CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

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PART A. Preservation of Testimony

Rule 500. Preservation of Testimony After Institution of Criminal Proceedings.

(A) BY COURT ORDER.

(1) At any time after the institution of a criminal proceedings, upon motion of any party, and after notice and hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for trial or for any other proceeding, or when due to exceptional circumstances, it is in the interests of justice that the witness' testimony be preserved.

(2) The court shall state on the record the grounds on which the order is based.

(3) The court's order shall specify the time and place for the taking of the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

(4) The testimony shall be taken in the presence of the court, the attorney for the Commonwealth, the defendant(s), and defense counsel, unless otherwise ordered.

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(5) The preserved testimony shall not be filed of record until it is offered into evidence at trial or other judicial proceeding.

(B) BY AGREEMENT OF THE PARTIES.

(1) At any time after the institution of a criminal proceeding, the testimony of any witness may be taken and preserved upon the express written agreement of the attorney for the Commonwealth, the defendant(s), and defense counsel.

(2) The agreement shall specify the time and place for taking the testimony, the manner in which the testimony shall be recorded and preserved, and the procedures for custody of the recorded testimony.

(3) The testimony shall be taken in the presence of the attorney for the Commonwealth, the defendant(s), and defense counsel, unless they otherwise agree.

(4) The agreement shall be filed of record.

(5) The preserved testimony shall not be filed of record until it is offered into evidence at trial or other judicial proceeding.

Comment

This rule is intended to provide the means by which testimony may be preserved for use at a subsequent stage in the criminal proceedings. When testimony is to be preserved by videotape recording, see also Rule 501.

This rule does not address the admissibility of the preserved testimony. All questions of admissibility must be decided by the court. See, e.g., Judicial Code § 5917, 42 Pa.C.S. § 5917 (1982); *Commonwealth v. Scarborough*, 421 A.2d 147 (Pa. 1980); *Commonwealth v. Stasko*, 370 A.2d 350 (Pa. 1977).

''May be unavailable,'' as used in paragraph (A), is intended to include situations in which the court has reason to believe that the witness will be unable to be present or to testify at trial or other proceedings, such as when the witness is dying, or will be out of the jurisdiction and therefore cannot be effectively served with a subpoena, or is elderly, frail, or demonstrates the symptoms of mental infirmity or dementia, or may become incompetent to testify for any other legally sufficient reason.

Under paragraph (A)(4), a judge should preside over the taking of testimony. The court, however, may order that testimony be taken and preserved without a judge's presence when exigent circumstances exist or the location of the witness renders a judge's presence impracticable. Furthermore, nothing in this rule is intended to preclude counsel, the defendant(s), and the judge from agreeing on the record that the judge need not be present. Paragraph (B)(3) permits the attorney for the Commonwealth, the defendant(s), and defense counsel to determine among themselves whether a judge should be present during the taking of testimony. That determination should be made a part of the written agreement required by paragraph (B)(1).

Nothing is this rule is intended to preclude the defendant from waiving his or her presence during the taking of testimony.

The means by which the testimony is recorded and preserved are within the discretion of the court under paragraph (A) and the parties under paragraph (B), and may include the use of electronic or photographic techniques such as videotape. There are, however, additional procedural requirements for preservation of testimony by videotape recording mandated by Rule 501.

The party on whose motion testimony is taken should normally have custody of and be responsible for safeguarding the preserved testimony. That party should also promptly provide a copy of the preserved testimony to any other party upon payment of reasonable costs.

When testimony is taken under this rule, the proceeding should be adversarial, and afford the parties full opportunity to examine and cross-examine the witness. Counsel should not reserve objections for time of trial.

Paragraphs (A)(5) and (B)(5) are intended to guard against pretrial disclosure of potentially prejudicial matters.

For definition of ''court,'' see Rule 103.

Official Note: Rule 9015 adopted November 8, 1982, effective January 1, 1983; amended March 22, 1989, effective July 1, 1989; renumbered Rule 500 and amended March 1, 2000, effective April 1, 2001; Comment revised August 31, 2016, effective October 1, 2016.

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 August 31, 2016 Comment revision refining the definition of ''unavailable'' to include the elderly published with the Court's Order at 46 Pa.B. 5893 (September 17, 2016).

Source

The provisions of this Rule 500 amended August 31, 2016, effective October 1, 2016, 46 Pa.B. 5893. Immediately preceding text appears at serial pages (371044), (363635) and (318623).

Rule 501. Preservation of Testimony by Videotape Recording.

(A) When the testimony of a witness is taken and preserved pursuant to Rule 500 by means of videotape recording, the testimony shall be recorded simultaneously by a stenographer.

(B) The following technical requirements shall be made part of the court order required by Rule 500(A) or the written agreement provided in Rule 500(B):

(1) The videotape recording shall begin with a statement on camera that includes:

(a) the operator's name and business address;

(b) the name and address of the operator's employer;

(c) the date, time, and place of the videotape recording;

(d) the caption of the case;

(e) the name of the witness;

(f) the party on whose behalf the witness is testifying; and

(g) the nature of the judicial proceedings for which the testimony is intended.

(2) The court and all parties shall identify themselves on camera.

(3) The witness shall be sworn on camera.

(4) If the length of the testimony requires the use of more than one videotape, the end of each videotape and the beginning of each succeeding videotape shall be announced on camera.

(5) At the conclusion of the witness' testimony, a statement shall be made on camera that the testimony is concluded. A statement shall also be made concerning the custody of the videotape(s).

(6) Statements concerning stipulations, exhibits, or other pertinent matters may be made at any time on camera.

(7) The videotape recording shall be timed by a digital clock on camera that continually shows the hour, minute, and second of the testimony.

(8) All objections and the reasons for them shall be made on the record. When a judge presides over the videotaping of testimony, the judge's rulings on objections shall also be made on the record.

(9) When a judge does not preside over the videotaping of testimony, the videotape operator shall keep a log of each objection, referenced to the time each objection is made. All rulings on objections shall be made before the videotape is shown at any judicial proceeding.

(10) The original videotape recording shall not be altered.

Comment

This rule provides the basic technical requirements for taking and preserving testimony by videotape recording under Rule 500. The list of requirements is not intended to be exhaustive. Rather, it is recommended that all recording by videotape be carefully planned and executed, and that in addition to complying with the basic requirement, each court order or written agreement for the videotape recording of testimony be tailored to the nature of the case and the needs of the parties.

Generally, the camera should focus on the witness to the extent practicable.

Under paragraph (B)(9), the court may rule on objections by either reviewing pertinent sections of the videotape recording, aided by the videotape operator's log, or by reviewing the stenographic transcript required by paragraph (A).

Any editing procedure ordered by the court or agreed upon by the parties may be used as long as it comports with current technology and does not alter the original videotape recording. Paragraph (B)(10) is intended to insure preservation of the original videotape, thereby providing for those situations in which a dispute arises over editing procedures.

This rule authorizes the use of videotape recording devices only for the preservation of testimony under Rule 500. It is not intended to affect other rules governing recording devices. See, e.g., Rules 112 and 500.

Official Note: Rule 9015A adopted March 22, 1989, effective July 1, 1989; renumbered Rule 501 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).

PART B. Instituting Proceedings

Rule 502. Instituting Proceedings in Court Cases.

Criminal proceedings in court cases shall be instituted by:

(1) filing a written complaint; or

(2) an arrest without a warrant:

(a) when the offense is a murder, felony, or misdemeanor committed in the presence of the police officer making the arrest; or

(b) upon probable cause when the offense is a felony or murder; or

(c) upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when such arrest without a warrant is specifically authorized by statute.

Comment

Criminal proceedings in court cases are instituted by 1) the filing of a complaint, followed by the issuance of a summons or arrest warrant; or by 2) a warrantless arrest, followed by the filing of a complaint. For the definition of ''court case,'' see Rule 103.

If the defendant is held for court, the attorney for the Commonwealth submits an information to the court (see Rule 560). *See* Section 8931(d) of the Judicial Code, 42 Pa.C.S. § 8931(d).

There are only a few exceptions to this rule regarding the instituting of criminal proceedings in court cases. There are, for example, special proceedings involving a coroner or medical examiner. *See Commonwealth v. Lopinson*, 234 A.2d 552 (Pa. 1967), vacated on other grounds sub nom. *Lopinson v. Penn.*, 392 U.S. 647 (1968), and *Commonwealth v. Smouse*, 594 A.2d 666 (Pa. Super. 1991).

See Rules 556.11 and 556.13 for the procedures for the filing of a complaint following the issuance of an indictment.

Whenever a misdemeanor, felony, or murder is charged, even if the summary offense is also charged in the same complaint, the case should proceed as a court case under Chapter 5. *See Commonwealth v. Caufman*, 662 A.2d 1050 (Pa. 1995), and *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974). In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 418 A.2d 664 (Pa. Super. 1980).

Paragraph (2)(c) is intended to acknowledge those specific instances wherein the General Assembly has provided by statute for arrest without a warrant for a misdemeanor not committed in the presence of the arresting officer. It in no way attempts to modify the law of arrest where no specific statutory provision applies.

For institution of criminal proceedings in summary cases, see Rule 400.

Official Note: Original Rule 102(1), (2), and (3), adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 102 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 101, and made applicable to court cases only, September 18, 1973, effective January 1, 1974; Comment revised February 15, 1974, effective immediately; amended June 30, 1975, effective September 1, 1975; Comment amended January 4, 1979, effective January 9, 1979; paragraph (1) amended October 22, 1981, effective January 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; amended August 9, 1994, effective January 1, 1995; Comment revised January 16, 1996, effective immediately; renumbered Rule 502 and amended March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006; Comment revised September 21, 2012, effective November 1, 2012; Comment revised November 27, 2018, effective March 1, 2019.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1993); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Report explaining the January 16, 1996 Comment revisions published with the Court's Order at 26 Pa.B. 437 (February 3, 1996).

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 March 9, 2006 changes to paragraphs (2)(a) and (b) and the first and third paragraphs of the Comment published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the September 21, 2012 revising the second paragraph of the Comment to correct a typographical error published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Final Report explaining the November 27, 2018 revision to the Comment regarding complaint procedures subsequent to indictment published with the Court's Order at 48 Pa.B. 7632 (December 15, 2018).

Source

The provisions of the Rule 502 amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385; amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247; amended November 27, 2018, effective March 1, 2019, 48 Pa.B. 7626. Immediately preceding text appears at serial pages (383591) to (383593).

PART B(1). Complaint Procedures

Rule 503. Complaint Procedures Generally.

In every court case a complaint shall be filed with the appropriate issuing authority.

Comment

Except in those cases where a warrantless arrest is made pursuant to Rules 502 and 518, the filing of a complaint institutes proceedings in a court case, followed by the issuance of a summons or arrest warrant. When a defendant is arrested without a warrant, it is the arrest itself which institutes proceedings, followed by the filing of a complaint.

For the filing of a complaint in summary cases, see Chapter 4, Part C, Procedures in Summary Cases When Complaint is Filed. See also Rule 504(6)(b) concerning the contents of a complaint in summary cases.

Official Note: Rule 103 adopted August 9, 1994, effective January 1, 1995; renumbered Rule 503 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the provisions of the new rule 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. 1478 (March 18, 2000).

Rule 504. Contents of Complaint.

Every complaint shall contain:

(1) the name of the affiant;

(2) the name and address of the defendant, or if unknown, a description of the defendant as nearly as may be;

(3) a direct accusation to the best of the affiant's knowledge, or information and belief, that the defendant violated the penal laws of the Commonwealth of Pennsylvania;

(4) the date when the offense is alleged to have been committed; provided, however:

(a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and

(b) if the date or day of the week is an essential element of the offense charged, such date or day must be specifically set forth;

(5) the place where the offense is alleged to have been committed;

(6) (a) in a court case, a summary of the facts sufficient to advise the defendant of the nature of the offense charged, but neither the evidence nor the statute allegedly violated need be cited in the complaint. However, a citation of the statute allegedly violated, by itself, shall not be sufficient for compliance with this subsection; or

(b) in a summary case, a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;

(7) a statement that the acts of the defendant were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;

(8) a notation if criminal laboratory services are requested in the case;

(9) a notation that the defendant has or has not been fingerprinted;

(10) a request for the issuance of a warrant of arrest or a summons, unless an arrest has already been effected;

(11) a verification by the affiant that the facts set forth in the complaint are true and correct to the affiant's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities;

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

(13) the signature of the affiant and the date of the execution of the complaint.

Comment

This rule sets forth the required contents of all complaints whether the affiant is a law enforcement officer, a police officer, or a private citizen. When the affiant is a private citizen, the complaint must be submitted to an attorney for the Commonwealth for approval. *See* Rule 506. When the district attorney elects to proceed under Rule 507 (Approval of Police Complaints and Arrest Warrant Affi-

davits by Attorney for the Commonwealth—Local Option), the police officer must likewise submit the complaint for approval by an attorney for the Commonwealth.

Ordinarily, whenever a misdemeanor, felony, or murder is charged, any summary offense in such a case, if known at the time, should be charged in the same complaint, and the case should proceed as a court case under Chapter 5 Part B. *See Commonwealth v. Caufman*, 662 A.2d 1050 (Pa. 1995) and *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974) (compulsory joinder rule). In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 418 A.2d 664 (Pa. Super. 1980).

Paragraph (8) requires the affiant who prepares the complaint to indicate on the complaint whether criminal laboratory services are requested in the case. This information is necessary to alert the magisterial district judge, the district attorney, and the court that the defendant in the case may be liable for a criminal laboratory user fee. *See* 42 Pa.C.S. § 1725.3 that requires a defendant to be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

The requirement that the affiant who prepares the complaint indicate whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is included so that the issuing authority knows whether it is necessary to issue a fingerprint order with the summons as required by Rule 510.

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: Original Rule 104 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 504 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended July 10, 2008, effective February 1, 2009; amended June 1, 2018, effective July 1, 2018.

Committee Explanatory Reports:

Report explaining the July 25, 1994 amendment published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

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. 1478 (March 18, 2000).

Final Report explaining the March 9, 2006 Comment revision published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the July 10, 2008 amendments adding new paragraph (9) requiring a notation concerning fingerprinting published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).

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 504 amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385; amended July 10, 2008, effective February 1, 2009, 38 Pa.B. 3971; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3575. Immediately preceding text appears at serial pages (335933) to (335934).

Rule 505. Complaints: Joinder of Offenses and Defendants.

(A) When more than one person is alleged to have participated in the commission of an offense, the issuing authority shall accept a complaint for each person charged. Each complaint shall contain the names of all persons alleged to have participated in the commission of the offense and shall contain a reference to the docket number of the complaints issued for the other alleged participants. Such complaints may be consolidated for hearing or such further action as may be required, and where complaints are consolidated, additional costs shall not be taxed as a result of the acceptance of separate complaints.

(B) When more than one offense is alleged to have been committed by one person arising from the same incident, the issuing authority shall accept only one complaint, and shall docket the matter as a single case.

(C) Upon application by any interested person and proof that any provision of paragraphs (A) or (B) was violated, a judge may order forfeiture of all additional costs of the issuing authority accrued by reason of such violation, and thereafter such costs shall not be taxed in the case.

Comment

For criteria as to cases in which joinder is required prior to trial, see *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973).

Official Note: Original Rule 103, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 103 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 131 and amended September 18, 1973, effective January 1, 1974; renumbered Rule 105 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 505 and amended March 1, 2000, effective April 1, 2001.

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. 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. 1478 (March 18, 2000).

Rule 506. Approval of Private Complaints.

(A) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(B) If the attorney for the Commonwealth:

(1) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(2) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the court of common pleas for review of the decision.

For the contents of a private complaint, see Rule 504.

In all cases where the affiant is not a law enforcement officer, the complaint must be submitted for approval or disapproval by the attorney for the Commonwealth.

The district attorney may "transmit" the complaint to the issuing authority pursuant to paragraph (B)(1) by returning it to the affiant for delivery.

Official Note: Original Rule 105 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 105 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 133 and amended September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; amended October 22, 1981, effective January 1, 1982; rescinded November 9, 1984, effective January 2, 1985. Present Rule 133 adopted November 9, 1984, effective January 2, 1985; renumbered Rule 106 and amended August 9, 1994, effective January 1, 1995; amended March 22, 1996, effective July 1, 1996; renumbered Rule 506 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the August 9, 1994 amendments published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).

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 507. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option.

(A) The district attorney of any county may require that criminal complaints, arrest warrant affidavits, or both filed in the county by police officers, as defined in these rules, 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 state whether prior approval of police complaints, or arrest warrant affidavits, or both shall be required, shall specify which offenses or grades of offenses shall require such 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 offenses or grades of offenses specified in the certification and stating whether prior approval of police complaints, arrest warrant affidavits, or both shall be required:

RULE . APPROVAL OF POLICE (COMPLAINTS) (ARREST WARRANT AFFIDAVITS) (COMPLAINTS AND ARREST WARRANT AFFIDAVITS) BY ATTORNEY FOR THE COMMONWEALTH.

The District Attorney of County having filed a certification pursuant to Pa.R.Crim.P. 507, (criminal complaints) (arrest warrant affidavits) (criminal complaints and arrest warrant affidavits) by police officers, as defined in the Rules of Criminal Procedure, charging

_____

_____

shall not hereafter be accepted by any judicial officer unless the (complaint) (affidavit) (complaint and affidavit) has the approval of an attorney for the Commonwealth prior to filing.

(C) If an attorney for the Commonwealth disapproves a police complaint, arrest warrant affidavit, or both, the attorney shall furnish to the police officer who prepared the complaint, affidavit, or both a written notice of the disapproval, in substantially the following form, and the attorney shall maintain a record of the written notice.

D. A. File Number _____

COMMONWEALTH OF PENNSYLVANIA
_____ COUNTY

NOTICE AND RECORD OF DISAPPROVAL

Commonwealth of Pennsylvania
vs.
_____

Complaint/Affidavit/Application of:

Charge:

_____

Police Number: _____

_____

Police Department: _____

Occurrence Date: _____ Time: _____ Location: _____

SUMMARY OF FACTS AND PROBABLE CAUSE

_____

_____

CLEAN/NCIC check reveals no outstanding warrants.
Date: _____ Source of Information: _____

REASON(S) FOR DISAPPROVAL
(Please check appropriate reason)

IC = Insufficient Corroboration
IE = Insufficient Evidence
II = Identification Inconclusive
IJ = Interest of Justice
IS = Inadmissible Evidence
IP = Insufficient Probable Cause
UV = Unavailable or Uncooperative Victim
WC = Witness Credibility/ Contradicted
ID = Inadequate Description of Persons, Premises, or Property

LP = Lacks Prosecutorial Merit
UW = Unavailable or Uncooperative Witness
LJ = Lacks Jurisdiction
NS = Insufficient Cause for Nighttime Search

Other: _____

_____

DISAPPROVED BY: _____
ATTORNEY FOR COMMONWEALTH

DATE: _____

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

Comment

This rule gives the district attorney of each county the option of requiring that criminal complaints and/or arrest warrant affidavits filed in that county by police officers, as defined in Rule 103, shall have the prior approval of an attorney for the Commonwealth. Under the rule, the district attorney may elect to require prior approval of police complaints, or arrest warrant affidavits (see Rule 513), or both. In addition, the district attorney is given the authority to define which offenses or grades of offenses will require such prior approval. For example, the district attorney may specify that prior approval will be required only if a felony is charged, or that prior approval will be required for all cases, i.e., whenever a misdemeanor or felony is charged.

