

**CHAPTER 35. BUSINESS OF THE SUPERIOR COURT**

**IN GENERAL**

- Rule  
3501. Amendments to Chapter.

**THE SUPERIOR COURT**

3502. Office of the Prothonotary.  
3503. Seal of the Superior Court.

**APPEALS AND ARGUMENT LISTS**

3511. [Rescinded].  
3512. [Rescinded].  
3513. Oral Arguments.  
3514. Weekly List.  
3515. Daily List.  
3516. Passing Regular Turn.  
3517. Docketing Statement Form.  
3518. [Reserved].  
3519. Requests for Publication.  
3520. [Reserved].  
3521. Oral Argument; Submission on Briefs.

**WIRETAPS**

3531. Definitions.  
3532. Preemption.  
3533. Confidential Docket Number.  
3534. Assignment to a Particular Judge.  
3535. Submission of Application to Assigned Judge.  
3536. Content of Application—General.  
3537. Content of Application—Target Specific Wiretaps.  
3538. Content of Application—Mobile Communication Tracking, Pen Registers, Trap and Trace Devices, and Telecommunication Identification Interception Devices.  
3539. Content of Affidavit.  
3540. Additional Testimony or Documentary Evidence.  
3541. Request for Identity of Informant.  
3542. Orders—Notice of Confidentiality.  
3543. Orders—Probable Cause Statement.  
3544. Orders—Supplementary Target Specific.

- 3545. Orders—Mobile Communication Tracking, Installation and Use of a Pen Register, Trap and Trace Device, and Telecommunication Identification Interception Device.
- 3546. Orders—Factual Statement.
- 3547. Orders—Sealing Procedure.
- 3548. Duplicate Original for Communications Common Carrier.
- 3549. Transmission of Sealed Materials.
- 3550. Renewal or Extension Procedure.
- 3551. Verbal Authorization—Application.
- 3552. Verbal Authorization—Order.
- 3553. Verbal Authorization—Required Written Application.
- 3554. Progress Reports.
- 3555. Final Reports.
- 3556. Service of Inventory.
- 3557. 30-Day Report of Assigned Judge.
- 3558. Unsealing—Motions.
- 3559. Unsealing—Orders
- 3560. Responsibility for Unsealed Documents.
- 3561. Return of Documents to Prothonotary.

### IN GENERAL

#### **Rule 3501. Amendments to Chapter.**

This chapter may be added to or otherwise amended by order of the Supreme Court, or by order of the Superior Court pursuant to Rule 104 (rules of court).

### THE SUPERIOR COURT

#### **Rule 3502. Office of the Prothonotary.**

The Prothonotary shall maintain offices in the cities of Philadelphia, Pittsburgh and Harrisburg. The Prothonotary may direct the parties to file documents in a specified office. A document thereafter filed in an improper office shall be transferred to the proper office as if pursuant to Rule 751 (transfer of erroneously filed cases). See also Rule 2703 (erroneously filed cases).

**Official Note:** The amendments to this chapter abolish the division of the Commonwealth into Philadelphia, Harrisburg and Pittsburgh Districts and the related October, March and April Term system. The present offices will continue to exist and will be available for filings. The distribution of cases among the offices will be an administrative matter. See Note to Rule 3301 (office of the prothonotary).

#### **Source**

The provisions of this Rule 3502 amended June 13, 1977, 7 Pa.B. 1814 effective June 13, 1977; amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740; amended February 27, 1980, 10 Pa.B. 1038, effective date as set forth at 10 Pa.B. 1038. Immediately preceding text appears at serial page (43097).

**Rule 3503. Seal of the Superior Court.**

The seal of the Superior Court shall be in the following form:



**Official Note:** See note to Rule 3302 (seal of the Supreme Court).

**Source**

The provisions of this Rule 3503 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial page (39679).

**APPEALS AND ARGUMENT LISTS****Rule 3511. [Rescinded].****Source**

The provisions of this Rule 3511 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial pages (39679) and (39680).

**Rule 3512. [Rescinded].****Source**

The provisions of this Rule 3512 amended May 16, 1979, effective September 30, 1979, 9 Pa.B. 1740. Immediately preceding text appears at serial page (39680).

**Rule 3513. Oral Arguments.**

In all appeals, appellant and appellee shall each be allowed 15 minutes to present his argument. Where there are two or more appeals from the same order raising different or unrelated questions and in joint appeals under Rule 512 (joint appeals), counsel addressing the court for each side shall be allowed ten minutes to present his argument. The total time allowed any side shall not exceed 30 minutes.

**Official Note:** Based on former Superior Court Rule 15 (part) and makes no change in substance.

**Rule 3514. Weekly List.**

No case on the weekly list shall be continued when reached, except by leave of the court upon cause shown. Engagement of counsel in the lower courts will not

be recognized as a reason for the continuance or postponement of a case, except when they are actually engaged in a trial which has been commenced in a previous week and is unfinished.

