CHAPTER 2. INVESTIGATIONS

PART A. Search Warrant

PART B(1). Investigating Grand Juries

PART B(2). Statewide or Regional Investigating Grand Juries

PART A. Search Warrant

Rule 200. Who May Issue.

A search warrant may be issued by any issuing authority within the judicial district wherein is located either the person or place to be searched.

Comment

This rule formally authorizes magisterial district judges, Philadelphia bail commissioners, and judges of the Municipal, Common Pleas, Commonwealth, Superior, and Supreme Courts to issue search warrants. This is not a departure from existing practice. See, e.g., Sections 1123(a)(5) and 1515(a)(4) of the Judicial Code, 42 Pa.C.S. §§ 1123(a)(5), 1515(a)(4). See also the Rules of Juvenile Court Procedure, Rule 105 (Search Warrants). Any judicial officer who is authorized to issue a search warrant and who issues a warrant is considered an ''issuing authority'' for purposes of this rule. The authority of a magisterial district judge to issue a search warrant outside of the magisterial district but within the judicial district is recognized in *Commonwealth v. Ryan*, 400 A.2d 1264 (Pa. 1979).

Only common pleas court judges and appellate court justices and judges may issue search warrants when the supporting affidavit(s) is to be sealed under Rule 211.

This rule is not intended to affect the traditional power of appellate court judges and justices to issue search warrants anywhere within the state.

Official Note: Prior Rules 2000 and 2001 were suspended by former Rule 323, effective February 3, 1969. Present Rule 2001 adopted March 28, 1973, effective 60 days hence; amended July 1, 1980, effective August 1, 1980; Comment revised September 3, 1993, effective January 1, 1994; renumbered Rule 200 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Report explaining the September 3, 1993 Comment revisions published at 21 Pa.B. 3681 (August 17, 1991).

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

Final Report explaining the April 1, 2005 Comment revision concerning Rule of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Source

The provisions of this Rule 200 amended April 1, 2005, effective October 1, 2005, 35 Pa.B. 2210. Immediately preceding text appears at serial page (264142).

Rule 201. Purpose of Warrant.

A search warrant may be issued to search for and to seize:

(1) contraband, the fruits of a crime, or things otherwise criminally possessed; or

(2) property that is or has been used as the means of committing a criminal offense; or

(3) property that constitutes evidence of the commission of a criminal offense.

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Comment

Concerning the provisions of paragraph (1) see *United States v. Rabinowitz*, 339 U. S. 56 (1950), overruled as to other points, *Chimel v. California*, 395 U. S. 752, 786 (1969). Also compare, *Cooper v. California*, 386 U. S. 58 (1967), with One 1958 *Plymouth Sedan v. Pennsylvania*, 380 U. S. 693 (1964).

Warrants may not be issued unless the affidavit alleges a pre-existing crime. See *United States ex. rel. Campbell v. Rundle*, 327 F.2d 153, 161 (3rd Cir. 1964), followed sub nom. *Commonwealth ex rel. Ensor v. Cummings*, 207 A.2d 230 (Pa. 1965) and *Commonwealth ex rel. Campbell v. Russell*, 207 A.2d 232 (Pa. 1965). The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmeyer*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955).

Concerning the provisions of paragraph (3), see *Warden v. Hayden*, 387 U. S. 294 (1967).

Official Note: Rule 2002 adopted March 28, 1973, effective 60 days hence; renumbered Rule 201 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 202. Approval of Search Warrant Applications by Attorney for the Commonwealth—Local Option.

(A) The district attorney of any county may require that search warrant applications filed in the county have the approval of an attorney for the Commonwealth prior to filing.

(B) If the district attorney elects to proceed under paragraph (A), the district attorney shall file a certification with the court of common pleas, which certification shall specify the circumstances in which search warrant applications shall require prior approval and shall also specify the date such procedure is to become effective. The court of common pleas shall thereupon promulgate a local rule in the following form, setting forth the circumstances specified in the certification:

RULE _____ . APPROVAL OF SEARCH WARRANT APPLICATIONS BY ATTORNEY FOR THE COMMONWEALTH.

The District Attorney of _____ County having filed a certification pursuant to Pa.R.Crim.P. 202, search warrants in the following circumstances:

_____

_____

shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

(C) If an attorney for the Commonwealth disapproves a search warrant application, the attorney shall furnish to the police officer who prepared the application a written notice of the disapproval, in substantially the form set forth in Rule 507(C), and the attorney shall maintain a record of the written notice.

(D) No defendant shall have the right to relief based solely upon a violation of this rule.

Comment

For reasons set forth in the Comment to Rule 507, this rule authorizes the adoption and withdrawal of the prior approval requirement on a local option basis.

Other principles and comments concerning this rule, including the intended meaning of ''attorney for the Commonwealth,'' and the use of advanced communication technology or other electronic methods to convey the approval of the search warrant application, are set forth in the Rule 507 Comment.

Official Note: Rule 2002A adopted December 11, 1981, effective July 1, 1982; amended August 9, 1994, effective January 1, 1995; renumbered Rule 202 and amended March 1, 2000, effective April 1, 2001; Comment revised February 26, 2010, effective April 1, 2010.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4325 (August 27, 1994).

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

Final Report explaining the February 26, 2010 *Comment* revision regarding electronic approval published with the Court's Order at 40 Pa.B. 1397 (March 13, 2010).

Source

The provisions of this Rule 202 amended February 26, 2010, effective April 1, 2010, 40 Pa.B. 1397. Immediately preceding text appears at serial pages (315211) to (315212).

Rule 203. Requirements for Issuance.

(A) In the discretion of the issuing authority, advanced communication technology may be used to submit a search warrant application and affidavit(s) and to issue a search warrant.

(B) No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

(C) Immediately prior to submitting a search warrant application and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority in person, by telephone, or by any device which allows for simultaneous audio-visual communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant. In any telephonic communication, if the issuing authority has a concern regarding the identity of the affiant, the issuing authority may require the affiant to communicate by a device allowing for two-way simultaneous audio-visual communication or may require the affiant to appear in person.

(D) At any hearing on a motion for the return or suppression of evidence, or for suppression of the fruits of evidence, obtained pursuant to a search warrant, no evidence shall be admissible to establish probable cause other than the affidavits provided for in paragraph (B).

(E) No search warrant shall authorize a nighttime search unless the affidavits show reasonable cause for such nighttime search.

(F) A search warrant may be issued in anticipation of a prospective event as long as the warrant is based upon an affidavit showing probable cause that at some future time, but not currently, certain evidence of a crime will be located at a specified place.

(G) When a search warrant is issued, the issuing authority shall provide the original search warrant to the affiant and the issuing authority shall retain a contemporaneously prepared copy.

Comment

Paragraph (A) recognizes that an issuing authority either may issue a search warrant using advanced communication technology or order that the law enforcement officer appear in person to apply for a search warrant.

