

# THE COURTS

## Title 201—RULES OF JUDICIAL ADMINISTRATION

[ 201 PA. CODE CH. 1 ]

### Amendment of Rule 103 of the Rules of Judicial Administration; No. 479 Judicial Administration Doc.

#### Order

*Per Curiam*

And Now, this 3rd day of February, 2017, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 103 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 1. GENERAL PROVISIONS

#### Rule 103. Procedure for adoption, filing and publishing rules.

\* \* \* \* \*

(d) *Rules of procedure adopted by other courts of the System.*

(1) For the purpose of this subdivision, the term “local rule” shall include every rule, administrative order, regulation, directive, policy, custom, usage, form or order of general application, however labeled or promulgated, which is adopted by a court of common pleas[ , the Philadelphia Municipal Court—Criminal Division, ] and the Philadelphia Municipal Court[ —Traffic Division, ] to govern practice and procedure. This subdivision shall also apply to any amendment of a local rule.

\* \* \* \* \*

[Pa.B. Doc. No. 17-269. Filed for public inspection February 17, 2017, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 1000 ]

### Order Amending Rule 1033 of the Rules of Civil Procedure; No. 657 Civil Procedural Rules Doc.

#### Order

*Per Curiam*

And Now, this 2nd day of February, 2017, upon the recommendation of the Civil Procedural Rules Committee;

the proposal having been published for public comment at 42 Pa.B. 6244 (October 6, 2012):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1033 of the Pennsylvania Rules of Civil Procedure 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 April 1, 2017.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1000. ACTIONS

#### Subchapter A. CIVIL ACTION

#### PLEADINGS

#### Rule 1033. Amendment.

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

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

#### EXPLANATORY COMMENT

Currently, the Rules of Civil Procedure do not expressly permit an amendment correcting the name of a party against whom a claim is asserted to relate back without a showing of concealment when the statute of limitations has expired and the effect of that correction operates to add another party. However, case law has interpreted the Rules to permit such an amendment within the statute of limitations. Rule 1033 has been amended to expressly permit amendments correcting the name of the party against whom a claim is asserted to relate back to the date of the commencement of the action if within ninety days after the period provided by law for commencing the action, the party to be brought in by the amendment has received notice of the commencement of the action such that it will not be prejudiced in obtaining a defense on the merits, and the party knew or should have known that the action would have been brought against the party but for a mistake concerning the identity of the proper party.

Consider the following example: Harry Roberts, who resides at 949 Alcoma Street, Pittsburgh, PA, was the driver of an automobile which struck the plaintiff when he was crossing the intersection at Grant and Forbes

Street, Pittsburgh, PA, at approximately 11:00 a.m. on October 11, 2013. The plaintiff's complaint, filed on October 2, 2015, mistakenly identifies the driver as Henry Rosen. He is the only named defendant in the complaint.

On October 7, 2015, the Sheriff made service by serving Mary Roberts at 949 Alcoma Street, Pittsburgh, PA. She is described in the Sheriff's Return as the wife of the defendant. On January 2, 2016, the complaint is amended to correct "Henry Rosen" to "Harry Roberts."

The amendment of Rule 1033 expressly permits the plaintiff to amend the complaint to correct the name of the defendant to Harry Roberts, because it is clear from the body of the complaint that the plaintiff was suing the driver of the automobile which struck the plaintiff and service of the complaint furnished sufficient notice to Harry Roberts that a lawsuit has been initiated against him for actions he is liable for even though the defendant is identified on the complaint as Henry Rosen. This is consistent with existing case law and codifies current practice.

The Federal Rules of Civil Procedure and a majority of states have rules of procedure governing the relation back of amendments, which are similar to this amendment. The interests of justice are served by a rule of civil procedure permitting a party to correct a complaint that provides an incorrect name of a party when there is no prejudice to the party brought in by the amendment.

The amendment of Rule 1033 does not alter the concealment doctrine and the discovery rule. The amendment is intended to cover situations in which neither the concealment doctrine nor the discovery rule apply.

*By the Civil Procedural  
Rules Committee*

WILLIAM S. STICKMAN, IV,  
*Chair*

[Pa.B. Doc. No. 17-270. Filed for public inspection February 17, 2017, 9:00 a.m.]

## Title 237—JUVENILE RULES

### PART I. RULES

#### [ 237 PA. CODE CH. 1 ]

#### Proposed Amendment of Pa.R.J.C.P. 170 and 172

The Juvenile Court Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment Pa.R.J.C.P. 170 to specifically require the inclusion of the offense tracking number, if available, in a motion for expungement and the amendment of Pa.R.J.C.P. 172 to require the Pennsylvania State Police and the Juvenile Court Judges' Commission to be served a copy of the expungement order, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

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

Daniel A. Durst, Chief Counsel  
Juvenile Court Procedural Rules Committee  
Supreme Court of Pennsylvania  
Pennsylvania Judicial Center  
PO Box 62635  
Harrisburg, PA 17106-2635  
FAX: 717-231-9541  
juvenilerules@pacourts.us

All communications in reference to the proposal should be received by March 20, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Juvenile Court  
Procedural Rules Committee*

KERITH STRANO TAYLOR, Esq.,  
*Chair*

### Annex A

#### TITLE 237. JUVENILE RULES

#### PART I. RULES

#### Subpart A. DELINQUENCY MATTERS

#### CHAPTER 1. GENERAL PROVISIONS

#### PART C(3). EXPUNGING OR DESTROYING RECORDS, FINGERPRINTS, AND PHOTOGRAPHS

#### Rule 170. Motion to Expunge or Destroy Records.

A. *Motion.* Upon motion, or *sua sponte*, expungement proceedings may be commenced:

- 1) if a written allegation is not approved for prosecution;
- 2) if the petition is dismissed by the court;
- 3) in consent decree and informal adjustment cases:
  - a) when six months have elapsed since the final discharge of the juvenile from supervision; and
  - b) if no proceeding seeking adjudication or conviction is pending;
- 4) when a juvenile has been discharged from court supervision pursuant to Rule 631:
  - a) five years have elapsed;
  - b) the juvenile has not been convicted or adjudicated delinquent for a felony or misdemeanor;
  - c) no court proceeding is pending seeking such conviction or adjudication; and
  - d) the delinquent act is not an act precluded from expungement pursuant to 18 Pa.C.S. § 9123(a.1); or
- 5) when the attorney for the Commonwealth consents to the expungement.

B. *Contents of [ motion ] Motion.* A motion, which shall include a proposed court order, shall contain the following information:

- 1) the name of the juvenile;
- 2) the date of birth of the juvenile, if known;

- 3) the juvenile's case docket number, if any;
- 4) the allegations **or offenses** to which the order pertains;
- 5) the law enforcement agency that initiated the allegations;
- 6) the reference number of the police report or written allegation to be expunged or destroyed, **including the juvenile offense tracking number (JOTN), if available**;
- 7) the date of arrest;
- 8) the disposition of the written allegation or petition;
- 9) the reasons and statutory authority for expunging or destroying the documents, fingerprints, or photographs; and
- 10) the agencies upon which certified copies of the court order shall be served.

C. *Service of [ motion ] Motion.* In addition to the service required by Rule 345, the movant shall serve the motion on the chief juvenile probation officer.

D. *Answer.*

- 1) The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.
- 2) If objections to the motion are not made within thirty days of the filing of the motion, they shall be deemed waived.

E. *Court's [ response to the motion ] Response to the Motion.* The court shall conduct a hearing or grant or deny the motion after giving consideration to the following factors:

- 1) the type of offense;
- 2) the individual's age, history of employment, history of academic or vocational training, delinquent or criminal activity, and drug or alcohol issues;
- 3) adverse consequences that the individual may suffer if the records are not expunged; and
- 4) whether retention of the record is required for purposes of public safety.

F. *[ Inter-county transfer cases ] Inter-County Transfer Cases.*

- 1) A motion to expunge or destroy records shall be filed in the county in which the adjudication of delinquency was entered.
- 2) A motion regarding the records of a juvenile whose disposition did not involve an adjudication of delinquency shall be filed in the county in which the disposition occurred.
- 3) The court entering an order to expunge or destroy records shall direct the order to any other court possessing records pertaining to the case.

**Comment**

Paragraph (A) provides that **[ any party may file ]** a motion to expunge or destroy records, files, fingerprints, or photographs, or the court, *sua sponte*, may commence expungement proceedings.

Under paragraphs (A)(1) & (2), the written allegation or petition may be dismissed for several reasons, including, but not limited to, when: 1) a juvenile completes an informal adjustment or diversionary program; 2) the

attorney for the Commonwealth declines to prosecute; 3) probable cause is not found at the detention hearing pursuant to Rule 242(C)(1); 4) there is no finding on the offenses pursuant to Rule 408(B); or 5) there is no finding of a need for treatment, supervision, and rehabilitation pursuant to Rule 409(A)(1). Expungement proceedings may be commenced upon these dismissals of the written allegation or the petition.

Under paragraph (B)(6), any number assigned to police papers helpful in tracking the police report or written allegation that would assist the law enforcement agency in expunging or destroying the document is to be listed. A reference number could be **[ an ] a juvenile** offense tracking number, district control number, crime control number, incident number, Philadelphia identification number, or another number assigned by the law enforcement agency to track the document.

Pursuant to paragraph (B)(9), the reasons for expunging the records or destroying fingerprints and photographs are to be included in the motion, specifically citing which provision of paragraph (A) applies.

"Expunge" or "expungement" is defined by Rule 120, which means to erase legally, or the process of legal erasure of an item making it permanently not available to the public but where some information may be retained only for limited purposes by agencies or departments. *See* Rule 173. *See also* Comment to Rule 120.

Rule 173 provides for the retention of certain information that is crucial for: 1) determining compliance with the order to expunge; 2) determining eligibility in a court program, determining the grading or penalty of an offense, or for other purposes as provided by law; 3) maintaining statistical and research information; 4) maintaining intelligence and investigative information; and 5) financial audits.

The new procedures instituted with the changes of 2014 require one procedure for expunging or destroying records, fingerprints, and photographs. One order will go to the appropriate agencies and departments as required by Rule 172 and will help those agencies become more efficient in the manner in which items are destroyed or expunged.

Pursuant to paragraph (D), the attorney for the Commonwealth is given an opportunity to respond to the motion. The attorney for the Commonwealth should specify its position on whether items should be expunged or destroyed. Expunged items remain available to law enforcement agencies and the attorney for the Commonwealth in limited circumstances, whereas destroyed items are permanently erased. The attorney for the Commonwealth should consent to expunging records unless the attorney for the Commonwealth demonstrates good cause for the retention of records. *See In re A.B.*, 987 A.2d 769 (Pa. Super. [ Ct. ] 2009).

The reasons for maintaining information pursuant to Rule 173 do not qualify as good cause against expunging records under this rule. Maintenance of specific information is different from the maintenance of the official court record or other official records of the juvenile probation office or a law enforcement agency. Pursuant to Rule 173, a separate document, file, or database is to be created. *See* Rule 173 and its Comment.

If the attorney for the Commonwealth objects to expunging or destroying the records, the court should conduct a hearing on the motion.

Pursuant to paragraph (E)(3), the court is to consider adverse consequences that an individual may suffer if the records are not expunged. Adverse consequences are discussed in The Pennsylvania Collateral Consequences Checklist instituted by Pennsylvania Juvenile Indigent Defense Action Network in conjunction with the initiative the Models for Change System Reform in Juvenile Justice. This checklist may be assessed on the Supreme Court's website at <http://www.pacourts.us/T/Boards/Committees/JuvenileCourtProcedural/>.

The attorney for the Commonwealth in the county in which a motion is filed in an inter-county transfer case pursuant to paragraph (F) should provide notice of the motion to, and communicate with, the attorney for the Commonwealth and the juvenile probation office in the county to which, or from which, the case was transferred.

Notwithstanding this rule, *see* 18 Pa.C.S. § 9123(a.1) for cases that are ineligible for expungement proceedings. *See also* 42 Pa.C.S. § 6341 for destruction of fingerprints and photographs.

**Official Note:** Rule 170 adopted April 1, 2005, effective October 1, 2005. Amended July 28, 2014, effective September 29, 2014. Amended February 12, 2015, effective immediately. **Amended** , 2017, effective , 2017.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 170 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 170 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

**Final Report explaining the amendments to Rule 172 published with the Court's Order at Pa.B. ( , 2017).**

**Rule 172. Order to Expunge or Destroy.**

A. *Contents.* Any order to expunge or destroy the official court record, juvenile probation files, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

- 1) all items contained in Rule 170(B);
- 2) a directive specifically identifying which items shall be expunged or destroyed, including all law enforcement records, juvenile probation files, official court records, other juvenile records, fingerprints, photographs, and any other information pertaining to the arrest;
- 3) a directive that the keeper of the juvenile records shall expunge or destroy such items;
- 4) a directive that each agency, department, or office, upon request, shall notify the court or its designee, in writing, of the action taken in response to the order to expunge or destroy;
- 5) a directive to a school building principal or his or her designee to destroy information received from the court pursuant to Rule 163;
- 6) the printed name and signature of the judge issuing the order; and
- 7) the date of the court order.

B. *Service.* In addition to the service required by Rule 167, the clerk of courts, court administrator, or other court designee shall serve certified copies of the order on the chief juvenile probation officer, **the Pennsylvania**

**State Police, the Juvenile Court Judges' Commission,** and any other person or agency as directed by the court.

**Comment**

Pursuant to paragraph (A)(2), the court is to list specifically which items are to be expunged and which items are to be destroyed. Specific information retained pursuant to Rule 173 should be expunged but not destroyed. In most instances, the court should order that the fingerprints and photographs be destroyed and that the remaining records and documents be expunged.

Pursuant to paragraph (A)(4), an agency, department, or office may be requested to produce evidence of compliance with the court order to expunge. Non-compliance may result in a finding of contempt of court.

Pursuant to paragraph (A)(5), the school is to destroy all information received from the court. Because the school is required to store this information separately under Rule 163(F), destruction should not be difficult. *See* Rule 163 and its Comment. The court may also require the school to provide written notice of the action taken.

**Official Note:** Rule 172 adopted April 1, 2005, effective October 1, 2005. Amended December 24, 2009, effective immediately. Amended July 28, 2014, effective September 29, 2014. **Amended** , 2017, effective , 2017.

*Committee Explanatory Reports:*

Final Report explaining the amendments to Rule 172 published with the Court's Order at 40 Pa.B. 222 (January 9, 2010).

Final Report explaining the amendments to Rule 172 published with the Court's Order at 44 Pa.B. 5447 (August 16, 2014).

**Final Report explaining the amendments to Rule 172 published with the Court's Order at Pa.B. ( , 2017).**

**REPORT**

**Proposed Amendment of Pa.R.J.C.P. 170 and 172**

The Juvenile Court Procedural Rules Committee proposes to amend Rule 170(B)(6) to specifically require the inclusion of the juvenile offense tracking number (JOTN), if available, in a motion for expungement and to amend Rule 172 to require the Pennsylvania State Police and the Juvenile Court Judges' Commission to be served a copy of the expungement order.