In principle, this rule was promulgated and intended solely to enable an attorney for the Commonwealth to evaluate whether there is substance to the complaint and arrest warrant affidavit, and to give the prosecutor the option of assuming some control over the initiation of the proceedings. Allowing a law-trained prosecutor, rather than the police, to exercise the initial charging decision, as well as the decision regarding which charges to bring, is endorsed by the American Bar Association Project on Standards Relating to the Administration of Criminal Justice, The National Advisory Commission on Criminal Justice Standards and Goals, and the American Law Institute Model Code of Pre-Arraignment Procedure. See ABA STANDARDS, PROSECUTION AND DEFENSE FUNCTION, STANDARD 3-3.4 (Approved 1979); NAC STANDARDS ON COURTS, STANDARD 1.2, PROCEDURE FOR SCREENING (1973); ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, § 130.2 (1975). Among the advantages generally asserted are that the prosecutor, whose responsibility it is to try cases, is in the best position to assess the existence of probable cause, whether additional police investigation is necessary before the filing of criminal charges, and to assess which charges should be brought. Moreover, the prosecutor's assumption of the initial charging function may result in significant savings of time and money by reducing the later withdrawal of cases or charges by the prosecutor.

To assume and exercise the charging function properly, the district attorney must have sufficient personnel and other resources to provide that an attorney for the Commonwealth is available 24 hours a day. Some counties may not have sufficient personnel and other resources. Therefore, the rule authorizes assumption of the charging function on a local option basis.

Under this rule, requiring prior approval of police complaints, arrest warrant affidavits, or both is solely at the election of the district attorney. It is intended that once the certification is filed, the court of common pleas must promulgate the effectuating local rule. The local rule mechanism is used primarily for the advantage of notice, publication, and recordation, which are inherent in the local rule process. The parentheticals are used in the local rule form of paragraph (B) because, under paragraph

(A), the district attorney has the alternatives of requiring prior approval of only complaints, or only arrest warrant affidavits, or both complaints and arrest warrant affidavits. The effectuating local rule will have to set forth which of these 3 alternatives has been selected by the district attorney, in accordance with the district attorney's certification.

The district attorney (or a successor district attorney) may withdraw the requirement of prior approval. This may be accomplished by filing a notice of withdrawal with the court of common pleas. In such event, the court of common pleas must rescind the local rule. The district attorney (or a successor district attorney) may also change the scope of the prior approval requirement by filing a new certification, in which event the court of common pleas shall promulgate a new local rule.

As used in this rule, ''attorney for the Commonwealth'' is intended to include not only the district attorney and any deputy or assistant district attorney in the county, but also the Attorney General, and any deputy or assistant attorney general, in those cases which the Attorney General is authorized by law to prosecute in the county.

Nothing in this rule is intended to preclude the use of advanced communication technology or other electronic methods to convey the approval of the complaint or affidavit by the attorney for the Commonwealth to the police officer acting as affiant.

See Rule 202 for a similar option as to search warrant applications.

See Rule 544 for the procedures requiring the written approval of the attorney for the Commonwealth for the refiling of a complaint.

Official Note: Rule 101A adopted December 11, 1981, effective July 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 107 and amended August 9, 1994, effective January 1, 1995; Comment revised October 8, 1999, effective January 1, 2000; renumbered Rule 507 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 concerning the October 8, 1999 Comment revision published with the Court's Order at 29 Pa.B. 5505 (October 23, 1999).

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 revision of the 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 507 amended February 26, 2010, effective April 1, 2010, 40 Pa.B. 1397. Immediately preceding text appears at serial pages (264227) to (264230).

Rule 508. Procedure Following Submission of Complaint to Issuing Authority.

(A) Before accepting a complaint for filing, the issuing authority shall ascertain and certify on the complaint that:

(1) the complaint has been properly completed and executed; and

(2) when prior submission to an attorney for the Commonwealth is required, an attorney has approved the complaint.

(B) Upon certification of the above matters, the issuing authority shall accept the complaint for filing, and the case shall proceed as otherwise provided in these rules.

Comment

This rule was amended in 1994 to clarify the procedures that the issuing authority must follow before a complaint may be filed. For the rules governing the issuance of process after a complaint is filed, see generally Rule 509 (Use of Summons or Warrant of Arrest in Court Cases) and Rule 518 (Procedure in Court Cases Initiated by Arrest Without Warrant).

See Rule 513 concerning the procedures for the issuance of an arrest warrant.

While the rule continues to require a written certification, the form of certification was deleted in 1985 because it is no longer necessary to control the specific form of written certification.

For the requirement that probable cause for the issuance of an arrest warrant be contained in an affidavit, see Rule 513.

Under paragraph (A)(2), the method by which the district attorney approves and transmits a private complaint pursuant to Rule 506(B)(1) may be determined by local practice.

Private complaints must first be submitted to the district attorney for approval or disapproval under Rule 506. For private complaint procedures in summary cases, see Rule 421.

Paragraph (A)(2) also applies when a district attorney elects to proceed under Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option).

Official Note: Original Rule 106 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 106 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 134 and amended September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; amended April 26, 1979, effective July 1, 1979; Comment revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; renumbered Rule 108 and amended August 9, 1994, effective January 1, 1995; Comment revised March 22, 1996, effective July 1, 1996; renumbered Rule 508 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the August 9, 1994 amendments published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the March 22, 1996 Comment revision published at 26 Pa.B. 1690 (April 13, 1996).

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 509. Use of Summons or Warrant of Arrest in Court Cases.

If a complaint charges an offense that is a court case, the issuing authority with whom it is filed shall:

(1) issue a summons and not a warrant of arrest in cases in which the most serious offense charged is a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802, except as set forth in paragraph (2);

(2) issue a warrant of arrest when:

(a) one or more of the offenses charged is a felony or murder; or

(b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons; or

(c) the issuing authority has reasonable grounds for believing that the defendant poses a threat of physical harm to any other person or to himself or herself; or

(d) the summons was mailed pursuant to Rule 511(A) and has been returned undelivered; or

(e) the identity of the defendant is unknown; or

(3) issue a summons or a warrant of arrest, within the issuing authority's discretion, when the offense charged does not fall within any of the categories specified in paragraphs (1) or (2).

Comment

This rule provides for the mandatory use of a summons instead of a warrant in court cases except in the special circumstances enumerated in paragraphs (2) and (3).

Before a warrant may be issued pursuant to paragraph (2)(d) when a summons is returned undelivered, the summons must have been served upon the defendant by both first class mail and certified mail, return receipt requested as provided in Rule 511(A), and both the certified mail and the first class mail must have been returned undelivered. ''Undelivered'' includes a return receipt that is signed by someone other than the defendant.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Pursuant to Rule 511, a return receipt signed by the defendant or a notation on the transcript that the first class mailing was not returned within 20 days is proof that the defendant received notice of the summons for purposes of paragraph (2)(d). See also Rule 543(D)(1).

When a defendant has been released pursuant to Rule 519(B), the issuing authority must issue a summons.

See Rule 1003 (Procedure in Non-Summary Municipal Court Cases), paragraph (C), for the procedures for issuing a summons and a warrant in Philadelphia.

It is expected when a case meets the requirements for the issuance of a summons, the police officer will proceed during the normal business hours of the proper issuing authority except in extraordinary circumstances. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

The procedure in paragraph (3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appro-

priate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, etc. However, in all cases in which the defendant has been released pursuant to Rule 519(B), a summons shall be issued.

Official Note: Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; Comment revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001; Comment revised August 24, 2004, effective August 1, 2005; amended June 30, 2005, effective August 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; Comment revised September 18, 2008, effective February 1, 2009.

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. 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. 1478 (March 18, 2000).

Final Report explaining the August 24, 2004 Comment revision adding a new second paragraph elaborating on paragraph (2)(c) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the June 30, 2005 amendments concerning in which cases a summons or a warrant are issued published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the May 1, 2007 amendments amending paragraph (2)(d) and the Comment and deleting paragraph (2)(e) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5488 (October 4, 2008).

Source

The provisions of this Rule 509 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended June 30, 2005, effective August 1, 2006, 35 Pa.B. 3901; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended September 18, 2008, effective February 1, 2009, 38 Pa.B. 5425. Immediately preceeding text appears at serial pages (328068) and (335935).

PART B(2). Summons Procedures

Rule 510. Contents of Summons; Notice of Preliminary Hearing.

(A) Every summons in a court case shall command the defendant to appear before the issuing authority for a preliminary hearing at the place and on the date and at the time stated on the summons. The date set for the preliminary hearing shall be not less than 20 days from the date of mailing the summons unless the issuing authority fixes an earlier date upon the request of the defendant or the defendant's attorney with the consent of the affiant.

(B) The summons shall give notice to the defendant:

(1) of the right to secure counsel of the defendant's choice and, for those who are without financial resources, of the right to assigned counsel in accordance with Rule 122;

(2) that bail will be set at the preliminary hearing;

(3) that if the defendant fails to appear on the date, and at the time and place specified on the summons, the case will proceed in the defendant's absence, and a bench warrant will be issued for the defendant's arrest; and

(4) if the case is held for court and if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including the trial, that the defendant's absence may be deemed a waiver of the right to be present, and the proceeding, including the trial, may be conducted in the defendant's absence.

(C) The following items shall be attached to the summons:

(1) a copy of the complaint; and

(2) an order directing the defendant to submit to fingerprinting in all cases in which the defendant has not been fingerprinted, except cases initiated by private complaint.

Comment

For the summons procedures in non-summary cases in the Municipal Court of Philadelphia, see Rule 1003(C).

When a case proceeds by summons, the issuing authority also must issue an order requiring the defendant to submit to the administrative processing and identification procedures as authorized by law (such as fingerprinting) that ordinarily occur following an arrest.

Paragraph (B)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. *See* Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (''[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'").

Paragraph (C)(2), added in 2008, requires that the fingerprint order be sent to the defendant with the summons. The purpose of this change is to ensure that the fingerprinting process in summons cases is completed. *See* the Criminal History Record Information Act, 18 Pa.C.S. § 9112.

The requirement in paragraph (C)(2) that a fingerprint order be attached to the summons does not apply to cases that have been initiated by private complaint or cases in which the defendant has been processed for fingerprinting and other identification procedures prior to being released pursuant to Rule 519.

If a defendant has not complied with the fingerprint order by the time of the preliminary hearing, the issuing authority must make compliance a condition of release on bail.

See Rule 511 for service of the summons and proof of service.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing.

For the consequences of defects in a summons in a court case, see Rule 109.

Official Note: Original Rule 109 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended May 2, 2013, effective June 1, 2013.

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. 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. 1478 (March 18, 2000).

Final Report explaining the August 24, 2004 amendments concerning notice that case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments to paragraph (B)(3) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraph (C) concerning the fingerprint order published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).

Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

Source

The provisions of this Rule 510 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended July 10, 2008, effective February 1, 2009, 38 Pa.B. 3971; amended May 2, 2013, effective June 1, 2013, 43 Pa.B. 2704. Immediately preceeding text appears at serial pages (338903) to (338905).

Rule 511. Service of Summons; Proof of Service.

(A) The summons shall be served upon the defendant by both first class mail and certified mail, return receipt requested. A copy of the complaint shall be served with the summons.

(B) Proof of service of the summons by mail shall include:

(1) a return receipt signed by the defendant; or

(2) the returned summons showing that the certified mail was not signed by the defendant and a notation on the transcript that the first class mailing of the summons was not returned to the issuing authority within 20 days after the mailing.

Comment

This rule was amended in 2004 to require that the summons be served by both first class mail and certified mail, return receipt requested.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Paragraph (B) sets forth what constitutes proof of service of the summons by mail in a court case for purposes of these rules.

Official Note: Original Rule 111, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 111 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 112 September 18, 1973, effective January 1, 1974; renumbered Rule 511 March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; Comment revised September 18, 2008, effective February 1, 2009.

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 August 24, 2004 amendments adding new paragraph (B) concerning proof of service published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments amending paragraph (B)(2) concerning proof of service published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Source

The provisions of this Rule 511 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended September 18, 2008, effective February 1, 2009, 38 Pa.B. 5425. Immediately preceeding text appears at serial page (335937).

Rule 512. Procedure in Court Cases Following Issuance of Summons.

The defendant shall appear before the issuing authority for a preliminary hearing on the date, and at the time and place specified in the summons. If the defendant fails to appear, the issuing authority shall [issue a warrant for the arrest of the defendant and] proceed as provided in Rule 543(D).

Comment

For the proper time for the preliminary hearing, see Rule 510.

When a case proceeds by summons, the issuing authority must require that the defendant submit to the administrative processing and identification procedures as authorized by law (such as fingerprinting) that ordinarily occur following an arrest. See, e.g., Criminal History Record Information Act, 18 Pa.C.S. § 9112. If these processing procedures ar not completed by the time of the preliminary hearing, they must be made a condition of bail or release. Concerning fingerprinting, see Rule 510(C)(2) that requires the issuing authority to send the fingerprint order with the summons.

For the procedures in non-summary cases in the Municipal Court, see Chapter 10.

Official Note: Rule 113 adopted September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 512 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; Comment revised July 10, 2008, effective February 1, 2009.

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. 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. 1478 (March 18, 2000).

Final Report explaining the August 24, 2004 amendments cross-referencing Rule 543(D) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments deleting the warrant language published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Final Report explaining the July 10, 2008 Comment revisions concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).

Source

The provisions of this Rule 512 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended July 10, 2008, effective February 1, 2009, 38 Pa.B. 3971. Immediately preceeding text appears at serial pages (328363) to (328364).

PART B(3). Arrest Procedures in Court Cases

(a) Arrest Warrants

Rule 513. Requirements for Issuance; Dissemination of Arrest Warrant Information.

(A) For purposes of this rule, ''arrest warrant information'' is defined as the criminal complaint in cases in which an arrest warrant is issued, the arrest warrant, any affidavit(s) of probable cause, and documents or information related to the case.

(B) ISSUANCE OF ARREST WARRANT

(1) In the discretion of the issuing authority, advanced communication technology may be used to submit a complaint and affidavit(s) for an arrest warrant and to issue an arrest warrant.

(2) No arrest 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.

(3) Immediately prior to submitting a complaint 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.

(4) At any hearing on a motion challenging an arrest warrant, no evidence shall be admissible to establish probable cause for the arrest warrant other than the affidavits provided for in paragraph (B)(2).

(C) DELAY IN DISSEMINATION OF ARREST WARRANT INFORMATION

The affiant or the attorney for the Commonwealth may request that the availability of the arrest warrant information for inspection and dissemination be delayed. The arrest warrant affidavit shall include the facts and circumstances that are alleged to establish good cause for delay in inspection and dissemination.

(1) Upon a finding of good cause, the issuing authority shall grant the request and order that the availability of the arrest warrant information for

inspection and dissemination be delayed for a period of 72 hours or until receipt of notice by the issuing authority that the warrant has been executed, whichever occurs first. The 72-hour period of delay may be preceded by an initial delay period of not more than 24 hours, when additional time is required to complete the administrative processing of the arrest warrant information before the arrest warrant is issued. The issuing authority shall complete the administrative processing of the arrest warrant information prior to the expiration of the initial 24-hour period.

(2) Upon the issuance of the warrant, the 72-hour period of delay provided in paragraph (C)(1) begins.

(3) In those counties in which the attorney for the Commonwealth requires that complaints and arrest warrant affidavits be approved prior to filing as provided in Rule 507, only the attorney for the Commonwealth may request a delay in the inspection and dissemination of the arrest warrant information.

Comment

This rule was amended in 2013 to add provisions concerning the delay in inspection and dissemination of arrest warrant information. Paragraph (A) provides a definition of the term ''arrest warrant information'' that is used throughout the rule. Paragraph (B) retains the existing requirements for the issuance of arrest warrants. Paragraph (C) establishes the procedures for a temporary delay in the inspection and dissemination of arrest warrant information prior to the execution of the warrant.

ISSUANCE OF ARREST WARRANTS

Paragraph (B)(1) recognizes that an issuing authority either may issue an arrest warrant using advanced communication technology or order that the law enforcement officer appear in person to apply for an arrest warrant.

This rule 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 an arrest warrant must be sworn to before the issuing authority prior to the issuance of the warrant. 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 (B)(3).

All affidavits and applications filed pursuant to this rule are public records. However, in addition to restrictions placed by law and rule on the disclosure of confidential information, the filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and may require further precautions, such as placing certain types of information in a ''Confidential Information Form'' or providing both a redacted and unredacted version of the filing. *See* Rule 113.1.

This rule carries over to the arrest warrant the requirement that the evidence presented to the issuing authority be reduced to writing and sworn to, and that only the writing is subsequently admissible to establish that there was probable cause. In these respects, the procedure is similar to that applicable to search warrants. *See* Rule 203. For a discussion of the requirement of probable cause for the issuance of an arrest warrant, see *Commonwealth v. Flowers*, 369 A.2d 362 (Pa. Super. 1976).

The affidavit requirements of this rule are not intended to apply when an arrest warrant is to be issued for noncompliance with a citation, with a summons, or with a court order.

An affiant seeking the issuance of an arrest 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.

Under Rule 540, the defendant receives a copy of the warrant and supporting affidavit at the time of the preliminary arraignment.

See Rule 556.11 for the procedures for the issuance of an arrest warrant by the supervising judge of an indicting grand jury following indictment of an individual not previously arrested.

DELAY IN DISSEMINATION OF ARREST WARRANT INFORMATION

Paragraph (C) was added in 2013 to address the potential dangers to law enforcement and the general public and the risk of flight when arrest warrant information is disseminated prior to the execution of the arrest warrant. The paragraph provides that the affiant or the attorney for the Commonwealth may request, for good cause shown, the delay in the inspection and dissemination of the arrest warrant information for 72 hours or until receipt of notice by the issuing authority that the warrant has been executed, whichever occurs first. Upon a finding of good cause, the issuing authority must delay the inspection and dissemination.

The request for delay in inspection and dissemination is intended to provide a very limited delay in public access to arrest warrant information in those cases in which there is concern that pre-execution disclosure of the existence of the arrest warrant will endanger those serving the warrant or will impel the subject of the warrant to flee. This request is intended to be an expedited procedure with the request submitted to an issuing authority.

A request for the delay in dissemination of arrest warrant information made in accordance with this rule is not subject to the requirements of Rule 576.

Once the issuing authority receives notice that the arrest warrant is executed, or when 72 hours have elapsed from the issuance of the warrant and the warrant has not been executed, whichever occurs first, the information must be available for inspection or dissemination unless the information is sealed pursuant to Rule 513.1.

The provision in paragraph (C)(2) that provides up to 24 hours in the delay of dissemination and inspection prior to the issuance of the arrest warrant recognizes that, in some cases, there may be administrative processing of the arrest warrant request that results in a delay between when the request for the 72-hour period of delay permitted in paragraph (C)(1) is approved and when the warrant is issued. In no case may this additional period of delay exceed 24 hours and the issuing authority must issue the arrest warrant within the 24-hour period.

When determining whether good cause exists to delay inspection and dissemination of the arrest warrant information, the issuing authority must consider whether the presumption of openness is rebutted by other interests that include, but are not limited to, whether revealing the information would allow or enable flight or resistance, the need to protect the safety of police officers executing the warrant, the necessity of preserving the integrity of ongoing criminal investigations, and the availability of reasonable alternative means to protect the interest threatened by disclosure.

Nothing in this rule is intended to limit the dissemination of arrest warrant information to court personnel as needed to perform their duties. Nothing in this rule is intended to limit the dissemination of arrest warrant information to or by law enforcement as needed to perform their duties.

Pursuant to paragraph (C)(3), in those counties in which the district attorney's approval is required only for certain, specified offenses or grades of offenses, the approval of the district attorney is required for a request to delay inspection and dissemination only for cases involving those specified offenses.