Paragraph (B) does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for a search warrant must be sworn to before the issuing authority prior to the issuance of the warrant. ''Sworn'' includes ''affirmed.'' *See* Rule 103. The language ''sworn to before the issuing authority'' contemplates, when advanced communication technology is used, that the affiant would not be in the physical presence of the issuing authority. *See* paragraph (C).

Paragraph (D) changes the procedure discussed in *Commonwealth v. Crawley*, 223 A.2d 885 (Pa. Super. 1966), aff'd *per curiam*, 247 A.2d 226 (Pa. 1968). *See Commonwealth v. Milliken*, 300 A.2d 78 (Pa. 1973).

The requirement in paragraph (E) of a showing of reasonable cause for a nighttime search highlights the traditional doctrine that nighttime intrusion into a citizen's privacy requires greater justification than an intrusion during normal business hours.

An affiant seeking the issuance of a search warrant, when permitted by the issuing authority, may use advanced communication technology as defined in Rule 103.

When advanced communication technology is used, the issuing authority is required by this rule to (1) determine that the evidence contained in the affidavit(s) establishes probable cause, and (2) verify the identity of the affiant.

Verification methods include, but are not limited to, a ''call back'' system, in which the issuing authority would call the law enforcement agency or police department that the affiant indicates is the entity seeking the warrant; a ''signature comparison'' system whereby the issuing authority would keep a list of the signatures of the law enforcement officers whose departments have advanced communication technology systems in place, and compare the signature on the transmitted information with the signature on the list; or an established password system.

Paragraph (F) was added to the rule in 2005 to provide for anticipatory search warrants. The rule incorporates the definition of anticipatory search warrants set forth in *Commonwealth v. Glass*, 754 A.2d 655 (Pa. 2000).

Paragraph (G) was added to clarify who must retain possession of the original of the search warrant. When the search warrant is issued using advanced communication technology, the version delivered to the police officer is considered the original for purposes of this rule.

Official Note: Rule 2003 adopted March 28, 1973, effective for warrants issued 60 days hence; renumbered Rule 203 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006; amended October 22, 2013, effective January 1, 2014; amended November 9, 2017, effective January 1, 2018.

Committee Explanatory Reports:

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

Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the October 19, 2005 amendments regarding anticipatory search warrants published with the Court's Order at 35 Pa.B. 6088 (November 5, 2005).

Final Report explaining the October 22, 2013 amendments regarding the original search warrants published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Final Report explaining the November 9, 2017 amendments regarding electronic technology for swearing affidavits published with the Court's Order at 47 Pa.B. 7180 (November 25, 2017).

Source

The provisions of this Rule 203 amended October 19, 2005, effective February 1, 2006, 35 Pa.B. 6087; amended October 22, 2013, effective January 1, 2014, 43 Pa.B. 6649; amended November 9, 2017, effective January 1, 2018, 47 Pa.B. 7177. Immediately preceding text appears at serial pages (369634) and (388179) to (388180).

Rule 204. Person to Serve Warrant.

A search warrant shall be served by a law enforcement officer.

Comment

No specific person need be designated in the warrant. However, only a law enforcement officer can properly serve a search warrant.

For the requirements when a law enforcement officer executes a search warrant beyond the territorial limits of the officer's primary jurisdiction, see Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953. See also *Commonwealth v. Mason*, 490 A.2d 421 (Pa. 1985).

Official Note: Rule 2004 adopted March 28, 1973, effective 60 days hence; Comment revised August 9, 1994, effective January 1, 1995 ; renumbered Rule 204 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the August 9, 1994 Comment revisions published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

Rule 205. Contents of Search Warrant.

(A) Each search warrant shall be signed by the issuing authority and shall:

(1) specify the date and time of issuance;

(2) identify specifically the property to be seized;

(3) name or describe with particularity the person or place to be searched;

(4) direct that the search be executed either;

(a) within a specified period of time, not to exceed 2 days from the time of issuance, or;

(b) when the warrant is issued for a prospective event, only after the specified event has occurred;

(5) direct that the warrant be served in the daytime unless otherwise authorized on the warrant, *provided that*, for purposes of the rules of Chapter 200, Part A, the term ''daytime'' shall be used to mean the hours of 6 a.m. to 10 p.m.;

(6) designate by title the judicial officer to whom the warrant shall be returned;

(7) certify that the issuing authority has found probable cause based upon the facts sworn to or affirmed before the issuing authority by written affidavit(s) attached to the warrant; and

(8) when applicable, certify on the face of the warrant that for good cause shown the affidavit(s) is sealed pursuant to Rule 211 and state the length of time the affidavit(s) will be sealed.

(B) A warrant under paragraph (A) may authorize the seizure of electronic storage media or of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in (A)(4)(a) refers to the seizure of the media or information, and not to any later off-site copying or review.

Comments

Paragraphs (A)(2) and (A)(3) are intended to proscribe general or exploratory searches by requiring that searches be directed only towards the specific items, persons, or places set forth in the warrant. Such warrants should, however, be read in a common sense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description may suffice. *See Commonwealth v. Matthews*, 285 A.2d 510, 513-14 (Pa. 1971).

Paragraph (A)(4) is included pursuant to the Court's supervisory powers over judicial procedure to supplement *Commonwealth v. McCants*, 299 A.2d 283 (Pa. 1973), holding that an unreasonable delay between the issuance and service of a search warrant jeopardizes its validity. Paragraph (A)(4) sets an outer limit on reasonableness. A warrant could, in a particular case, grow stale in less than two days. If the issuing authority believes that only a particular period which is less than two days is reasonable, he or she must specify such period in the warrant.

Paragraph (A)(4)(b) provides for anticipatory search warrants. These types of warrants are defined in *Commonwealth v. Glass*, 754 A.2d 655 (Pa. 2000), as ''a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.''

Paragraph (A)(5) supplements the requirement of Rule 203(E) that special reasonable cause must be shown to justify a nighttime search. A warrant allowing a nighttime search may also be served in the daytime.

Paragraph (A)(6) anticipates that the warrant will list the correct judicial officer to whom the warrant should be returned. There may be some instances in which the judicial officer who issues the warrant may not be the one to whom the warrant will be returned. For example, it is a common practice in many judicial districts to have an ''on-call'' magisterial district judge. This ''on-call'' judge would have the authority to issue search warrants anywhere in the judicial district but may not be assigned to the area in which the search warrant would be executed. There may be cases when the warrant is incorrectly returned to the judge who originally issued the warrant. In such cases, the issuing judge should forward the returned search warrant to the correct judicial officer. Thereafter, that judicial officer should administer the search warrant and supporting documents as provided for in these rules, including the Rule 210 requirement to file the search warrant and supporting documents with the clerk of courts.

Paragraph (A)(8) implements the notice requirement in Rule 211(C). When the affidavit(s) is sealed pursuant to Rule 211, the justice or judge issuing the warrant must certify on the face of the warrant that there is good cause shown for sealing the affidavit(s) and must also state how long the affidavit will be sealed.