The Pennsylvania State Police is required to maintain a statewide registry of juvenile history record information, fingerprints, and photographs. *See* 42 Pa.C.S. § 6309(b). Additionally, the Juvenile Court Judges' Commission's Information Technology Division collects, compiles and publishes the juvenile court statistics. *See* 42 Pa.C.S. § 6373. Accordingly, information related to juvenile cases is shared with these entities. *See* 42 Pa.C.S. § 6309(c) & (d).

The proposed amendment to Rule 172 is intended to ensure that these entities maintain accurate information pertaining to juvenile records by requiring copies of expungement orders to be served upon them in every matter. The proposed amendment to Rule 170(B)(6) will require the JOTN, if available, to be included in the expungement motion. By operation of Rule 172(A)(1), this information will be included in the expungement order. This requirement is intended to assist the entities in performing their functions.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 17-271. Filed for public inspection February 17, 2017, 9:00 a.m.]

PART I. RULES

[ 237 PA. CODE CHS. 1 AND 2 ]

Order Amending Rules 152 and 242 of the Rules of Juvenile Court Procedure; No. 724 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 6th day of February, 2017, upon the recommendation of the Juvenile Court Procedural Rules Committee, the proposal having been published for public comment at 46 Pa.B. 3939 (July 23, 2016):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 152 and 242 of the Pennsylvania Rules of Juvenile Court Procedure are amended in the following form.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective on April 1, 2017.

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART B(2). COUNSEL

Rule 152. Waiver of Counsel.

A. Waiver requirements. A juvenile who has attained the age of fourteen may only waive the right to counsel if:

1) the waiver is knowingly, intelligently, and voluntarily made; [ and ]

\* \* \* \* \*

Comment

Because of the ramifications of a juvenile record, it is important that every safeguard [ is ] be taken to ensure that all constitutional and procedural guarantees and rights are preserved. Juveniles should not feel pressured to waive counsel or be the subject of any proactive pursuit for obtaining a waiver.

In determining whether the waiver of counsel is knowingly, intelligently, and voluntarily made, the court, on the record, is to ask the juvenile questions to elicit: 1) the reasons why the juvenile wants to waive counsel; 2) information regarding the juvenile's: a) age; b) maturity; c) education; d) mental health issues, if any; and e) any current alcohol or drug issues that may impair the juvenile's decision-making skills; 3) the juvenile's understanding of the: a) right to an attorney, including the provisions of Rule 151; b) juvenile's role when proceeding pro se; c) allegations in the petition against the juvenile; and d) possible consequences if the juvenile is found

delinquent; 4) whether the juvenile consulted with the juvenile's guardian; and 5) whether the juvenile consulted with an attorney.

\* \* \* \* \*

[ Notwithstanding the provisions of paragraph (A)(3), a juvenile fourteen years of age or older may make or file a motion pursuant to Rule 344(E) for alternative relief, for example, when the juvenile subscribes to a protected formal belief system which prohibits attorney representation. ]

Pursuant to paragraph (C), if waiver of counsel is revoked, the court is to appoint counsel before proceeding.

Official Note: Rule 152 adopted April 1, 2005, effective October 1, 2005. Amended January 11, 2012, effective March 1, 2012. Amended February 6, 2017, effective April 1, 2017.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 152 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

Final Report explaining the amendments to Rule 152 published with the Court's Order at 42 Pa.B. 547 (January 28, 2012).

Final Report explaining the revision to the Comment to Rule 152 published with the Court's Order at 47 Pa.B. 942 (February 18, 2017).

CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

PART D. PRE-ADJUDICATORY DETENTION

Rule 242. Detention Hearing.

\* \* \* \* \*

B. Manner of hearing.

\* \* \* \* \*

3) Testimony and evidence.

a) All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition.

b) The juvenile's attorney [ , the juvenile, if the juvenile has waived counsel pursuant to Rule 152, ] and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) Juvenile's rights. The juvenile shall be present at the detention hearing and the juvenile's attorney [ or the juvenile, if the juvenile has waived counsel pursuant to Rule 152, ] may:

\* \* \* \* \*

Official Note: Rule 242 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012. Amended February 6, 2017, effective April 1, 2017.

Committee Explanatory Reports:

\* \* \* \* \*

Final Report explaining the amendments to Rule 242 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

**Final Report explaining the amendments to Rule 242 published with the Court's Order at 47 Pa.B. 942 (February 18, 2017).**

### FINAL REPORT<sup>1</sup>

#### Amendment of Pa.R.J.C.P. 152 and 242

On February 6, 2017, the Court amended Juvenile Court Procedural Rule 152 to remove a statement from the Comment suggesting a juvenile has a right to proceed *pro se*, and Rule 242 to remove references to a juvenile's waiver of counsel pursuant to Rule 152. Per Rule 152(A)(3)(a), a juvenile may not waive counsel for a detention hearing.

[Pa.B. Doc. No. 17-272. Filed for public inspection February 17, 2017, 9:00 a.m.]

### PART I. RULES

#### [ 237 PA. CODE CHS. 4, 5 AND 6 ]

#### Proposed New Pa.R.J.C.P. 415 and 518; Proposed Amendment of Rule 620

The Juvenile Court Procedural Rules Committee proposes new Rule 415 and 518, together with the amendment of Rule 620, to provide a procedural mechanism for weight of the evidence claims to be raised before the juvenile court, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being republished in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

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

Daniel A. Durst, Chief Counsel  
 Juvenile Court Procedural Rules Committee  
 Supreme Court of Pennsylvania  
 Pennsylvania Judicial Center  
 PO Box 62635  
 Harrisburg, PA 17106-2635  
 FAX: 717-231-9541  
 juvenilerules@pacourts.us

All communications in reference to the proposal should be received by March 20, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Juvenile Court  
 Procedural Rules Committee*

KERITH STRANO TAYLOR, Esq.,  
*Chair*

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

### Annex A

#### TITLE 237. JUVENILE RULES

#### PART I. RULES

#### Subpart A. DELINQUENCY MATTERS

#### CHAPTER 4. ADJUDICATORY HEARING

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

#### Rule 415. Challenge to the Weight of the Evidence.

A. *Timing and Manner.* A claim that a ruling of the offense or an adjudication of delinquency was against the weight of the evidence shall be raised with the juvenile court judge:

- 1) by oral motion, on the record, at any time after the ruling or adjudication and before disposition;
- 2) by written motion at any time after the ruling or adjudication and before disposition; or
- 3) in a post-dispositional motion pursuant to Rule 620(A)(1).

B. *Decision.* If the claim is raised before disposition:

- 1) the judge shall decide the motion before entering disposition, and shall not extend the date for disposition or otherwise delay the disposition hearing in order to dispose of the motion; and
- 2) the claim shall be preserved for appeal.

C. *Appeal.* An appeal of a decision shall be governed by the timing requirements of Rule 620(B)(2) or (3), whichever applies.

#### Comment

The purpose of this rule is to make it clear that a challenge to the weight of the evidence must be raised with the juvenile court judge or it will be waived. *See also In re J.B.*, 106 A.3d 76, 95 (Pa. 2014) (claim cannot be raised via closing argument). When a claim is raised pursuant to paragraph (A)(1) or (A)(2), it need not be raised again in a post-dispositional motion to preserve the claim for appeal.

**Official Note:** Rule 415 adopted \_\_\_\_\_, effective \_\_\_\_\_.

#### Committee Explanatory Reports:

Final Report explaining the adoption of Rule 415 published with the Court's Order at Pa.B. (\_\_\_\_\_).

#### CHAPTER 5. DISPOSITIONAL HEARING

#### PART B. DISPOSITIONAL HEARING AND AIDS

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

#### Rule 518. Challenge to the Weight of the Evidence.

A claim that a dispositional order was against the weight of the evidence shall be raised with the juvenile court judge in a post-disposition motion pursuant to Rule 620(A)(1).

#### Comment

The purpose of this rule is to make it clear that a challenge to the weight of the evidence must be raised with the juvenile court judge or it will be waived. *See also In re J.B.*, 106 A.3d 76, 95 (Pa. 2014) (claim cannot be raised via closing argument).

**Official Note:** Rule 518 adopted \_\_\_\_\_, effective \_\_\_\_\_.

*Committee Explanatory Reports:*

Final Report explaining the adoption of Rule 518 published with the Court's Order at Pa.B. ( ).

**CHAPTER 6. POST-DISPOSITIONAL PROCEDURES**

**PART C. MOTIONS AND NUNC PRO TUNC RELIEF**

**Rule 620. Post-Dispositional Motions.**

A. [ *Optional* ] *Post-Dispositional Motion.*

1) [ **The parties** ] A party shall have the right to [ **make** ] file a post-dispositional motion. All requests for relief from the court shall be stated with specificity [ **and particularity,** ] and shall be consolidated in the post-dispositional motion.

2) [ **Issues** ] Claims properly raised before or during [ **the adjudicatory** ] a hearing shall be deemed issues preserved for appeal whether or not the party elects to file a post-dispositional motion on those [ **issues** ] claims.

3) **With the exception of Rule 518, post-dispositional motions are optional.**

B. *Timing.*

1) If a post-dispositional motion is filed, it shall be filed no later than ten days after the [ **imposition of disposition** ] date of entry of the dispositional order.

2) If a timely post-dispositional motion is filed, the notice of appeal shall be filed **within thirty days of the date of entry of the post-dispositional order:**

a) [ **within thirty days of the entry of the order** ] deciding the motion;

b) [ **within thirty days of the entry of the order** ] denying the motion by operation of law in [ **cases in which** ] a case when the judge fails to decide the motion; or

c) [ **within thirty days of the entry of the order** ] memorializing the withdrawal in [ **cases in which** ] a case when a party withdraws the motion.

3) If a post-dispositional motion is not timely filed, a notice of appeal shall be filed within thirty days of the [ **imposition of disposition** ] date of entry of the dispositional order.

C. *Court Action.*

1) *Briefing Schedule and Argument.* Within ten days of the filing of the post-dispositional motion, the court shall:

a) determine if briefs, memoranda of law, or oral arguments are required; and

b) set [ **a** ] the briefing schedule and dates for oral argument, if necessary.

2) *Failure to Set Schedule.* If the court fails to act according to paragraph (C)(1), briefs and oral arguments are deemed unnecessary.

3) *Transcript.* If the grounds asserted in the post-dispositional motion do not require a transcript, neither the briefs nor arguments [ **on** ] concerning the post-dispositional motion shall be delayed for transcript preparation.

D. *Time [ Limits for Decision on ] Limitations for Decision of Motion.* The judge shall not vacate the disposition pending the decision [ **on** ] of the post-dispositional motion, but shall decide the motion as provided in this paragraph.

1) Except as provided in [ **paragraph (D)(2)** ] paragraphs (D)(2) and (D)(6), the judge shall decide the post-dispositional motion as soon as possible but within thirty days of the filing of the motion. If the judge fails to decide the motion within thirty days, or to grant an extension as provided in paragraph (D)(2), the motion shall be deemed denied by operation of law.

2) Upon motion of a party [ **within the 30-day disposition period, for good cause shown, the judge may grant one 30-day extension for decision** ] and good cause shown, prior to the expiration of the 30-day decision period of paragraph (D)(1), the judge may grant one 30-day extension to rule on the motion. If the judge fails to decide the motion within the 30-day extension period, the motion shall be deemed denied by operation of law.

3) When a post-dispositional motion is denied by operation of law, the clerk of courts shall enter an order on behalf of the court [ **, and, as provided pursuant** ]. Pursuant to Rule 167, the clerk of courts shall serve a copy of the order [ **on** ] upon each attorney and the juvenile, if unrepresented, that **states** the post-dispositional motion is deemed denied. This order is not subject to reconsideration.

4) If the judge denies the post-dispositional motion, the judge promptly shall issue an order [ **and the** ]. The order shall be filed and served as provided in Rule 167.

5) If a party withdraws a post-dispositional motion, the judge promptly shall issue an order memorializing the withdrawal [ **, and the** ]. The order shall be filed and served as provided in Rule 167.

6) **A post-dispositional motion pursuant to Rule 518 seeking to challenge whether an out of home placement was against the weight of the evidence shall be decided by the court within the time constraints of Pa.R.A.P. 1770(f) when the issue is raised in a petition for review pursuant to Pa.R.A.P. 1770.**

E. *Contents of [ order ] Order.* An order denying a post-dispositional motion, whether issued by the judge pursuant to paragraph (D)(4) or entered by the clerk of courts pursuant to paragraph (D)(3), or an order issued following a party's withdrawal of the post-dispositional motion pursuant to paragraph (D)(5), shall include notice to the party of the following:

1) the right to appeal;

2) the time [ **limits within which the appeal shall be filed** ] limitations for filing the appeal; and

3) the right to counsel [ **in the preparation of the appeal** ] for the appellate process.

F. [ *After-discovered evidence* ] *After-Discovered Evidence.* A motion for a new [ **adjudication** ] adjudicatory hearing on the grounds of after-discovered evidence shall be filed in writing promptly after such discovery. If an appeal is pending, the judge may grant the motion only upon remand of the case.

### Comment

[ The purpose of this rule is to promote the fair and prompt resolution of all issues relating to admissions, adjudication, and disposition by consolidating all possible motions to be submitted for court review, and by setting reasonable but firm time limits within which the motion is to be decided. Because the post-dispositional motion is optional, a party may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

For the definition of “disposition,” see Rule 120 and its Comment.

### OPTIONAL POST-DISPOSITIONAL MOTION

See *In re Brandon Smith*, 393 Pa. Super. 39, 573 A.2d 1077 (1990), for motions on ineffective assistance of counsel.

Under paragraph (A)(2), any issue raised before or during adjudication is deemed preserved for appeal whether a party chooses to raise the issue in a post-dispositional motion. It follows that the failure to brief or argue an issue in the post-dispositional motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during adjudication. Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. See *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (1998) (any issues not raised in a 1925(b) statement will be deemed waived).

Under paragraph (B)(1), if a party chooses to file a post-dispositional motion, the motion is to be filed within ten days of imposition of disposition. The filing of the written post-dispositional motion triggers the time limits for decision on the motion. See paragraph (D)(1).

### TIMING

Paragraph (B) contains the timing requirements for filing the optional post-dispositional motion and taking an appeal. Under paragraph (B)(1), the post-dispositional motion is to be filed within ten days of imposition of disposition. Supplemental motions may be filed but the time requirements of paragraph (B)(1) are to be followed.

When a party files a timely post-dispositional motion, the 30-day period for the juvenile’s direct appeal on all matters in that case is triggered by the judge’s decision on the post-dispositional motion, the denial of the motion by operation of law, or the withdrawal of the post-dispositional motion. The appeal period runs from the entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. No direct appeal may be taken by the party while the post-dispositional motion is pending. See paragraph (B)(2).

If no timely post-dispositional motion is filed, the party’s appeal period runs from the date disposition is imposed. See paragraph (B)(3). ]

For the definition of “disposition,” see Rule 120 and its Comment.

