-2-25 Magisterial District Judge Mary P. Murray	Coraopolis Borough Crescent Township Moon Township Neville Township
Magisterial District 05-2-08 Magisterial District Judge Thomas P. Caulfield	Braddock Hills Borough Chalfant Borough Churchill Borough Forest Hills Borough Swissvale Borough	Magisterial District 05-2-26 Magisterial District Judge Beth S. Mills	Elizabeth Borough West Elizabeth Borough Elizabeth Township Forward Township
Magisterial District 05-2-10 Magisterial District Judge Kim M. Hoots	Edgewood Borough Wilksburg Borough	Magisterial District 05-2-27 Magisterial District Judge Eugene N. Ricciardi	City of Pittsburgh (Wards 4, 6, and 17)
Magisterial District 05-2-11 Magisterial District Judge Robert L. Barner	Trafford Borough Wall Borough Wilmerding Borough East McKeesport Borough North Versailles Township	Magisterial District 05-2-28 Magisterial District Judge Oscar J. Petite, Jr.	City of Pittsburgh (Wards 1, 2, 3, and 5)
Magisterial District 05-2-12 Magisterial District Judge William K. Wagner	Bradford Woods Borough Marshall Township Mc Candless Township Pine Township	Magisterial District 05-2-31 Magisterial District Judge Ronald N. Costa, Sr.	City of Pittsburgh (Wards 8, 10, and 11)
Magisterial District 05-2-13 Magisterial District Judge Eugene F. Riazzi	City of McKeesport	Magisterial District 05-2-32 Magisterial District Judge Linda I. Zucco	Oakmont Borough Plum Borough
Magisterial District 05-2-14 Magisterial District Judge Richard D. Olasz, Jr.	Dravosburg Borough Rankin Borough West Mifflin Borough Whitaker Borough	Magisterial District 05-2-35 Magisterial District Judge Hugh F. McGough	City of Pittsburgh (Wards 7 and 14)
Magisterial District 05-2-15 Magisterial District Judge Thomas R. Torkowsky	Homestead Borough Munhall Borough West Homestead Borough	Magisterial District 05-2-36 Magisterial District Judge James J. Hanley, Jr.	City of Pittsburgh (Wards 15 and 31)
Magisterial District 05-2-16 Magisterial District Judge Pat A. Capolupo	Jefferson Hills Borough Pleasant Hills Borough South Park Township	Magisterial District 05-2-38 Magisterial District Judge James A. Motznik	City of Pittsburgh (Ward 19)
Magisterial District 05-2-17 Magisterial District Judge David J. Barton	Baldwin Township Castle Shannon Borough Whitehall Borough	Magisterial District 05-2-40 Magisterial District Judge Derwin D. Rushing	City of Pittsburgh (Wards 21, 22, 23, 24, and 25)
Magisterial District 05-2-18 Magisterial District Judge John N. Bova	Baldwin Borough Brentwood Borough	Magisterial District 05-2-42 Magisterial District Judge Robert P. Ravenstahl, Jr.	City of Pittsburgh (Wards 26 and 27)
		Magisterial District 05-2-43 Magisterial District Judge Carla M. Swearingen	Kennedy Township Robinson Township
		Magisterial District 05-2-47 Magisterial District Judge Scott H. Schricker	City of Duquesne Braddock Borough East Pittsburgh Borough North Braddock Borough Turtle Creek Borough

Magisterial District 05-3-02 Magisterial District Judge Robert L. Ford	Bell Acres Borough Edgeworth Borough Franklin Park Borough Glenfield Borough Haysville Borough Leetsdale Borough Osborne Borough Sewickley Heights Borough Sewickley Hills Borough Sewickley Borough Aleppo Township Leet Township	Magisterial District 05-3-09 Magisterial District Judge Armand A. Martin	City of Clairton Glassport Borough Liberty Borough Port Vue Borough
Magisterial District 05-3-03 Magisterial District Judge David J. Sosovicka	Cheswick Borough Springdale Borough Frazer Township Harmar Township Springdale Township	Magisterial District 05-3-10 Magisterial District Judge Anthony M. Ceoffe	City of Pittsburgh (Wards 6 and 9)
Magisterial District 05-3-04 Magisterial District Judge Suzanne R. Blaschak	Hampton Township Richland Township West Deer Township	Magisterial District 05-3-12 Magisterial District Judge Kevin E. Cooper	City of Pittsburgh (Wards 12 and 13)
Magisterial District 05-3-05 Magisterial District Judge Thomas G. Miller, Jr.	Lincoln Borough Versailles Borough White Oak Borough South Versailles Township	Magisterial District 05-3-13 Magisterial District Judge Randy C. Martini	City of Pittsburgh (Wards 20 and 28)
Magisterial District 05-3-06 Magisterial District Judge Mary Ann Cercone	McKees Rocks Borough Stowe Township	Magisterial District 05-3-14 Magisterial District Judge Richard G. King	City of Pittsburgh (Wards 18, 29, 30, and 32) Mt. Oliver Borough
		Magisterial District 05-3-17 Magisterial District Judge Anthony W. Saveikis	McDonald Borough (Allegheny County portion) Oakdale Borough Findlay Township North Fayette Township

[Pa.B. Doc. No. 13-1114. Filed for public inspection June 21, 2013, 9:00 a.m.]