Official Note: Rule 119 adopted April 26, 1979, effective as to arrest warrants issued on or after July 1, 1979; Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 513 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effec-

tive September 1, 2002; amended December 23, 2013, effective March 1, 2014; amended November 9, 2017, effective January 1, 2018; Comment revised June 1, 2018, effective July 1, 2018; Comment revised November 27, 2018, effective March 1, 2019.

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. 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 December 23, 2013 amendments providing procedures for delay in dissemination and sealing of arrest warrant information published with the Court's Order at 44 Pa.B. 243 (January 11, 2014).

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).

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

Final Report explaining the November 27, 2018 revision to the Comment cross-referencing post-indictment arrest warrant procedures in Rule 556.11 published with the Court's Order at 48 Pa.B. 7632 (December 15, 2018).

Source

The provisions of this Rule 513 amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended December 23, 2013, effective March 1, 2014, 44 Pa.B. 239; amended November 9, 2017, effective January 1, 2018, 47 Pa.B. 7177; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3575; amended November 27, 2018, effective March 1, 2019, 48 Pa.B. 7626. Immediately preceding text appears at serial pages (392753) to (392756).

Rule 513.1. Sealing of Arrest Warrant.

(A) For purposes of this rule, ''arrest warrant information'' is defined as the criminal complaint in cases in which an arrest warrant is issued, the arrest warrant, any affidavit(s) of probable cause, and documents or information related to the case.

(B) At the request of the attorney for the Commonwealth in the form of a motion, the arrest warrant information may be sealed upon good cause shown at the time the complaint is filed.

(C) Submission to Judge or Justice of Request for Sealed Arrest Warrant

When the attorney for the Commonwealth intends to request that the arrest warrant information be sealed, at the time the complaint is filed, the attorney for the Commonwealth shall present the arrest warrant information to a judge of the court of common pleas or an appellate court judge or justice. The arrest warrant affidavit(s) shall include the facts and circumstances that are alleged to establish good cause for the sealing of the arrest warrant information.

(1) When the judge or justice orders the arrest warrant information sealed, the order shall:

(a) certify that for good cause shown the arrest warrant information is sealed and state the date and time that the sealing of the arrest warrant information shall expire; and

(b) when requested by the attorney for the Commonwealth, specify that the arrest warrant information may be released by the attorney for the Commonwealth to the law enforcement agencies listed in the order.

(2) When a judge of the court of common pleas orders the arrest warrant information sealed, he or she shall accept the filing of the written complaint, which shall be marked as sealed, and shall issue the sealed arrest warrant. When a judge or justice of an appellate court orders the arrest warrant information sealed, he or she shall direct that the complaint be filed in the court of common pleas and the sealed arrest warrant shall be issued by a judge of the court of common pleas.

(3) When the judge or justice issues the sealed arrest warrant, the judge or justice also shall issue an order designating the proper issuing authority before whom the case shall proceed upon execution of the warrant.

(4) When the sealed arrest warrant is issued, the sealed arrest warrant information, the sealing order, and the order designating the proper issuing authority shall be filed with the clerk of courts in the judicial district in which the charges are being filed.

(5) Upon execution of the sealed arrest warrant, the affiant shall file a copy of the sealed arrest warrant information with the proper issuing authority along with copies of the order sealing the arrest warrant information and the order designating the proper issuing authority. Thereafter, the case will proceed before the proper issuing authority.

(D) The arrest warrant information shall be sealed for a period of not more than 60 days, unless the time period is extended as provided in paragraph (D)(1) or (D)(2).

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

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

(3) If the motion requesting any extension pursuant to paragraphs (D)(1) or (D)(2) 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 and a copy of the extension order shall be transmitted to the proper issuing authority.

(E) Upon motion of the attorney for the Commonwealth, the justice or judge shall order the arrest warrant information to be unsealed.

(F) Defendant's Access to Sealed Arrest Warrant Information

(1) After the sealed arrest warrant is executed, a copy of the arrest warrant information shall be given to the defendant at the preliminary arraignment as provided in Rule 540, unless otherwise ordered as provided in paragraph (F)(2).

(2) Upon motion of the attorney for the Commonwealth, the justice or judge who issued the warrant, for good cause shown and after hearing, may delay giving the defendant a copy of the sealed arrest warrant information, in whole or in part, for periods of not more than 30 days. In no case shall the delay extend beyond the date of the preliminary hearing.

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

(G) Until the order sealing the arrest warrant information and any extensions thereof expires, the judge and clerk of courts shall not make the arrest warrant information available for public inspection and dissemination.

Comment

This rule was adopted in 2013 to codify and further define the practice of temporarily sealing arrest warrants previously recognized in case law such as *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 (1987). Unlike existing case law, which only addresses the sealing of arrest warrants after execution, the procedures in this rule apply to all arrest warrants.

Magisterial district judges, arraignment court magistrates, and municipal court judges do not have authority to seal arrest warrant information; the request for the warrant to be sealed must be presented to a judge of the court of common pleas or a justice or judge of an appellate court.

As provided in paragraph (C)(2), when the request to seal an arrest warrant is presented to a judge of the court of common pleas, the complaint must be filed with common pleas judge who issues the sealing order. In those rare cases in which an appellate court judge or justice orders the arrest warrant information sealed, the complaint shall be filed with an appropriate common pleas judge and the common pleas judge shall issue the sealed arrest warrant. This latter provision is necessary due to the limited capability of the appellate courts to accept initial filings and issue arrest warrants.

A request to seal arrest warrant information made in accordance with this rule is not subject to the requirements of Rule 576.

The rule establishes a standard of ''good cause'' for sealing the arrest warrant information. When determining whether good cause exists to seal the arrest warrant information, the justice or judge must consider whether the presumption of openness is rebutted by other interests that include, but are not limited to, whether revealing the information would allow or enable flight or resistance, the need to protect the safety of police officers executing the warrant, the necessity of preserving the integrity of ongoing criminal investigations, and the availability of reasonable alternative means to protect the interest threatened by disclosure.

The rule assumes that access to a sealed arrest warrant will be severely limited. The rule assumes that this also will limit the availability of the arrest warrant information to a broad class of law enforcement agencies through the various law enforcement computer systems such as the Commonwealth Law Enforcement Assistance Network (CLEAN) and the National Crime Information Center system (NCIC). In many cases, the requester will desire that the information be placed into these systems in order to assist in the execution of the warrant. In these cases, the attorney for the Commonwealth may request that the sealing order provide that the sealed arrest warrant information be provided to law enforcement agencies generally and entry of the arrest warrant information into law enforcement computer systems be required.

Under paragraph (D), an order sealing the arrest warrant information is limited in duration to not more than 60 days. Extension of this period may be granted only upon the showing of good cause for the extension. Each extension of the order is limited to no more than 30 days duration.

The judge issuing the order to seal has the discretion to set the appropriate duration of the order and whether there are any conditions for unsealing the order. For example, a judge may order that the arrest warrant information must be unsealed 15 days from issuance or automatically upon execution of the warrant.

Paragraph (E) provides that the attorney for the Commonwealth may move to unseal the arrest warrant information and the judge or justice must order the information unsealed. Ordinarily, this will occur in circumstances in which law enforcement wishes to publicize the existence of a previously sealed warrant in order to obtain public assistance in the apprehension of the defendant. The judge or justice may not deny the motion.

Paragraph (F)(2) permits a judge or justice to order sealed arrest warrant information to be kept from the defendant even after the defendant is arrest. The judge or justice may order that either the whole or part of the arrest warrant information be kept from the defendant. This provision should only be used in extraordinary circumstances in which there is considerable risk to public safety or the safety of individual witnesses. In determining whether the information is to be kept from the defendant and what portion of the information is to be kept from the defendant, the judge or justice should be guided by the principle that the least restrictive means should be utilized that are consistent with the reason for the requested restriction. For example, if the grounds for requesting delay in providing this information to the defendant is that the affidavit of probable cause contains information regarding identity of an informant and must remain confidential until additional arrests in other ongoing investigations are made, the judge or justice may delay providing a copy of the affidavit of probable cause to the defendant while providing him or her with a copy of the complaint in order to provide the defendant with information regarding the charges.

When a sealed copy of the arrest warrant information 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 arrest warrant or the contents of the affidavit. *See* Rule 573(F).

Until the order sealing the arrest warrant information terminates, the judge and the clerk of courts shall not make the arrest warrant information available for inspection and dissemination.

Official Note: New Rule 513.1 adopted December 23, 2013, effective March 1, 2014.

Committee Explanatory Reports:

Final Report explaining the December 23, 2013 adoption of new Rule 513.1 providing procedures for sealing of arrest warrant information published with the Court's Order at 44 Pa.B. 243 (January 11, 2014).

Source

The provisions of this Rule 513.1 adopted December 23, 2013, effective March 1, 2014, 44 Pa.B. 239.

Rule 514. Duplicate and Reissued Warrants of Arrest.

(A) When a warrant of arrest has been issued and it appears necessary or desirable to issue duplicates thereof for execution, the issuing authority may issue any number of duplicates. Each duplicate shall have the same force and effect as the original. Costs may be taxed only for one such warrant and only one service fee shall be charged.

(B) After service and execution of an original or duplicate warrant, the issuing authority may reissue the warrant if the purpose for which the original or duplicate has been issued has not been accomplished.

Comment

This rule permits the use of advanced communication technology for the issuance of duplicate and reissued arrest warrants.

Under this rule, warrant information transmitted by using advanced communication technology has the same force and effect as a duplicate or reissued arrest warrant. This rule does not require that the

transmitted warrant information be an exact copy of the original warrant for purposes of execution under Rule 515. Nothing in this rule, however, is intended to curtail the Rule 540(D) requirement that the issuing authority provide the defendant with an exact copy of the warrant at the preliminary arraignment. *See* Rule 513 (Requirements for Issuance).

This rule originally used the term ''alias warrant'' to describe the reissuance of a warrant that has been served and executed but has not accomplished its original purpose. The term ''alias warrant'' is archaic and its meaning obscure, leading to potential confusion. With the 2005 amendments, the terminology of the rule has been simplified by deleting ''alias warrant'' and replacing it with ''reissue,'' thereby retaining the underlying practice previously described by the term ''alias warrant.''

Official Note: Original Rule 113 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 113 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 121 September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 514 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006; Comment revised July 31, 2012, effective November 1, 2012.

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. 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. 1478 (March 18, 2000).

Final Report explaining the May 10, 2002 Comment revision 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 to paragraph (B) deleting ''alias warrant'' published with the Court's Order at 35 Pa.B. 6090 (November 5, 2005).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(C) to Rule 540(D) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Source

The provisions of this Rule 514 amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended October 19, 2005, effective February 1, 2006, 35 Pa.B. 6089; amended July 31, 2012, effective November 1, 2012, 42 Pa.B. 5333. Immediately preceding text appears at serial pages (348275) to (348276).

Rule 515. Execution of Arrest Warrant.

(A) A warrant of arrest may be executed at any place within the Commonwealth.

(B) A warrant of arrest shall be executed by a police officer.

(C) When the warrant has been issued by a magisterial district judge, and the defendant cannot be found, the case shall remain in the magisterial district, and shall not be forwarded to the court of common pleas for further proceedings.

Comment

No substantive change in the law is intended by paragraph (A) of this rule; rather, it was adopted to carry on those provisions of the now repealed Criminal Procedure Act of 1860 that had extended the legal efficacy of an arrest warrant beyond the jurisdictional limits of the issuing authority. The Judicial Code now provides that the territorial scope of process shall be prescribed by the Supreme Court's procedural rules. 42 Pa.C.S. §§ 931(d), 1105(b), 1123(c), 1143(b), 1302(c), 1515(b).

For the definition of police officer, see Rule 103.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. *See also Commonwealth v. Mason*, 507 Pa. 396, 490 A.2d 421 (1985).

Pursuant to Rule 540, the defendant is to receive a copy of the warrant and the supporting affidavit at the time of the preliminary arraignment.

For purposes of executing an arrest warrant under this rule, warrant information transmitted by using advanced communication technology has the same force and effect as an original arrest warrant. This rule does not require that the transmitted warrant information be an exact copy of the original warrant. Nothing in this rule, however, is intended to curtail the Rule 540(D) requirement that the issuing authority provide the defendant with an exact copy of the warrant. *See* Rule 513 (Requirements for Issuance).

Paragraph (C) abolishes the traditional practice known as "*NEI*" or "*nonest inventus*" as being no longer necessary.

Official Note: Formerly Rule 124, adopted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 122 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 515 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended February 12, 2010, effective April 1, 2010; Comment revised July 31, 2012, effective November 1, 2012; Comment revised September 21, 2012, effective immediately.

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. 1478 (March 18, 2000).

Final Report explaining the May 10, 2002 Comment revision concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2582 (May 25, 2002).

Final Report explaining the February 12, 2010 changes adding new paragraph (C) and the Comment revision published with the Court's Order at 40 Pa.B. 1071 (February 27, 2010).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(c) to Rule 540(D) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the September 21, 2012 revising the last paragraph of the Comment by correcting a typographical error published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Source

The provisions of this Rule 515 amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended February 12, 2010, effective April 1, 2010, 40 Pa.B. 1068; amended July 31, 2012, effective November 1, 2012, 42 Pa.B. 5333; amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247. Immediately preceding text appears at serial pages (348276) to (348277).

Rule 516. Procedure in Court Cases When Warrant of Arrest is Executed Within Judicial District of Issuance.

(A) When a defendant has been arrested in a court case, with a warrant, within the judicial district where the warrant of arrest was issued, the defendant shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay.

(B) When a preliminary arraignment is conducted using advanced communication technology pursuant to Rule 540(A), the defendant shall be taken to an advanced communication technology site that, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

Comment

This rule was amended in 1983 to permit closed circuit television preliminary arraignment, to insure that the preliminary arraignment is not delayed and the defendant is not detained unduly because of the unavailability of a particular issuing authority (see Rule 132), to reflect that ''judicial district'' is the appropriate subdivision of the Commonwealth, and to make the wording of this rule consistent with related rules. *See* Rules 431 and 517. These amendments are not intended to affect the responsibility of the police and issuing authorities to insure prompt preliminary arraignments.

This rule is intended to permit the use of advanced communication technology (including two-way simultaneous audio-visual communication and closed circuit television) in preliminary arraignments. *See* Rule 540 and Comment for the procedures governing the use of advanced communication technology in preliminary arraignments.

This rule permits a defendant to be transported to an advanced communication technology site that is located outside the judicial district of arrest for preliminary arraignment. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

See Rule 556.13 for procedures following execution of an arrest warrant issued after indictment pursuant to Rule 556.11(E).

Official Note: Original Rule 116 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 116 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 122 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; renumbered Rule 123 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 516 and Comment revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; Comment revised November 27, 2018, effective March 1, 2019.

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).

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 November 27, 2018 revisions to the Comment regarding post-indictment arrest warrants published with the Court's Order at 48 Pa.B. 7632 (December 15, 2018).

Source

The provisions of this Rule 516 amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended November 27, 2018, effective March 1, 2019, 48 Pa.B. 7626. Immediately preceding text appears at serial pages (383595) to (383596).

Rule 517. Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance.

(A) When a defendant has been arrested in a court case, with a warrant, outside the judicial district where the warrant of arrest was issued, the defendant shall be taken without unnecessary delay to the proper issuing authority in the judicial district of arrest for the purpose of posting bail, as permitted by law.

(B) Such issuing authority shall advise the defendant of the right to post bail. If bail is posted, the defendant shall be admitted to bail, conditioned upon the defendant's appearance for the preliminary arraignment before the proper issuing authority in the judicial district where the warrant was issued, at a date certain not less than 5 nor more than 10 days thereafter.

(C) When a defendant fails to post bail, the arresting person shall:

(1) return the defendant to the judicial district where the warrant was issued, without unnecessary delay, for preliminary arraignment by the proper issuing authority; or

(2) lodge the defendant in a suitable place of detention in the judicial district of arrest, and forthwith notify the proper issuing authority in the judicial district where the warrant was issued of the defendant's detention, and the place of such detention. Upon receipt of this notice, the issuing authority shall, without unnecessary delay, cause the defendant to be brought to the judicial district where the warrant was issued for preliminary arraignment by the proper issuing authority.

(D) When a defendant has been held for 48 hours or more without preliminary arraignment, in a place of detention outside the judicial district where the warrant was issued, because of the inability to post bail, the defendant shall be discharged from custody upon application of any interested person to a judge of a court of the judicial district of detention; provided that, upon cause shown the judge may grant one or more extensions of the defendant's detention to an early date, fixed in the order, but if the defendant remains in custody and has not been removed to the judicial district where the warrant was issued at the end of the extended detention period, the defendant shall be discharged from custody.

(E) When a defendant who has posted bail and been released from custody before preliminary arraignment thereafter fails to appear at the time fixed, the proper issuing authority in the judicial district where the warrant was issued shall forthwith cause the bail to be forfeited according to law, and issue a bench warrant. If the defendant is thereafter arrested outside the judicial district where the bench warrant was issued, the defendant shall not be entitled to post bail in the judicial district where arrested, but shall be taken as soon as practicable to the judicial district where the bench warrant was issued for preliminary arraignment by the proper issuing authority.

(F) When, upon application of any interested person, it is shown to the satisfaction of a judge of a court in the judicial district where the warrant of arrest was issued, that the defendant was returned to that judicial district without being given the opportunity to post bail, as provided in paragraphs (A) and (B), and that had such opportunity been given, the defendant would have been able to post such bail, the judge shall have the discretion to:

(1) discharge the defendant from custody; or

(2) release the defendant on bail, conditioned upon the defendant's appearance at the preliminary hearing; and

(3) forfeit all costs, including mileage and transportation charges, of the arresting and transporting person, in order that such costs and charges shall not be taxed in the case.

(G) All recognizances accepted under this rule shall forthwith be transmitted to the proper issuing authority in the judicial district where the warrant was issued.

Comment

Nothing in this rule prevents a defendant from consenting to dispense with the procedures in paragraph (A) if the defendant is afforded a preliminary arraignment without unnecessary delay in the judicial district where the warrant was issued.

See Rule 518 for using advanced communication technology following execution of arrest warrant outside the judicial district of issuance.

For preliminary hearing procedures, see Rules 540 and 541.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. *See also Commonwealth v. Mason*, 490 A.2d 421 (Pa. 1985).

Paragraph (E) originally used the term ''alias warrant'' to describe the type of warrant issued when a defendant is arrested outside the judicial district of issuance, is released on bond by a magisterial district judge in the judicial district of arrest conditioned on the defendant's appearance at a preliminary arraignment in the judicial district of issuance, and then fails to appear. Because the term ''alias warrant'' is an archaic term that refers to the reissuance of a warrant when the original purpose of the warrant has not been achieved, and the warrant issued in paragraph (E) is issued for the failure to appear as contemplated by Rule 536(A)(1)(b), paragraph (E) was amended in 2005 by changing the terminology to ''bench warrant.''

For purposes of this rule, if a defendant is arrested pursuant to an arrest warrant issued following indictment pursuant to Rule 556.11(E), the issuing authority in the county of issuance is the supervising judge of the grand jury in that county or the president judge's designee. *See* Rule 556.13.

Official Note: Original Rule 117 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 117 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 123 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; renumbered Rule 124 and amended August 9, 1994, effective January 1, 1995; amended December 27, 1994, effective April 1, 1995; renumbered Rule 517 and amended March 1, 2000, effective April 1, 2001; Comment revised May 10, 2002, effective September 1, 2002; amended October 19, 2005, effective February 1, 2006; Comment revised November 27, 2018, effective March 1, 2019.