**Official Note:** Based on former Superior Court Rule 18.

### **Rule 3515. Daily List.**

The list shall be made up each day at three o'clock for the following day, and cases on that list must be argued or noncrossed when called.

**Official Note:** Former Superior Court Rule 19 renumbered.

### **Rule 3516. Passing Regular Turn.**

When it is desired, for any reason whatever, that a case be passed at its regular turn on the list, the Prothonotary of the Superior Court must be notified before the case is put on the daily list. Engagement of counsel in other courts, or agreement of parties, is no ground of exception to this requirement. The rule is for the conduct of the business of the court, and is not subject to variation by counsel for any cause.

**Official Note:** Based on former Superior Court Rule 20 and makes no change in substance.

### **Rule 3517. Docketing Statement Form.**

Whenever a notice of appeal to the Superior Court is filed, the Prothonotary shall send a docketing statement form which shall be completed and returned within ten (10) days in order that the Court shall be able to more efficiently and expeditiously administer the scheduling of argument and submission of cases on appeal. Failure to file a docketing statement may result in dismissal of the appeal.

#### **Source**

The provisions of this Rule 3517 adopted November 29, 1982, effective January 1, 1983, 13 Pa.B. 8; amended July 6, 2001, effective September 4, 2001, 31 Pa.B. 3518. Immediately preceding text appears at serial page (279441).

### **Rule 3518. [Reserved].**

#### **Source**

The provisions of this Rule 3518 adopted July 28, 1993, effective September 1, 1993, 23 Pa.B. 3775; reserved January 14, 1999, effective January 14, 1999, 29 Pa.B. 544. Immediately preceding text appears at serial pages (236427) to (236428).

### **Rule 3519. Requests for Publication.**

(a) *Briefs of the Parties.* The brief of the appellant or the appellee may include, in addition to those matters enumerated in Rule 2111, a request for the publication of the Superior Court's disposition with respect to the issues on

appeal. The request shall be separately and distinctly entitled and shall set forth the reasons why publication as an opinion is being sought. Such reasons may include (1) that the Court of Common Pleas has decided a question of substance not previously determined by the Superior Court or the Supreme Court; (2) the Court of Common Pleas has rendered a decision in conflict with the decision of another Court of Common Pleas on the same question; or (3) the question involves an issue of substantial public importance.

(b) After an unpublished memorandum decision has been filed, the panel may sua sponte, or on the motion of any party to the appeal, or on request by the trial judge, convert the memorandum to a published opinion. In the case of a motion of any party to the appeal or a request from the trial judge, such motion or request must be filed with the Prothonotary within 14 days after the entry of the judgment or other order involved. The decision to publish is solely within the discretion of the panel.

**Source**

The provisions of this Rule 3519 adopted July 7, 2000, effective July 1, 2000, 30 Pa.B. 3429; amended April 20, 2001, effective April 21, 2001, 31 Pa.B. 2108; amended October 10, 2003, effective November 24, 2003, 33 Pa.B. 5075. Immediately preceding text appears at serial page (279442).

**Rule 3520. [Reserved].**

**Source**

The provisions of this Rule 3520 adopted September 5, 2001, effective January 1, 2002, 31 Pa.B. 5446; reserved June 27, 2003, effective June 5, 2003, 33 Pa.B. 2973. Immediately preceding text appears at serial page (289772).

**Rule 3521. Oral Argument; Submission on Briefs.**

In all cases other than post-conviction hearing cases, upon receipt of the appellant's brief, the Prothonotary shall send a reply letter to the appellant asking whether oral argument is requested. If appellant responds in a timely fashion that appellant requests oral argument, the case will be listed for argument. If appellant fails to respond in a timely fashion, the case will be submitted on the briefs, unless otherwise directed by the court on its own motion or upon application.

**Source**

The provisions of this Rule 3521 adopted June 28, 2002, effective June 6, 2002, 32 Pa.B. 3076.

**WIRETAPS**

**Rule 3531. Definitions.**

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

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

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

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

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

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

**Source**

The provisions of this Rule 3531 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3532. Preemption.**

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

**Source**

The provisions of this Rule 3532 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3533. Confidential Docket Number.**

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

**Source**

The provisions of this Rule 3533 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3534. Assignment to a Particular Judge.**

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

B. All matters related to a docket number shall be presented to the Assigned/Issuing Judge. In extraordinary circumstances, where the Assigned/Issuing Judge

is unavailable or is no longer a judge of the Superior Court, the Applicant or movant shall contact the Supervising Judge for assignment of a substitute judge. In true emergencies, where delay risks death or serious bodily injury, any judge of the Superior Court may issue any order permitted by law.