For purposes of this rule, the term ''electronically stored information'' includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained. This definition is intended to cover all current types of computer-based information and to encompass future changes and developments.

For purposes of this rule, the term ''seizure'' includes the copying of material or information that is subject to the search warrant. This includes the copying of electronically stored information for later analysis.

For the procedures for motions for return of property, see Rule 588.

Official Note: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; Comment revised October 22, 2013, effective January 1, 2014; amended July 31, 2017, effective October 1, 2017.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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

Final Report explaining the October 19, 2005 amendments to paragraph (4) and the Comment published with the Court's Order at 35 Pa.B. 6088 (November 5, 2005).

Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. 6652 (November 9, 2013).

Final Report explaining the July 31, 2017 amendment regarding search warrants for electronically stored information published with the Court's Order at 47 Pa.B. 4681 (August 12, 2017).

Source

The provisions of this Rule 205 amended October 19, 2005, effective February 1, 2006, 35 Pa.B. 6087; amended October 22, 2013, effective January 1, 2014, 43 Pa.B. 6649; amended July 31, 2017, effective October 1, 2017, 47 Pa.B. 4680. Immediately preceding text appears at serial pages (369636) to (369638).

Rule 206. Contents of Application for Search Warrant.

Each application for a search warrant shall be supported by written affidavit(s) signed and sworn to or affirmed before an issuing authority, which affidavit(s) shall:

(1) state the name and department, agency, or address of the affiant;

(2) identify specifically the items or property to be searched for and seized;

(3) name or describe with particularity the person or place to be searched;

(4) identify the owner, occupant, or possessor of the place to be searched;

(5) specify or describe the crime which has been or is being committed;

(6) set forth specifically the facts and circumstances which form the basis for the affiant's conclusion that there is probable cause to believe that the items or property identified are evidence or the fruit of a crime, or are contraband, or are expected to be otherwise unlawfully possessed or subject to seizure, and that these items or property are or are expected to be located on the particular person or at the particular place described;

(7) if a ''nighttime'' search is requested (*i.e.*, 10 p.m. to 6 a.m.), state additional reasonable cause for seeking permission to search in nighttime;

(8) when the attorney for the Commonwealth is requesting that the affidavit(s) be sealed pursuant to Rule 211, state the facts and circumstances which are alleged to establish good cause for the sealing of the affidavit(s); and

(9) a certification that the application complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

Comments

For the contents of the search warrant, see Rule 205.

While this rule continues to require written affidavits, the form of affidavit was deleted in 1984 because it is no longer necessary to control the specific form of written affidavit by rule.

The 2005 amendments to paragraph (6) recognize anticipatory search warrants. To satisfy the requirements of paragraph (6) when the warrant being requested is for a prospective event, the application for the search warrant also must include a statement explaining how the affiant knows that the items to be seized on a later occasion will be at the place specified. *See Commonwealth v. Coleman*, 830 A.2d 554 (Pa. 2003), and *Commonwealth v. Glass*, 754 A.2d 655 (Pa. 2000).

When the attorney for the Commonwealth is requesting that the search warrant affidavit(s) be sealed, the affidavit(s) in support of the search warrant must set forth the facts and circumstances the attorney for the Commonwealth alleges establish that there is good cause to seal the affidavit(s). *See also* Rule 211(B)(2). Pursuant to Rule 211(B)(1), when the attorney for the Commonwealth requests that the search warrant affidavit be sealed, the application for the search warrant must be made to a judge of the court of common pleas or to an appellate court justice or judge, who would be the issuing authority for purposes of this rule. For the procedures for sealing search warrant affidavit(s), see Rule 211.

See Rule 113.1 regarding the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and the requirements regarding filings and documents that contain confidential information.

Official Note: Previous Rule 2006 adopted October 17, 1973, effective 60 days hence; rescinded November 9, 1984, effective January 2, 1985. Present Rule 2006 adopted November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 206 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; amended June 1, 2018, effective July 1, 2018.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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

Final Report explaining the October 19, 2005 amendments to paragraph (6) and the Comment published with the Court's Order at 35 Pa.B. 6088 (November 5, 2005).

Amendment regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).

Source

The provisions of this Rule 206 amended October 19, 2005, effective February 1, 2006, 35 Pa.B. 6087; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3575. Immediately preceding text appears at serial pages (388182) and (369639).

Rule 207. Manner of Entry Into Premises.

(A) A law enforcement officer executing a search warrant shall, before entry, give, or make reasonable effort to give, notice of the officer's identity, authority, and purpose to any occupant of the premises specified in the warrant, unless exigent circumstances require the officer's immediate forcible entry.

(B) Such officer shall await a response for a reasonable period of time after this announcement of identity, authority, and purpose, unless exigent circumstances require the officer's immediate forcible entry.

(C) If the officer is not admitted after such reasonable period, the officer may forcibly enter the premises and may use as much physical force to effect entry therein as is necessary to execute the search.

Comment

See generally *Commonwealth v. DeMichel*, 277 A.2d 159 (Pa. 1971) with regard to paragraphs (A) and (B). Concerning paragraph (C), see *Commonwealth v. Newman*, 240 A.2d 795 (Pa. 1968).

Official Note: Rule 2007 adopted October 17, 1973, effective 60 days hence; renumbered Rule 207 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 208. Copy of Warrant; Receipt for Seized Property

(A) A law enforcement officer, upon taking property pursuant to a search warrant, shall leave with the person from whom or from whose premises the property was taken a copy of the warrant and affidavit(s) in support thereof, and a receipt for the property seized. A copy of the warrant and affidavit(s) must be left whether or not any property is seized.

(B) If no one is present on the premises when the warrant is executed, the officer shall leave the documents specified in paragraph (A) at a conspicuous location in the said premises. A copy of the warrant and affidavit(s) must be left whether or not any property is seized.

(C) Notwithstanding the requirements in paragraphs (A) and (B), the officer shall not leave a copy of an affidavit that has been sealed pursuant to Rule 211.

Official Note: Rule 2008 adopted October 17, 1973, effective 60 days hence; amended September 3, 1993, effective January 1, 1994; renumbered Rule 208 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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

Rule 209. Return With Inventory.

(A) The law enforcement officer executing the search warrant shall return the search warrant promptly after the search is completed, along with any inventory required under paragraph (C), to the issuing authority.

(B) Unexecuted warrants shall be returned promptly to the issuing authority once the period of time authorized for execution of the warrant has expired. The affiant shall retain a copy of the returned unexecuted search.

(C) An inventory of items seized shall be made by the law enforcement officer serving a search warrant. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, when feasible, or otherwise in the presence of at least one witness. The officer shall sign a statement on the inventory that it is a true and correct listing of all items seized, and

that the signer is subject to the penalties and provisions of 18 Pa.C.S. § 4904(b)—Unsworn Falsification To Authorities. The inventory shall be returned to and filed with the issuing authority.