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. 4342 (August 27, 1994).

Report explaining the December 27, 1994 amendments published at 24 Pa.B. 1673 (April 2, 1994); Final Report published with the Court's Order at 25 Pa.B. 142 (January 14, 1995).

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 Comment revision 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 to paragraph (E) changing ''alias warrant'' to ''bench warrant'' published with the Court's Order at 35 Pa.B. 6090 (November 5, 2005).

Final Report explaining the November 27, 2018 revisions to the Comment regarding post-indictment arrest warrants published with the Court's Order at 48 Pa.B. 7632 (December 15, 2018).

Source

The provisions of this Rule 517 amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended October 19, 2005, effective February 1, 2006, 35 Pa.B. 6089; amended November 27, 2018, effective March 1, 2019, 48 Pa.B. 7626. Immediately preceding text appears at serial pages (383596) to (383598).

Rule 518. Using Advanced Communication Technology in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance.

(A) When a defendant has been arrested in a court case, with a warrant, outside the judicial district where the warrant of arrest was issued, the defendant may be taken for a preliminary arraignment or the posting of bail to an advanced communication technology site that, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district; and

(1) the defendant must be taken to the advanced communication technology site without unnecessary delay.

(2) The preliminary arraignment may be conducted pursuant to Rule 540 by the proper issuing authority in the magisterial district or judicial district in which the warrant was issued; or

(3) the defendant may post bail as permitted by law with the proper issuing authority in the judicial district in which the defendant was arrested.

(B) If a preliminary arraignment is conducted pursuant to paragraph (A)(2), and the defendant does not post bail, the issuing authority who conducted the preliminary arraignment shall commit the defendant to the jail in the judicial district in which the defendant was arrested or the judicial district in which the warrant was issued.

(1) The issuing authority may transmit to the jail any required documents by using advanced communication technology.

(2) When a monetary condition of bail is set by the issuing authority who conducted the preliminary arraignment, the payment of the monetary condition shall be made to either the issuing authority who imposed the monetary condition or the proper issuing authority in the judicial district in which the defendant was arrested.

(C) Pursuant to paragraph (A)(3), when the defendant appears via advanced communication technology before the proper issuing authority in the judicial district in which the defendant was arrested, the procedures set forth in Rule 517 shall be followed.

Comment

This rule sets forth the procedures for using advanced communication technology when a defendant is arrested with a warrant outside the judicial district in which it was issued: when advanced communication technology is available, the defendant could be preliminarily arraigned by the issuing authority who issued the warrant, or the ''on-duty'' issuing authority in that judicial district, or ''appear'' via advanced communication technology before the proper issuing authority for the purpose of posting bail.

See Rule 130 concerning *venue*.

See Rule 132 concerning the continuous availability and temporary assignment of issuing authorities.

When advanced communication technology is available only in the judicial district of arrest, the case would proceed under paragraph (A)(3), unless the defendant consents to dispense with the procedures in paragraph (A)(3), and the defendant is afforded a preliminary arraignment without unnecessary delay in the judicial district in which the warrant was issued.

See Rule 540 and Comment for the procedures governing the use in preliminary arraignments of two-way simultaneous audio-visual communication, which is a form of advanced communication technology.

This rule permits a defendant to be transported to an advanced communication technology site that is located outside the judicial district of arrest. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

For purposes of this rule, if a defendant is arrested pursuant to an arrest warrant issued following indictment pursuant to Rule 556.11(E), the issuing authority in the county of issuance is the supervising judge of the grand jury in that county or the president judge's designee. *See* Rule 556.13.

Official Note: New Rule 518 adopted May 10, 2002, effective September 1, 2002; Comment revised November 27, 2018, effective March 1, 2019.

Committee Explanatory Reports:

Final Report explaining the May 10, 2002 adoption of new Rule 518 published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the November 27, 2018 revisions to the Comment regarding post-indictment arrest warrants published with the Court's Order at 48 Pa.B. 7632 (December 15, 2018).

Source

The provisions of this Rule 518 adopted May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended November 27, 2018, effective March 1, 2019, 48 Pa.B. 7626. Immediately preceding text appears at serial pages (383598) to (383600).

(b) Arrests Without Warrant

Rule 519. Procedure in Court Cases Initiated by Arrest Without Warrant.

(A) PRELIMINARY ARRAIGNMENT

(1) Except as provided in paragraph (B), when a defendant has been arrested without a warrant in a court case, a complaint shall be filed against the defendant and the defendant shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay.

(2) When a preliminary arraignment is conducted by advanced communication technology pursuant to Rule 540(A), the defendant shall be taken to an advanced communication technology site that, in the judgment of the arresting officer, is most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

(B) RELEASE

(1) The arresting officer shall promptly release from custody a defendant who has been arrested without a warrant, rather than taking the defendant before the issuing authority, when the following conditions have been met:

(a) the most serious offense charged is a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. 3802;

(b) the defendant poses no threat of immediate physical harm to any other person or to himself or herself; and

(c) the arresting officer has reasonable grounds to believe that the defendant will appear as required.

(2) When a defendant is released pursuant to paragraph (B)(1), a complaint shall be filed against the defendant within 5 days of the defendant's release. Thereafter, the issuing authority shall issue a summons, not a warrant of arrest, and shall proceed as provided in Rule 510.

Comment

See Rule 1003 (Procedure in Non-Summary Municipal Court Caes) for procedures in Philadelphia Municipal Court.

Paragraph (A) requires that the defendant receive a prompt preliminary arraignment. See Rule 540 (Preliminary Arraignment).

Under paragraph (A), following arrest, the officer may file the complaint with the issuing authority using advanced communication technology.

Paragraph (A) is intended to permit the use of advanced communication technology (including two-way simultaneous audio-visual communication equipment and closed circuit television) in preliminary arraignments. See Rule 540 and Comment for the procedures governing the use of advanced communication technology in preliminary arraignments.

Paragraph (A)(2) permits a defendant to be transported to an advanced communication technology site that is located outside the judicial district of arrest for preliminary arraignment. The arresting officer should determine which site is the most convenient to the place of arrest without regard to the boundary of any magisterial district or judicial district.

Paragraph (B)(1) requires the arresting officer, in specified circumstances, to release a defendant rather than take the defendant before an issuing authority for preliminary arraignment. Prior to the 2005 amendments, the release provision in paragraph (B) was optional. With the 2005 amendments, release is mandatory if the three criteria are met, and this requirement may not be modified by local rule.

''Reasonable grounds'' as used in paragraph (B)(1)(c) would include such things as concerns about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the police officer's personal knowledge of the defendant.

Pursuant to paragraph (B), the police will either promptly arrange for the defendant's release or, if it is necessary to detain the defendant, proceed pursuant to paragraph (A). See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

Prompt release allows, of course, for the administration of any sobriety tests pursuant to the Vehicle Code, 75 Pa.C.S. § 1547, and for the completion of any procedures authorized by law.

With respect to ''necessary'' delay, see, e.g., *Commonwealth v. Williams*, 484 Pa. 590, 400 A.2d 1258 (1979).

By statute, a defendant may not be released but must be brought before the issuing authority for a preliminary arraignment when a police officer has arrested the defendant for failure to comply with the registration requirements for sexual offenders, see 18 Pa.C.S. § 4915.1(e)(2), or when a police officer has arrested the defendant in a domestic violence case, see 18 Pa.C.S. § 2711. *See also* 23 Pa.C.S. § 6113(c) of the Protection from Abuse Act.

With reference to the provisions of paragraph (B)(2) relating to the issuance of a summons, see also Part B(2) of this Chapter, Summons Procedures.

For procedures in summary cases initiated by an arrest without warrant, see Rule 441.

Official Note: Original Rule 118 and 118(a) adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 118 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 130 September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 102 and amended August 9, 1994, effective January 1, 1995; Comment revised September 26, 1996, effective immediately; renumbered Rule 518 and amended March 1, 2000, effective April 1, 2001; renumbered Rule 519 and amended May 10, 2002, effective September 1, 2002; amended June 30, 2005, effective August 1, 2006; Comment revised July 1, 2013, effective August 1, 2013.

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. 4342 (August 27, 1994).

Report explaining the September 26, 1996 Comment revision published with the Court's Order at 26 Pa.B. 4894 (October 12, 1996).

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

Final Report explaining the June 30, 2005 amendments concerning in which cases a defendant must be promptly released published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the July 1, 2013 revision of the Comment adding a cross-reference to 18 Pa.C.S. § 4915.1 published with the Court's Order at 43 Pa.B. 4062 (July 20, 2013).

Source

The provisions of this Rule 519 adopted May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended June 30, 2005, effective August 1, 2005, 35 Pa.B. 3901; amended July 1, 2013, effective August 1, 2013, 43 Pa.B. 4062. Immediately preceding text appears at serial pages (328366) to (328367).

PART C. Bail

Rule 520. Bail Before Verdict.

(A) Bail before verdict shall be set in all cases as permitted by law. Whenever bail is refused, the bail authority shall state in writing or on the record the reasons for that determination.

(B) A defendant may be admitted to bail on any day and at any time.

Comment

Article I, § 14 of the Pennsylvania Constitution was amended in 1998 to read: ''All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it.''

For the minor judiciary's authority to set bail, see the Judicial Code, 42 Pa.C.S. §§ 1123(a)(5), 1143(a)(1), and 1515(a)(4).

See Pa.R.J.C.P. 396, which provides that, at the conclusion of a transfer hearing, the juvenile court judge is to determine bail pursuant to these bail rules for a juvenile whose case is ordered transferred to criminal proceedings.

See *Commonwealth v. Truesdale*, 449 Pa. 325, 296 A.2d 829 (1972), concerning the bail authority's discretion to refuse bail under paragraph (A).

Under paragraph (A), whenever the bail authority is a judicial officer in a court not of record, that officer must set forth in writing his or her reasons for refusing bail, and the written reasons must be included with the docket transcript.

Rule 117(C) requires the president judge to ensure coverage is provided to satisfy the requirements of paragraph (B).

Official Note: Former Rule 4001 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4002; amended January 28, 1983, effective July 1, 1983; Comment revised September 23, 1985, effective January 1, 1986; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4001. Present Rule 4001 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the

April 1, 1996 effective dates extended to July 1, 1996; Comment revised September 3, 1999, effective immediately; renumbered Rule 520 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised April 1, 2005, effective October 1, 2005; Comment revised June 30, 2005, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the September 3, 1999 Comment revision concerning the 1998 constitutional amendment providing for preventive detention published with the Court's Order at 29 Pa.B. 4862 (September 18, 1999).

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 Rules of Juvenile Court Procedure published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the June 30, 2005 revision of the Comment adding a cross-reference to Rule 117(C) published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Source

The provisions of this Rule 520 amended April 1, 2005, effective October 1, 2005, 35 Pa.B. 2210; amended June 30, 2005, effective August 1, 2006, 35 Pa.B. 3901. Immediately preceding text appears at serial pages (310540) to (310541).

Rule 521. Bail After Finding of Guilt.

(A) BEFORE SENTENCING

(1) Capital and Life Imprisonment Cases

When a defendant is found guilty of an offense which is punishable by death or life imprisonment, the defendant shall not be released on bail.

(2) Other Cases

(a) The defendant shall have the same right to bail after verdict and before the imposition of sentence as the defendant had before verdict when the aggregate of possible sentences to imprisonment on all outstanding verdicts against the defendant within the same judicial district cannot exceed 3 years.

(b) Except as provided in paragraph (A)(1), when the aggregate of possible sentences to imprisonment on all outstanding verdicts against the defendant within the same judicial district can exceed 3 years, the defendant shall have the same right to bail as before verdict unless the judge makes a finding:

(i) that no one or more conditions of bail will reasonably ensure that the defendant will appear and comply with the conditions of the bail bond;or

(ii) that the defendant poses a danger to any other person or to the community or to himself or herself.

The judge may revoke or refuse to set bail based upon such a finding.

(B) AFTER SENTENCING

(1) When the sentence imposed includes imprisonment of less than 2 years, the defendant shall have the same right to bail as before verdict, unless the judge, pursuant to paragraph (D), modifies the bail order.

(2) Except as provided in paragraph (A)(1), when the sentence imposed includes imprisonment of 2 years or more, the defendant shall not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge.

(3) When the defendant is released on bail after sentencing, the judge shall require as a condition of release that the defendant either file a post-sentence

motion and perfect an appeal or, when no post-sentence motion is filed, perfect an appeal within the time permitted by law.

(C) REASONS FOR REFUSING OR REVOKING BAIL

Whenever bail is refused or revoked under this rule, the judge shall state on the record the reasons for this decision.

(D) MODIFICATION OF BAIL ORDER AFTER VERDICT OR AFTER SENTENCING

(1) When a defendant is eligible for release on bail after verdict or after sentencing pursuant to this rule, the existing bail order may be modified by a judge of the court of common pleas, upon the judge's own motion or upon motion of counsel for either party with notice to opposing counsel, in open court on the record when all parties are present.

(2) The decision whether to change the type of release on bail or what conditions of release to impose shall be based on the judge's evaluation of the information about the defendant as it relates to the release criteria set forth in Rule 523. The judge shall also consider whether there is an increased likelihood of the defendant's fleeing the jurisdiction or whether the defendant is a danger to any other person or to the community or to himself or herself.

(3) The judge may change the type of release on bail, impose additional nonmonetary conditions as provided in Rule 527, or, if appropriate, impose or increase a monetary condition as provided in Rule 528.

(E) MUNICIPAL COURT

Bail after a finding of guilt in the Municipal Court of Philadelphia shall be governed by the rules set forth in Chapter 10.

Comment

For post-sentence procedures generally, see Rules 704 and 720. For additional procedures in cases in which a sentence of death or life imprisonment has been imposed, see Rules 810 and 811.

For purposes of this rule, ''verdict'' includes a plea of guilty or nolo contendere which is accepted by the judge.

Whenever the trial judge sets bail after sentencing pending appeal, paragraph (B)(3) requires that a condition of release be that the defendant perfect a timely appeal. However, the trial judge cannot, as part of that condition, require that the defendant perfect the appeal in less time than that allowed by law.

Unless bail is revoked, the bail bond is valid until full and final disposition of the case. See Rule 534. The Rule 534 Comment points out that the bail bond is valid through all avenues of direct appeal in the Pennsylvania courts, but not through any collateral attack.

Official Note: Former Rule 4009, previously Rule 4011, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4009 and title amended July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 532. Present Rule 4009 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996

effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 521 and amended March 1, 2000, effective April 1, 2001; Comment revised June 4, effective November 1, 2004.

Committee Explanatory Reports:

Final Report explaining the March 22, 1993 amendments to former Rule 4010B(3), included in new Rule 521(B)(3), published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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).

Source

The provisions of this Rule 521 amended June 4, 2004, effective November 1, 2004, 34 Pa.B. 3105. Immediately preceeding text appears at serial pages (264241) to (264243).

Rule 522. Detention of Witnesses.

(A) After an accused has been arrested for any offense, upon application of the attorney for the Commonwealth or defense counsel, and subject to the provisions of this chapter, a court may set bail for any material witness named in the application. The application shall be supported by an affidavit setting forth adequate cause for the court to conclude that the witness will fail to appear when required if not held in custody or released on bail. Upon receipt of the application, the court may issue process to bring any named witnesses before it for the purpose of demanding bail.

(B) If the material witness is unable to satisfy the conditions of the bail bond after having been given immediate and reasonable opportunity to do so, the court shall commit the witness to jail, provided that at any time thereafter and prior to the term of court for which the witness is being held, the court shall release the witness when the witness satisfies the conditions of the bail bond.

(C) Upon application, a court may release a witness from custody with or without bond, or grant other appropriate relief.

(D) If process has been issued pursuant to paragraph (A) for a material witness who is under the age of 18 years, the procedures provided in Rule 151 shall apply.

Comment

This rule does not permit a witness to be detained prior to the arrest of the defendant, since an arrest might never take place and the witness could be held indefinitely.

''Conditions of the bail bond'' as used in this rule include the conditions set forth in Rule 526(A) and the conditions of release defined in Rules 524, 527, and 528.

Pursuant to paragraph (C), a witness may be released on his or her own recognizance conditioned upon the witness' written agreement to appear as required. *See* Rule 524.

This rule does not affect the compensation and expenses of witnesses under the Judicial Code, 42 Pa.C.S. § 5903, or the provisions of the Uniform Act to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings. *See* 42 Pa.C.S. §§ 5963(c) and 5964(b) relating to bail.

In cases in which bail is set for a material witness pursuant to this rule, the court should consider all the types of release permitted in Rule 524 and the conditions of nonmonetary release upon bail available under Rule 527. When a material witness is to be detained, the court should impose the least restrictive means of assuring that witness' presence, including the use of release on the witness' own recognizance or release upon other nonmonetary conditions, such as electronic monitoring, especially when the witness has limited financial means to post monetary bail.

Official Note: Former Rule 4017, previously Rule 4014, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4017 July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective Janu-

ary 1, 1996, and replaced by present Rule 522. Present Rule 4017 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 522 and amended March 1, 2000, effective April 1, 2001; Comment revised April 28, 2006, effective August 1, 2006; amended December 7, 2018, effective April 1, 2019.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 April 28, 2006 revision to the Comment concerning electronic monitoring published with the Court's Order at 36 Pa.B. 2279 (May 13, 2006).

Final Report explaining the December 7, 2018 amendments concerning material witnesses under the age of 18 years published with the Court's Order at 48 Pa.B. 7749 (December 22, 2018).

Source

The provisions of this Rule 522 amended April 28, 2006, effective August 1, 2006, 36 Pa.B. 2279; amended December 7, 2018, effective April 1, 2019, 48 Pa.B. 7746. Immediately preceding text appears at serial pages (382197) to (382198).

PART C(1). Release Procedures

Rule 523. Release Criteria.

(A) To determine whether to release a defendant, and what conditions, if any, to impose, the bail authority shall consider all available information as that information is relevant to the defendant's appearance or nonappearance at subsequent proceedings, or compliance or noncompliance with the conditions of the bail bond, including information about:

(1) the nature of the offense charged and any mitigating or aggravating factors that may bear upon the likelihood of conviction and possible penalty;

(2) the defendant's employment status and history, and financial condition;

(3) the nature of the defendant's family relationships;

(4) the length and nature of the defendant's residence in the community, and any past residences;

(5) the defendant's age, character, reputation, mental condition, and whether addicted to alcohol or drugs;

(6) if the defendant has previously been released on bail, whether he or she appeared as required and complied with the conditions of the bail bond;

(7) whether the defendant has any record of flight to avoid arrest or prosecution, or of escape or attempted escape;

(8) the defendant's prior criminal record;

(9) any use of false identification; and

(10) any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond.

(B) The decision of a defendant not to admit culpability or not to assist in an investigation shall not be a reason to impose additional or more restrictive conditions of bail on the defendant.

Comment

This rule clarifies present practice, and does not substantively alter the criteria utilized by the bail authority to determine the type of release on bail or the conditions of release reasonably necessary, in the bail authority's discretion, to ensure the defendant's appearance at subsequent proceedings and compliance with the conditions of the bail bond.

When deciding whether to release a defendant on bail and what conditions of release to impose, the bail authority must consider all the criteria provided in this rule, rather than considering, for example, only the designation of the offense or the fact that the defendant is a nonresident. Nothing in this rule prohibits the use of a pretrial risk assessment tool as one of the means of evaluating the factors to be considered under paragraph (A). However, a risk assessment tool must not be the only means of reaching the bail determination.