**Source**

The provisions of this Rule 3534 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3535. Submission of Application to Assigned Judge.**

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

**Comment**

This rule is intended to provide a neutral method, which does not depend on a specific software product, for the secure transmission of electronic documents to the Assigned Judge. This rule requires the use of public-key cryptography. It is anticipated that the Applicant will select strong, common, encryption algorithms, secured by the security certificate (i.e. public key), to protect the confidentiality of documents transmitted electronically.

**Source**

The provisions of this Rule 3535 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3536. Content of Application—General.**

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

- A. A statement of the Applicant's authority to make the application.
- B. A statement of the identity, State Police certification number, and qualifications of the investigative or law enforcement officer who will supervise the conduct of the interception and the identity of the agency which will conduct the interception.

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

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

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

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

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

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

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

I. If it is reasonably necessary that law enforcement officers enter the described premises for the purpose of installing, maintaining, or removing intercepting devices, the Applicant shall request that, pursuant to 18 Pa.C.S. § 5712(g), the Assigned Judge authorize the entry of the described premises or facilities by the designated officers as often as necessary solely for the purpose of installing, maintaining, or removing intercepting devices. Prior to such entry, the Issuing Judge must, if practical, be notified in writing of the time and method



of each such entry. If prior notice is impractical, the Issuing Judge must be notified within 48 hours of entry.

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

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

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

#### Source

The provisions of this Rule 3536 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

### **Rule 3537. Content of Application—Target Specific Wiretaps.**

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

A. In the case of oral communications:

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

B. In the case of wire or electronic communications:

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

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

1. The identity of the investigative or law enforcement officers or agency to whom the authority to intercept wire, electronic, or oral communication is given, and the name and official identity of the Applicant.
2. The identity of or a particular description of the person, if known, whose communications are to be intercepted.
3. The period of time during which the interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.
4. The facts supporting a showing of reasonable suspicion that the target of the original order has in fact changed communications devices or facilities.
5. The facts supporting a showing of reasonable suspicion that the target of the original order is likely to use the additional facility or device or place for criminal purposes similar to or related to those specified in the original order.

**Source**

The provisions of this Rule 3537 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

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

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

- A. The Applicant's identity and the identity of the investigative or law enforcement agency conducting the investigation.
- B. A certification by the Applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.
- C. An affidavit by an investigative or law enforcement officer which establishes probable cause for the issuance of an order or extension of an order under 18 Pa.C.S. § 5773.

**Source**

The provisions of this Rule 3538 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3539. Content of Affidavit.**

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

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

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

C. A statement of the details as to the particular offense that has been, is being, or is about to be committed.

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

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

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

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

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

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

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

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

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

I. The facts supporting these findings of probable cause should be as current as practical. The age of the facts will be considered when determining whether the prosecutor has established probable cause.

**Source**

The provisions of this Rule 3539 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3540. Additional Testimony or Documentary Evidence.**

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

**Source**

The provisions of this Rule 3540 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3541. Request for Identity of Informant.**

Where, pursuant to 18 Pa.C.S. § 5710(b), the Assigned Judge requests the identity of an informant, such proceedings must be on the record, except for the name or information that could lead to the identification of the informant which may be provided *in camera* and off the record.

**Source**

The provisions of this Rule 3541 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3542. Orders—Notice of Confidentiality.**

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

**WIRETAP CONFIDENTIALITY****NOTICE**

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

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

This is a very serious and highly confidential matter and must be treated with the utmost care and discretion. Except as specifically authorized under the Wiretap Act, IT IS A CRIME TO WILLFULLY USE OR DISCLOSE THE EXIS-

TENCE OF AN INTERCEPT ORDER. SUCH USE OR DISCLOSURE IS PUNISHABLE BY IMPRISONMENT OF UP TO 2 YEARS, AND A FINE OF UP TO \$5,000.

The Wiretap Act provides as follows:

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

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

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

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

**Source**

The provisions of this Rule 3542 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3543. Orders—Probable Cause Statement.**

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

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

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

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

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

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

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

**Source**

The provisions of this Rule 3543 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3544. Orders—Supplementary Target Specific.**

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

- A. The target of the original target specific wiretap has in fact changed communication devices or facilities or is presently using additional communication devices, communications facilities, or places.
- B. The target of the original target specific wiretap is likely to use the specified communications device or facility for criminal purposes similar to or related to those specified in the original order.
- C. The Applicant will be responsible for the supervision of the interception.