(D) The judicial officer to whom the return was made shall, upon request, cause a copy of the inventory to be delivered to the applicant for the warrant and to the person from whom, or from whose premises, the property was taken.

(E) When the search warrant affidavit(s) is sealed pursuant to Rule 211, the return shall be made to the justice or judge who issued the warrant.

Comment

The inventory is required to ensure that all items seized are accounted for in the return to the issuing authority. It thus differs from the receipt required by Rule 208, which is for the personal records of those from whose possession or from whose premises property was taken. In some cases, however, the list in the receipt may be sufficiently detailed so as to also be sufficient for use in the inventory. The inventory need not be sworn to before the issuing authority; however, the officer is subject to statutory penalties for unsworn falsification.

The rule was amended in 2013 specifically to require that the executed warrant be returned to the issuing authority. This amendment reflects a procedure with a long-standing practice but one that had not been codified in the rules.

See Rule 205(A)(6) regarding the circumstances under which the issuing authority to whom the warrant is returned may differ from the one that issued the warrant.

As provided in Rule 205(A)(4), search warrants generally authorize execution within a period not to exceed two days. Paragraph (B) requires that an unexecuted warrant be returned to the issuing authority upon expiration of this period.

Unexecuted search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

For the obligation of the Commonwealth to disclose exculpatory evidence, see Rule 573 and its Comment.

Official Note: Rule 2009 adopted October 17, 1973, effective 60 days hence; amended April 26, 1979, effective July 1, 1979; amended September 3, 1993, effective January 1, 1994; renumbered Rule 209 and amended March 1, 2000, effective April 1, 2001; amended October 22, 2013, effective January 1, 2014; Comment revised July 31, 2017, effective October 1, 2017.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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

Final Report explaining the October 22, 2013 amendments related to the return of the search warrant published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Final Report explaining the July 31, 2017 comment revisions correcting a cross-reference to Rule 205 published with the Court's Order at 47 Pa.B. 4681 (August 12, 2017).

Source

The provisions of this Rule 209 amended October 22, 2013, effective January 1, 2014, 43 Pa.B. 6649; amended July 31, 2017, effective October 1, 2017, 47 Pa.B. 4680. Immediately preceding text appears at serial pages (369640) to (369641).

Rule 210. Return of Papers to Clerk.

The judicial officer to whom the warrant was returned shall file the search warrant, all supporting affidavits, and the inventory with the clerk of the court of common pleas of the judicial district in which the property was seized.

Comment

See Rule 211 for the procedures when the search warrant affidavit(s) has been sealed.

Unexecutecd search warrants are not public records, see Rule 212(B), and therefore are not to be included in the criminal case file nor are they to be docketed.

Official Note: Rule 2010 adopted October 17, 1973, effective 60 days hence; amended September 3, 1993, effective January 1, 1994; renumbered Rule 210 and Comment revised March 1, 2000, effective April 1, 2001; amended October 22, 2013, effective January 1, 2014.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

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

Final Report explaining the October 22, 2013 revisions to the Comment regarding unexecuted search warrants published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Source

The provisions of this Rule 210 amended October 22, 2013, effective January 1, 2014, 43 Pa.B. 6649. Immediately preceding text appears at serial page (264149).

Rule 211. Sealing Search Warrant Affidavits.

(A) At the request of the attorney for the Commonwealth, a search warrant affidavit may be sealed upon good cause shown.

(B) When the attorney for the Commonwealth intends to request that the search warrant affidavit(s) be sealed,

(1) the application for the search warrant shall be presented by the attorney for the Commonwealth to a judge of the court of common pleas or an appellate court justice or judge, and

(2) the affidavit(s) for the search warrant shall include the facts and circumstances which are alleged to establish good cause for the sealing of the search warrant affidavit(s).

(C) When the justice or judge issues the search warrant and seals the search warrant affidavit(s), he or she shall also certify on the face of the warrant that for good cause shown the affidavit(s) is sealed and shall state the length of time the affidavit(s) will be sealed.

(D) When the search warrant is issued, the sealed affidavit(s) shall be filed with the clerk of courts in the judicial district in which the search warrant is to be executed, unless otherwise ordered by the justice or judge.

(E) The affidavit shall be sealed for a period of not more than 60 days, unless the time period is extended as provided in paragraph (F) or paragraph (H).

(F) Upon motion of the attorney for the Commonwealth for good cause shown, the justice or judge who issued the search warrant may extend the period of time that the affidavit(s) will remain sealed. If the justice or judge is unavailable, another justice or judge shall be assigned to decide the motion.

(G) Upon motion for good cause shown, the justice or judge may grant an unlimited number of extensions of the time that the affidavit(s) shall remain sealed. Each extension shall be for a period of not more than 30 days.

(H) When criminal proceedings are instituted as a result of the search,

(1) A copy of the sealed affidavit(s) shall be given to the defendant at or before the preliminary hearing unless otherwise ordered as provided in paragraph (H)(2).

(2) Upon motion of the attorney for the Commonwealth, the justice or judge who issued the warrant, for good cause shown, may delay giving the defendant a copy of the sealed affidavit(s) for periods of not more than 30 days. In no case shall the delay extend beyond the date of the court arraignment.

(3) If the justice or judge is unavailable, another justice or judge shall be assigned to decide the motion.

(I) If the motion requesting any extension pursuant to paragraphs (F) or (H) is granted, the motion and any record of the hearing on the motion shall be sealed and transmitted with the extension order to the clerk of courts.

(J) When the order sealing the affidavit(s) and any extensions thereof expires, the clerk of courts shall make the affidavit(s) available for public inspection.

Comment

This rule establishes procedures for temporarily sealing the affidavit(s) supporting a search warrant. Ordinarily these procedures would be limited to cases in which an ongoing investigation using, for example, electronic surveillance (18 Pa.C.S. § 5701 et seq.) or an undercover agent, would be jeopardized by revealing the information necessary to support probable cause to obtain a search warrant. Therefore, when determining whether good cause exists to seal the affidavit(s), the justice or judge should consider, for example, whether revealing the information in the affidavit(s) would defeat an ongoing investigation or endanger an undercover agent or informant.

District justices, bail commissioners, and municipal court judges do not have authority to seal an affidavit(s). In cases in which it is believed that there is good cause to seal the affidavit(s), the application for the search warrant must be presented to a judge of the court of common pleas or a justice or judge of an appellate court. See also Rule 206(8).

When a search warrant affidavit(s) is to be sealed, the application and affidavit(s) should be prepared as separate documents, rather than on the preprinted search warrant form. See Rules 206 and 208.

Paragraph (C) requires that the justice or judge issuing the warrant certify on the face of the warrant that for good cause shown the affidavit(s) was sealed and state the length of time the affidavit will be sealed, thereby giving notice of the sealing to the person who was searched or whose premises were searched and the defendant, if any. See Rules 205 and 206.