In addition to the release criteria set forth in this rule, in domestic violence cases under Section 2711 of the Crimes Code, 18 Pa.C.S. § 2711, the bail authority must also consider whether the defendant poses a threat of danger to the victim.

When a defendant who has been released on bail and is awaiting trial is arrested on a second or subsequent charge, the bail authority may consider that factor in conjunction with other release criteria in setting bail for the new charge.

Official Note: Previous Rule 4002, formerly Rule 4003, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4002 and amended July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and not replaced. Present Rule 4002 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; amended September 3, 1999, effective immediately; renumbered Rule 523 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised June 15, 2016, effective October 1, 2016.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the September 3, 1999 amendment concerning the 1998 constitutional amendment providing for preventive detention and deleting "but only" published with the Court's Order at 29 Pa.B. 4862 (September 18, 1999).

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 June 15, 2016 Comment revisions regarding the use of risk assessment tools published with the Court's Order at 46 Pa.B. 3414 (July 2, 2016).

Source

The provisions of this Rule 523 amended June 15, 2016, effective October 1, 2016, 46 Pa.B. 3414. Immediately preceding text appears at serial pages (319014) and (264245).

Rule 524. Types of Release on Bail.

(A) If bail is set pursuant to Rule 520, the defendant shall be eligible for the following types of release on bail. The bail authority, after considering the release criteria in Rule 523, shall determine the type or combination of types of release on bail reasonably necessary, in the bail authority's discretion, to ensure that the defendant will appear at all subsequent proceedings and comply with the conditions of the bail bond.

(B) All of the types of release in paragraph (C) shall be conditioned upon the defendant's written agreement to appear and to comply with the conditions of the bail bond set forth in Rule 526(A).

(C) The types of release on bail are:

(1) Release On Recognizance (ROR): Release conditioned only upon the defendant's written agreement to appear when required and to comply with the conditions of the bail bond in Rule 526(A).

(2) Release on Nonmonetary Conditions: Release conditioned upon the defendant's agreement to comply with any nonmonetary conditions, as set forth in Rule 527, which the bail authority determines are reasonably necessary to ensure the defendant's appearance and compliance with the conditions of the bail bond.

(3) Release on Unsecured Bail Bond: Release conditioned upon the defendant's written agreement to be liable for a fixed sum of money if he or she fails to appear as required or fails to comply with the conditions of the bail bond. No money or other form of security is deposited.

(4) Release on Nominal Bail: Release conditioned upon the defendant's depositing a nominal amount of cash which the bail authority determines is sufficient security for the defendant's release, such as $1.00, and the agreement of a designated person, organization, or bail agency to act as surety for the defendant.

(5) Release on a Monetary Condition: Release conditioned upon the defendant's compliance with a monetary condition imposed pursuant to Rule 528. The amount of the monetary condition shall not be greater than is necessary to reasonably ensure the defendant's appearance and compliance with the conditions of the bail bond.

Comment

The decision as to what type or combination of types of release on bail is appropriate for an individual defendant is within the discretion of the bail authority, using the criteria set forth in Rule 523.

Consistent with existing practice, the bail authority must initially determine whether the defendant is likely to appear at subsequent proceedings and comply with the conditions of the bail bond set forth in Rule 526(A) if released on ROR.

The bail rules prior to the 1995 reorganization required a defendant to be released on ROR when the most serious offense charged was punishable by a maximum sentence of imprisonment of not more than 3 years, the defendant was a resident of the Commonwealth, the defendant posed no threat of immediate physical harm to himself or herself or others, and the bail authority had reasonable grounds to believe that the defendant would appear as required. Cases that fall within similar parameters under the new rules adopted in 1995 should continue to be treated in the same manner.

If the bail authority determines that ROR will not reasonably ensure the defendant's appearance and compliance with the conditions of the bail bond, see Rule 526(A), the bail authority should consider which other type or combination of types of release on bail, as provided in paragraphs (C)(2)—(5) of this rule, will be sufficient to reasonably ensure the defendant's appearance and compliance, taking into consideration facts specific to the individual defendant, such as the need to abstain from the use of alcohol or drugs.

Nominal bail may be used as an alternative to releasing a defendant on his or her own recognizance when it is desirable to have a surety. It should be used when the bail authority believes the defendant is a sufficiently good bail risk so as not to require the imposition of nonmonetary conditions of release or a monetary condition in a significant amount, but is not sufficiently reliable for ROR. The purpose of the surety is to facilitate interstate apprehension of any defendant who absconds by allowing the nominal surety the right to arrest the defendant without the necessity of extradition proceedings. See *Frisbie v. Collins*, 342 U.S. 519 (1952). A bail agency may be the nominal bail surety, as well as private individuals or acceptable organizations. In all cases, the surety on nominal bail incurs no financial liability.

Nonmonetary conditions may be used in conjunction with a monetary condition.

No condition of release, whether nonmonetary or monetary, should ever be imposed for the sole purpose of ensuring that a defendant remains incarcerated until trial. See Standard 10-5.3, ABA Standards for Criminal Justice, Chapter 10, Pretrial Release. However, bail may be initially denied, or subsequently modified or revoked, if the bail authority determines such action is necessary to ensure the defendant's appearance and compliance.

Official Note: Previous Rule 4003, formerly Rule 4007, adopted November 22, 1965, effective June 1, 1966; amended March 18, 1972, effective immediately; renumbered Rule 4003 and paragraph (c) added July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced in part by present Rule 524. Present Rule 4003 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 524 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 525. Bail Bond.

(A) A bail bond is a document whereby the defendant agrees that while at liberty after being released on bail, he or she will appear at all subsequent proceedings as required and comply with all the conditions of the bail bond.

(B) At the time the bail is set, the bail authority shall

(1) have the bail bond prepared; and

(2) sign the bail bond verifying the conditions the bail authority imposed.

(C) If the defendant is unable to post bail at the time bail is set, when the bail authority commits the defendant to jail, he or she shall send the prepared and verified bail bond and the other necessary paperwork with the defendant to the place of incarcertation.

(D) When the defendant is going to be released, the defendant, and, when applicable, one or more sureties, shall sign the bail bond. The official who releases the defendant also shall sign the bail bond witnessing the defendant's signature.

(E) The bail bond shall set forth the type or combination of types of release, the conditions of release ordered by the bail authority, the conditions of the bail bond set forth in Rule 526(A), and the consequences of failing to appear or failing to comply with all the conditions of the bail bond.

(F) The defendant shall not be released until he or she signs the bail bond.

(G) After the defendant signs the bail bond, a copy of the bail bond shall be given to the defendant, and the original shall be included in the record.

Comment

For the types of release and the conditions of release, see Rule 524.

Paragraph (G) requires the court official who accepts a deposit of bail and has the defendant sign the bail bond to include the original of the bail bond in the record of the case. See Rule 535(A) for the other contents of the record in the context of the bail deposit.

For some of the consequences when a defendant fails to appear or fails to comply as required, see the Crimes Code, 18 Pa.C.S. § 5124. See also Rule 536.

The form of the bail bond was deleted from the bail rules in 1985 with the expectation that the Court Administrator of Pennsylvania will continue to design and publish such forms pursuant to Rule 104.

Official Note: Former Rule 4004 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 523. Present Rule 4004 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 525 and amended March 1, 2000, effective April 1, 2001; amended June 30, 2005, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 June 30, 2005 changes clarifying the bail authority's responsibility concerning the preparation of the bail bond published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Source

The provisions of this Rule 525 amended June 30, 2005, effective August 1, 2006, 35 Pa.B. 3901. Immediately preceding text appears at serial pages (264247) to (264248).

Rule 526. Conditions of Bail Bond.

(A) In every case in which a defendant is released on bail, the conditions of the bail bond shall be that the defendant will:

(1) appear at all times required until full and final disposition of the case;

(2) obey all further orders of the bail authority;

(3) give written notice to the bail authority, the clerk of courts, the district attorney, and the court bail agency or other designated court bail officer, of any change of address within 48 hours of the date of the change;

(4) neither do, nor cause to be done, nor permit to be done on his or her behalf, any act proscribed by Section 4952 of the Crimes Code (relating to intimidation of witnesses or victims) or by Section 4953 (relating to retaliation against witnesses or victims), 18 Pa.C.S. §§ 4952, 4953; and

(5) refrain from criminal activity.

(B) If the bail authority determines that it is necessary to impose conditions of release in addition to the conditions required in paragraph (A) to ensure the defendant's appearance and compliance, the bail authority may impose such conditions as provided in Rules 524, 527, and 528.

(C) The bail authority shall set forth in the bail bond all conditions of release imposed pursuant to this rule.

Comment

This rule continues the practice that all defendants released on bail under these rules are subject to an order of the bail authority that they comply with all the conditions of the bail bond. Paragraph (A)(4) effectuates the Crimes Code requirement set forth in 18 Pa.C.S. § 4956.

All the conditions of the bail bond set forth in paragraph (A) must be imposed in every criminal case in which a defendant is released on bail. In addition to these conditions of the bail bond, in the appropriate case, the bail authority may also impose a condition of release on bail or a combination of conditions of release on bail as provided in Rules 524, 527, and 528. See also Section 2711 of the Crimes Code, 18 Pa.C.S. § 2711, which requires that in domestic violence cases, if the bail authority determines that the defendant poses a threat of danger to the victim, he or she must impose the additional conditions of bail that the defendant ''refrain from entering the residence or household of the victim or the victim's place of employment,'' and that the defendant ''refrain from committing any further criminal conduct against the victim.''

If a defendant fails to comply with any of the conditions of the bail bond in paragraph (A) or conditions of release imposed pursuant to paragraph (B), the defendant's bail may be modified or revoked. Additional sanctions for failing to appear in a criminal case when required are provided in the Crimes Code. See 18 Pa.C.S. § 5124. See also Standard 10-1.2 and Commentary, ABA Standards for Criminal Justice, Chapter 10, Pretrial Release.

Official Note: Former Rule 4005 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4005(b); amended January 28, 1983, effective July 1, 1983; amended April 29, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 529. Present Rule 4005 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 526 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 527. Nonmonetary Conditions of Release on Bail.

(A) When the bail authority determines that, in addition to the conditions of the bail bond required in every case pursuant to Rule 526(A), nonmonetary conditions of release on bail are necessary, the categories of nonmonetary conditions that the bail authority may impose are:

(1) reporting requirements;

(2) restrictions on the defendant's travel; and/or

(3) any other appropriate conditions designed to ensure the defendant's appearance and compliance with the conditions of the bail bond.

(B) The bail authority shall state with specificity on the bail bond any nonmonetary conditions imposed pursuant to this rule.

Comment

When the bail authority determines that, in addition to the conditions of the bail bond set forth in Rule 526(A), it is necessary to impose nonmonetary conditions of release on bail in order to reasonably ensure the defendant's appearance and compliance, the bail authority should consider what the specific circumstances are that relate to the likelihood that the defendant will appear and comply and should tailor the conditions of release for the defendant's specific circumstances. In addition, the bail authority must determine whether the conditions being considered are reasonably capable of being enforced.

Section 2711 of the Crimes Code, 18 Pa.C.S. § 2711, requires that in domestic violence cases, if the bail authority determines that the defendant poses a threat of danger to the victim, he or she must impose the additional conditions of bail that the defendant "refrain from entering the residence or household of the victim or the victim's place of employment," and that the defendant "refrain from committing any further criminal conduct against the victim."

The bail authority should clearly state on the bail bond all conditions of release in specific detail.

The bail authority should consider any reasonable suggestions for nonmonetary conditions of release on bail in an effort to establish what would be the most suitable conditions for a particular defendant. It would be appropriate in some circumstances for the defendant and counsel to offer suggestions about types of conditions that would help the defendant appear and comply with the conditions of the bail bond.

The following sets forth a few examples of conditions that might be imposed to address specific situations. In some circumstances, a combination of such conditions might also be considered. This is not intended to be an exhaustive list of appropriate conditions.

(1) When, for example, the defendant lacks family supervision, is very young, or has recently moved into the community, the bail authority could require that the defendant report by phone or in person at specified times to a designated probation department or bail agency, or that the defendant be supervised by a designated probation department or bail agency, or a designated person or private organization. The supervisor would maintain close contact with the defendant, assist the defendant in making arrangements to appear in court, and, if appropriate, accompany the defendant to court. However, the designated individual, organization, probation department, or bail agency would not be a surety for the defendant unless specifically so designated by the bail authority. It might also be helpful to require that the defendant maintain employment or continue an educational program.

(2) When, for example, the defendant is known to have an alcohol or a drug problem, the bail authority could require that the defendant submit to drug or alcohol testing. The bail authority could also require that the defendant refrain from excessive use of alcoholic beverages or from any use of illegal drugs.

(3) When, for example, the defendant has a history of failing to appear or failing to comply with the conditions of the bail bond, the bail authority might consider restricting the defendant to his or her residence or a supervised halfway house, and permitting the defendant to leave the residence or halfway house to work or attend school, or require that the defendant comply with a curfew.

(4) There may be cases in which the defendant and counsel should suggest to the bail authority that an appropriate condition of release on bail would be to require that the defendant undergo counseling and/or treatment, for example, when the defendant has a history of mental illness or drug or alcohol addiction.

(5) There may be cases when the relationship between the defendant and another person is such that the bail authority might require that the defendant refrain from contact with that other person.

(6) When a case proceeds by summons, the issuing authority must require that the defendant submit to required administrative processing and identification procedures, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, that ordinarily occur following an arrest. Rule 510(C)(2) requires an order directing the defendant to be fingerprinted be issued with the summons. If the defendant has not completed fingerprinting by the date of the preliminary hearing, completion of these processing procedures must be made a condition of release.

Official Note: Former Rule 4006 adopted July 23, 1973, effective 60 days hence, replacing prior Rules 4008 and 4010; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rules 524 and 528. Present Rule 4006 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 527 and amended March 1, 2000, effective April 1, 2001; Comment revised July 10, 2008, effective February 1, 2009.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 July 10, 2008 Comment revisions adding paragraph (6) concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).

Source

The provisions of this Rule 527 amended July 10, 2008, effective February 1, 2009, 38 Pa.B. 3971. Immediately preceding text appears as serial pages (264249) to (264251).

Rule 528. Monetary Condition of Release on Bail.

(A) If the bail authority determines that it is necessary to impose a monetary condition of bail, to determine the amount of the monetary condition, the bail authority shall consider:

(1) the release criteria set forth in Rule 523; and

(2) the financial ability of the defendant.

(B) The amount of the monetary condition shall be reasonable.

(C) After determining the amount of the monetary condition, the bail authority may permit the deposit of a sum of money not to exceed 10% of the full amount of the monetary condition if he or she determines that such a deposit is sufficient to ensure the defendant's appearance and compliance.

(D) One or a combination of the following forms of security shall be accepted to satisfy the full amount of the monetary condition:

(1) Cash or when permitted by the local court a cash equivalent.

(2) Bearer bonds of the United States Government, of the Commonwealth of Pennsylvania, or of any political subdivision of the Commonwealth, in the full amount of the monetary condition, provided that the defendant or the surety files with the bearer bond a sworn schedule which shall verify the value and marketability of such bonds, and which shall be approved by the bail authority.

(3) Realty located anywhere within the Commonwealth, including realty of the defendant, as long as the actual net value is at least equal to the full amount of the monetary condition. The actual net value of the property may be established by considering, for example, the cost, encumbrances, and assessed value, or another valuation formula provided by statute, ordinance, or local rule of court. Realty held in joint tenancy or tenancy by the entirety may be accepted provided all joint tenants or tenants by the entirety execute the bond.

(4) Realty located anywhere outside of the Commonwealth but within the United States, provided that the person(s) posting such realty shall comply with all reasonable conditions designed to perfect the lien of the county in which the prosecution is pending.

(5) The surety bond of a professional bondsman licensed under the Judicial Code, 42 Pa.C.S. §§ 5741—5749, or of a surety company authorized to do business in the Commonwealth of Pennsylvania.

(E) The bail authority shall record on the bail bond the amount of the monetary condition imposed and the form of security that is posted by the defendant or by an individual acting on behalf of the defendant or acting as a surety for the defendant.

(F) Except as limited in Rule 531, the defendant or another person may deposit the cash percentage of the bail. If the defendant posts the money, the defendant shall sign the bond, thereby becoming his or her own surety, and is liable for the full amount of bail if he or she fails to appear or to comply. When a person other than the defendant deposits the cash percentage of the bail, the clerk of courts or issuing authority shall explain and provide written notice to that person that:

1) if the person agrees to act as a surety and signs the bail bond with the defendant, the person shall be liable for the full amount of bail if the defendant fails to appear or comply; or

2) if the person does not wish to be liable for the full amount of bail, the person shall be permitted to deposit the money for the defendant to post, and will relinquish the right to make a subsequent claim for the return of the money pursuant to these rules. In this case, the defendant would be deemed the depositor, and only the defendant would sign the bond and be liable for the full amount of bail.

3) Pursuant to Rule 535(E), if the bail was deposited by or on behalf of the defendant and the defendant is the named depositor, the amount otherwise returnable to the defendant may be used to pay and satisfy any outstanding restitution, fees, fines, and costs owed by the defendant as a result of a sentence imposed in the court case for which the deposit is being made.

Comment

Nothing in this rule precludes the bail authority from releasing the defendant on an unsecured bail bond whereby the defendant, upon executing the bail bond, binds himself or herself to be liable for an amount of money in the event the defendant fails to appear or to comply with the conditions of the bail bond. Although this is a monetary condition, no actual security or money is deposited as a condition of the release. *See* Rule 524(C)(3) for the definition of unsecured bail bond.

The bail authority may impose a monetary condition in addition to nonmonetary conditions if a combination of such conditions is necessary to reasonably ensure the defendant's appearance and compliance. For example, a defendant could be released conditioned upon posting a certain amount of money and subject to the supervision of a designated probation department or bail agency, or a designated person or private organization. The supervisor would maintain close contact with the defendant, assist the defendant in making arrangements to appear in court, and, if appropriate, accompany the defendant to court. In addition, the bail authority could require that the supervisor also be a surety for the full amount of the monetary condition so that the supervisor would be financially responsible if the defendant failed to appear.

Paragraph (C) requires that in all cases, the bail authority must consider whether a defendant should be permitted to deposit a percentage of the cash bail.

Nothing in this rule changes the practice of permitting the judicial districts to require by local rule the use of percentage cash bail.

When the bail authority determines that it is appropriate to accept a percentage of the cash bail, the defendant, or an individual acting on behalf of the defendant or acting as a surety for the defendant, may make the deposit with the clerk of courts or the issuing authority. *See* Rule 535.

When the bail authority authorizes the deposit of a percentage of the cash bail, the defendant may satisfy the monetary condition by depositing, or having an individual acting as a surety on behalf of the defendant deposit, the full amount of the monetary condition. For example, there may be cases in which the defendant does not have the cash to satisfy the percentage cash bail, but has some other form of security, such as realty. In such a case, the defendant must be permitted to execute a bail bond for the full amount of the monetary condition and deposit one of the forms or a combination of the forms set forth in paragraph (D).

If a percentage of the cash bail is accepted pursuant to these rules, when the funds are returned at the conclusion of the defendant's bail period, the court or bail agency may retain as a fee an amount reasonably related to the cost of administering the cash bail program. *See Schilb v. Kuebel*, 404 U.S. 357 (1971).

Paragraph (F), which formerly was included in the Comment, was added to the rule in 2014 to clarify the manner in which the defendant or a third party may act as a surety for the defendant's bond. The rule now requires that written notice be given to the person posting the bail, especially a third party, of the possible consequences if the defendant receives a sentence that includes restitution, a fine, fees, and costs. *See also* Rule 535 for the procedures for retaining bail money for satisfaction of outstanding restitution, fines, fees, and costs.