**Source**

The provisions of this Rule 3544 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

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

A proposed order for mobile communication tracking, installation and use of a pen register, trap and trace device, or a telecommunication identification interception device shall be submitted to the Assigned Judge, and it shall state:

- A. There is probable cause to believe that information relevant to an ongoing criminal investigation will be obtained from the targeted telephone.
- B. The identity, if known, of the person to whom is leased or in whose name is listed the targeted telephone, or, in the case of the use of a telecommunication identification interception device, the identity, if known, of the person or persons using the targeted telephone.
- C. The identity, if known, of the person who is the subject of the criminal investigation.
- D. If the order is for a pen register or trap and trace device only, the physical location of the targeted telephone.
- E. A statement of the offense to which the information likely to be obtained by the pen register, trap and trace device, or the telecommunication identification interception device relates.
- F. Direct, upon the request of the Applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register under 18 Pa.C.S. § 5771.
- G. In the case of a telecommunication identification interception device, direct that all interceptions be recorded and monitored in accordance with 18 Pa.C.S. § 5714(a)(1) and (2) and (b).

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

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

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

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

#### Source

The provisions of this Rule 3545 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

### Rule 3546. Orders—Factual Statement.

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

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

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

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

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

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

F. The period of time during which such interception is authorized not to exceed 30 days, or 60 days in the cases of orders authorizing production or disclosure of mobile communication tracking, the installation and use of pen registers, trap and trace devices, or telecommunication identification interception devices, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained. The order shall state that such interception or tracking is authorized only for that period of time necessary under the circumstances to accomplish the objectives of the interception or tracking. The order shall require that the interception or track-

ing begin and terminate as soon as practicable and that the interception be conducted in such a manner as to minimize or eliminate interception of communications not otherwise subject to interception under the Wiretap Act and require reasonable efforts, whenever possible, to reduce the hours of interception.

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

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

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

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

#### Source

The provisions of this Rule 3546 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

### **Rule 3547. Orders—Sealing Procedure.**

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

#### Source

The provisions of this Rule 3547 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.



**Rule 3548. Duplicate Original for Communications Common Carrier.**

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

**Source**

The provisions of this Rule 3548 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3549. Transmission of Sealed Materials.**

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

**Source**

The provisions of this Rule 3549 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3550. Renewal or Extension Procedure.**

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

**Source**

The provisions of this Rule 3550 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3551. Verbal Authorization—Application.**

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

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

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

- i. The investigation involves conspiratorial activities characteristic of organized crime; or
  - ii. A substantial danger to life or limb exists.
2. As a result of the facts supporting these findings, authorization for immediate interception of wire, electronic, or oral communications is needed before a written application could, with due diligence, be submitted and acted upon by the Assigned Judge.

**Source**

The provisions of this Rule 3551 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3552. Verbal Authorization—Order.**

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

**Source**

The provisions of this Rule 3552 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3553. Verbal Authorization—Required Written Application.**

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

B. If the Issuing Judge, after granting verbal authorization, denies a subsequent written application, the Applicant shall, in writing, request that the Issuing Judge cause an inventory to be served as provided in 18 Pa.C.S. § 5716. Similarly, if a subsequent written application is not made or, if made, is denied, the Applicant shall, in writing, request the Issuing Judge to seal and retain any recordings of communications intercepted pursuant to verbal authorization.

**Source**

The provisions of this Rule 3553 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3554. Progress Reports.**

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

**Source**

The provisions of this Rule 3554 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3555. Final Reports.**

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

**Source**

The provisions of this Rule 3555 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3556. Service of Inventory.**

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

**Source**

The provisions of this Rule 3556 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3557. 30-Day Report of Assigned Judge.**

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

**Source**

The provisions of this Rule 3557 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3558. Unsealing—Motions.**

A. A motion by an interested party to unseal an application, report, order, or other material previously placed under seal shall be in writing and shall be presented to the Issuing Judge. The Issuing Judge, upon good cause shown, may order an application, report, order, or other material (or portions thereof) within the Prothonotary's file to be unsealed and may impose such conditions or limitations thereon as may be necessary to safeguard the confidentiality of such information. This provision, however, shall not apply to investigative or law enforcement officers who may disclose the information pursuant to Section 5715 of the Wiretap Act.

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

C. The motion should identify with particularity the following:

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

**Source**

The provisions of this Rule 3558 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3559. Unsealing—Orders.**

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

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

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

**Source**

The provisions of this Rule 3559 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3560. Responsibility for Unsealed Documents.**

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

**Source**

The provisions of this Rule 3560 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

**Rule 3561. Return of Documents to Prothonotary.**

The application, report, order, or other materials subject to the unsealing shall be returned to the Prothonotary within 48 hours of the expiration of the life of the unsealing order or within 48 hours of the termination of the trial or other criminal proceeding or investigation, whichever event occurs sooner, unless a timely motion to extend the life of the unsealing order or to extend the scope of a previously granted unsealing order has been filed and granted.

**Source**

The provisions of this Rule 3561 adopted November 24, 2020, effective immediately, 50 Pa.B. 6994.

[Next page is 37-1.]

35-22

(403550) No. 556 Mar. 21

*Copyright © 2021 Commonwealth of Pennsylvania*