Unless the justice or judge orders otherwise, paragraph (D) requires that when the search warrant is issued the sealed affidavit(s) must be filed with the clerk of courts in the judicial district in which the search is expected to be conducted. There may be cases in which the justice or judge might determine, for example, that it is better to retain the sealed affidavit(s) in his or her office until a later time, such as when the return is made, and would therefore not file the sealed affidavit(s) until after this occurs, or that the affidavit(s) should be filed with a clerk in a different judicial district.

When determining whether there is good cause to extend the time that the affidavit(s) is to remain sealed or the time before a copy of the affidavit(s) is given to the defendant, in addition to examining the Commonwealth's or the defendant's need to have the affidavit sealed, the justice or judge should consider any pertinent information about the case, such as whether any items were seized, whether there were any arrests, and whether any motions were filed. The justice or judge should also consider the defendant's need to have the affidavit(s) to prepare his or her case, especially the right to file motions, including a motion to suppress or a motion for return of property (see, e.g., Rules 578, 579, 581, and 588).

Although the initial request to have the affidavit(s) sealed is made ex parte by the attorney for the Commonwealth as part of the search warrant application process, once the affidavit(s) is sealed and the warrant is executed, thereby giving the person who was searched or whose premises were searched and the defendant, if any, notice of the sealing, that person may, of course, request by motion that the affidavit(s) be made available to him or her, or that the order sealing the affidavit(s) be rescinded.

Paragraphs (F) and (G) provide the procedures for extending the time that the affidavit(s) is sealed, except in cases in which criminal proceedings are instituted as a result of the search. The attorney for the Commonwealth may request that the time period be extended, but each extension may not be for more than 30 days and may only be granted upon motion for good cause shown.

Once criminal proceedings are instituted as a result of the search, the defendant in the case has a need to have the information in the affidavit(s) to be able to prepare his or her case. Paragraph (H) requires that a copy of the sealed affidavit(s) be given to the defendant at or before the time of the preliminary hearing, unless the attorney for the Commonwealth establishes by motion that there is good cause to delay giving the defendant a copy.

When the justice or judge finds good cause to delay giving a copy of the sealed affidavit(s) to the defendant, the justice or judge, as provided in paragraph (G), may only grant an extension for up to 30 days, after which the attorney for the Commonwealth must request another extension. Under no circumstances may the time be extended beyond the time for arraignment.

When a sealed copy of the affidavit(s) has been given to the defendant, nothing in this rule is intended to preclude the attorney for the Commonwealth from requesting that the justice or judge issue a protective order to prevent or restrict the defendant from disclosing the contents of the affidavit. See Rule 573(F).

When the order sealing the affidavit(s) expires, the clerk of courts must make the affidavit(s) available for public inspection.

Official Note: Rule 2011 adopted September 3, 1993, effective January 1, 1994; renumbered Rule 211 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published at 21 Pa.B. 3681 (August 17, 1991).

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

Rule 212. Dissemination of Search Warrant Information.

(A) The issuing authority shall not make any search warrants and any affidavit(s) of probable cause available for public inspection or dissemination until the warrant has been executed.

(B) Unexecuted warrants and the associated affidavits of probable cause are not public records and upon return to the issuing authority the unexecuted warrants and affidavit(s) shall be destroyed by the issuing authority.

Comment

Execution of search warrants carries the potential risk of hazard and premature dissemination of the intention to execute a warrant may greatly increase that risk. For this reason, this rule was adopted in 2008 to delay the dissemination of search warrant information to the general public until after execution. This rule does not deny disclosure of any search warrant information to which the public is entitled, but rather, temporarily delays the dissemination of that information in order to protect public safety.

Once the warrant is executed, the information may be disseminated unless sealed pursuant to Rule 211.

The rule was amended in 2013 to clarify that unexecuted search warrants are not public records. This change recognizes that often search warrants may be issued that are never executed. This non-execution may arise from many factors, including a discovery that the information that formed the basis of the original issuance of the search warrant was inaccurate. Given the potential harm to the subject of a search warrant as well as potential disruption to public safety and investigations, information related to such expired warrants must remain confidential. *See PG Publishing Co. v. Commonwealth*, 532 Pa. 1, 614 A.2d 1106 (1992) (''The *ex parte* application for the issuance of a search warrant and the issuing authority's consideration of the application are not subject to public scrutiny. The need for secrecy will ordinarily expire once the search warrant has been executed.'').

Official Note: Rule 212 adopted June 23, 2008, effective August 1, 2008; amended October 22, 2013, effective January 1, 2014.

Final Reprot explaining new Rule 212 providing for the limitations in dissemination of search warrant information published with the Court's Order at 38 Pa.B. 3651 (July 5, 2008).

Final Report explaining the October 22, 2013 amendment providing that expired unexecuted warrants are not public records published with the Court's Order at 43 Pa.B. 6652 (November 9, 2013).

Source

The provisions of this Rule 212 adopted June 23, 2008, effective August 1, 2008, 38 Pa.B. 3651; amended October 22, 2013, effective January 1, 2014, 43 Pa.B. 6649. Immediately preceding text appears at serial pages (335389) to (335390).

PART B(1). Investigating Grand Juries

Rule 220. Motion and Order for Investigating Grand Jury.

A motion for an investigating grand jury shall be presented to the president judge of the judicial district or to such other judge as the president judge shall designate.

Official Note: Rule 251 adopted June 26, 1978, effective January 9, 1979; renumbered Rule 220 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 221. Summoning Investigating Grand Jurors.

(A) After issuing an order summoning an investigating grand jury, the court shall order the officials designated by law to summon prospective jurors to summon not less than 38 persons eligible by law to serve as grand jurors.

(B) The summons shall be made returnable on such date as is ordered by the court.

Comment

See 42 Pa.C.S. §§ 4521—4524 for the Judicial Code provisions on the selection of prospective jurors.

The number of persons initially summoned for an investigating grand jury has been fixed at no less than 38 to accommodate the requirements for a maximum of 15 alternates as specified in Rule 222. See also 42 Pa.C.S. § 4545(a) (investigating grand jury shall have a minimum of 7 and not more than 15 alternates).

Official Note: Rule 252 adopted June 26, 1978, effective January 9, 1979; amended January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; renumbered Rule 221 and amended March 1, 2000, effective April 1, 2001; amended October 17, 2002, effective January 1, 2003.

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

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

Final Report explaining the October 17, 2002 amendments concerning the number of alternate grand juror published with the Court's Order at 32 Pa.B. 5407 (November 2, 2002).

Source

The provisions of this Rule 221 amended October 17, 2002, effective January 1, 2003, 32 Pa.B. 5406. Immediately preceding text appears at serial page (264152).

Rule 222. Composition and Organization of the investigating Grand Jury.