The defendant must be permitted to substitute the form(s) of security deposited as provided in Rule 532.

The method of valuation when realty is offered to satisfy the monetary condition pursuant to paragraphs (D)(3) and (D)(4) is determined at the local level. If no satisfactory basis exists for valuing particular tracts of offered realty, especially tracts located in remote areas, acceptance of that realty is not required by this rule.

Official Note: Former Rule 4007 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4013; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4011. Present Rule 4007 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 528 and amended March 1, 2000, effective April 1, 2001; amended September 21, 2012, effective November 1, 2012; amended December 8, 2014, effective February 9, 2015.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 amendment correcting a typographical error in paragraph (A)(1) published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Final Report explaining the December 8, 2014 amendment providing for the advice required to be given concerning possible forfeiture of the deposit published with the Court's Order 44 Pa.B. 7833 (December 20, 2014).

Source

The provisions of this Rule 528 amended September 21, 2012, effective November 21, 2012, 42 Pa.B. 6247; amended December 8, 2014, effective February 9, 2015, 44 Pa.B. 7830. Immediately preceding text appears at serial pages (363821) to (363823).

Rule 529. Modification of Bail Order Prior to Verdict.

(A) The issuing authority who is the magisterial district judge who was elected or assigned to preside over the jurisdiction where the crime occurred, upon request of the defendant or the attorney for the Commonwealth, or by the issuing authority sua sponte, and after notice to the defendant and the attorney for the Commonwealth and an opportunity to be heard, may modify a bail order at anytime before the preliminary hearing.

(B) A bail order may be modified by an issuing authority at the preliminary hearing.

(C) The existing bail order may be modified by a judge of the court of common pleas:

(1) at any time prior to verdict upon motion of counsel for either party with notice to opposing counsel and after a hearing on the motion; or

(2) at trial or at a pretrial hearing in open court on the record when all parties are present.

(D) Once bail has been set or modified by a judge of the court of common pleas, it shall not be modified except

(1) by a judge of a court of superior jurisdiction, or

(2) by the same judge or by another judge of the court of common pleas either at trial or after notice to the parties and a hearing.

(E) When bail is modified pursuant to this rule, the modification shall be explained to the defendant and stated in writing or on the record by the issuing authority or the judge.

Comment

In making a decision whether to modify a bail order, the issuing authority or judge should evaluate the information about the defendant as it relates to the release criteria in Rule 523 and the types of release on bail set forth in Rule 524.

In Municipal Court cases, the Municipal Court judge may modify bail in the same manner as a common pleas judge may under this rule. See Rule 1011.

The procedures for modification of a bail order by the issuing authority were amended in 2006 to permit the issuing authority to modify bail at any time before the preliminary hearing on the issuing authority's own motion or request of a party when, for example, new information becomes available concerning the defendant that would affect the issuing authority's decision concerning the type of release and the conditions of release imposed at the preliminary arraignment. The 2006 amendments to paragraph (A) are not intended to affect bail procedures in the Philadelphia Municipal Court.

Once bail has been modified by a common pleas judge, only the common pleas judge subsequently may modify bail, even in cases that are pending before a district justice. See Rules 543 and 536.

Pursuant to this rule, the motion, notice, and hearing requirements in paragraphs (C)(1) and (D)(2) must be followed in all cases before a common pleas judge may modify a bail order unless the modification is made on the record in open court either when all parties are present at a pretrial hearing—such as a suppression hearing—or during trial.

See Pa.R.A.P. 1762(b)(2) for the procedures to obtain appellate court review of an order of a judge of the court of common pleas granting or denying release, or modifying the conditions of release.

Official Note: Former Rule 4008 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4010. Present Rule 4008 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 529 and amended March 1, 2000, effective April 1, 2001; Comment revised August 24, 2004, effective August 1, 2005; amended May 19, 2006, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 19, 2006 amendments concerning "pre-preliminary hearing" modification of bail by the issuing authority published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

Source

The provisions of this Rule 529 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended May 19, 2006, effective August 1, 2006, 36 Pa.B. 2631. Immediately preceeding text appears at serial pages (305465) to (305466).

PART C(2). General Procedures in All Bail Cases

Rule 530. Duties and Powers of a Bail Agency.

(A) Each court of common pleas may, by local rule, establish or designate a bail agency to monitor and assist defendants released on bail pursuant to these rules. The duties and powers of the agency shall include the following:

(1) gathering information about defendants relevant to bail decisions;

(2) making recommendations to the bail authorities concerning the types of release and the conditions of release on bail for individual defendants;

(3) supervising defendants when so designated by the bail authority;

(4) administering percentage cash bail when authorized by a bail authority pursuant to Rule 528, and evaluating for the bail authority the reliability and solvency of prospective sureties for percentage cash bail programs; and

(5) making reasonable rules and regulations to implement the bail agency's functions.

(B) The representative of the bail agency who obtains information from a defendant shall, both orally and in writing, advise the defendant that anything said to a bail agency representative may be used against the defendant.

(C) Information obtained from or concerning the defendant by a bail agency shall be disclosed only to the defendant, counsel for the defendant, the issuing authority or judge setting bail, the attorney for the Commonwealth, and the department of probation or parole preparing a presentence report regarding the defendant. This information shall not be disclosed or used except for purposes relating to the defendant's bail or a presentence report about the defendant, or in a prosecution based on the falsity of the information, or for impeachment purposes to the extent permitted by law.

Comment

Under the pre-1995 bail rules, a court bail agency, pursuant to a local rule establishing the bail agency, could be a surety in a percentage cash bail program, as well as administering the program, or a private person or agency could be required to be the surety. In addition, the bail agency was permitted by some local rules to decide the exact amount of the percentage of the cash bail that a defendant was required to post, provided that it did not exceed 10% of the total amount of the monetary condition. Nothing in this rule is intended to preclude these procedures from continuing or from being incorporated in any new local rules establishing bail agencies. See Rule 528.

The information from or concerning a defendant that is gathered by a bail agency pursuant to paragraph (C) may be disclosed only to a specifically limited group of people, who may not use it or disclose it for any purposes other than the bail determination, preparation of a presentence report on the defendant, a prosecution for the falsity of the information, or impeachment as permitted by law.

Bail agencies should ensure that their employees avoid conflicts of interest.

See Rule 536 for the authority of a bail agency to apply for a bail piece.

Official Note: Former Rule 4010 adopted July 23, 1973, effective 60 days hence; amended September 22, 1976, effective November 1, 1976; amended January 28, 1983, effective July 1, 1983; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 521. Present Rule 4010 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 530 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 531. Qualifications of Surety.

(A) Subject to any additional requirements prescribed by local rule of court, the following shall be qualified to act as sureties:

(1) owners of cash or securities as provided in Rule 528;

(2) owners of realty located in the Commonwealth as provided in Rule 528(D)(3), or owners of realty located outside the Commonwealth but within the United States as provided in Rule 528(D)(4), provided that satisfactory evidence of ownership or special approval of the court is obtained;

(3) surety companies approved by the court and authorized to do business in the Commonwealth of Pennsylvania;

(4) professional bondsmen licensed under the Judicial Code, 42 Pa.C.S. §§ 5741—5750;

(5) for percentage cash bail only, the defendant or any private individual or organization.

(B) No attorney, or spouse or employee of any attorney, shall be permitted to become a surety for a client of the attorney or for a client of the attorney's office.

(C) No sheriff, employee of a sheriff, tipstaff, other employee, or official of the courts or issuing authorities of any judicial district shall be permitted to become a surety unless the defendant is a member of that person's immediate family.

(D) No person who is named in any current official list of undesirable bondsmen shall be permitted to become a surety in any case.

Comment

Paragraph (A)(2) is intended to require that ownership of realty anywhere within the Commonwealth qualifies a person to act as a surety in any judicial district in the Commonwealth. Local procedure may not require as an ''additional requirement'' that realty must be located within the county before it may be posted to satisfy a monetary condition of release.

''Bail bondsman,'' as defined in the Judicial Code, 42 Pa.C.S. §§ 5741—5750, includes a person who engages in the business of giving bail as a surety for compensation. *See* 42 Pa.C.S. § 5741.

''Surety,'' as defined in the Judicial Code, 42 Pa.C.S. §§ 5741—5750, includes a person who pledges security, whether or not for compensation, in exchange for the release from custody of a person charged with a crime prior to adjudication. *See* 42 Pa.C.S. § 5741.

Under paragraph (A)(5), either the defendant or another person, such as a relative or neighbor, may deposit the percentage cash bail. If the defendant deposits the money, he or she signs the bond, thereby becoming a surety and liable for the full amount of the monetary condition if a condition of the bail bond is violated. If someone other than the defendant deposits the money and co-signs the bond with the defendant, that person becomes a surety for the defendant and is liable for the full amount of the monetary condition if a condition of the bail bond is violated. There may be cases in which the other person does not co-sign the bond, but merely deposits the money on behalf of the defendant. In such cases, that person would not be a surety and would not be liable for the full amount of the monetary condition.

Paragraph (B) is not intended to preclude an attorney, or the spouse or employee of an attorney, from being a surety as long as the defendant is not the attorney's client or a client of the attorney's office.

''Immediate family,'' as used in paragraph (C), is intended to include only grandparents, parents, spouses, siblings, children, grandchildren, stepchildren, and like relatives-in-law.

Official Note: Former Rule 4011 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 534. Present Rule 4011

adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 531 and amended March 1, 2000, effective April 1, 2001; amended May 2, 2017, effective July 1, 2017.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 2, 2017 amendment regarding the statutory definition of ''surety'' published with the Court's Order at 47 Pa.B. 2872 (May 20, 2017).

Source

The provisions of this Rule 531 amended May 2, 2017, effective July 1, 2017, 47 Pa.B. 2871. Immediately preceding text appears at serial pages (383602) and (376055) to (376056).

Rule 532. Substitution of Surety or Security.

The defendant or the defendant's surety, with the approval of the bail authority, may at any time substitute another surety or another form of security. Upon substitution of the form of security, the original security shall be returned to the depositor.

Comment

For the forms of security that may be deposited to satisfy the full amount of the monetary condition, see Rule 528(D).

Official Note: Former Rule 4012 adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 533. Present Rule 4012 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 532 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 533. Increased Amount of Monetary Condition of Bail.

When the amount of a monetary condition of bail is increased, the original amount shall remain in effect and additional cash or other form of security shall be required only for the amount of the increase.

Comment

In cases in which the bail authority increases the amount of a monetary condition, the defendant is only required to post the additional amount, either in cash or in one of the forms of security permitted in Rule 528. The clerk of courts retains the original amount in the cash or other form deposited, unless the defendant chooses to deposit a different form or combination of forms as provided in Rules 528 and 532.

Official Note: Former Rule 4013 adopted July 23, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 526. Present Rule 4013 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 533 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 534. Duration of Obligation.

Unless bail is revoked, a bail bond shall be valid until the full and final disposition of the case, including all avenues of direct appeal to the Supreme Court of Pennsylvania.

Comment

The intent of this rule is to continue the validity of the bail bond through all avenues of direct appeal in the state courts, but to exclude state post-conviction collateral proceedings, federal appeals and post-conviction habeas corpus proceedings, or any other collateral attacks.

When bail is terminated upon acceptance of the defendant into an ARD program, such action constitutes a ''full and final disposition'' for purposes of this rule and Rule 535 (Receipt of Deposit; Return of Deposit). See Rule 313.

A defendant who is released on bail pursuant to these rules and subsequently incarcerated on the same charges may be entitled, before the full and final disposition of the case, to a return of any cash or other form of security deposited to satisfy a monetary condition of bail. See *Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978).

Official Note: Former Rule 4014 adopted July 23, 1973, effective 60 days hence, replacing previous Rule 4006; amended December 11, 1981, effective July 1, 1982; rescinded November 9, 1984, effective January 2, 1985, and not replaced. Present Rule 4014 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 534 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 535. Receipt for Deposit; Return or Retention of Deposit.

(A) Any deposit of cash in satisfaction of a monetary condition of bail shall be given to the issuing authority, the clerk of courts, or another official designated by the president judge by local rule pursuant to Rule 117(C). The issuing authority, clerk, or other official who accepts the deposit shall give the depositor an itemized receipt, and shall note on the bail bond the amount deposited and the name of the person who made the deposit. The defendant shall sign the bail bond, and be given a copy of the signed bail bond.

(1) When the issuing authority accepts a deposit of bail, the issuing authority shall note on the docket transcript the amount deposited and the name of the person who made the deposit. The issuing authority shall have the deposit, the docket transcript, and a copy of the bail bond delivered to the clerk of courts.

(2) When another official is designated by the president judge to accept a bail deposit, that official shall deliver the deposit and the bail bond to either the issuing authority, who shall proceed as provided in paragraph (A)(1), or the clerk of courts, who shall proceed as provided in paragraph (A)(3).

(3) When the clerk of courts accepts the deposit, the clerk shall note in the list of docket entries the amount deposited and the name of the person who made the deposit, and shall place the bail bond in the criminal case file.

(B) When the deposit is the percentage cash bail authorized by Rule 528, the depositor shall be notified that by signing the bail bond, the depositor becomes a surety for the defendant and is liable for the full amount of the monetary condition in the event the defendant fails to appear or comply as required by these rules and that, if the defendant is the named depositor, the amount otherwise returnable may be used to pay and satisfy any outstanding restitution, fees, fines, and costs owed by the defendant as a result of a sentence imposed in the court case for which the deposit is being made.

(C) The clerk of courts shall place all cash bail deposits in a bank or other depository approved by the court and shall keep records of all deposits.

(D) Unless a motion is filed pursuant to paragraph (E), within 20 days of the full and final disposition of the case, the deposit shall be returned to the depositor, less any bail-related fees or commissions authorized by law, and the reasonable costs, if any, of administering the percentage cash bail program.

(E) In any case in which the defendant is the named depositor, upon the full and final disposition of the case, the court may order, upon motion of the attorney for the Commonwealth, that any money deposited pursuant to this rule by or on behalf of the defendant that is otherwise returnable to the defendant be held and applied to the payment of any restitution, fees, fines, and costs imposed upon the defendant in the case for which the deposit had been made, unless the defendant shows that he or she would suffer an undue hardship.

(F) When a case is transferred pursuant to Rule 130(B) or Rule 555, the full deposit shall be promptly forwarded to the transfer judicial district, together with any bail-related fees, commissions, or costs paid by the depositor.

Comment

When the president judge has designated another official to accept the bail deposit as provided in Rule 117, the other official's authority under Rule 117 and this rule is limited to accepting the deposit, having the defendant sign the bail bond, releasing the defendant, and delivering the bail deposit and bail bond to the issuing authority or the clerk of courts.

Paragraph (E) was added in 2014 to permit the attorney for the Commonwealth to seek, at the full and final disposition of any case in which the defendant is the named depositor of bail money, to have the deposited bail money applied to any restitution, fees, fines, and costs imposed on the defendant in the case for which the deposit had been made. This new provision, adopted pursuant to the authority granted in 42 Pa.C.S. § 5702, is a procedural mechanism by which the court may retain money previously deposited with the court to satisfy the defendant's obligations but only in the current criminal case. This procedure also secures the right of the defendant to proffer reasons why retention of the bail money would be an undue hardship. *See Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978).

The procedure stated in this rule is the only procedure by which bail may be retained to pay for assessments imposed on the defendant. Any local practice that permits the retention of bail other than as provided in this rule is inconsistent with the statewide rules and subject to the provisions in Rule 105(B).

For the manner of distribution of any funds applied to the outstanding restitution, fees, fines, and costs owed by the defendant, see the Pennsylvania Supreme Court's Uniform Disbursement Schedule, *In Re: Promulgation of Financial Regulations Pursuant to Act 49 of 2009 (42 Pa.C.S. §§ 3733(A.1) and 3733.1)*, No. 335 Judicial Administration Docket (October 29, 2009), 204 Pa. Code § 29.353.

The procedures in paragraph (E) contemplate the decision to retain the bail to be made at the court of common pleas. There may be court cases in which bail had been set that are resolved at the magisterial district court, for example, in cases in which a plea agreement is entered to withdraw misdemeanor or felony charges in exchange for a plea to summary charges or misdemeanor charges within the jurisdiction of the magisterial district judge. In such cases, the magisterial district judge may not order the retention of bail money where the defendant is the named depositor for the payment of assessments unless the Commonwealth and the defendant agree.

Any order issued pursuant to paragraph (E) shall be in conformance with Rule 114.

Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside the normal business hours.

Paragraph (B) requires the issuing authority or the clerk of courts who accepts a percentage cash bail deposit to explain to the person who deposits the money the consequences of acting as a surety. There will be cases in which a person merely deposits the money for the defendant to post, and is not acting as the defendant's surety. In this situation, the defendant is the depositor and should receive the receipt pursuant to paragraph (A). *See* Rule 528. *See also* Rule 528 for the notice the clerk of courts or issuing authority must provide when a person other than the defendant deposits the cash percentage of the bail.

When cash bail that is deposited in a bank pursuant to paragraph (C) is retained by a county in an interest-bearing account, case law provides that the county retains the earned interest. *See Crum v. Burd*, 571 A.2d 1 (Pa. Cmwlth. 1989), *allocatur* denied, 581 A.2d 574 (Pa. 1990).

The full and final disposition of a case includes all avenues of direct appeal in the state courts. Therefore, the return of any deposits would not be required until after either the expiration of the appeal period or, if an appeal is taken, after disposition of the appeal. *See* Rule 534.

Any fees, commissions, or costs assessed pursuant to paragraph (D) must be reasonably related to the county's actual bail administration costs. Each county should establish local procedures to ensure adequate notice and uniform application of such fees, commissions, or costs. *See, e.g., Buckland v. County of Montgomery*, 812 F.2d 146 (3rd Cir. 1987).

When a case is transferred pursuant to Rules 130(B) and 555, paragraph (F) and Rules 130(B) and 555 require that any bail-related fees, commissions, or costs collected pursuant to paragraph (D) be forwarded to the transfer judicial district. Fees, commissions, or costs that have been assessed but not paid at the time of transfer may not be collected in the transferring judicial district.

When bail is terminated upon acceptance of the defendant into an ARD program, such action constitutes a ''full and final disposition'' for purposes of this rule and Rule 534 (Duration of Obligation). *See* Rule 313.

Official Note: Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4015. Present Rule 4015 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000; amended March 3, 2004, effective July 1, 2004; amended June 30, 2005, effective August 1, 2006; amended March 9, 2006, effective August 1, 2006; amended December 8, 2014, effective February 9, 2015.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 new paragraph (E) concerning the interplay with Rules 130(B) (former Rule 21(B)) and 555 (former Rule 300) published with Court's Order at 30 Pa.B. 2219 (May 6, 2000).

Final Report explaining the March 3, 2004 changes to paragraph (A) published with Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the June 30, 2005 changes to the rule correlative to new Rule 117 published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the March 9, 2006 changes to paragraph (A) concerning deposits of bail published with the Court's Order at 36 Pa.B. 1398 (March 25, 2006).

Final Report explaining the December 8, 2014 changes concerning defendant's deposits of bail to be applied to restitution, fees, fines, and costs in the current case published with the Court's Order 44 Pa.B. 7833 (December 20, 2014).

Source

The provisions of this Rule 535 amended April 20, 2000, effective July 1, 2000, 30 Pa.B. 2211; amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended June 30, 2005, effective August 1, 2006, 35 Pa.B. 3901; amended March 9, 2006, effective August 1, 2006, 36 Pa.B. 1397; amended December 8, 2014, effective February 9, 2015, 44 Pa.B. 7830. Immediately preceding text appears at serial pages (312446) and (338907) to (338908).