When properly raised before or during a hearing, a claim will be deemed preserved for appeal and the party need not file a post-dispositional motion solely for the purpose of preservation. To raise a

claim that a decision was against the weight of the evidence, see Rule 415 and Rule 518. Nothing in this rule is intended to address Pa.R.A.P. 1925(b) or the possible waiver of appellate issues for non-compliance with the Pennsylvania Rules of Appellate Procedure once an appeal is filed. See, e.g., *Commonwealth v. Lord*, 719 A.2d 306 (Pa. 1998) (any issues not raised in a 1925(b) statement will be deemed waived).

See Rule 622 and *In re Brandon Smith*, 573 A.2d 1077 (Pa. Super. 1990), for motions concerning ineffective assistance of counsel.

### TIMING

Supplemental post-dispositional motions may be filed, but the time requirements of paragraph (B)(1) are to be followed.

If no timely post-dispositional motion is filed, the party’s appeal period commences on the date of the entry of the dispositional order. If a post-dispositional motion is filed, then the time for filing an appeal commences on the date of entry of the post-dispositional order. For the date of entry of an order, see Pa.R.A.P. 108(a)(1) (“[ T ]he date of entry shall be the day the clerk of courts . . . mails or delivers copies of the order to the parties, . . .”).

### BRIEFS; TRANSCRIPTS; ARGUMENT

Under paragraph (C)(1), the judge should determine, on a case-by-case basis, whether briefs, memoranda of law, or arguments are required for a fair resolution of the post-dispositional motion. [ If they are not needed, or if ] The judge may order that a concise summary of the relevant law and facts is sufficient [ , the judge should so order ]. Any local [ rules ] rule requiring briefs or oral argument [ are ] in every case is inconsistent with this rule. See [ Rule 121(E) ] Pa.R.J.A. No. 103(d)(2).

Under paragraph (C)(3), the judge, in consultation with the attorneys, should determine what, if any, portions of the notes of testimony are to be transcribed so that the post-dispositional motion can be resolved. The judge should then set clear deadlines for the court reporter to [ insure ] ensure timely resolution of the motion. Nothing in this rule precludes the judge from ordering the [ transcript ] transcription of the notes of testimony or portions of it immediately after the conclusion of the adjudicatory, dispositional, or revocation hearing or the entry of an admission.

For the recording and transcribing of court proceedings generally, see Rule 127. The requirements for the record and the writing of an opinion [ on ] for an appeal are set forth in the Pennsylvania Rules of Appellate Procedure.

There is no requirement that oral argument be [ heard on ] held for every post-dispositional motion. When oral argument is [ heard on ] held concerning the post-dispositional motion, the juvenile need not be present.

### DISPOSITION

Under paragraph (D), [ once a party makes a timely written post-dispositional motion, the judge retains jurisdiction for the duration of the disposition period. The ] the judge may not vacate the order imposing the disposition pending decision [ on ] of the post-dispositional motion. However, the judge may



**vacate or change the disposition once there has been a ruling on the motion if the motion was decided within the time limitations of this rule.**

Paragraph (D)(2) permits one 30-day extension of the 30-day time **[ limit, for good cause shown, ] limitation** upon motion of a party **and good cause shown**. In most cases, an extension would be requested and granted when new counsel has entered the case. Only a party may request such an extension. The judge may not, *sua sponte*, extend the time for the decision: a congested court calendar or other judicial delay does not constitute "good cause" under this rule.

The possibility of an extension is not intended to suggest that thirty days are required for a decision in most cases. The time **[ limits ] limitations** for resolution of the post-dispositional motion are the outer limits. **[ Easily resolvable ] Uncomplicated** issues, such as a modification of the disposition or an admission challenge, **ordinarily** should **[ ordinarily ]** be decided in a much shorter time period **[ of time ]**.

If the judge decides the motion within the time **[ limits ] limitations** of this rule, the judge may grant reconsideration on the post-dispositional motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701(b)(3), but the judge may not vacate the disposition pending reconsideration. The reconsideration period may not be used to extend the timing requirements set forth in paragraph (D) for decision **[ on ] of** the post-dispositional motion **[ : the time limits ]**. The time limitations imposed by paragraphs (D)(1) and (D)(2) continue to run from the date the post-dispositional motion was originally filed. The judge's reconsideration, therefore, is to be resolved within the 30-day decision period of paragraph (D)(1) or the 30-day extension period of paragraph (D)(2), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-dispositional motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (D)(3).

Under paragraph (D)(1), on the date when the court disposes of the motion, or the date when the motion is denied by operation of law **pursuant to paragraph (D)(3)**, the judgment becomes final for the purposes of appeal. See **[ Judicial Code, ]** 42 Pa.C.S. §§ 102, 722, 742, 5105(a), **Pa.R.A.P. 341**, and *Commonwealth v. Bolden*, **[ 472 Pa. 602, ]** 373 A.2d 90 (Pa. 1977). **[ See Pa.R.A.P. 341. ]**

An order entered by the clerk of courts under paragraph (D)(3) constitutes a ministerial order and **[ , as such, ]** is not subject to reconsideration or modification pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.

If the motion is denied by operation of law, paragraph (D)(3) requires that the clerk of courts enter an order denying the motion on behalf of the court and immediately notify the attorneys, or the juvenile, if unrepresented, that the motion has been denied. This notice is intended to protect the party's right to appeal. The clerk of courts also is to comply with the filing, service, and docket entry requirements of Rule 167.

#### CONTENTS OF ORDER

Paragraph (E) protects a party's right to appeal by requiring that the judge's order denying the motion, the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a party's with-

drawal of a post-dispositional motion, contain a written notice of the party's **[ appeal ] appellate** rights. This requirement ensures adequate notice to the party, which is important given the potential time lapse between the notice provided at **[ disposition ] the dispositional hearing** and the resolution of the post-dispositional motion. See also *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. **[ Ct. ]** 1998), concerning the contents of the order memorializing the withdrawal of a post-dispositional motion.

When a party withdraws a post-dispositional motion in open court and on the record, the judge should **[ orally ]** enter an **oral** order memorializing the withdrawal **[ for the record, and ]**. The judge is to give the party notice of the information required by paragraph (E). See *Commonwealth v. Miller, supra*.

#### AFTER-DISCOVERED EVIDENCE

Pursuant to paragraph (G), a motion for a new adjudicatory hearing on the grounds of after-discovered evidence may be filed with the court. **If the motion is filed, it is to be in writing after such discovery is made if there is no appeal pending. See Rule 622 for filing a motion for nunc pro tunc relief. If an appeal is pending, the judge may grant the motion only upon remand of the case.**

**If there is after-discovered evidence concerning the dispositional hearing, a motion for a change in the dispositional order may be filed with the court. The motion may allege a need for a change in the dispositional order pursuant to Rule 610(B). If this motion is made, notice and an opportunity to be heard is to be given to the parties and the victim. See Rule 610(B) and 42 Pa.C.S. § 6353.**

#### MISCELLANEOUS

Under paragraph (A)(1), the grounds for the post-dispositional motion should be stated with **[ particularity ] specificity**. Motions alleging insufficient evidence, for example, are to specify **[ in what way ] the reasons why** the evidence was insufficient, and motions alleging that the court's findings were against the weight of the evidence are to specify why the findings were against the weight of the evidence.

**[ Because the post-dispositional motion is optional, the failure to raise an issue with sufficient particularity in the post-dispositional motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during adjudication. ] Failure to raise a claim with specificity in the post-dispositional motion nonetheless will not constitute a waiver of the issue on appeal if the claim was properly raised. See paragraph (A)(2).**

**[ Issues ] Claims** properly preserved at the dispositional hearing need not, but may, be raised again in a motion to modify disposition in order to preserve them for appeal. In deciding whether to move to modify the disposition, counsel **should** carefully **[ is to ]** consider whether the record created at the dispositional hearing is adequate for appellate review of the issues, or the issues may be waived. See *Commonwealth v. Jarvis*, **[ 444 Pa. Super. 295, ]** 663 A.2d 790 (Pa. Super. 1995). As a general rule, the motion to modify the disposition under paragraph (A)(1) gives the dispositional judge the earliest opportunity to modify the disposition. This procedure does

not affect the court's inherent powers to correct an illegal disposition or obvious and patent mistakes in its orders [ at ] any time before an appeal or upon remand by the appellate court. *See, e.g., Commonwealth v. Holmes*, 933 A.2d 57 (Pa. 2007) (court has inherent power to correct patent and obvious mistakes despite the absence of traditional jurisdiction); *Commonwealth v. Jones*, [ 520 Pa. 385, ] 554 A.2d 50 (Pa. 1989) (court can, *sua sponte*, correct an illegal sentence even after the defendant has begun probation or placement) [ and ]; *Commonwealth v. Cole*, [ 437 Pa. 288, ] 263 A.2d 339 (Pa. 1970) (inherent power of the court to correct obvious and patent mistakes).

Once a disposition has been modified or reimposed pursuant to a motion to modify the disposition under paragraph (A)(1), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify the disposition in order to preserve an issue for appeal [ , as long as ] if the issue was properly preserved [ at the time ] when the disposition was modified or reimposed. *See paragraph (B)(2)*.

**Official Note:** Rule 520 adopted May 17, 2007, effective August 20, 2007. Amended July 28, 2009, effective immediately. Amended January 11, 2010, effective March 1, 2010. Renumbered Rule 620 on February 23, 2012, effective April 1, 2012. Amended , 2017, effective , 2017.

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 520 published with the Court's Order at 37 Pa.B. 2506 (June 2, 2007).

Final Report explaining the amendment to Rule 520 published with the Court's Order at 39 Pa.B. 4743 (August 8, 2009).

Final Report explaining the renumbering of Rule 520 to 620 published with the Court's Order at 42 Pa.B. 1214 (March 10, 2012).

Final Report explaining the amendments to Rule 620 published with the Court's Order at Pa.B. ( , 2017).

**REPORT**

**Proposed New Pa.R.J.C.P. 415 and 518; Proposed Amendment of Rule 620**

The Juvenile Court Procedural Rules Committee proposes new Rule 415 and 518, together with the amendment of Rule 620, to provide a procedural mechanism for weight of the evidence claims to be raised before the juvenile court.

In light of *In re J.B.*, 106 A.3d 76 (Pa. 2014), the Committee considered a procedural rule concerning preservation of the weight of the evidence claims for appeal. In that case, a juvenile was charged with offenses related to the shotgun death of his father's fiancé. At the adjudicatory hearing, there was evidence that the victim's former boyfriend had a history of making threats of violence against her, which might have raised doubt about whether the juvenile committed the offenses. The court entered a finding that the juvenile committed the offenses, excluding the former boyfriend as a suspect. The court thereafter held a dispositional hearing and committed the juvenile to a secure detention facility.

The juvenile filed an appeal, claiming that the finding was against the weight of the evidence. A question before the Supreme Court was whether the juvenile waived the

claim by failing to raise it first with the juvenile court. The Court observed that, unlike Pa.R.Crim.P. 607, the Pennsylvania Rules of Juvenile Court Procedure do not contain a provision addressing how or when a weight of the evidence claim should be raised. Moreover, Pa.R.J.C.P. 620 indicates that post-dispositional motions are optional. Ultimately, given the uncertain direction provided by the Rules, the juvenile was permitted to raise the claim in a post-dispositional motion *nunc pro tunc*.

In response, the Committee prepared a proposal concerning weight of the evidence claims and published it for comment at 45 Pa.B. 1491 (March 28, 2015). The proposal provided for a new Rule 420 to require a weight of the evidence claim to be raised by a motion for reconsideration as it relates to a ruling on the offenses, adjudication of delinquency, or transfer to criminal proceedings.

Post-publication, the Committee further revised the proposal to provide for a new Rule 415 addressing claims that a ruling on the offenses or an adjudication of delinquency was against the weight of the evidence. A new Rule 518 would address those types of claims arising from a dispositional order.

In addition, the text to Rule 620 was revised to reflect the required filing of a post-dispositional motion pursuant to new Rule 518 and that post-dispositional motions were no longer optional in all circumstances. Other revisions, including the modification of the Comment, were primarily stylistic or editorial in nature, but for the addition of paragraph (D)(6).

The intention of Rule 620(D)(6) was to accommodate Pennsylvania Rule of Appellate Procedure 1770, which provides for expedited appellate review of out of home placements in delinquency matters. Pa.R.A.P. 1770(a) requires a petition for review of the out of home placement to be filed with ten days of the placement order. Thereafter, an answer may be filed within ten days of service of the petition. Pa.R.A.P. 1770(d). Moreover, the juvenile court has within five days of service of the petition to either file a statement of the reasons for the placement or indicate in the record where the reasons may be found. Pa.R.A.P. 1770(f).

Guided by need to maintain an expedited review process and consistency with *In re J.B.*, the Committee proposes that Rule 620(D)(6) state:

A post-dispositional motion pursuant to Rule 518 seeking to challenge whether an out of home placement was against the weight of the evidence should be decided by the court within the time constraints of Pa.R.A.P. 1770(f) when the issue is raised in a petition for review pursuant to Pa.R.A.P. 1770.

This approach is not without implication. In this narrow category of cases, one impact may be the virtual elimination of the potential for the prosecution to file an answer to the post-dispositional motion before the juvenile court decides the motion. An alternative would be to subject the Rule 518 motion, albeit narrowed to the issue of whether placement was against the weight of the evidence, to the same time line as all other post-dispositional motions. However, this approach appeared contrary to the expeditious goal of Pa.R.A.P. 1770. Another alternative would be to exclude weight of the evidence claims from the operation of Pa.R.A.P. 1770, but that approach seems to erode the purpose of the rule, which is to expedite review of the out of home placement itself. *See* Pa.R.A.P. 1770(c)(1). Yet another alternative would be to exclude these types of claim raised in a petition for review from the requirements of Rule 518, but that approach is contrary to *In re J.B.*

As revised, this proposal is being republished for comment. The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 17-273. Filed for public inspection February 17, 2017, 9:00 a.m.]

## PART I. RULES

### [ 237 PA. CODE CH. 16 ]

#### Proposed Amendment of Pa.R.J.C.P. 1601 and 1609

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 1601 to require notice of the intention to seek a goal change discontinuing reunification and Rule 1609 to permit the court to grant a rehearing if such notice was not provided, for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded; deletions to the text are bolded and bracketed.

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

Daniel A. Durst, Chief Counsel  
 Juvenile Court Procedural Rules Committee  
 Supreme Court of Pennsylvania  
 Pennsylvania Judicial Center  
 PO Box 62635  
 Harrisburg, PA 17106-2635  
 FAX: 717-231-9541  
 juvenilerules@pacourts.us

All communications in reference to the proposal should be received by March 20, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Juvenile Court  
 Procedural Rules Committee*

KERITH STRANO TAYLOR, Esq.,  
*Chair*

### Annex A

#### TITLE 237. JUVENILE RULES

##### PART I. RULES

##### Subpart B. DEPENDENCY MATTERS

##### CHAPTER 16. POST-DISPOSITIONAL PROCEDURES

##### PART A. SUMMONS, NOTICE, AND REPORTS

##### Rule 1601. Permanency Hearing Notice.

**A.** At least fifteen days prior to the hearing, the court or its designee shall give notice of the permanency hearing to:

- 1) all parties;
- 2) the attorney for the county agency;
- 3) the child's attorney
- 4) the guardian's attorney;
- 5) the parents, child's foster parent, preadoptive parent, or relative providing care for the child;
- 6) the court appointed special advocate, if assigned;
- 7) the educational decision maker, if applicable; and
- 8) any other persons as directed by the court.