(A) There shall be impaneled initially to serve on an investigating grand jury 23 legally qualified jurors and a minimum of 7 and not more than 15 legally qualified alternates. During its term, the investigating grand jury shall consist, as provided hereinafter, of not less than 15 nor more than 23 legally qualified jurors, and the remaining alternates.

(B) When an investigating grand jury is to be impaneled and more than 30 persons attend for service and qualify, the judge in charge of the grand jury shall excuse a sufficient number of persons to reduce the panel to not more than 23 persons plus the minimum of 7 but not more than 15 alternates. After prospective grand jurors have been excused for cause, the reduction to the minimum of 30 or maximum of 38 shall take place by random drawing in the following manner: 30 to 38 jurors shall be selected by random drawing, of which the first 23 jurors so selected shall be designated permanent grand jurors and the next 7 to 15 jurors shall be designated alternate jurors 1, 2, 3, and so on to a minimum of 15.

(C) Alternate jurors shall attend sessions of the grand jury but they may not participate in the preparation of any reports or presentments, nor in the deliberations and voting, until such time as they may be appointed as permanent grand jurors as provided in paragraph (D).

(D) The court shall have the power to permanently excuse a permanent or alternate grand juror for cause at any time during the term of the investigating grand jury. For each such excused permanent grand juror, the court shall appoint a new permanent grand juror from among the available alternates.

(E) Fifteen permanent members of the grand jury shall constitute a quorum, but an affirmative vote of 12 permanent members of the grand jury shall be required to adopt a report or issue a presentment.

(F) Whenever the number of permanent grand jurors, including alternates who have been appointed to replace permanent grand jurors, becomes less than 15, the term of the investigating grand jury shall be considered at an end.

(G) The court shall appoint one of the grand jurors as foreman. The grand jury shall select one of its members as a secretary to assist the foreman in keeping a record of the action of the grand jury.

Comment

The initial number of jurors impaneled should be at least 30, but no more than 38, to accommodate the minimum of 7 and maximum of 15 alternate jurors. See 42 Pa.C.S. § 4545(a) (investigating grand jury shall have a minimum of 7 and not more than 15 alternates).

The alternate jurors are impaneled with the permanent grand jurors and hear all testimony, but are excluded from taking part in or from being present at deliberations, votes, or preparation of presentments or reports.

If, prior to the impaneling of the investigating grand jury, the number of prospective grand jurors initially summoned falls below the minimum needed to seat permanent and alternate grand jurors by

reason of excuses for cause, additional prospective grand jurors are to be summoned in the manner provided in these rules. See Rule 221. Any grand jurors already selected to serve on the investigating grand jury must remain.

The term ''permanent grand juror'' is used to distinguish grand jurors with the power to vote from alternate grand jurors. The purpose of providing a built-in system of alternates is to assure the smooth functioning of the grand jury throughout its term and to provide that alternates, when made permanent grand jurors, will be fully cognizant of all the proceedings before the grand jury. This provision provides the authority for substitution that was found lacking in *Commonwealth v. Levinson*, 389 A.2d 1062 (Pa. 1978).

It is intended that no alternate may be appointed as a temporary substitute for a permanent grand juror, and that the court will excuse permanent grand jurors only when necessary and in the interests of justice. However, whenever a permanent juror is excused for cause and an alternate is available to become a permanent grand juror, the court must substitute an alternate for the excused permanent grand juror. It is intended that such substitution be made in the order of the alternate jurors' numerical designation.

Official Note: Rule 253 adopted June 26, 1978, effective January 9, 1979; amended October 22, 1981, effective January 1, 1982; amended August 12, 1993, effective September 1, 1993; renumbered Rule 222 and amended March 1, 2000, effective April 1, 2001; amended October 17, 2002, effective January 1, 2003.

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

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

Final Report explaining the October 17, 2002 amendments concerning the number of alternate grand jurors published with the Court's Order at 32 Pa.B. 5407 (November 2, 2002).

Source

The provisions of this Rule 222 amended October 17, 2002, effective January 1, 2003, 32 Pa.B. 5406. Immediately preceding text appears at serial pages (264152) to (264156).

Rule 223. Administering Oath to Stenographer.

In addition to the oath specified in Rule 224, stenographers who record the proceedings before the investigating grand jury shall, before commencing their duties, be sworn by the court to faithfully report the proceedings.

Official Note: Rule 255 adopted June 26, 1978, effective January 9, 1979; renumbered Rule 223 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 224. Administering Oath to Court Personnel.

All court personnel who are to be present during any portion of the grand jury proceedings, and all others who assist in the proceedings, shall be sworn to secrecy by the court prior to their participation.

Official Note: Rule 256 adopted June 26, 1978, effective January 9, 1979; renumbered Rule 224 March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 225. Administering Oath to Grand Jury and Foreman.

(A) After the selection of the members of the investigating grand jury, the court shall administer the oath to the grand jury and then separately to the foreman.

(B) The court shall administer the oath to the investigating grand jury in substantially the following form:

> ''You, as grand jurors, do solemnly swear that your will make diligent inquiry with regard to all matters brought before you as well as such things as may come to your knowledge in the course of your duties; that you will keep secret all that transpires in the jury room, except as authorized by law; that you will not present any person for hatred, envy, or malice, or refuse to present any person for love, fear, favor, or any reward or hope thereof; and that you will present all things truly to the court as they come to your knowledge and understanding.''

(C) The court shall administer the oath to the foreman in substantially the following form:

> ''You, as foreman, do solemnly swear that you will make diligent inquiry with regard to all matters as shall be given you in charge; that you will keep secret all that transpires in the jury room, except as authorized by law; that you will not present any person for hatred, envy, or malice, or refuse to present any person for love, fear, favor, or any reward or hope thereof; and that you will present all things truly to the court as they come to your knowledge and understanding.''

It is intended that all grand jurors, including the alternate grand jurors, will be sworn at this time.

Official Note: Rule 257 adopted June 26, 1978, effective January 9, 1979; amended October 22, 1981, effective January 1, 1982; renumbered Rule 225 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 226. Charge to Investigating Grand Jury.

After the investigating grand jury is sworn, the court shall charge the grand jury in open court.

Comment

The charge of the court to the grand jury should define the duties of the grand jurors. However, section (7)(c) of The Investigating Grand Jury Act, 42 Pa.C.S. §§ 4541—4553, provides that: ''The jurisdiction, powers and activities of an investigating grand jury shall not, of otherwise lawful, be limited in any way by the charge of the court.''

Official Note: Rule 258 adopted June 26, 1978, effective January 9, 1979; Comment revised October 22, 1981, effective January 1, 1982; renumbered Rule 226 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 227. Administering Oath to Witness.

Each witness to be heard by the investigating grand jury shall be sworn before testifying. The witness may elect to be sworn in camera or in open court.

Comment

When it is necessary to give constitutional warnings to a witness, the warnings and the oath must be administered by the court. As to warnings that the court may have to give to the witness when the witness is sworn, see, e.g., *Commonwealth v. McCloskey*, 443 Pa. 117, 277 A.2d 764 (Pa. 1971).