Rule 536. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety.

(A) SANCTIONS

(1) *Revocation of Release*

(a) A person who violates a condition of the bail bond is subject to a revocation of release and/or a change in the conditions of the bail bond by the bail authority.

(b) When a violation of a condition occurs, the bail authority may issue a bench warrant for the defendant's arrest. When the bench warrant is executed, the bench warrant proceedings shall be conducted pursuant to Rule 150.

(c) The bail authority also may order the defendant or the defendant's surety to explain why the defendant's release should not be revoked or why the conditions of release should not be changed. A copy of the order shall be served on the defendant and the defendant's surety, if any.

(d) When the bail authority changes the conditions of the bail bond and/or revokes the defendant's release, the bail authority shall state in writing or on the record the reasons for so doing.

(2) *Forfeiture*

(a) When a monetary condition of release has been imposed and the defendant has violated a condition of the bail bond, the bail authority may order the cash or other security forfeited and shall state in writing or on the record the reasons for so doing. When the surety is a third party, the cash or other security may be ordered forfeited only when the condition of the bail bond violated is that the defendant has failed to appear for a scheduled court proceeding.

(b) Written notice of the forfeiture shall be given to the defendant and any surety, either personally or by both first class and certified mail at the defendant's and the surety's last known addresses.

(c) The forfeiture shall not be executed until 90 days after notice of the forfeiture order.

(d) The bail authority may direct that a forfeiture be set aside or remitted as provided by law or if justice does not require the full enforcement of the forfeiture order.

(e) When a magisterial district judge orders bail forfeited pursuant to this rule, the magisterial district judge shall generate a check in the amount of the bail monies he or she has on deposit in the case, and shall send the check and a copy of the docket transcript to the clerk of courts for processing and disbursement as provided by law.

(B) BAIL PIECES

(1) A surety or bail agency may apply to the court for a bail piece.

(2) If the court is satisfied that a bail piece is required, it may issue a bail piece authorizing the surety or bail agency to apprehend and detain the defendant, and to bring the defendant before the bail authority without unnecessary delay.

(C) EXONERATION

(1) A bail authority, as provided by law or as justice requires, shall exonerate a surety who deposits cash in the amount of any forfeiture ordered or who surrenders the defendant in a timely manner.

(2) When the conditions of the bail bond have been satisfied, or the forfeiture has been set aside or remitted, the bail authority shall exonerate the obligors and release any bail.

Comment

This rule does not apply when a defendant has been arrested pursuant to extradition proceedings. *See generally* Uniform Criminal Extradition Act, 42 Pa.C.S. §§ 9121—9148, and particularly Section 9139 concerning forfeiture proceedings in such cases. *See also* the Crimes Code, 18 Pa.C.S. § 5124, which imposes criminal sanctions for failing to appear in a criminal case when required.

Paragraph (A)(1)(b) was amended and former paragraph (A)(1)(d) was deleted in 2005 to make it clear that a warrant for the arrest of the defendant for failure to comply with a condition of bail is a bench warrant. For the procedures when a paragraph (A)(1)(b) bench warrant is executed, see Rule 150 (Bench Warrants). For the procedures for issuing a bench warrant when a defendant fails to appear for a preliminary hearing, see paragraph (D) of Rule 543 (Disposition of Case at Preliminary Hearing).

Nothing in this rule is intended to preclude the issuance and service of the notice of revocation of release under paragraph (A)(1) and the notice of forfeiture of security under paragraph (A)(2) to be performed simultaneously. *Compare* 42 Pa.C.S. § 5741.1.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Once bail has been modified by a common pleas judge pursuant to Rule 529, only the common pleas judge subsequently may change the conditions of release, even in cases that are pending before a magisterial district judge. *See* Rules 543 and 529.

This rule was amended in 2017 following the enactment of Section 5747.1 of the Judicial Code, 42 Pa.C.S. § 5747.1, that limits the grounds for which bail might be forfeited by a third party surety to the defendant's failure to appear for a court proceeding. For all other violations of the conditions of bail, all other remedies remain available, including but not limited to, forfeiture by the defendant when he or she is the surety, revocation of bail, modification of bail, and indirect criminal contempt.

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

Paragraph (A)(2)(c) provides an automatic 90-day stay on the execution of the forfeiture to give the surety time to produce the defendant or the defendant time to appear and comply with the conditions of bail.

''Conditions of the bail bond'' as used in this rule include the conditions set forth in Rule 526(A) and the conditions of release defined in Rules 524, 527, and 528.

Section 5747.1(b)(5) of the Judicial Code requires the bail authority to grant specific remittances to sureties if the defendant is produced within specified time periods. *See* 42 Pa.C.S. § 5747.1(b)(5). Otherwise, remittance or exoneration of the surety is within the discretion of the bail authority.

Official Note: Former Rule 4016 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded Septem-

ber 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 536 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; Comment revised May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; Comment revised September 18, 2008, effective February 1, 2009; amended May 2, 2017, effective July 1, 2017.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 March 3, 2004 rule changes deleting ''show cause'' published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the December 30, 2005 amendments concerning bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the May 1, 2007 Comment revision concerning bench warrants following a failure to appear at a preliminary hearing published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Final Report explaining the May 2, 2017 amendments necessitated by statutory changes related to bail forfeitures published with the Court's Order at 47 Pa.B. 2872 (May 20, 2017).

Source

The provisions of this Rule 536 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended December 30, 2005, effective August 1, 2006, 36 Pa.B. 181; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended September 18, 2008, effective February 1, 2009, 38 Pa.B. 5425; amended May 2, 2017, effective July 1, 2017, 47 Pa.B. 2871. Immediately preceeding text appears at serial pages (376060), (338909) to (338910) and (385523).

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

(A) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.

(B) If the defendant is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the issuing authority shall determine whether the defendant's parents, guardian, or

other custodian have been notified of the charge(s). If the parents, guardian, or other custodian have not been notified, the issuing authority shall notify them.

(C) At the preliminary arraignment, a copy of the complaint accepted for filing pursuant to Rule 508 shall be given to the defendant.

(D) If the defendant was arrested with a warrant, the issuing authority shall provide the defendant with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant shall be given copies no later than the first business day after the preliminary arraignment.

(E) If the defendant was arrested without a warrant pursuant to Rule 519, unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

(F) The issuing authority shall not question the defendant about the offense(s) charged but shall read the complaint to the defendant. The issuing authority shall inform the defendant:

(1) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(2) of the right to have a preliminary hearing, except in cases being presented to an indicting grand jury pursuant to Rule 556.2; and

(3) if the offense is bailable, the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

(G) Unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2, the issuing authority shall:

(1) fix a day and hour for a preliminary hearing which shall not be later than 14 days after the preliminary arraignment if the defendant is in custody on the current case only and no later than 21 days if the defendant is not in custody or is in custody but not on the current case only unless extended for cause shown; and

(2) give the defendant notice, orally and in writing,

(a) of the date, time, and place of the preliminary hearing,

(b) that failure to appear without cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and in the issuance of a warrant of arrest, and

(c) if the case is held for court at the time of the preliminary hearing that if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including the trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.

(H) After the preliminary arraignment, if the defendant is detained, the defendant shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail as provided by law.

(I) If a monetary condition of bail is set, the issuing authority shall accept payment of the monetary condition, as provided in Rule 528, at any time prior to the return of the docket transcript to the court of common pleas.

Comment

A preliminary arraignment as provided in this rule bears no relationship to arraignment in criminal courts of record. See Rule 571.

Within the meaning of Rule 540, counsel is present when physically with the defendant or with the issuing authority.

Under paragraph (A), the issuing authority has discretion to order that a defendant appear in person for the preliminary arraignment.

Under paragraph (A), two-way simultaneous audio-visual communication is a form of advanced communication technology.

See Rule 130 concerning venue when proceedings are conducted using advanced communication technology.

Paragraph (D) requires that the defendant receive copies of the arrest warrant and the supporting affidavit(s) at the time of the preliminary arraignment. *See also* Rules 513(A), 208(A), and 1003. *See* Rule 513.1(F) concerning a defendant's access to arrest warrant information that has been sealed.

Paragraph (D) includes a narrow exception that permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

For public access to arrest warrant information, *see* Rules 513, 513.1, and *Commonwealth v. Fenstermaker*, 530 A.2d 414 (Pa. 1987).

When a defendant has not been promptly released from custody after a warrantless arrest, the defendant must be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. *See* Rule 519(A).

Under paragraph (E), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before a defendant may be detained. *See Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Pursuant to the 2004 amendment to paragraph (G)(2), at the time of the preliminary arraignment, the defendant must be given notice, both orally and in writing, of the date, time, and place of the preliminary hearing. The notice must also explain that, if the defendant fails to appear without cause for the preliminary hearing, the defendant's absence will constitute a waiver of the right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.

The 2012 amendment to paragraph (G) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

Paragraph (G)(2)(b) was amended in 2013 changing the phrase ''without good cause'' to ''without cause'' in reference to whether the defendant's absence at the time of the preliminary hearing permits the preliminary hearing to proceed in the defendant's absence. This amendment is not intended as a change in the standard for making this determination. The change makes the language consistent with the language in Rule 602 describing the standard by which a defendant's absence is judged for the trial to proceed in the defendant's absence. In both situations, the standard is the same.

Paragraph (G)(2)(c) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. *See* Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (''[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'").

There have been some judicial districts in which the practice has been to set a date for the preliminary hearing within the time limits of this rule with no intention of a preliminary hearing actually taking place on that date; instead, the preliminary hearing is automatically continued by the court. This practice is inconsistent with the intent of the rule.

Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.

See Rule 1003(D) for the procedures governing preliminary arraignments in the Philadelphia Municipal Court.

See Chapter 5, Part H, Rules 595, 596, 597, and 598, for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

Official Note: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended June 21, 2012, effective in 180 days; amended July 31, 2012, effective November 1, 2012; amended May 2, 2013, effective June 1, 2013; Comment revised December 23, 2013, effective March 1, 2014; amended November 30, 2016, effective April 1, 2017.

Committee Explanatory Reports:

Report explaining the provisions of the new Rule 140 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 September 13, 1995 amendments published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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 August 24, 2004 amendments concerning notice that the case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the June 21, 2012 amendments concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining July 31, 2012 amendments concerning defendants under the age of 18 and charged with one of the offenses enumerated in 42 Pa.C.S. § 6302(2)(i), (ii), or (iii) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

Final Report explaining the December 23, 2013 Comment revisions concerning sealed arrest warrant information published with the Court's Order at 44 Pa.B. 243 (January 11, 2014).

Final Report explaining the amendments concerning the scheduling of the preliminary hearing published with the Court's Order at 46 Pa.B. 7810 (December 17, 2016).

Source

The provisions of this Rule 540 amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140; amended July 31, 2012, effective November 1, 2012, 42 Pa.B. 5333; amended May 2, 2013, effective June 1, 2013, 43 Pa.B. 2704; amended December 23, 2013, effective March 1, 2014, 44 Pa.B. 239; amended November 30, 2016, effective April 1, 2017, 46 Pa.B. 7809. Immediately preceding text appears at serial pages (370043) to (370046).

Rule 541. Waiver of Preliminary Hearing.

(A) The defendant who is represented by counsel may waive the preliminary hearing at the preliminary arraignment or at any time thereafter.

(1) The defendant thereafter is precluded from raising the sufficiency of the Commonwealth's *prima facie* case unless the parties have agreed at the time of the waiver that the defendant later may challenge the sufficiency.

(2) If the defendant waives the preliminary hearing by way of an agreement, made in writing or on the record, and the agreement is not accomplished, the defendant may challenge the sufficiency of the Commonwealth's *prima facie* case.

(B) The defendant who is not represented by counsel at the preliminary arraignment may not at that time waive the preliminary hearing.

(C) If the defendant waives the preliminary hearing and consents to be bound over to court, the defendant and defense attorney, if any, shall certify in writing that

(1) the issuing authority told the defendant of the right to have a preliminary hearing,

(2) when represented by counsel, the defendant understands that by waiving the right to have a preliminary hearing, he or she is thereafter precluded from raising challenges to the sufficiency of the prima facie case, and

(3) the defendant voluntarily waives the hearing and consents to be bound over to court.

(D) Once a preliminary hearing is waived and the case bound over to the court of common pleas, if the right to a preliminary hearing is subsequently reinstated, the preliminary hearing shall be held at the court of common pleas unless the parties agree, with the consent of the common pleas judge, that the preliminary hearing be held before the issuing authority.

(E) When the defendant waives the preliminary hearing, the case shall proceed as provided in Rule 543(C).

Comment

Paragraph (A)(1) is intended to address the recurring issue that arises when a defendant waives the preliminary hearing in exchnage for a *quid pro quo* benefit, such as a reduction in bail or withdrawal of charges, and thereafter, the defendant challenges the sufficiency of the Commonwealth's *prima facie* case through pre-trial means such as *habeas corpus* hearings. Furthermore, paragraph (C) recognizes that by waiving the preliminary hearing, the defendant and defense counsel are acknowledging that sufficient evidence exists to make out a *prima facie* case, and by prohibiting a subsequent and unwarranted challenge, promotes judicial economy.

Nothing in this rule is intended to preclude a waiver of the preliminary hearing by way of agreement in which both parties agree to the preservation of the defendant's ability to raise the sufficiency of the Commonwealth's *prima facie* case at a subsequent proceeding. Any such agreement must be in writing or made on the record. However, this provision is not intended to require the creation of a record in those proceedings before an issuing authority, such as a magisterial district judge, whose court is not one of record. In those situations, there would be no record unless a stenographer is available and any agreement would have to be in writing.

While the rule continues to require a written certification incorporating the contents set forth in paragraph (C), the form of certification was deleted in 1985 because it is no longer necessary to control the specific form of written certification.

Under paragraph (B), it is intended that the defendant who elects to proceed *pro se* may waive the preliminary hearing at a time subsequent to the preliminary arraignment.

Paragraph (E) was added in 2012 to clarify that bail must be set at the time of the waiver of the preliminary hearing in those cases, such as those initiated by summons, in which no preliminary arraignment has been held.

Official Note: Rule 140A adopted April 26, 1979, effective July 1, 1979; amended November 9, 1984, effective January 2, 1985; renumbered Rule 541 and amended March 1, 2000, effective April 1, 2001; amended February 12, 2010, effective April 1, 2010; amended April 26, 2012, effective in 180 days.

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).

Final Report explaining the February 12, 2010 amendments adding new paragraph (D) concerning reinstatement of a waived preliminary hearing published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Final Report explaining the April 26, 2012 amendments related to the effects of the waiver of the preliminary hearing and new paragraph (E) related to setting bail published at 42 Pa.B. 2466 (May 12, 2012).

Source

The provisions of this Rule 541 amended February 12, 2010, effective April 1, 2010, 40 Pa.B. 1068; amended April 26, 2012, effective in 180 days, 42 Pa.B. 2645. Immediately preceding text appears at serial pages (355845) to (355846).

Rule 542. Preliminary Hearing; Continuances.

(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

(1) assume charge of the prosecution; and

(2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

(1) be represented by counsel;

(2) cross-examine witnesses and inspect physical evidence offered against the defendant;

(3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;

(4) offer evidence on the defendant's own behalf, and testify; and

(5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) At the preliminary hearing, the issuing authority shall determine from the evidence presented whether there is a *prima facie* case that (1) an offense has been committed and (2) the defendant has committed it.

(E) Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense, including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

(F) In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, the issuing authority shall not proceed on the summary offense except as provided in Rule 543(F).

(G) CONTINUANCES

(1) The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

(a) the grounds for granting each continuance;

(b) the identity of the party requesting such continuance; and

(c) the new date, time, and place for the preliminary hearing, and the reasons that the particular date was chosen.

When the preliminary hearing is conducted in the court of common pleas, the judge shall record the party to which the period of delay caused by the continuance shall be attributed and whether the time will be included in or excluded from the computation of the time within which trial must commence in accordance with Rule 600.

(2) The issuing authority shall give notice of the new date, time, and place for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

(a) The notice shall be in writing.

(b) Notice shall be served on the defendant either in person or by first class mail.

(c) Notice shall be served on defendant's attorney of record and the attorney for the Commonwealth either by personal delivery, or by leaving a copy for or mailing a copy to the attorneys at the attorneys' offices.

Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 460 Pa. 336, 333 A.2d 755 (1975). This amendment was made to preserve the limited function of a preliminary hearing.

Paragraph (E) was amended in 2013 to reiterate that traditionally our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, especially with regard to the use of hearsay to establish the elements of a *prima facie* case. *See* the Pennsylvania Rules of Evidence generally, but in particular, Article VIII. Accordingly, hearsay, whether written or oral, may establish the elements of any offense. The presence of witnesses to establish these elements is not required at the preliminary hearing. *But compare Commonwealth ex rel. Buchanan v. Verbonitz*, 525 Pa. 413, 581 A.2d 172 (Pa. 1990) (plurality) (disapproving reliance on hearsay testimony as the sole basis for establishing a prima facie case). *See also* Rule 1003 concerning preliminary hearings in Philadelphia Municipal Court.

If the case is held for court, the normal rules of evidence will apply at trial.

For the procedures when a defendant fails to appear for the preliminary hearing, see Rule 543(D).

In cases in which summary offenses are joined with misdemeanor, felony, or murder charges, pursuant to paragraph (F), during the preliminary hearing, the issuing authority is prohibited from proceeding on the summary offenses, or adjudicating or disposing of the summary offenses, except as provided in Rule 543(F).

For the contents of the transcript, see Rule 135.

See Chapter 5 Part E for the procedures governing indicting grand juries. Under these rules, a case may be presented to the grand jury instead of proceeding to a preliminary hearing. *See* Rule 556.2.

Official Note: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970;

renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999, effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended January 27, 2011, effective in 30 days; amended June 21, 2012, effective in 180 days; amended October 1, 2012, effective July 1, 2013; amended April 25, 2013, effective June 1, 2013.

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Final Report explaining new Rule 141 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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 August 24, 2004 amendments concerning notice published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the March 9, 2006 amendments to paragraph (D) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 1, 2007 amendments deleting the certified mail service requirement from paragraph (E)(2)(b) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Court's Order of January 27, 2011 adding new paragraphs (D) and (E) concerning hearsay at the preliminary hearing published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the June 21, 2012 revision of the Comment concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the October 1, 2012 amendments to paragraph (G)(1) concerning computation of time and (G)(2) concerning notice of continuance published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).

Final Report explaining the April 25, 2013 amendments to paragraph (E) concerning hearsay at preliminary hearings published with the Court's Order at 43 Pa.B. 2562 (May 11, 2013).

Source

The provisions of this Rule 542 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended January 27, 2011, effective in 30 days, 41 Pa.B. 834; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140; amended October 1, 2012, effective July 1, 2013, 42 Pa.B. 6622; amended April 25, 2013, effective June 1, 2013, 43 Pa.B. 2560. Immediately preceeding text appears at serial pages (364099) to (364102).

Rule 543. Disposition of Case at Preliminary Hearing.

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

(B) If the issuing authority finds that the Commonwealth has established a *prima facie* case that an offense has been committed and the defendant has committed it, the issuing authority shall hold the defendant for court on the offense(s)

on which the Commonwealth established a *prima facie* case. If there is no offense for which a *prima facie* case has been established, the issuing authority shall discharge the defendant.