**B. If the county agency intends to request a goal change from reunification, then either the notice shall state this purpose or the county agency shall give separate notice of the intended goal change in accordance with paragraph (A).**

##### Comment

**Given the significance of discontinuing the goal of reunification, the requirement of paragraph (B) is intended to ensure that parties, counsel, and interested persons have notice of the purpose of the hearing and are able to prepare to participate and to attend the hearing.**

**Official Note:** Rule 1601 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended , 2017, effective , 2017.

##### Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1601 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1601 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

**Final Report explaining the amendments to Rule 1601 published with the Court's Order at Pa.B. ( , 2017).**

##### PART B(2). PERMANENCY HEARING

##### Rule 1609. Permanency Hearing Orders.

**A. Court Order.** After every permanency hearing, the court shall issue a written order, which provides whether the permanency plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child.

**B. Determination made.** The court's order shall reflect a determination made pursuant to Rule 1608(D).

**C. Transfer of custody.** If the court decides to transfer custody of the child to a person found to be qualified to provide care, shelter, and supervision of the child, the permanency order shall include:

- 1) the name and address of such person unless disclosure is prohibited by court order;
- 2) the limitations of the order, including the type of custody granted; and
- 3) any temporary visitation rights of parents.

##### D. Orders on family finding.

- 1) The court order shall indicate whether family finding efforts made by the county agency were reasonable;
- 2) If the family finding efforts were not reasonable, the court shall order the county agency to engage in family finding prior to the next permanency hearing;

E. *Orders concerning education.*

1) The court's order shall address the stability and appropriateness of the child's education; and

2) When appropriate, the court shall appoint an educational decision maker pursuant to Rule 1147.

F. *Orders concerning health care and disability.*

1) The court's order shall identify, monitor, and address the child's needs concerning health care and disability; and

2) The court's orders shall authorize evaluations and treatment if parental consent cannot be obtained.

G. *Guardians.* The permanency order shall include any conditions, limitations, restrictions, and obligations imposed upon the guardian.

**H. Orders concerning discontinuation of reunification goal. If the court orders the discontinuation of reunification as a goal and notice was not provided in accordance with Rule 1601(B), then the court may grant rehearing upon request or its own motion.**

**Comment**

When issuing a permanency order, the court should issue an order that is "best suited to the safety, protection, and physical, mental, and moral welfare of the child." 42 Pa.C.S. § 6351(a). *See In re S.J.*, 906 A.2d 547, 551 (Pa. Super. [Ct.] 2006) (citing *In re Tameka M.*, [525 Pa. 348,] 580 A.2d 750 (Pa. 1990)), for issues addressing a child's mental and moral welfare.

Pursuant to paragraph (D), when making its determination for reasonable efforts made by the county agency, the court is to consider the extent to which the county agency has fulfilled its obligation pursuant to Rule 1149 regarding family finding. *See also* Rules 1240(B)(6), 1242(C)(2) & (3)(b) & (c), and 1330(B)(6) and Comments to Rules 1242, 1330, 1409, 1515, 1608, 1610, and 1611 for reasonable efforts determinations.

If the requirements of Rule 1149 regarding family finding have not been met, the court is to make necessary orders to ensure compliance by enforcing this legislative mandate. *See* 62 P.S. § 1301 *et seq.* *See also* Rules 1210(D)(8), 1242(E)(3), and 1409(C) and Comments to Rules 1242, 1408, 1409, 1512, 1514, 1515, 1608, 1610, and 1611.

Pursuant to paragraph (E), the court's order is to address the child's educational stability, including the right to an educational decision maker. The order should address the child's right to: 1) educational stability, including the right to: a) remain in the same school regardless of a change in placement when it is in the child's best interest; b) immediate enrollment when a school change is in the child's best interest; and c) have school proximity considered in all placement changes, 42 U.S.C. §§ 675(1)(G) and 11431 *et seq.*; 2) an educational decision maker pursuant to Rule 1147, 42 Pa.C.S. § 6301, 20 U.S.C. § 1439(a)(5), and 34 C.F.R. § 300.519; 3) an appropriate education, including any necessary special education, early intervention, or remedial services pursuant to 24 P.S. §§ 13-1371 and 13-1372, 55 Pa. Code § 3130.87, and 20 U.S.C. § 1400 *et seq.*; 4) the educational services necessary to support the child's transition to independent living pursuant to 42 Pa.C.S. § 6351 if the child is sixteen or older; and 5) a transition plan that addresses the child's educational needs pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within ninety days.

Pursuant to paragraph (F), the court's order is to address the child's needs concerning health care and disability. The order should address the right of: 1) a child to receive timely and medically appropriate screenings and health care services pursuant to 55 Pa. Code §§ 3700.51 and 3800.32 and 42 U.S.C. § 1396d(r); 2) a child to a transition plan that addresses the child's health care needs, and includes specific options for how the child can obtain health insurance after leaving care pursuant to 42 U.S.C. § 675(5)(H) if the child will age out of care within ninety days; and 3) a child with disabilities to receive necessary accommodations pursuant to 42 U.S.C. § 12132; 28 C.F.R. § 35.101 *et seq.*, Section 504 of the Rehabilitation Act of 1973, *as amended*, 29 U.S.C. § 794, and implementing regulations at 45 C.F.R. § 84.1 *et seq.* In addition, the court is to ensure progress and compliance with the child's case plan for the ongoing oversight and coordination of health care services under 42 U.S.C. § 622(b)(15).

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a child and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

*See* Rule 1611 for permanency hearing orders for children over the age of eighteen.

**Official Note:** Rule 1609 adopted August 21, 2006, effective February 1, 2007. Amended April 29, 2011, effective July 1, 2011. Amended October 21, 2013, effective December 1, 2013. Amended July 13, 2015, effective October 1, 2015. **Amended** , **2017, effective** , **2017.**

*Committee Explanatory Reports:*

Final Report explaining the provisions of Rule 1609 published with the Court's Order at 36 Pa.B. 5571 (September 2, 2006).

Final Report explaining the amendments to Rule 1609 published with the Court's Order at 41 Pa.B. 2413 (May 14, 2011).

Final Report explaining the amendments to Rule 1609 published with the Court's Order at 43 Pa.B. 6658 (November 9, 2013).

Final Report explaining the amendments to Rule 1609 published with the Court's Order at 45 Pa.B. 3987 (July 25, 2015).

**Final Report explaining the amendments to Rule 1609 published with the Court's Order at Pa.B. ( , 2017).**

**REPORT**

**Proposed Amendment of Pa.R.J.C.P. 1601 and 1609**

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 1601 to require notice of the intention to seek a goal change discontinuing reunification and Rule 1609 to permit the court to grant a rehearing if such notice was not provided.

The Committee was informed of circumstances wherein permanency review hearings were resulting in goal changes discontinuing reunification without prior notice that such a goal change was to be decided at the hearing. As shared with the Committee, these events arose either when the county agency did not disclose the intention to

seek a goal change until the hearing or when the judge *sua sponte* changes the goal at the conclusion of the permanency hearing.

Presently, the Rules do not provide a mechanism for providing notice that a goal change is being sought in a permanency review hearing. The Committee notes that “goal change hearings” may be emotional for both the child and the parents. Further, it is best practice to provide notice of an upcoming goal change hearing. See Pennsylvania Children’s Roundtable Initiative. *Pennsylvania Dependency Benchbook* at p. 119. Harrisburg, PA: Office of Children and Families in the Courts, 2010.

Therefore, to provide timely notice and the opportunity to prepare for and attend the hearing, the Committee proposes to amend Rule 1601 to add paragraph (B) to require either the permanency hearing notice to indicate whether the county agency seeks to discontinue a goal of reunification or for the county agency to provide separate notice consistent with paragraph (A) in terms of recipients and timeliness.

The Committee also proposes to amend Rule 1609 to add paragraph (H) to provide for a discretionary rehearing if notice was not given in accordance with Rule 1601(B). This language is based, in part, upon Rule 1243(B) providing for a discretionary rehearing for shelter care hearings. Rule 1609(H) is not intended to encourage noncompliance with Rule 1601(B); rather, it rejects a categorical mandate for a rehearing in every instance and invests the judge with the discretion to determine whether a rehearing is warranted.

The proposed requirements of Rule 1601(B) do not include instances where the judge *sua sponte* orders discontinuation of a goal of reunification without a request from the county agency. Although believed to be a seldom occurrence, the Committee believes that the better practice is for the court to reject the current reunification goal and order the county agency to file for a change of goal so that notice may be provided.

The Committee invites all comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 17-274. Filed for public inspection February 17, 2017, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### ADAMS COUNTY

#### New Rules of Judicial Administration 4007, 4008, 4009 and 4011; Administrative Order No. 6 of 2017

#### Order of Court

And Now, this 30th day of January, 2017, the Court hereby vacates Administrative Order 3 of 2017 in its entirety. The Court further Orders that Rules 4007, 4008, 4009 and 4011 of the Adams County Rules of Judicial Administration shall be created as follows:

#### Rule 4007. Request for Transcripts.

(a) All requests for transcripts shall be set forth on a standardized form provided by the District Court Administrator of the Commonwealth of Pennsylvania and available at the office of District Court Administrator of

Adams County and the Adams County website. The form shall indicate the current rates authorized to be charged for transcripts under these rules.

(b) For an ordinary transcript, the party requesting a full or partial transcript of a trial or other proceeding shall file the original request with the appropriate filing office (Clerk of Courts, Prothonotary, Orphans Court, or Domestic Relations Office) in which the litigation is pending. The requesting party shall also serve copies of the formal request to:

- (1) the Judge presiding over the matter,
- (2) the court reporter, recorder, or transcriptionist assigned to the proceeding,
- (3) the District Court Administrator, and
- (4) opposing counsel or party if the party is unrepresented.

(c) Where daily, expedited, or same day transcripts are requested, request for those transcripts shall be filed in writing in the appropriate filing office at least ten (10) days prior to the proceeding with copies of the request delivered as required by paragraph (b).

Where justice requires and ten (10) days prior notice cannot reasonably be provided, requests for daily, expedited, or same day transcripts shall be made by oral motion to the presiding Judge.

(d) Following receipt of a request for transcript, the presiding Judge shall forthwith produce an order:

- (1) setting forth the amount of the deposit which shall be 75 percent of the anticipated total cost of the transcript and directing the transcript to be prepared upon payment of the deposit;
- (2) setting a reduced payment rate and directing the transcript to be prepared upon payment of the reduced rate; or
- (3) approving or denying an economic hardship exemption and, where applicable, directing preparation of the transcript.

(e) Upon receipt of the court order referenced in subparagraph (d) above, the filing office shall make service of the same on the requestor. If deposit or reduced payment is required, the payment shall be paid to the filing office prior to commencement of transcript preparation. Upon receipt of the payment, the filing office shall promptly advise Court Administration of the same who thereafter shall direct the court reporter to prepare the transcript.

#### Rule 4008. Transcript Costs.

(a) Costs payable by a requesting party other than the Commonwealth or subdivision thereof for a transcript in electronic format shall be:

- (1) for an ordinary transcript, \$2.50 per page,
- (2) for an expedited transcript, \$3.50 per page,
- (3) for a daily transcript, \$4.50 per page, and
- (4) for same day delivery, \$6.50 per page.

(b) Costs payable by the Commonwealth or subdivision thereof for a transcript in electronic format shall be:

- (1) for an ordinary transcript, \$1.55 per page,
- (2) for an expedited transcript, \$1.75 per page,
- (3) for a daily transcript, \$2.00 per page, and
- (4) for same day delivery, \$4.00 per page.

(c) Costs payable for a transcript in paper format regardless of whether the request is made by a private litigant or the Commonwealth or subdivision thereof shall be in accordance with paragraph (a) and (b) relating to electronic format plus a surcharge of 25 cents per page.

(d) Costs payable by any person or entity requesting a copy of any transcript previously ordered, transcribed, and filed of record shall be:

- (i) 75 cents per page bound, paper format, and
- (ii) 50 cents per page electronic copy.
- (e) *Economic hardship.*

(1) A party seeking consideration of an economic hardship related to obtaining a transcript may petition the Court in utilizing the in forma pauperis self-help packet available at the Adams County Law Library or online at [www.adamscounty.us](http://www.adamscounty.us). In order for a party to be considered for economic hardship, the in forma pauperis self-help packet must be fully completed and verified.

(2) A transcript requested by Legal Aid Services must include with the request for transcript a letter of certification verifying, as provided in R.J.A. 4008(b), that the client meets financial eligibility and the matter is under appeal or the transcript being requested is necessary to advance the current litigation.

(f) A request for a copy of any transcript previously ordered, transcribed, and filed of record shall comply with R.J.A. 4007(a). After the Court has set the amount to be paid, and upon satisfaction of any financial obligation related to the request, the court reporter shall provide a copy to the requesting party.

(g) Except as otherwise set forth in this rule, no filing fee shall be assessed to a litigant filing a request for transcript.

#### **Rule 4009. Fees.**

(a) Fees for all transcripts shall be payable by check, money order, or credit card as required by the respective filing office.

(b) All revenue received related to the production of transcripts or copies thereof, unless required to be held in escrow pursuant to these rules, shall be transferred to the Adams County general fund coded to the Courts' charges for services revenue line.

#### **Rule 4011. Delivery of Transcript.**

(a) The court reporter shall notify the requesting party and the District Court Administrator or designee upon completion of the transcript and shall indicate the balance to be paid at the respective filing office.

(b) The District Court Administrator or designee shall notify the filing office of the balance owed.

(c) Upon payment of the balance owed to the filing office, the filing office shall notify Court Administration, and thereafter the court reporter shall certify and deliver the original transcript to the appropriate filing office. After the original transcript has been filed, a copy shall be delivered to the requesting party by the court reporter.

These rules shall become effective after all the provisions of the Pennsylvania Rules of Judicial Administration 103 are met, to include the following:

a. Two (2) certified copies of this Order together with a computer diskette that complies with the requirement of 1 Pa. Code § 13.11(b), or other compliant format, containing the text of the local rule(s) adopted hereby shall be

distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

b. One copy of this Order shall be forwarded to the Administrative Office of the Pennsylvania Courts via e-mail to [adminrules@pacourts.us](mailto:adminrules@pacourts.us);

c. A copy of the proposed local rule(s) shall be published on the 51st Judicial District website;

d. This Order shall be filed in the Office of the Prothonotary of Adams County and a copy thereof shall be filed with the Adams County Clerk of Courts and the Adams County Law Library for inspection and copying;

e. The effective date of the local rule(s) shall be 30 days after publication in the *Pennsylvania Bulletin*.

*By the Court*

MICHAEL A. GEORGE,  
*President Judge*

[Pa.B. Doc. No. 17-275. Filed for public inspection February 17, 2017, 9:00 a.m.]