Official Note: Rule 259 adopted June 26, 1978, effective January 9, 1979; renumbered Rule 227 and Comment revised March 1, 2000, effective April 1, 2001; amended September 30, 2005, effective February 1, 2006.

Committee Explanatory Reports:

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

Final Report explaining the September 30, 2005 amendments concerning administration of the oath published with the Court's Order at 35 Pa.B. 5679 (October 15, 2005).

Source

The provisions of this Rule 227 amended September 30, 2005, effective February 1, 2006, 35 Pa.B. 5678. Immediately preceding text appears at serial pages (264155) to (264156).

Rule 228. Recording of Proceedings Before Investigating Grand Jury.

Proceedings before an investigating grand jury, other than the deliberations and voting of the grand jury, shall be stenographically recorded and a transcript made.

Official Note: Rule 260 adopted June 26, 1978, effective January 9, 1979; renumbered Rule 228 March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 229. Control of Investigating Grand Jury Transcript/Evidence.

Except as otherwise set forth in these rules, the court shall control the original and all copies of the transcript and shall maintain their secrecy. When physical evidence is presented before the investigating grand jury, the court shall establish procedures for supervising custody.

Comment

This rule requires that the court retain control over the transcript of the investigating grand jury proceedings and all copies thereof, as the record is transcribed, until such time as the transcript is released as provided in these rules.

Reference to the court in this rule and in Rule 230 is intended to be to the supervising judge of the grand jury.

Official Note: Rule 261 adopted June 26, 1978, effective January 9, 1979; Comment revised October 22, 1981, effective January 1, 1982; renumbered Rule 229 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 230. Disclosure of Testimony Before Investigating Grand Jury.

(A) Attorney for the Commonwealth:

Upon receipt of the certified transcript of the proceedings before the investigating grand jury, the court shall furnish a copy of the transcript to the attorney for the Commonwealth for use in the performance of official duties.

(B) Defendant in a Criminal Case:

(1) When a defendant in a criminal case has testified before an investigating grand jury concerning the subject matter of the charges against him or her, upon application of such defendant the court shall order that the defendant be furnished with a copy of the transcript of such testimony.

(2) When a witness in a criminal case has previously testified before an investigating grand jury concerning the subject matter of the charges against the defendant, upon application of such defendant the court shall order that the defendant be furnished with a copy of the transcript of such testimony; however, such testimony may be made available only after the direct testimony of that witness at trial.

(3) Upon appropriate motion of a defendant in a criminal case, the court shall order that the transcript of any testimony before an investigating grand

jury that is exculpatory to the defendant, or any physical evidence presented to the grand jury that is exculpatory to the defendant, be made available to such defendant.

(C) Other Disclosures:

Upon appropriate motion, and after a hearing into relevancy, the court may order that a transcript of testimony before an investigating grand jury, or physical evidence before the investigating grand jury, may be released to another investigative agency, under such other conditions as the court may impose.

Comment

It is intended that the ''official duties'' of the attorney for the Commonwealth may include reviewing investigating grand jury testimony with a prospective witness in a criminal case stemming from the investigation, when such testimony relates to the subject matter of the criminal case. It is not intended that a copy of such testimony be released to the prospective witness.

Subparagraph (B)(3) is intended to reflect the line of cases beginning with *Brady v. Maryland*, 373 U. S. 83 (1963), and the refinements of the Brady standards embodied in subsequent judicial decisions.

Official Note: Rule 263 adopted June 26, 1978, effective January 9, 1979; renumbered Rule 230 and amended March 1, 2000, effective April 1, 2001; amended September 21, 2012, effective November 1, 2012.

Committee Explanatory Reports:

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

Final Report explaining the September 21, 2012 correction of a typographical error in paragraph (B)(1) published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Source

The provisions of this Rule 230 amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247. Immediately preceding text appears at serial pages (314387) and (264157).

Rule 231. Who May be Present During Session of an Investigating Grand Jury.

(A) The attorney for the Commonwealth, the alternate grand jurors, the witness under examination, and a stenographer may be present while the investigating grand jury is in session. Counsel for the witness under examination may be present as provided by law.

(B) The supervising judge, upon the request of the attorney for the Commonwealth or the grand jury, may order that an interpreter, security officers, and such other persons as the judge may determine are necessary to the presentation of the evidence may be present while the investigating grand jury is in session.

(C) All persons who are to be present while the grand jury is in session shall be identified in the record, shall be sworn to secrecy as provided in these rules, and shall not disclose any information pertaining to the grand jury except as provided by law.

(D) No person other than the permanent grand jurors may be present during the deliberations or voting of the grand jury.

Comment

As used in this rule, the term ''witness'' includes both juveniles and adults.

The 1987 amendment provides that either the attorney for the Commonwealth, or a majority of the grand jury, through their foreperson, may request that certain, specified individuals, in addition to those referred to in paragraph (A), be present in the grand jury room while the grand jury is in session. As provided in paragraph (B), the additional people would be limited to an interpreter or interpreters the supervising judge determines are needed to assist the grand jury in understanding the testimony of a witness; a security officer or security officers the supervising judge determines are needed to escort witnesses who are in custody or to protect the members of the grand jury and the other people present during a session of the grand jury; and any individuals the supervising judge determines are required to assist the grand jurors with the presentation of evidence. This would include such people as the case agent (lead investigator), who would assist the attorney for the Commonwealth with questions for witnesses; experts, who would assist the grand jury with interpreting difficult, complex technical evidence; or technicians to run such equipment as tape recorders, videomachines, etc.

It is intended in paragraph (B) that when the supervising judge authorizes a certain individual to be present during a session of the investigating grand jury, the person may remain in the grand jury room only as long as is necessary for that person to assist the grand jurors.

Paragraph (C), added in 1987, generally prohibits the disclosure of any information related to testimony before the grand jury. There are, however, some exceptions to this prohibition enumerated in Section 4549 of the Judicial Code, 42 Pa.C.S. § 4549.

Official Note: Rule 264 adopted June 26, 1978, effective January 9, 1979; amended June 5, 1987, effective July 1, 1987; renumbered Rule 231 and amended March 1, 2000, effective April 1, 2001; Comment revised January 18, 2013, effective May 1, 2013.

Committee Explanatory Reports:

Report explaining the June 5, 1987 amendments adding paragraphs (B)—(D) published at 17 Pa.B. 167 (January 10, 1987).

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

Final Report explaining the January 18, 2013 Comment revision concerning definition of witness as used in this rule published at 43 Pa.B. 653 (February 2, 2013).

Source

The provisions of this Rule 231 amended January 18, 2013, effective May 1, 2013, 43 Pa.B. 652. Immediately preceding text appears at serial pages (363808) to (363809).

PART B(2). Statewide Or Regional Investigating Grand Juries

Rule 240. Applicability of Investigating Grand Jury Rules.