## **ARMSTRONG COUNTY**

### **Adoption of New Local Orphans' Court Rules; No. CP-03-AD-0000001-2016**

#### **Order of Court**

*And Now*, this 20th day of January, 2017, the following amended rule is hereby *Adopted* as the Local Orphans' Court Rules of the Court of Common Pleas and its Orphans' Court Division, effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*:

#### **Rule 10.7. Filing of Inventory. Notice. Petition to Compel Filing of Inventory. Objections to Inventory.**

(a) Inventories shall be filed with the Register of Wills, and not with the Clerk of the Orphans' Court Division.

(b) A copy of the inventory shall be served upon all interested parties in the same manner as an account is served. A notice substantially in the following form shall accompany the copy as its front page:

[CAPTION]  
NOTICE

Attached is a true and correct copy of the Inventory/ Supplement Inventory which was filed by the personal representative in the Office of the Register of Wills on \_\_\_\_\_, 20\_\_\_\_.

Specific written objections, if any, may be filed with the Clerk of Orphans' Court Division in accordance with Local Orphans' Court Rule 10.7(d).

\_\_\_\_\_  
Personal Representative or Attorney

(c) All petitions to compel the filing of an inventory or a supplemental inventory required by 20 Pa.C.S. § 3301 and § 3303, respectively, shall be filed with the Clerk of the Orphans' Court Division, and not with the Register of Wills.

(d) All objections to an inventory or supplemental inventory filed pursuant to 20 Pa.C.S. § 3305 shall be filed with the Clerk of Orphans' Court Division, and not with the Register of Wills. All such objections shall be in writing with consecutively numbered paragraphs, signed

by counsel, or if not represented by counsel, then by all the objectors. Objections must be verified by at least one of the objectors. Each objection shall be specific. The pleadings allowed after the filing of such objections shall be governed by Pa.O.C. Rule 2.8(a) and (b).

*By the Court*

JAMES J. PANCHIK,  
*President Judge*

[Pa.B. Doc. No. 17-276. Filed for public inspection February 17, 2017, 9:00 a.m.]

## BUCKS COUNTY

### Order Rescinding Administrative Order No. 68 and Promulgating Local Rules of Judicial Administration 4007, 4008 and 4009 Governing Court Reporting and Transcripts

#### Order

*And Now*, this 19th day of December, 2016, it is hereby *Ordered* that Bucks County Administrative Order No. 68 is rescinded and Bucks County Local Rules of Judicial Administration 4007, 4008 and 4009 governing court reporting and transcripts are hereby promulgated, effective January 1, 2017, as follows:

#### **Rule 4007. Request for Transcripts.**

(A) Requests for transcripts shall be set forth on the standardized Request for Transcript Form available online at [www.buckscounty.org/CourtServices](http://www.buckscounty.org/CourtServices). The form is also available from the following offices: Prothonotary, Domestic Relations Prothonotary, Clerk of Courts and the Register of Wills/Clerk of the Orphans' Court. Once completed, the Request for Transcript Form shall be submitted to the Chief Court Reporter.

(1) A request for transcript may also be made by contacting the court reporter present at the proceeding directly or by contacting the Chief Court Reporter by telephone, in writing or by email.

(2) A request for daily, same-day or expedited transcription shall be submitted to the Chief Court Reporter at least ten (10) days prior to the scheduled proceeding. In the event of an emergency, a party may request, by oral motion, a daily, same-day or expedited transcript. The request will be accommodated when it is feasible for the court reporter to produce the transcript within the allotted period of time, and upon approval of the trial judge and the Chief Court Reporter.

(B) Upon receiving a request for a transcript:

(1) the court reporter shall, within 24 hours of receipt of said request, determine the number of copies being ordered by contacting all counsel and/or self-represented parties; and

(2) the court reporter shall send the ordering party or parties, via email or regular mail, the standardized Transcript Order Form. The Transcript Order Form shall include the estimated number of pages, the page rate and the estimated total cost of the transcript.

(C) The requesting party or parties shall make a non-refundable deposit in the amount of 95% of the estimated cost of the transcript. The deposit shall be paid by money order, certified check or law firm check made payable to the County of Bucks.

(1) The deposit, along with the completed and signed Transcript Order Form, shall be delivered to the Court Administrator's Office, 100 N. Main Street, Doylestown, Pennsylvania, within seven (7) calendar days from the date of receipt of the Transcript Order Form.

(D) The court reporter shall prepare the transcript upon direction of the Chief Court Reporter.

(E) The court reporter shall notify all ordering parties and the Chief Court Reporter upon completion of the transcript and provide the completed transcript to the trial judge for signature.

(F) The court reporter shall deliver the original transcript to the appropriate filing office and distribute copies to all ordering parties upon payment of any balance owed.

#### **Rule 4008. Transcript Costs Payable by a Requesting Party Other than the Commonwealth or a Subdivision Thereof.**

(A) *Costs*

(1) The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, for a transcript in electronic format (.pdf) shall not exceed:

- (a) ordinary transcript, \$2.50 per page;
- (b) expedited transcript, \$3.50 per page;
- (c) daily transcript, \$4.50 per page; and
- (d) same day delivery, \$6.50 per page.

(2) When the transcript is prepared in bound paper format, the costs shall be in accordance with paragraph (1) relating to electronic format (.pdf) plus a surcharge of \$0.25 per page.

(3) A Complex Trial Surcharge of \$1.00 per page will be applied in cases such as mass tort, medical malpractice or other unusually complex litigation where there is a need for the court reporter to significantly expand his or her dictionary, when approved by the presiding Judge.

(B) *Economic Hardship*

(1) A Petition to Proceed In Forma Pauperis shall be filed with the appropriate filing office (Prothonotary, Domestic Relations Prothonotary, Clerk of Courts or the Register of Wills/Clerk of the Orphans' Court) along with the Request for Transcript and Poverty Affidavit.

(2) Copies of the forms listed above shall be provided to:

- (a) the presiding judge;
- (b) the Chief Court Reporter; and
- (c) opposing counsel, or the opposing party if self-represented.

In forma pauperis and Poverty Affidavit Forms are available at [www.buckscounty.org/CourtServices](http://www.buckscounty.org/CourtServices).

(C) When more than one ordering party requests a transcript, the transcript cost plus \$0.75 per page (paper format) and/or \$0.50 per page (electronic copy/.pdf) shall be divided equally among the ordering parties.

(D) A request for a copy of any transcript previously ordered, transcribed and filed of record shall be made by telephone, letter or email to the Chief Court Reporter and shall be provided at the cost of \$0.75 per page (paper format) and/or \$0.50 per page (electronic copy/.pdf).

#### **Rule 4009. Fees Payable to the Court Reporter by the Courts for Court-Ordered Transcripts.**

(A) A party requesting that the cost of their transcript be placed on the court must provide documentation of having been declared in forma pauperis as described in 4008(B).

(1) Any transcript request where the costs are to be placed on the court must be accompanied by Order of Court directing the notes of testimony be transcribed.

(B) Court reporters shall be paid the following amounts by the Court for court-ordered transcripts:

(1) regular delivery of the original transcript: \$1.25 per page;

(2) regular delivery of each additional copy: \$0.30 per page;

(3) regular delivery of a duplicate original: \$0.30;

(4) expedited delivery of the transcript: \$2.00 per page for the original, and \$0.60 per page for each additional copy;

(5) daily delivery of the transcript: \$3.00 per page for the original and \$0.90 per page for each additional copy; and

(6) same-day delivery of the transcript: \$3.50 per page for the original and \$1.00 per page for each additional copy.

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

*By the Court*

JEFFREY L. FINLEY,  
*President Judge*

[Pa.B. Doc. No. 17-277. Filed for public inspection February 17, 2017, 9:00 a.m.]

## CARBON COUNTY

### Amendment of 56th Judicial District—Constable Manual; No. CP-13-AD-0000002-2017

#### Administrative Order No. 05-2017

*And Now*, this 30th day of January, 2017, it is hereby

*Ordered and Decreed*, that effective March 1, 2017, the Carbon County Court of Common Pleas *Amends* the following Constable Manual governing the procedures to be followed by all Constables performing judicial duties for the 56th Judicial District.

The Carbon County District Court Administrator is *Ordered and Directed* to do the following:

1. File one (1) copy electronically to [adminrules@pacourts.us](mailto:adminrules@pacourts.us) of this Administrative Order and Manual with the Administrative Office of Pennsylvania Courts.

2. File two (2) paper copies and one (1) electronic copy in a Microsoft Word format to [bulletin@palrb.us](mailto:bulletin@palrb.us) with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish the Rule on the Carbon County Court website at <http://www.carboncourts.com>.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection copies of the Administrative Order and Manual in the Clerk of Courts Office.

7. Incorporate the Manual no later than thirty (30) days after publication in the *Pennsylvania Bulletin* with this Court's complete set of Rules of Court published at <http://www.carboncourts.com>.

*By the Court*

ROGER N. NANOVIC,  
*President Judge*

## CONSTABLE MANUAL

### 56th JUDICIAL DISTRICT

#### I. General Provisions

*A. Definitions*—Subject to additional definitions contained in subsequent sections of this manual, the following words and phrases shall have, unless the context indicates otherwise, the meanings given to them in this section.

*C.C.C.F.*—Carbon County Correctional Facility

*Clerk of Courts*—The official, and that official's office, in the 56th Judicial District who, pursuant to 42 Pa.C.S.A. §§ 2756 and 2757, has the responsibility and function to maintain the official criminal case file and list of docket entries for each criminal proceeding, and to perform such other duties as required by rule or law.

*Constable*—All elected, court appointed, and/or deputy constables duly elected or appointed pursuant to statutory authority. As elected or appointed officials, constables are independent contractors and are not employees of the Commonwealth, the judiciary, or the municipality in which they serve.

*Constable's Education and Training Board (C.E.T.B.)*—The Constable's Education and Training Board established and created pursuant to 44 Pa.C.S.A. § 7143 responsible for developing basic training and firearms education for constables and to certify constables who perform judicial duties.

*Controller*—The duly elected County Controller for the County of Carbon empowered with the rights, duties, and responsibilities under the County Code, 16 P.S. § 101 et seq.

*County*—County of Carbon.

*Court*—The Court of Common Pleas for the 56th Judicial District.

*Court Administrator*—The District Court Administrator for the 56th Judicial District as designated by the Pennsylvania Supreme Court and the Administrative Offices of the Pennsylvania Courts.

*Court Official*—The Judges of the Court of Common Pleas for the 56th Judicial District, the Magisterial District Judges for the 56th Judicial District, the Carbon County District Court Administrator, the Chief Adult Probation Officer for the Carbon County Probation Department, and all employees in the respective offices.

*Judicial Duties*—Services and duties performed by a constable for the payment of fees as authorized by 44 Pa.C.S.A. § 7161, including all services specified therein regardless of whether a fee is actually sought by the constable or paid by the County.

*Magisterial District Judge*—A public official having the power and authority of a magisterial district judge whose jurisdiction falls within the 56th Judicial District.

*P.C.C.D.*—Pennsylvania Commission on Crime and Delinquency.



*Prothonotary*—The duly elected Prothonotary for the 56th Judicial District empowered with the rights, duties, and responsibilities under 42 Pa.C.S.A. §§ 2736 and 2737, who has the responsibility to maintain official court records and to perform such other duties as required by rule or law.

*Sheriff*—The duly elected Sheriff for the County of Carbon empowered with the rights, duties, and responsibilities under the County Code, 16 P.S. § 101 et seq., including all deputies appointed in compliance with the County Code.

## II. Powers and Duties

A. *Requirements of Constables Performing Judicial Duties in the 56th Judicial District*—Constables performing judicial duties within the 56th Judicial District must:

1. Be certified by C.E.T.B.
2. Post a bond with the Clerk of Courts' Office in the sum of \$2,500 conditioned upon the just and faithful discharge by the constable of the duties of his/her office. The bond shall be held in trust for the use and benefit of persons who may sustain injury by reason of a constable's neglect of duty. Proof of the filing of a bond must be provided to the Court Administrator's Office.
3. Maintain a policy of professional liability insurance providing coverage for the performance of judicial duties with a minimum coverage of \$250,000 per incident and a minimum aggregate of \$500,000 per year. Proof of insurance coverage must be filed with the Clerk of Courts Office and the Court Administrator's Office annually.
4. Maintain a valid and current Pennsylvania driver's license and required financial responsibility (automobile insurance) on any vehicle used for the performance of judicial duties. Proof of licensing and insurance must be provided to the Court Administrator's Office as required by that office. Absence of a driver's license does not preclude a constable who is otherwise approved by the Court to perform judicial duties from working with a constable pursuant to 44 Pa.C.S.A. § 7161(c), provided the unlicensed or uninsured constable does not operate a motor vehicle. However, unless accompanied by another constable who maintains a valid and current Pennsylvania driver's license and required financial responsibility, a constable who does not possess a valid driver's license or required financial responsibility shall not perform judicial duties.
5. Maintain current contact information with the Court Administrator's Office. Current contact information shall include constable's current address, telephone number, and cell phone number. Contact information shall also include information as to any other communication equipment utilized by the constable to perform judicial duties (e.g. pager, fax machine).
6. If carrying a firearm in the performance of judicial duties, a constable shall provide the Court Administrator's Office with proof of certification or qualification to carry or use firearms as provided by 44 Pa.C.S.A. § 7148.
7. Complete and provide the Controller with all vendor authorization documents, including the production of a tax identification number as required by local, state, or federal law or policies and procedures of the Controller.
8. Provide the Court Administrator's Office with an executed acknowledgment evidencing the constable has received a copy of the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct and understands the provisions and terms set

forth therein. The acknowledgment shall be in the form attached hereto as "Exhibit A."

9. Provide the Court Administrator's Office with an executed acknowledgment evidencing the constable has received a copy of the Constable Manual for the 56th Judicial District and understands the provisions and terms set forth in the manual governing the performance of judicial duties. The acknowledgment shall be in the form attached hereto as "Exhibit A."

B. *Authorization to Perform Judicial Duties*—No Magisterial District Judge, nor any other Court Official, shall request or otherwise authorize a constable to perform judicial duties, nor shall the Controller authorize payment of fees for a constable performing judicial duties, unless the constable has been designated by the Court Administrator's Office as a constable authorized to perform judicial duties.

1. The Court Administrator's Office shall maintain a list of all constables who are authorized to perform judicial duties within the 56th Judicial District. The Court Administrator's Office shall publish the list with all Magisterial District Judges in the 56th Judicial District; any other Court office utilizing constable services in the performance of judicial duties; the Controller; and the Clerk of Courts Office on a regular basis. This list shall be updated and published at least annually. In the event the privilege of a constable to perform judicial duties is revoked by the Court, the Court Administrator's Office shall promptly notify the identified offices of the same.

2. The Court Administrator's Office shall develop policy and procedure to effectuate and ensure a constable's compliance with the requirements set forth in Section A above.

C. *Removal of Authorization to Perform Judicial Duties*—Although a constable may only be removed or disciplined for acts of malfeasance or misfeasance upon petition of the District Attorney or an individual citizen (see 13 P.S. § 31), a constable's authorization to perform judicial duties pursuant to Section B above may be revoked at any time pursuant to the authority of the President Judge for the 56th Judicial District.

1. A constable's authority to perform judicial duties may be revoked in the following circumstances:

- a. a constable permits his/her compliance with the requirements of Section A above to lapse;
- b. the constable commits a breach of the duties or requirements of this manual including, but not limited to, the Constable Code of Conduct as set forth in Section V herein;
- c. the constable commits any violation of the law while in the performance of judicial duties or is otherwise convicted of criminal conduct which places the integrity or honesty of the constable at issue;
- d. the constable commits any act which jeopardizes public trust in or brings disrespect to the Court.

2. Court Officials who know, or have reason to believe, that a constable has committed a violation of the Code of Conduct or the provisions of the Constable Manual shall promptly inform the Court Administrator's Office of the same.

3. All complaints of constable misconduct, including complaints related to failure to comply with the Constable Manual, shall be promptly investigated by the Court Administrator. The results of the investigation shall be provided to the President Judge for further action, if any.

D. *Minimum Requirements*—Compliance with the provisions of this manual does not guarantee a constable the right to perform judicial duties for a Magisterial District Judge. Rather, the provisions of this section set forth the minimum requirements which must be complied with before a constable may be utilized by a Magisterial District Judge to perform judicial duties. Magisterial District Judges retain the right to assign constable work within their reasonable discretion provided the utilized constable is otherwise in compliance with this section.

### III. Warrant Procedures

A. *Definitions*—The following words and phrases shall have, unless the context indicates otherwise, the meanings given to them in this section.

*Legal Holiday*—For purposes of this manual, the following shall be defined as legal holidays: New Year's Day, Martin Luther King, Jr.'s Day, Presidents' Day, Good Friday, Easter, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, the Day after Thanksgiving Day, and Christmas Day. For those holidays identified herein which annually fall on a rotating calendar day, the actual date shall be defined as the day designated as the federal holiday.

*Arrest Warrant*—An arrest warrant for a misdemeanor/felony offense issued pursuant to Pa.R.Crim.P. 513 et. al by a Magisterial District Judge for private criminal complaints, including those filed by the Pennsylvania Department of Inspector General, and which have been approved by the District Attorney's Office.

*Summary Warrant*—A warrant issued by a Magisterial District Judge pursuant to Pa.R.Crim.P. 430. This definition includes both arrest warrants and bench warrants issued pursuant to Rule 430.

B. *Summary Warrants and Misdemeanor/Felony Warrants for Private Criminal Complaints*—The following procedures shall apply to the issuance and service of these warrants.

1. Magisterial District Judges possess the exclusive right, subject to the authority of the President Judge, to distribute warrants issued by them to a constable of their choice who satisfies the requirements of the C.E.T.B., this manual, and the Court Administrator's Office to perform judicial duties. Magisterial District Judges shall issue warrants where appropriate pursuant to the Pennsylvania Rules of Criminal Procedure and prevailing law.

2. Upon issuance of a warrant, the Magisterial District Judge may assign the warrant to a constable authorized to perform judicial duties by the Court Administrator's Office. Unless the warrant is unassigned, no constable other than the assigned constable shall serve a warrant within 60 days of the initial issuance of the warrant by the Magisterial District Court, subject to the following:

a. If the subject of the warrant is in the custody of the Sheriff's Department as a result of contact between the subject and the Sheriff's Department unrelated to the warrant or in the custody of prison officials in which case a duplicate warrant may be issued to the Sheriff's Department. In the event the Sheriff's Department serves such a warrant, the Magisterial District Judge, upon notice of the same, shall promptly alert the assigned constable that the warrant has been served; or

b. If the subject of the warrant is present in the Carbon County Courthouse and, as a result of routine examination by the Sheriff's Department of any person appearing before the Court of Common Pleas or other information acquired by the Sheriff's Department, the

Sheriff's Department learns that an individual present in or at the Courthouse is the subject of a warrant, a duplicate warrant may be issued to the Sheriff's Department. In the event the Sheriff's Department serves such a warrant, the Magisterial District Judge, upon notice of the same, shall promptly alert the assigned constable that the warrant has been served; or

c. If the subject of the warrant is in the custody of a constable who has exercised custody pursuant to another warrant issued and served in compliance with this manual in which case the original warrant shall be recalled and reissued to the constable who has custody of the subject; or

d. If the subject of the warrant is in the custody of a constable as the result of execution of another warrant issued by a Court official or Magisterial District Judge of another Judicial District of this Commonwealth in which case the original warrant shall be recalled and reissued to the Constable.

3. Upon service of the warrant, the constable to whom the warrant has been assigned shall immediately notify the issuing authority of service and promptly return a certified copy of the warrant to the District Court evidencing service of the warrant.

4. If the subject of the warrant is in the custody of a municipal or state police officer who, for any reason, has taken the subject before the issuing authority, the Magisterial District Judge shall promptly notify any constable to whom the warrant has been assigned that the warrant has been served.

5. During the normal operating hours of the Magisterial District Court, if a Constable reasonably believes he/she will be able to serve a summary warrant which has been assigned to another Constable, or is unassigned, within the next 12 hours, he/she shall contact the issuing District Court in which case a warrant may be issued to the Constable.

6. All assigned, unserved summary warrants shall be available for service by any constable authorized to perform judicial duties in the 56th Judicial District after the 60th day following issuance of the warrant. In all such cases, it shall be the responsibility of the constable seeking to serve the warrant to review the warrant and determine if the warrant is available to be served by that constable. A constable shall not request a warrant to be reissued unless imminent service of the warrant is anticipated. For purposes of this paragraph, imminent service requires a good faith belief as to the whereabouts of the subject of the warrant and the likelihood that the warrant will be served within the immediately subsequent 12-hour period.

7. When a summary warrant is issued pursuant to Pa.R.Crim.P. 430, upon service of the warrant, the constable shall either:

a. Accept a signed guilty plea together with payment in full of the amount of the fines and costs as stated on the warrant;

b. Accept from the defendant a signed not guilty plea together with payment in full of the amount of the collateral stated on the warrant; or

c. If the defendant is unable to pay the full amount of the fines and costs or collateral, cause the defendant to be taken without unnecessary delay before the issuing authority during normal court hours, or before the on-call Magisterial District Judge.

8. When a constable accepts fines and costs or collateral, the constable shall issue a receipt to the defendant setting forth the amount of the fines and costs or collateral received and promptly return a copy of the receipt, signed by the defendant and constable, to the proper issuing authority. Constables must return the warrant and any pleas, fines, costs, and/or restitution collected to the issuing authority no later than the close of business during the same business day; or if served after normal court hours, on the next business day. Constables should make every effort to resolve service of the warrant as per Pa.R.Crim.P. 430 before physically transporting the defendant to the proper issuing authority, or on-call Magisterial District Judge.

9. A constable shall not serve a summary warrant issued pursuant to Pa.R.Crim.P. 430 at a residence between the hours of 10:00 p.m. and 6:00 a.m., or after 10:00 p.m. on the day preceding a legal holiday until after 6:00 a.m. of the day following the legal holiday.

10. A constable shall not attempt to serve a summary warrant or take the subject of such a warrant into custody unless in possession of a valid warrant.

#### C. Return of Unserved Warrants

1. A constable who has been issued a warrant pursuant to this manual shall return the warrant to the Magisterial District Court at the expiration of sixty (60) days of its issuance or 12 hours for those warrants issued pursuant to Chapter III, B(5), (6) if the constable is unable to execute or effectuate service within those time periods. Failure to return the warrant within the time period set forth herein may, at the discretion of the President Judge, result in a revocation/restriction of one's right to perform judicial duties.

2. A constable shall not, under any circumstance, make a duplicate or copy of any warrant for purposes of service.

#### D. Warrant Service on Incarcerated Parties

1. Unless expressly approved in advance by the Issuing Authority, President Judge or Court Administrator, warrant service on parties already incarcerated or otherwise in the custody of prison officials [is not authorized and] will not be compensated.

2. The Court may authorize payment in Summary Warrant matters in the event, through the efforts of a constable seeking a defendant, the constable learns that a defendant is incarcerated in a County jail outside of Carbon County but within the Commonwealth, and relays that information to the issuing authority.

a. The Magisterial District Judge must indicate that he/she was unaware that the defendant was incarcerated in a County jail outside of Carbon County but within the Commonwealth when the warrant was issued.

### IV. Compensation

A. *Preliminary Provisions*—Constables shall be paid fees in compliance with the fee schedule set forth in 44 Pa.C.S.A. § 7161 or subsequent legislative act or rule of court. Constables shall not be paid a fee for any judicial act committed in violation of the provisions of this manual. Fees shall not be paid unless the request for fees is made in compliance with the procedures set forth in this chapter.

B. *Reimbursement Procedure*—Constables shall comply with the procedures of this section in seeking reimbursement for services. A request for reimbursement of services not in compliance with the procedures of this section may be denied on that basis.

1. *Magisterial District Judge Warrants*—Payment for the performance of judicial duties related to the issuance of a warrant by a Magisterial District Judge shall be submitted to the Magisterial District Judge who authorized the service on the form prescribed by the Court Administrator's Office or the Administrative Office of the Pennsylvania Courts. See Exhibit "B" attached to this manual. The Magisterial District Judge shall acknowledge receipt of the request by executing the same and promptly forwarding the request to the County Controller's Office for payment. Execution of a constable's fee request by a Magisterial District Judge evidences that the Magisterial District Judge authorized the service for which fee reimbursement is being requested.

2. All reimbursement forms shall be completed in their entirety. A form which is incomplete will be returned to the constable by the Magisterial District Court promptly and shall be considered as not having been filed for purposes of the time period set forth in Section IV(C) of this manual.

C. *Time of Invoice*—Request for payment of all fees shall be made to the Magisterial District Judge in the manner directed by this manual within 30 days of the date of the performed service. Although the County's liability for the payment of fees submitted after 30 days of the date of service shall be controlled by prevailing law, failure to submit requests for payment of fees within the time period set forth herein may result in the revocation of a constable's privilege to perform judicial duties.

D. *Mileage*—The following rules shall apply to reimbursement for actual mileage:

1. Actual mileage for travel by motor vehicle shall be reimbursed at a rate equal to the highest rate allowed by the Internal Revenue Service.

2. No constable shall undertake travel in the performance of judicial duties by any mode other than motor vehicle, unless prior written consent for the same is authorized by the Court Administrator.

3. In effectuating service of a warrant, actual mileage for travel by motor vehicle for purposes of the payment of fees shall be the number of miles from the issuing authority's office to the location where the warrant is served plus the number of miles to the location of commitment, if necessary, plus the number of miles from the commitment location to the issuing authority's office. Where commitment does not occur, actual mileage for travel by motor vehicle for purposes of the payment of fees shall be the number of miles from the issuing authority's office to the location where the warrant is served plus the number of miles to the location where acceptance of payment or collateral is made, plus the number of miles from this location to the issuing authority's office.

E. *Hours Worked*—All work that calculates reimbursement by the hour shall be rounded to the nearest quarter-hour.

F. *Second Constable*—Except for those circumstances described in 44 Pa.C.S.A. § 7161(c), upon prior approval by the issuing authority, when a second constable is utilized in the service of a warrant, the second constable shall also examine the warrant to ensure that service of the warrant is in compliance with the provisions of this Manual. The second constable shall follow all requirements as described in the Manual and will be held to the same standards as the constable who obtained the warrant for service.

## V. Constable Code of Conduct

A. *Introduction*—A fair and independent court system is essential to the administration of justice. Although constables are not employees of the Commonwealth, the judiciary or any municipal agency, as an independent contractor, they provide services and aid to the judicial process. Proper conduct by those involved in assisting the judicial process inspires public confidence and trust in the Courts and conveys the values of impartiality and fairness that promote the integrity of our system of justice. A constable's conduct reflects upon the Court's commitment to serving the public. A constable performing judicial duties shall observe high standards of conduct so that the integrity and independence of the judicial system are preserved. The provisions of this code shall be applied to further those objectives. All constables performing judicial duties shall observe the standards of conduct set forth in this section. These standards however shall not limit or preclude, nor be interpreted to limit or preclude, other more stringent standards as established by law or by Court order or rule.

B. *Performance of Judicial Duties*—Constables performing judicial duties shall conduct themselves in an appropriate and lawful manner at all times and shall adhere to the following standards. Constables performing judicial duties:

1. Shall not engage in any form of discrimination, harassment, or retaliation against any person as prohibited by law or Court policy;
2. Shall not engage in any form of violence, threat of violence, or disruptive conduct;
3. Shall not make intentionally false or misleading statements when performing judicial duties. Specifically, a constable may not make a false statement of material fact or law or fail to correct a false statement of material fact or law to any party for purposes of obtaining compliance or forfeiture by a person of their legal rights;
4. Shall not falsify, or improperly alter or destroy work-related documents or records;
5. Shall not be impaired by alcohol, drugs, medications, or other intoxicating substances while performing judicial duties;
6. Shall not give legal advice while performing judicial duties beyond an explanation of the duty they are performing and one's right to be represented by counsel;
7. Shall not illegally possess weapons or controlled substances while performing judicial duties;
8. Shall avoid impropriety or the appearance of impropriety in the performance of all judicial duties;
9. Shall not commit any violation of the law while performing their judicial duties;
10. Shall not be convicted of any crime which shall place their integrity, honesty, or credibility at issue or otherwise negatively reflect upon the integrity and independence of the Court or Court offices;
11. Shall not make any sexual advance, request for sexual favors, or perform other verbal or physical conduct of a sexual nature while in the performance of judicial duties. Such conduct shall include but is not limited to touching, fondling, patting, pinching, kissing, or other physical contact for sexual gratification;
12. Shall treat all those with whom they interact, including Court staff, with professionalism, dignity, respect, and impartiality;

13. Shall cooperate with all law enforcement agencies and their representatives including the Sheriff's Department, the C.C.C.F., and Carbon County staff;

14. Shall not use any means that has no substantial purpose other than to embarrass, delay, or burden the rights of another person or use methods that violate the legal rights of such person;

15. Shall not in any manner hold himself/herself out to be an agent, employee, or representative of any Court office; and

16. Shall not utilize a motor vehicle in the performance of judicial duties contrary to the provisions of the Pennsylvania Motor Vehicle Code.

C. *Confidentiality*—Constables shall not disclose or use confidential information obtained through the performance of judicial duties for any purpose not connected with the performance of their judicial duties.

### D. *Conflicts of Interest*—

1. Constables shall not solicit, accept, or agree to accept anything of value from any person or entity doing or seeking to do business with, or having an interest in a matter related to the performance of judicial duties.

2. Constables shall not permit family, social, or other relationships to influence their official conduct or judgment, or to create the appearance of influence in the exercise of their official conduct or judgment, while in the performance of judicial duties. Constables performing judicial duties shall inform the Court Administrator of any situation creating undue influence or the appearance of undue influence.

3. Constables shall not use the resources, employees, property, facilities, time, or any funds under their control while in the performance of their judicial duties to improperly benefit them or any other person.

E. *Use of Force*—A constable's use of force shall be consistent with Pennsylvania law and in compliance with training and education provided by the C.E.T.B. A constable shall never employ unnecessary force or violence and shall use only such force in the discharge of duty as is reasonable under the circumstances. While the use of force is occasionally unavoidable, every constable in the performance of judicial duties shall refrain from applying any unnecessary infliction of pain or suffering and shall never engage in cruel, degrading, or inhuman treatment of any person. A constable shall not fire, unholster, or otherwise remove a firearm from its holster in the performance of judicial duties unless the same is necessary for the defense of the constable or others in response to the threat or use of deadly force against the constable or another where the action is consistent with firearms training provided by P.C.C.D. In no event shall a firearm be unholstered for purposes of intimidation.