The procedure governing investigating grand juries as set forth in Part B(1) (Investigating Grand Juries) of this Chapter, shall, with the exception of Rule 220 (Motion and Order For Investigating Grand Jury) and Rule 221 (Summoning Investigating Grand Jurors), be applicable to multi-county investigating grand juries.

Comment

The Investigating Grand Jury Act, 42 Pa.C.S. §§ 4541—4553, establishes the authority for ''multi-county'' (that is, both statewide and regional) grand juries.

Official Note: Rule 270 adopted July 1, 1980, effective August 1, 1980; Comment revised October 22, 1981, effective January 1, 1982; amended August 12, 1993, effective September 1, 1993; renumbered Rule 240 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

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

Rule 241. Summoning Jurors for Statewide or Regional Investigating Grand Juries.

(A) Grand Jury Having Statewide Jurisdiction:

(1) Upon receipt of an application to convene an investigating grand jury having statewide jurisdiction, the Court shall cause the Court Administrator of Pennsylvania to draw 6 counties at random from the district where the grand jury will be located, which are to be weighted on the basis of their approximate relative populations. The 6 counties so drawn plus the county or counties to be designated as locations of the investigating grand jury, shall together supply jurors for the investigating grand jury. The Court Administrator of Pennsylvania shall establish the number of names of persons to be forwarded from each county, as provided in (A)(2), based on the approximate relative populations of the respective counties involved. The Court Administrator of Pennsylvania shall then submit this information to the Court.

(2) Upon receipt of the order convening an investigating grand jury, the Court Administrator of Pennsylvania shall request from the president judge of each of the counties supplying jurors the names and addresses of persons residing in the county who are eligible by law to serve as grand jurors and who have been screened as provided by Rule 242.

(3) The total of such names of prospective jurors to be collected shall be 200, of which 50 shall be selected at random and summoned by the Court Administrator of Pennsylvania to the designated location of the investigating grand jury. The supervising judge shall impanel the investigating grand jury from this panel of 50 prospective jurors. If the summoning of additional prospective jurors becomes necessary, they shall be summoned by the supervising judge from among the remaining 150 prospective jurors.

(B) Grand Jury Having Regional Jurisdiction:

(1) Upon receipt of an application to convene an regional investigating grand jury, the Court shall cause the Court Administrator of Pennsylvania to establish the number of names of persons to be forwarded from each county, as provided in (B)(2), based on the approximate relative populations of the respec-

tive counties involved. The Court Administrator of Pennsylvania shall submit the information to the Court.

(2) Upon receipt of the order convening a regional investigating grand jury, the Court Administrator of Pennsylvania shall request from the president judge of each of the counties specified in the convening order the names and addresses of persons residing in the county who are eligible by law to serve as grand jurors and who have been screened as provided in Rule 242.

(3) The total of such names of prospective jurors to be collected shall be 200, of which 50 shall be selected at random and summoned by the Court Administrator of Pennsylvania to the designated location of the investigating grand jury. The supervising judge shall impanel the investigating grand jury from this panel of 50 prospective jurors. If the summoning of additional prospective jurors becomes necessary, they shall be summoned by the supervising judge from among the remaining 150 prospective jurors.

(C) Definitions:

(1) ''District'' means the Eastern District, Middle District, and Western District.

(2) ''Eastern District'' consists of Berks, Bucks, Carbon, Chester, Delaware, Lackawanna, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Susquehanna, Wayne, and Wyoming counties.

(3) ''Middle District'' consists of Adams, Bradford, Cameron, Centre, Clinton, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Lycoming, Mifflin, Montour, Northumberland, Perry, Potter, Schuylkill, Snyder, Sullivan, Tioga, Union, and York counties.

(4) ''Western District'' consists of Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Clarion, Clearfield, Crawford, Elk, Erie, Fayette, Forest, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, and Westmoreland counties.

Comment

If the 200 prospective jurors prove to be insufficient for the impaneling of the statewide or regional investigating grand jury, it is expected that additional prospective jurors may be summoned as provided by law.

Official Note: Rule 241 adopted July 1, 1980, effective August 1, 1980; amended October 21, 1983, effective January 1, 1984 ; renumbered Rule 241 and amended March 1, 2000, effective April 1, 2001; amended June 7, 2006, effective immediately.

Committee Explanatory Reports:

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

Source

The provisions of this Rule 241 amended June 7, 2006, effective immediately. Immediately preceding text appears at serial pages (264159) to (264160).

Rule 242. Providing Prospective Jurors for Statewide of Regional Investigating Grand Juries.

The following procedure shall be applicable in each county that under these rules, is to supply prospective jurors for a statewide or regional investigating grand jury:

(1) Such prospective jurors shall be drawn and summoned in the same manner as provided by law for other juries.

(2) The voir dire of such prospective jurors shall be conducted by the supervising judge of the investigating grand jury, or the supervising judge may request that the president judge of the county, conduct the voir dire, or that the president judge designate another judge of the county to conduct the voir dire.

(3) The names of any such prospective jurors forwarded to the Court Administrator of Pennsylvania shall include only those prospective jurors who have undergone such voir dire.

Comment

It is intended that, as to prospective jurors for a statewide or regional investigating grand jury, the voir dire take place as follows: (1) the voir dire would be conducted in each county which is to supply jurors by the supervising judge of the investigating grand jury, the president judge, or another judge of that county designated by the president judge; and (2) any necessary additional voir dire would thereafter be conducted by the supervising judge of the investigating grand jury at the designated location of the investigating grand jury. See Rule 240.

Official Note: Rule 272 adopted July 1, 1980, effective August 1, 1980; amended November 9, 1984, effective January 2, 1985; renumbered Rule 242 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 243. Location of Statewide of Regional Investigating Grand Juries.

(A) The location or locations of an investigating grand jury having statewide jurisdiction shall be designated in the order convening the investigating grand jury.

(B) Investigating grand juries having multi-county jurisdiction over specified counties shall be located within any county of its jurisdiction.

Comment

Included among the many factors that may be taken into account in designating the location of the statewide or regional investigating grand jury are: ease of access of location; the expected geographical focus of the investigation; and availability of facilities.

Official Note: Rule 273 adopted July 1, 1980, effective August 1, 1980; renumbered Rule 243 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

Rule 244. Venue.

Any presentment by a statewide or regional investigating grand jury shall be returned to the supervising judge who shall, by order, designate the county for filing the presentment and for further proceedings.

Comment

Although venue ordinarily lies in a county where the offense is alleged to have occurred, there are several variations on this principle. See *Commonwealth v. Simeone*, 294 A.2d 921 (Pa. Super. 1972); *Commonwealth v. Marino*, 245 A.2d 868 (Pa. Super. 1968); aff'd., 253 A.2d 911, cert. denied, 395 U. S. 983 (1969).

Official Note: Rule 274 adopted July 1, 1980, effective August 1, 1980; renumbered Rule 244 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

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

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