### F. *Appearance*—

1. *Dress*—All constables shall dress in customary law enforcement uniform or casual business dress while performing judicial duties. Denim jeans are considered neither customary law enforcement uniform nor casual business dress and are prohibited.

2. *Sign of Authority*—While in the performance of judicial duties, all constables shall prominently display a badge of authority on their outermost clothing. The badge of authority shall consist of either a Pennsylvania state constable patch or a badge pinned to the outermost garment, displayed around the neck, or attached to a belt. Additionally, while performing judicial duties, a constable

shall carry at all times a constable certification card issued by C.E.T.B. indicating certification number and expiration date.

G. *Duty to Report*—Constables who are arrested, charged with, or convicted of a crime, including summary offenses, which occurred while the constable was acting in the course of performing judicial duties, shall report this fact to the Court Administrator at the earliest opportunity, however, in no event shall this report be made later than three (3) business days from the date of arrest or

receipt of charges. Constables who are arrested, charged with, or convicted of a crime, other than summary traffic offenses not committed while in the performance of judicial duties, regardless of the jurisdiction in which the conduct occurred, shall report this fact to the Court Administrator at the earliest reasonable opportunity, however, in no event shall this report be made later than three (3) business days from the date of the arrest or receipt of charges.

**Exhibit A**

**ACKNOWLEDGMENT**

I, \_\_\_\_\_, have received a copy of the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct. I also acknowledge receipt of a copy of the Fifty-Sixth Judicial District Constable Manual. I understand that in order to perform judicial duties, or to be paid for work performed for the Fifty-Sixth Judicial District, I must abide by the procedures and requirements set forth in the Pennsylvania Unified Judicial System Constable Policies, Procedures, and Standards of Conduct and the Fifty-Sixth Judicial District Constable Manual, including the Code of Conduct, and hereby agree to abide by those procedures and requirements.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

**Exhibit B**

**CARBON COUNTY CONSTABLE PAYMENT SHEET**

CONSTABLE NAME \_\_\_\_\_ CONSTABLE NUMBER \_\_\_\_\_  
 DISTRICT COURT NUMBER \_\_\_\_\_ DISTRICT JUDGE \_\_\_\_\_  
 DEFENDANT'S NAME \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_  
 DEFENDANT'S ADDRESS \_\_\_\_\_

SERVICE	FEE	DATE(S) SERVICES PERFORMED	SERVICE	FEE	DATE(S) SERVICES PERFORMED
WARRANT . . . . .	\$ _____	( ) _____	ARRAIGNMENT . . . . .	\$ _____	* ( ) _____
HOW WAS SERVICE MADE? _____			COMMIT TO . . . . .	\$ _____	* ( ) _____
			RETURN OF SERVICE . . . . .	\$ _____	( ) _____
TO WHOM? _____			CONVEY (FINGERPRINTING)	\$ _____	* ( ) _____
RELEASE . . . . .	\$ _____	( ) _____	FINGERPRINTING . . . . .	\$ _____	* ( ) _____
CUSTODY . . . . .	\$ _____	* ( ) _____	RELEASED ON BOND . . . . .	\$ _____	* ( ) _____
CONVEY . . . . .	\$ _____	* ( ) _____	OTHER . . . . .	\$ _____	( ) _____
TO: _____			OTHER . . . . .	\$ _____	( ) _____
TO: _____			OTHER . . . . .	\$ _____	( ) _____

\* MAY ONLY BE CHARGED ONCE PER DEFENDANT PER DATE HANDLED TOTAL \$ \_\_\_\_\_

NAME OF ASSISTING CONSTABLE OR DEPUTY \_\_\_\_\_

DATE	FROM/TO	MILES	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
MILEAGE @ _____	CENTS PER MILE	TOTAL MILES	MILES \$ _____
ATTACH ADDITIONAL SHEETS, IF NECESSARY.			
			CETA \$ _____
			TOTAL AMOUNT DUE \$ _____

I HEREBY CERTIFY THAT THE ABOVE SERVICES HAVE BEEN PERFORMED.

\_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

THE UNDERSIGNED HEREBY CERTIFIES THAT THE ABOVE SERVICES HAVE BEEN PERFORMED AND THAT NO OTHER REQUESTS FOR PAYMENT FOR THESE SERVICES HAS BEEN MADE.

\_\_\_\_\_  
DISTRICT JUDGE (DISTRICT COURT SEAL)

\_\_\_\_\_  
SIGNATURE OF CONSTABLE

[Pa.B. Doc. No. 17-278. Filed for public inspection February 17, 2017, 9:00 a.m.]

**CHESTER COUNTY**

**Promulgation of Local Rule; 2017-0007R-CM**

**Order**

And Now, this 20th day of January, 2017, Chester County Local Rules of Judicial Administration 4001, 4002, 4007 and 4008 are adopted as follows:

**Rule 4001.**

(A) These rules shall govern the procedure for requests for transcripts of court proceedings and fees payable for transcripts by a requesting party, other than the Commonwealth or subdivision thereof.

**Rule 4002. Definitions.**

*Ordinary transcript* means a transcript necessary for an appeal or to otherwise advance litigation and required under a time frame set by a Pennsylvania Rule of Court regarding the delivery of court transcripts or by court order. An example of a non-ordinary transcript is one requested by a litigant when no matters are open before the court or where the transcript is ordered by a third party.

*Expedited transcript* means a transcript delivered within seventy-two (72) hours of an official request, not including weekends or official court holidays. For the purposes of additional payment, a transcript is an expedited transcript only if it is in fact delivered within the above time limit.

*Daily transcript* means a transcript delivered within eighteen (18) hours of an official request, not including weekends or official court holidays. For the purposes of additional payment, a transcript is a daily transcript only if it is in fact delivered within the above time limit.

*Same day delivery* means transcripts delivered within 6 hours of the close of the court session, divided by morning and afternoon with the line of demarcation being lunch or mid-day recess.

**Rule 4007. Request for Transcripts.**

(A) All requests for transcripts shall be set forth on the standardized form provided by the Chester County Court

Administrator. The request form is available in all filing offices and at www.chesco.org.

(B) For an ordinary transcript, the party requesting a full or partial transcript of a trial or other court proceeding shall submit the original Request for Transcript to the office of the Court Administrator. Ordinary transcript is defined as a transcript necessary for an appeal or to otherwise advance litigation. The requesting party shall also serve copies of the formal request to:

- (1) The judge presiding over the matter; and
- (2) The court reporter; and
- (3) Opposing counsel or the opposing party if self-represented.

(C) If a party is requesting daily, expedited, or same day transcripts, the Request for such transcripts shall be submitted to the Court Administrator's office at least ten (10) days prior to the scheduled proceeding. Copies of the written request shall be delivered as required in paragraph B above. In the event of an emergency, a party may request by oral motion a daily, expedited or same day transcript.

(D) When a litigant requests a transcript:

(1) The litigant shall make a deposit in the amount of 75% of the estimated cost of the transcript as provided by the district court administrator. This amount shall be paid by cash or money order, certified check or check from an attorney made payable to the County of Chester and delivered to the district court administrator.

(2) The court reporter shall prepare the transcript upon direction of the district court administrator.

(3) The court reporter shall notify the ordering party and the district court administrator of the completion of the transcript and deliver the original transcript to the presiding judge.

(4) Upon payment of the final balance owed, the court reporter shall deliver the original transcript to the appropriate filing office and copies to the parties.

**Rule 4008. Transcript Costs Payable by a Requesting Party Other Than the Commonwealth or a Subdivision Thereof.**

**(A) Cost for Original Transcript**

(1) The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, for an original transcript in an electronic format, when available, shall be as follows:

- (a) for an ordinary transcript, \$2.50 per page;
- (b) for an expedited transcript, \$3.50 per page;
- (c) for a daily transcript, \$4.50 per page;
- (d) for same day delivery, \$6.50 per page;

(2) The costs payable by a requesting party for an original transcript in bound paper format:

- (a) for an ordinary transcript, \$2.75 per page;
- (b) for an expedited transcript, \$3.75 per page;
- (c) for a daily transcript, \$4.75 per page;
- (d) for same day delivery, \$6.75 per page;

**(3) Allocation of Costs.**

(a) When more than one party requests the transcript, or are required by general rule to file the transcript, the cost shall be divided equally among the parties.

**(B) Economic Hardship**

(1) When a litigant requests a transcript, but cannot pay for the transcript because of economic hardship, the litigant shall file in the appropriate filing office a petition to proceed in forma pauperis, requesting waiver of a portion of the transcript fees. The form for said petition is available in the Chester County Law Library and is posted at [www.chesco.org](http://www.chesco.org).

**(C) Copies of Transcripts**

A request for a copy of any transcript previously ordered, transcribed, and filed of record shall be made to the a district court administrator and provided according to the following schedule:

- (1) \$0.75 per page paper format; and
- (2) \$0.50 per page electronic copy.

**(E) Additional Costs**

The trial judge may impose a reasonable surcharge in cases such as medical malpractice or other unusually complex litigation where there is a need for a court reporter to significantly expand his or her dictionary. Such surcharges are at the discretion of the trial judge.

**(F) Cost for other court reporter products**

(1) For preparation of a transcript index: \$25.00 flat fee for ten pages or less. Eleven pages and over, add an additional \$2.50 per page.

*By the Court*

JACQUELINE CARROLL CODY,  
*President Judge*

[Pa.B. Doc. No. 17-279. Filed for public inspection February 17, 2017, 9:00 a.m.]

**LANCASTER COUNTY**

**Amendment of Local Rules of Civil Procedure;  
CI-17-00765**

**Administrative Order**

And Now, this 31st day of January 2017, it is hereby Ordered that the following Local Rules of Civil Procedure of the Court of Common Pleas of the 2nd Judicial District of Pennsylvania, Lancaster County, are amended as indicated, to be effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Lancaster County District Court Administrator is Ordered to do the following:

1. File one (1) copy to the Administrative Office of Pennsylvania Courts via email to [adminrules@pacourts.us](mailto:adminrules@pacourts.us).

2. File two (2) paper copies and one (1) electronic copy in a Microsoft Word format only to [bulletin@palrb.us](mailto:bulletin@palrb.us) with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish these Rules on the Lancaster County Court website at [www.court.co.lancaster.pa.us](http://www.court.co.lancaster.pa.us).

4. Incorporation of the local rule into the set of local rules on [www.court.co.lancaster.pa.us](http://www.court.co.lancaster.pa.us) within thirty (30) days after the publication of the local rule in the *Pennsylvania Bulletin*.

5. File one (1) copy of the local rule in the appropriate filing office for public inspection and copying.

*By the Court*

DENNIS E. REINAKER,  
*President Judge*

**Rule 10. Business Judge.**

A. The District Court Administrator shall designate the daily Business Judge. Motions and petitions, not already assigned to a judge or dealing with matters otherwise covered by these Rules for presentation to the Court, shall be forwarded to the Business Judge by the Prothonotary or may be presented by counsel directly to the Business Judge by appointment.

Revised 1-18-17      Effective 3-20-17

**Rule 27. Land Use Appeals.**

**A. Appeal Notice**

A land use appeal shall contain:

1. A caption in substantially the following form:

Name of Appellant

v.

NO. CI-\_\_\_\_\_

Name of municipality and name of body (i.e. zoning hearing board, governing body or or planning commission) which rendered decision

LAND USE APPEAL

2. When applicable, in separately numbered paragraphs and in the following order:

a. Name and address of the appellant.

b. Name and address of the zoning hearing board, governing body or planning commission ("local agency") which rendered the decision.

c. Name and address of the applicant to the local agency, if the applicant is not the appellant.

d. Name and address of the owners, both real and equitable, of any real estate which was the subject of the decision and identification of the real estate.

e. The chronology of the matter, including the following as applicable:

i. Date of filing application or appeal with zoning officer or other official.

ii. Date of action of the zoning officer or other official.

iii. Date of appeal from action of zoning officer or other official to local agency or date of filing application with local agency.

iv. Dates of all hearings or meetings of the local agency.

v. Date of written decision or, if applicable, date of deemed decision from which the appeal has been taken.

vi. Date written decision served.

f. The purpose for which the application was made.

g. The basis for appellant's standing to file the appeal.

h. All specific legal and factual grounds for the appeal.

i. Specific request for relief.

3. If a court reporter was present and if a transcript is not already in existence, appellant's certification that appellant has ordered a transcript of the proceedings and has made satisfactory arrangements with the court reporter for payment. Upon receipt of the transcript, appellant shall provide the original transcript to the solicitor of the local agency filing the return of the record. If appellant does not include a certification that appellant has ordered the transcript, any other party may file a petition requesting the Court dismiss the appeal.

#### B. *Intervention*

1. A notice of intervention under Section 1004-A of the Pennsylvania Municipalities Planning Code, 53 P.S. § 11004-A, shall contain:

a. The caption and number of the appeal.

b. Name and address of intervenor.

c. Nature of the interest of intervenor in the appeal.

d. Legal and factual circumstances under which intervenor claims a right to intervene.

e. Summary of intervenor's position and grounds therefor.

2. Pa.R.C.P. Nos. 2326—2350 shall govern all other intervention.

#### C. *Certiorari*

1. The local agency shall submit its entire record within twenty days after receipt of the writ of certiorari or receipt of the transcript(s), whichever is later, including but not limited to:

a. All original papers filed in chronological order, commencing with the application.

b. Minutes of meetings of the local agency at which the application was considered.

c. The transcript of all hearings. The local agency shall not submit its record to the Prothonotary until appellant has provided the transcript of all hearings if the transcript is not in existence and available to the local agency prior to appellant's filing the appeal.

d. The complete ordinance under which the local agency rendered its decision, including maps.

e. The findings of fact and conclusions of law of the local agency, if any, and its written decision.

f. Names and addresses of all persons the local agency recognized as parties to the proceedings.

2. The chairperson or presiding officer shall certify the submission of the record.

3. The Prothonotary shall give notice of the return of the local agency's record to appellant who shall, within four days after receipt of the notice, notify the local agency, the applicant before the local agency (if appellant was not the applicant), the legal and equitable owner of the land which was the subject of the application and all other persons recognized as parties to the local agency's proceedings. Appellant shall file proof of service.

#### D. *Disposition*

1. Within ten days after the Prothonotary gives notice of the filing of the complete return of the record, any party who believes the appeal is not ready for disposition may file a motion for a conference and a praecipe requesting that the appeal be forwarded to the assigned judge. The motion for a conference shall state why the party believes that the appeal is not ready for disposition and shall identify all actions that the party requests. At the conference, the Court may, inter alia:

a. Require or approve supplementation of the record.

b. Fix a time for a de novo hearing before the Court.

c. Employ expert(s) to aid the Court to frame an appropriate order.

d. Refer the appeal to a referee to receive additional evidence, with directions as to time deadlines and other matters the Court deems appropriate.

e. If allowed by law, remand the appeal to the local agency with directions as to time deadlines and other matters, including mediation.

2. After the conference, the Court shall issue an appropriate order addressing the filing of briefs.

3. If no party has filed a request for a conference, the appellant shall file a brief within forty days after the date the Prothonotary gives notice of the filing of the local agency's complete record. The appellant shall limit the brief to the issues appellant raised in the land use appeal. Each other party shall file a responsive brief within thirty days after service of appellant's brief. The appellant may file a reply brief within ten days after service of the responsive brief. Any party may thereafter file and serve a praecipe stating that the appeal is ready for disposition and requesting the Prothonotary to forward it to the assigned judge.

4. If appellant fails to file a brief within the time period established by Paragraph D.3 above or by the Court after a conference, any party may file and serve a praecipe stating that the appeal is ready for disposition together with a brief or may petition the Court for dismissal of the appeal. If a party files a praecipe



requesting disposition due to the failure of the appellant to file a brief, the Court shall render a decision, without oral argument, on the record before it.

5. Any party may request oral argument when filing its brief. The Court shall hear oral argument at its discretion.

6. An appeal from a decision the local agency renders after a remand shall be filed and docketed to the original caption and number. The party filing such appeal shall be limited to issues arising from the remand. All other requirements of this Rule shall apply to an appeal from a decision after remand.

Revised 1-18-17 Effective 3-20-17

**Rule 36. Assigned Judge.**

The assigned judge is the judge who has been assigned by the Prothonotary when the action is filed, or who has been assigned by the President Judge for cases filed after April 30, 2016.

Revised 1-18-17 Effective 3-20-17

**Rule 206.4(c). Petition. Rule to Show Cause.**

A. The procedure of Pa.R.C.P. No. 206.6 is adopted, and a rule shall issue as a matter of course pursuant to that Rule.

B. The petitioner shall attach to the petition a proposed order substantially in the following form:

ORDER

Upon consideration of the attached petition, it is hereby ordered that:

1. A rule is issued upon the respondent to show cause why the petitioner is not entitled to the relief requested.

2. The respondent shall file an answer to the petition within twenty days of service.

3. The petition shall be decided under Pa.R.C.P. No. 206.7.

4. Discovery shall be completed within forty-five days of service of the answer.

5. The petitioner shall file a brief in support of the petition within twenty days after the discovery deadline. Any party opposing the petition shall file a responsive brief within ten days of service of the petitioner's brief. The petitioner may file a reply brief within five business days of service of a responsive brief. After all briefs have been filed, the Prothonotary shall notify the assigned Judge and forward the file to chambers for disposition. Any party may request oral argument by filing a praecipe requesting it when filing their brief.

6. The petitioner shall provide notice of the entry of this Order to all parties.

BY THE COURT:

\_\_\_\_\_ J.

\_\_\_\_\_ DATE

C. When the petitioner requests a hearing or argument date, the form of the order may be modified accordingly.

D. When the petitioner requests a stay, the form of the order may be modified accordingly.

E. All petitions, except as provided in F, shall be filed with the Prothonotary. The Prothonotary shall forward such petitions to the assigned judge for entry of the Order.

F. A petition which requests a stay, the filing of an answer in fewer than twenty days or other substantive relief shall be presented in person to the assigned judge. For such petitions, the Court shall not issue the rule to show cause unless:

1. It appears from the petition that reasonable notice has been given to all affected parties of the date, time and place of the presentation; or

2. It appears from the petition that there is an agreement of all affected parties; or

3. The Court in its discretion shall determine that there are extraordinary circumstances justifying immediate relief.

Revised 1-18-17 Effective 3-20-17

**Rule 206.7. Procedure after Issuance of Rule to Show Cause.**

If an answer is not filed, the petitioner may submit a proposed order and file a praecipe to forward the petition to the assigned judge for disposition.

Revised 1-18-17 Effective 3-20-17

**Rule 208.1. Motion. Definition. Scope.**

A. Motion means any application to Court for an order made in any action or proceeding that is not excluded by Pa.R.C.P. No. 208.1.

B. If the parties agree to the relief sought a motion shall be accompanied by a stipulation signed by all affected counsel or unrepresented parties, a prepared order and a praecipe to assign the stipulated matter for disposition.

Revised 1-18-17 Effective 3-20-17

**Rule 208.2(c). Motion. Form. Content.**

A motion shall be in the form required by Pa.R.C.P. No. 208.2.

Revised 1-18-17 Effective 3-20-17

**Rule 208.3(a). Procedure for Disposition of Motion.**

A. *Praecipe for Disposition.* Motions will be sent to the assigned judge for disposition upon completion of the briefing schedule pursuant to L.C.R.C.P. No. 208.3(b) below or by praecipe of any party.

B. *Oral Argument.* Any party may request oral argument by filing a praecipe at the time a brief is filed pursuant to Local Rule 208.3(b)A., B., or C.

C. *Emergency Motions.* Emergency motions must be presented to the assigned judge, or in the assigned judge's absence the business judge who will advise the parties how to proceed.

Revised 1-18-17 Effective 3-20-17

**Rule 212.1. When an Action is at Issue.**

A. When an action is at issue the Prothonotary shall notify the assigned judge and forward the file to chambers.

An action is at issue as follows:

1. *Expedited track*: All Magisterial Judges and Arbitration appeals. Any case in the expedited track will be deemed at issue 120 days after the close of the pleadings.

2. *Standard track*: All other cases that are not in the expedited track or complex track. Any case in the standard track will be deemed at issue 180 days after the close of the pleadings.

3. *Complex track*: Cases will be considered complex if all parties agree or by order of Court.

a. If all parties agree that the case is complex, they shall file with the Prothonotary a certification signed by all parties.

b. If the assigned judge deems that the case is complex an appropriate order shall be filed.

c. Any case in the complex track will be deemed at issue 365 days after the close of pleadings.

B. Absent compelling reasons, an action that is at issue must have all discovery completed, except for the exchange of expert reports.

C. When an action is at issue the trial judge shall give notice to the parties in conformance with Pa.R.C.P. No. 212.1(a). Thereafter, the parties shall proceed in accordance with the time periods of Pa.R.C.P. No. 212.1(b).

Revised 1-18-17 Effective 3-20-17

#### **Rule 212.2. Pre-Trial Statement.**

The pre-trial statement shall be in the form prescribed by Pa.R.C.P. No. 212.2.

Revised 1-18-17 Effective 3-20-17

#### **Rule 440.1. Proof of Service.**

A proof of service shall conform to Pa.R.A.P. No. 122.

Revised 1-18-17 Effective 3-20-17

#### **Rule 1028(c). Preliminary Objections.**

A. *Preliminary Objections Pursuant to Pa.R.C.P. No. 1028(a)(2), (3) or (4).*

1. *Proposed Order*. All preliminary objections shall be accompanied by a proposed order.

2. *Stipulated Matters*. If the parties agree to the relief sought, the preliminary objections shall be accompanied by a stipulation signed by all affected counsel or unrepresented parties, a proposed order and a praecipe to assign the stipulated matter for disposition.

3. *Brief*. The party filing preliminary objections shall file a supporting brief within ten days of the date of filing of the preliminary objections. If a supporting brief is not filed within ten days of the filing of the preliminary objections, the preliminary objections shall be deemed withdrawn upon praecipe of the respondent. In that event, the objecting party shall file an answer to the complaint within twenty days of the date the praecipe is filed.

4. *Responsive Brief*. If a supporting brief is filed, the respondent shall file a responsive brief within twenty days after service of the supporting brief.

5. *Reply Brief*. The moving party may file a reply brief within five days after service of the responsive brief.

6. *Assignment*. After all briefs are filed the Prothonotary shall deliver the file to the assigned judge for disposition.

7. *Oral Argument*. Any party may request oral argument by filing a praecipe at the time of the filing of their brief. Oral argument shall be at the discretion of the judge.

B. *Preliminary Objections Pursuant to Pa.R.C.P. No. 1028(a)(1), (5) or (6).*

Any party filing preliminary objections pursuant to Pa.R.C.P. No. 1028(a)(1), (5) or (6) shall attach a notice to plead. Such objections are governed by Local Rules 206.1(a), 206.4(c) and 206.7.

Revised 1-18-17 Effective 3-20-17

#### **Rule 1034(a). Motion for Judgment on the Pleadings.**

A. *Proposed Order*. All motions shall be accompanied by a proposed order.

B. *Stipulated Matters*. If the parties agree to the relief sought, the motion shall be accompanied by a stipulation signed by all affected counsel or unrepresented parties, a proposed order and a praecipe to assign the stipulated matter for disposition.

C. *Motion and Brief*. The moving party shall file the motion, proposed order and a supporting brief concurrently. If a brief is not filed with the motion, the motion shall be deemed withdrawn, without prejudice, upon praecipe of an opposing party.

D. *Responsive Brief*. Within twenty days after service of the moving party's motion and brief, any party opposing the motion shall file a responsive brief.

E. *Reply Brief*. The moving party may file a brief in reply to the responsive brief within five days after service of the responsive brief.

F. *Disposition*. After all briefs are filed the Prothonotary shall deliver the file to the assigned judge for disposition.

G. *Oral Argument*. Any party may request oral argument by filing a praecipe, at the time of the filing of their brief. Oral argument shall be at the discretion of the judge.

Revised 1-18-17 Effective 3-20-17

#### **Rule 1035.2(a). Motion for Summary Judgment.**

A. *Proposed Order*. All motions shall be accompanied by a proposed order.

B. *Stipulated Matters*. If the parties agree to the relief sought, the motion shall be accompanied by a stipulation signed by all affected counsel or unrepresented parties, a proposed order and a praecipe to assign the stipulated matter for disposition.

C. *Motion and Brief*. The moving party shall file the motion, a proposed order and a supporting brief concurrently. If a brief is not filed with the motion, the motion shall be deemed withdrawn, without prejudice, upon praecipe of an opposing party.

D. *Responsive Brief*. Within thirty days after service of the moving party's motion and brief, any party opposing the motion shall file a responsive brief, together with any opposing affidavits, depositions, transcripts or other documents. Any party who fails to file a responsive brief shall be deemed not to oppose the motion.

E. *Reply Brief*. The moving party may file a brief in reply to the responsive brief within five days after service of the responsive brief.

F. *Disposition*. After all briefs are filed the Prothonotary shall deliver the file to the assigned judge for disposition.

G. *Oral Argument*. Any party may request oral argument by filing a praecipe, at the time of the filing of their brief. Oral argument shall be at the discretion of the judge.

Revised 1-18-17      Effective 3-20-17

[Pa.B. Doc. No. 17-280. Filed for public inspection February 17, 2017, 9:00 a.m.]

## WAYNE COUNTY

### Local Rules of Judicial Administration; 61-2017-CV

#### Order

*And Now*, to wit, this 29th day of November, 2016, the Court hereby adopts the following new Local Rules of Judicial Administration:

#### **Rule 4007.1. Requests for Transcripts.**

(A) All requests for transcripts shall be submitted on a form provided by the district court administrator. The form shall include the current rates charged for transcripts.

(B) For an ordinary transcript, the party requesting a full or partial transcript of a trial or other proceeding shall file the original request with the district court administrator. The requesting party shall also serve copies of the formal request to:

- (1) the judge presiding over the matter;
- (2) the court recorder or transcriptionist;
- (3) opposing counsel, but if not represented, the opposing party.

(C) Daily, expedited, same day or rough draft transcripts are not available.

(D) When a litigant requests a transcript,

(1) the litigant ordering a transcript shall make payment of the estimated transcript cost. Deposit payments are to be made payable to Wayne County and shall be delivered to the Prothonotary's Office. Payment may be made by cash, check, or money order. Deposit payments are non-refundable, and proof of deposit shall be provided to the district court administrator.

(2) the court recorder or transcriptionist shall prepare the transcript upon direction of the district court administrator.

(3) the court recorder or transcriptionist shall notify the ordering party and the district court administrator of the completion of the transcript.

(4) upon payment of any balance owed, the court recorder or transcriptionist shall deliver the original transcript to the appropriate filing office for distribution. Payment of the final balance shall be made payable to Wayne County and shall be delivered to the Prothonotary's Office. Proof of payment shall be provided to the district court administrator. Copies of the transcript may be requested upon payment in full.

(E) When a litigant requests a transcript, but cannot pay for the transcript because of alleged economic hardship, the court shall determine economic hardship pursuant to the procedure set forth in Rule 4008(B). In cases of economic hardship, where the matter is under appeal or a transcript is necessary to advance the litigation, the costs of procuring the transcript shall be waived or otherwise adjusted by the court. In cases of economic hardship where there is no appeal pending or there exists no obvious need for the transcript to advance the litigation, the requesting party must demonstrate reasonable need before the court shall waive or adjust the cost of obtaining the transcript.

(F) When a transcript is requested for which the court or county is responsible for the cost, the court recorder or transcriptionist shall prepare the transcript at the direction of the district court administrator without the necessity of a deposit.

#### **Rule 4008.1. Transcript Costs Payable by a Requesting Party Other Than the Commonwealth or a Subdivision Thereof.**

##### (A) *Costs*

(1) The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, for a transcript in an electronic format shall be:

(a) for an ordinary transcript, \$2.50 per page.

(2) When the transcript is prepared in bound paper format, the costs shall be in accordance with paragraph (1) relating to electronic format plus a surcharge of \$0.25 per page.

##### (B) *Economic hardship—minimum standards*

(1) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be waived for a litigant who has been permitted by the court to proceed in forma pauperis or whose income is less than 125 percent of the poverty line as defined by the U.S. Department of Health and Human Services (HHS) poverty guidelines for the current year.

(2) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be reduced by one-half for a litigant whose income is less than 200 percent of the poverty line as defined by the HHS poverty guidelines for the current year.

(3) Transcript costs for ordinary transcripts in matters that are not subject to an appeal, where the transcript is not necessary to advance the litigation, may be waived at the court's discretion for parties who qualify for economic hardship under subdivision (B)(1) or (B)(2) and upon good cause shown.

(4) The application to waive all or a portion of costs for ordinary transcripts shall be supported by an affidavit substantially in the form required by Rule 240(h) of the Pennsylvania Rules of Civil Procedure and shall be served with the form requesting a transcript.

##### (C) *Assignment and allocation of transcripts costs*

(1) *Assignment of costs*. The requesting party, or party required by general rule to file a transcript, shall be responsible for the cost of the transcript. Costs shall not be assessed against any party for transcripts prepared at the initiation of the court.

(2) *Allocation of costs*. When more than one party requests the transcript, or are required by general rule to file the transcript, the cost shall be divided equally among the parties.

(D) *Copies of transcript*

A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided according to the following schedule:

- (1) \$0.75 per page bound, paper format; and,
- (2) \$0.50 per page electronic copy.

Said Local Rules of Judicial Administration shall be effective in the 22nd Judicial District of the Commonwealth of Pennsylvania thirty (30) days after publication in the *Pennsylvania Bulletin* and upon publication on the Wayne County website.

*By the Court*

RAYMOND L. HAMILL,  
*President Judge*

[Pa.B. Doc. No. 17-281. Filed for public inspection February 17, 2017, 9:00 a.m.]