(C) When the defendant has appeared and has been held for court, the issuing authority shall:

(1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 529(A);

(3) if the defendant has not submitted to the administrative processing and identification procedures as authorized by law, such as fingerprinting pursuant to Rule 510(C)(2), make compliance with these processing procedures a condition of bail; and

(4) advise the defendant that, if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including the trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.

(D) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice of the preliminary hearing by a summons served pursuant to Rule 511, a warrant of arrest shall be issued pursuant to Rule 509(2)(d).

(2) If the issuing authority finds that there was cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date, time, and place as provided in Rule 542(G)(2). The issuing authority shall not issue a bench warrant.

(3) If the issuing authority finds that the defendant's absence is without cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority.

(a) In these cases, the issuing authority shall proceed with the case in the same manner as though the defendant were present.

(b) If the preliminary hearing is conducted and the case held for court, the issuing authority shall

(i) give the defendant notice by first class mail of the results of the preliminary hearing and that a bench warrant has been requested; and

(ii) pursuant to Rule 547, transmit the transcript to the clerk of courts with a request that a bench warrant be issued by the court of common pleas and, if the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), with a notice to the court of common pleas of the defendant's noncompliance.

(c) If the preliminary hearing is conducted and the case is dismissed, the issuing authority shall give the defendant notice by first class mail of the results of the preliminary hearing.

(d) If a continuance is granted, the issuing authority shall give the parties notice of the new date, time, and place as provided in Rule 542(G)(2), and may issue a bench warrant. If a bench warrant is issued and the warrant remains unserved for the continuation of the preliminary hearing, the issuing authority shall vacate the bench warrant. The case shall proceed as provided in paragraphs (D)(3)(b) or (c).

(E) If the Commonwealth does not establish a prima facie case of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the issuing authority shall dismiss the complaint.

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

(1) If the Commonwealth establishes a *prima facie* case pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

(2) If the Commonwealth does not establish a *prima facie* case pursuant to paragraph (B), upon the request of the Commonwealth, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(3) If the Commonwealth withdraws all the misdemeanor, felony, and murder charges, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(G) Except as provided in Rule 541(D), once a case is bound over to the court of common pleas, the case shall not be remanded to the issuing authority.

Comment

Paragraph (B) was amended in 2011 to clarify what is the current law in Pennsylvania that, based on the evidence presented by the Commonwealth at the preliminary hearing, the issuing authority may find that the Commonwealth has not made out a *prima facie* case as to the offense charged in the complaint but has made out a *prima facie* case as to a lesser offense of the offense charged. In this case, the issuing authority may hold the defendant for court on that lesser offense only. The issuing authority, however, may not *sua sponte* reduce the grading of any charge.

See Rule 1003 (Procedure In Non-Summary Municipal Court Cases) for the preliminary hearing procedures in Municipal Court, including reducing felony charges at the preliminary hearing in Philadelphia.

Paragraph (C) reflects the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. *See* Rules 509 and 510.

Paragraph (C)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. *See* Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (''[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'").

If the administrative processing and identification procedures as authorized by law, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, that ordinarily occur following an arrest are not completed previously, when bail is set at the conclusion of the preliminary hearing, the issuing authority must order the defendant to submit to the administrative processing and identification procedures as a condition of bail. *See* Rule 527 for nonmonetary conditions of release on bail.

If a case initiated by summons is held for court after the preliminary hearing is conducted in the defendant's absence pursuant to paragraph (D)(2) and the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), the issuing authority must include with the transmittal of the transcript a notice to the court of common pleas that the defendant has not complied with the fingerprint order. *See* Rule 547.

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. *See* Rule 571.

Paragraphs (D)(2) and (D)(3) were amended in 2013 changing the phrase ''good cause'' to ''cause'' in reference to whether the defendant's absence at the time of the preliminary hearing permits the preliminary hearing to proceed in the defendant's absence. This amendment is not intended as a change in the standard for making this determination. The change makes the language consistent with the language in Rule 602 describing the standard by which a defendant's absence is judged for the trial to proceed in the defendant's absence. In both situations, the standard is the same.

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540(G)(2) or in a summons served as provided in Rule 511, and (2) whether the defendant had cause explaining the absence.

If the issuing authority determines that the defendant did not receive notice, the issuing authority must issue an arrest warrant as provided in Rule 509, and the case will proceed pursuant to Rules 516 or 517. *See* paragraph (D)(1).

If the issuing authority determines that there is cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. *See* paragraph (D)(2). For the procedures when a preliminary hearing is continued, see Rule 542(G).

If the issuing authority determines that the defendant received service of the summons as defined in Rule 511 and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without cause, paragraph (D)(3)(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 542(A), (B), (C) and Rule 543(A), (B), (C), and (D)(3)(b) or (c); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 542(G); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority may issue a bench warrant as provided in paragraph (D)(3)(d), and must send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)(3)(b)(ii) requires the issuing authority to include with the Rule 547 transmittal a request that the court of common pleas issue a bench warrant if the case is held for court.

In addition to the paragraph (D)(3)(b) notice requirements, the notice may include the date of the arraignment in common pleas court.

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

See Rule 571 (Arraignment) for notice of arraignment requirements.

Rule 542(F) specifically prohibits an issuing authority at a preliminary hearing from proceeding on any summary offenses that are joined with misdemeanor, felony, or murder charges, except as provided in paragraph (F) of this rule. Paragraph (F) sets forth the procedures for the issuing authority to handle these summary offenses at the preliminary hearing. These procedures include the issuing authority (1) forwarding the summary offenses together with the misdemeanor, felony, or murder charges held for court to the court of common pleas, or (2) disposing of the summary offenses as provided in Rule 454 by accepting a guilty plea or conducting a trial whenever (a) the misdemeanor, felony, and murder charges are withdrawn, or (b) a *prima facie* case is not established at the preliminary hearing and the Commonwealth requests that the issuing authority proceed on the summary offenses.

Under paragraph (F)(2), in those cases in which the Commonwealth does not intend to refile the misdemeanor, felony, or murder charges, the Commonwealth may request that the issuing authority dispose of the summary offenses. In these cases, if all the parties are ready to proceed, the issuing authority should conduct the summary trial at that time. If the parties are not prepared to proceed with the summary trial, the issuing authority should grant a continuance and set the summary trial for a date and time certain.

In those cases in which a *prima facie* case is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the defendant unless there are outstanding detainers against the defendant that would prevent the defendant's release.

Paragraph (G) emphasizes the general rule that once a case has been bound over to the court of common pleas, the case is not permitted to be remanded to the issuing authority. There is a limited exception to the general rule in the situation in which the right to a previously waived preliminary hearing is reinstated and the parties agree, with the consent of the common pleas judge, that the preliminary hearing be held before the issuing authority. *See* Rule 541(D).

Nothing in this rule would preclude the refiling of one or more of the charges, as provided in these rules.

See Rule 313 for the disposition of any summary offenses joined with misdemeanor or felony charges when the defendant is accepted into an ARD program on the misdemeanor or felony charges.

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended February 12, 2010, effective April 1, 2010; amended January 27, 2011, effective in 30 days; Comment revised July 31, 2012, effective November 1, 2012; amended October 1, 2012, effective July 1, 2013; amended May 2, 2013, effective June 1, 2013.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 18 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the October 8, 1999 renumbering of Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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 August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the December 30, 2005 changes adding references to bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the March 9, 2006 amendments adding new paragraphs (E) and (F) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

Final Report explaining the May 1, 2007 changes clarifying the procedures when a defendant fails to appear published with the Court's Order at 37 Pa.B. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraphs (C) and (D)(2)(c) concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. 3971 (July 26, 2008).

Final Report explaining the February 12, 2010 amendments adding new paragraph (G) prohibiting remands to the issuing authority published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Court's Order adopting the January 27, 2011 amendments to paragraph (B) concerning prima facie case published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(F)(2) to Rule 540(G)(2) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the October 1, 2012 amendments to paragraphs (D)(2) and (D)(3)(d) adding ''place'' to ''date and time'' for preliminary hearing notices published with the Court's Order at 42 Pa.B. 6629 (October 20, 2012).

Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

Source

The provisions of this Rule 543 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended December 30, 2005, effective August 1, 2006, 36 Pa.B. 181; amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385; amended May 19, 2006, effective August 1, 2006, 36 Pa.B. 2631; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended July 10, 2008, effective February 1, 2009, 38 Pa.B. 3971; amended February 12, 2010, effective April 1, 2010, 40 Pa.B. 1068; amended January 27, 2011, effective in 30 days, 41 Pa.B. 834; amended July 31, 2012, 42 Pa.B. 5333; amended October 1, 2012, effective July 1, 2013, 42 Pa.B. 6622; amended May 2, 2013, effective June 1, 2013, 43 Pa.B. 2704. Immediately preceeding text appears at serial pages (364102) to (364106).

Rule 544. Reinstituting Charges Following Withdrawal or Dismissal.

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, or when a grand jury declines to indict and the complaint is dismissed, the attorney for the Commonwealth may reinstitute the charges by approving, in writing, the re-filing of a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges.

(B) Following the re-filing of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 132

motion with the clerk of courts requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth the reasons for requesting a different issuing authority.

Comment

This rule provides the procedures for reinstituting criminal charges following their withdrawal or dismissal at, or prior to, the preliminary hearing as provided in Rule 543, or after the complaint is dismissed when a grand jury declines to indict.

The authority of the attorney for the Commonwealth to reinstitute charges that have been dismissed at the preliminary hearing is well established by case law. *See, e.g., McNair's Petition*, 324 Pa. 48, 187 A. 498 (1936); *Commonwealth v. Thorpe*, 549 Pa. 343, 701 A.2d 488 (1997). This authority, however, is not unlimited. First, the charges must be reinstituted prior to the expiration of the applicable statute(s) of limitations. *See Commonwealth v. Thorpe*, 549 Pa. 343, 701 A.2d 488 (1997). In addition, the courts have held that the reinstitution may be barred in a case in which the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. *See Commonwealth v. Thorpe*, 549 Pa. 343, 701 A.2d 488 (1997); *Commonwealth v. Shoop*, 420 Pa. Super. 606, 617 A.2d 351 (1992).

The decision to reinstitute charges must be made by the attorney for the Commonwealth. Therefore, in cases in which no attorney for the Commonwealth was present at the preliminary hearing, the police officer may not re-file the complaint without the written authorization of the attorney for the Commonwealth. *See* Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option) for procedures for prior approval of complaints.

Pursuant to paragraph (A), in the usual case, charges will be reinstituted by filing a complaint with the issuing authority who dismissed or permitted the withdrawal of the charges. However, there may be cases in which the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing, such as when an error of law is made by the issuing authority in finding that the Commonwealth did not sustain its burden to establish a *prima facie* case. Paragraph (B) requires that, in these cases, the attorney for the Commonwealth must file a petition with the court of common pleas requesting that the president judge, or a judge designated by the president judge, assign a different issuing authority to conduct the preliminary hearing. For the procedure for requesting assignment of a different issuing authority, see Rule 132.

See Chapter 5 Part E for the procedures governing indicting grand juries. If the attorney for the Commonwealth is reinstituting the charges after a complaint is dismissed when a grand jury had declined to indict, the complaint should be re-filed with the issuing authority with whom the original complaint was filed.

See Chapter 5 Part F(1) for the procedures governing motions.

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974;

amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000. New Rule 143 adopted October 8, 1999, effective January 1, 2000; renumbered Rule 544 and amended March 1, 2000, effective April 1, 2001; amended June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining new Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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 June 21, 2012, amendments to paragraph (A) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 544 amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140. Immediately preceding text appears at serial pages (355853) and (335953).

Rule 545. Witnesses: Compulsory Process.

(A) The issuing authority shall issue such process as may be necessary for the summoning of witnesses for the Commonwealth or the defendant.

(B) Persons shall not be permitted to testify at a preliminary hearing without first being duly sworn or affirmed according to law.

Official Note: Former Rule 122 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; amended January 31, 1970, effective May 1, 1970; renumbered Rule 144 September 18, 1973, effective January 1, 1974; renumbered Rule 545 and amended March 1, 2000, effective April 1, 2001.

Committee Explanartory 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 546. Dismissal Upon Satisfaction or Agreement.

When a defendant is charged in a case in which the most serious offense charged is a misdemeanor, the issuing authority may dismiss the case upon a showing that:

(1) the public interest will not be adversely affected;

(2) the attorney for the Commonwealth, or in cases in which there is no attorney for the Commonwealth present, the affiant, consents to the dismissal;

(3) satisfaction has been made to the aggrieved person or there is an agreement that satisfaction will be made to the aggrieved person; and

(4) there is an agreement as to who shall pay the costs.

Comment

Paragraphs (1) through (4) set forth those criteria that a defendant must satisfy before the issuing authority has the discretion to dismiss the case under this rule.

The requirement in paragraph (2) that, when the attorney for the Commonwealth is present, he or she must consent to the dismissal, is one of the criteria that, along with the other enumerated criteria, gives the issuing authority discretion to dismiss, even when the affiant refuses to consent.

A dismissal of the case pursuant to this rule is a dismissal of all the charges, including any summary offenses that have been joined with the misdemeanor(s) and are part of the case. See the Comment to Rule 502 (Instituting Proceedings In Court Cases) (when a misdemeanor, felony, or murder is charged with a summary offense in the same complaint, the case should proceed as a court case under Chapter 5 Part B). See also Rule 551 (Withdrawal Of Charges Pending Before Issuing Authority) that permits the attorney for the Commonwealth to withdraw one or more of the charges.

For dismissal upon satisfaction or agreement in summary cases, see Rule 458.

For court dismissal upon satisfaction or agreement, see Rule 586.

Official Note: Formerly Rule 121, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 145 and amended September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended April 18, 1997, effective July 1, 1997; renumbered Rule 546 and amended March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006.

Committee Explanatory Reports:

Final Report explaining the April 18, 1997 amendments aligning the rule with Rule 458 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

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 March 3, 2006 amendments to the first paragraph and the Comment published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Source

The provisions of this Rule 546 amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385. Immediately preceding text appears at serial pages (316453) to (316454).

Rule 547. Return of Transcript and Original Papers.

(A) When a defendant is held for court, or after the issuing authority receives notice that the case will be presented to the indicting grand jury and closes out the case, the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required by these rules to be recorded on the transcript. It shall be signed by the issuing authority, and have affixed to it the issuing authority's seal of office.

(B) The issuing authority shall transmit the transcript to the clerk of the proper court within 5 days after holding the defendant for court or after closing out the case upon receipt of the notice that the case will be presented to the indicting grand jury.

(C) In addition to this transcript the issuing authority also shall transmit the following items:

(1) the original complaint;

(2) the summons or the warrant of arrest and its return;

(3) all affidavits filed in the proceeding;

(4) the appearance or bail bond for the defendant, if any, or a copy of the order committing the defendant to custody;

(5) a request for the court of common pleas to issue a bench warrant as required in Rule 543(D)(3)(b);

(6) notice informing the court of common pleas that the defendant has failed to comply with the fingerprint order as required in Rule 543(D)(3)(b)(ii); and

(7) a copy of the notice that the case will be presented to the indicting grand jury.

Comment

See Rule 135 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. *See, e.g.*, Rules 542 and 543.

When the case is held for court pursuant to Rule 543(D)(3), the issuing authority must include with the transcript transmittal a request for the court of common pleas to issue a bench warrant.

When the case is held for court pursuant to Rule 543(D)(3)(b)(ii), the issuing authority must include with the transcript transmittal a notice to the court of common pleas that the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2). *See* Rule 543(D)(3)(b)(ii). The court of common pleas must take whatever actions deemed appropriate to address this non-compliance.

See Chapter 5 Part E for the procedures governing indicting grand juries. Pursuant to Rule 556.2(A)(3), the judge is required to notify the issuing authority that the case will be presented to the indicting grand jury. Pursuant to Rule 556.11(A), upon receipt of the notice, the issuing authority is required to close out the case in his or her office, and forward it to the court of common pleas for all further proceedings. When the case is transmitted to the court of common pleas, the clerk of courts should associate the transcript and other documents transmitted by the issuing authority with the motion and order filed pursuant to Rule 556.2(A)(5).

When arrest warrant information has been sealed pursuant to Rule 513.1, the arrest warrant information already will have been filed with the clerk of courts. When the case is transmitted to the court of common pleas, the clerk of courts should associate the transcript and other documents transmitted by the issuing authority with the original file created for the sealing procedure.

Official Note: Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970; effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended June 21, 2012, effective in 180 days; amended December 23, 2013, effective March 1, 2014.

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 August 24, 2004 changes published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments concerning the request for a bench warrant published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraph (C)(6) concerning the fingerprint order published at 38 Pa.B. 3975 (July 26, 2008).

Final Report explaining June 21, 2012 amendments to paragraph (A) and adding paragraph (C)(7) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the December 23, 2013 Comment revisions concerning sealed arrest warrant documents published with the Court's Order at 44 Pa.B. 243 (January 11, 2014).

Source

The provisions of this Rule 547 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended July 10, 2008, effective February 1, 2009, 38 Pa.B. 3971; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140; amended December 23, 2013, effective March 1, 2014, 44 Pa.B. 239. Immediately preceeding text appears at serial pages (361832) to (361834).

Rule 548. Amendment of Transcript in Court Cases.

The issuing authority may make any proper amendments, additions, or corrections to the transcript before it is returned to court. After the transcript has been returned, amendments, additions, or corrections can be made to the transcript only upon application filed and permission granted by the court, and only to perfect the record to conform to the facts of the case.

Official Note: Former Rule 127 adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970, amended January 31, 1970, effective May 1, 1970; renumbered Rule 147 September 18, 1973, effective January 1, 1974; renumbered Rule 548 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 549. Compelling Transmission of Papers by Issuing Authority.

If an issuing authority refuses or fails to transmit the papers as required by these rules, the court may issue a subpoena to compel their production.

Official Note: Former Rule 128 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; amended January 31, 1970, effective May 1, 1970; renumbered Rule 148 September 18, 1973, effective January 1, 1974; renumbered Rule 549 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 550. Pleas of Guilty Before Magisterial District Judge in Court Cases.

(A) In a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction, a defendant may plead guilty before a magisterial district judge at any time up to the completion of the preliminary hearing or the waiver thereof.

(B) The magisterial district judge may refuse to accept a plea of guilty, and the magisterial district judge shall not accept such plea unless there has been a determination, after inquiry of the defendant, that the plea is voluntarily and understandingly tendered.

(C) The plea shall be in writing:

(1) signed by the defendant, with a representation by the defendant that the plea is entered knowingly, voluntarily, and intelligently; and

(2) signed by the magisterial district judge, with a certification that the plea was accepted after a full inquiry of the defendant, and that the plea was made knowingly, voluntarily, and intelligently.

(D) A defendant who enters a plea of guilty under this rule may, within 30 days after sentence, change the plea to not guilty by so notifying the magisterial district judge in writing. In such event, the magisterial district judge shall vacate the plea and judgment of sentence, and the case shall proceed in accordance with Rule 547, as though the defendant had been held for court.

(E) Thirty days after the acceptance of the guilty plea and the imposition of sentence, the magisterial district judge shall certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings.

Comment

In certain cases, what would ordinarily be a court case within the jurisdiction of the court of common pleas has been placed within the jurisdiction of magisterial district judges. See Judicial Code, 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7). This rule provides the procedures to implement this expanded jurisdiction of magisterial district judges.

In those cases in which either the defendant declines to enter a plea of guilty before the magisterial district judge or the magisterial district judge refuses to accept a plea of guilty, the case is to proceed in the same manner as any other court case.

This rule applies whenever a magisterial district judge has jurisdiction to accept a plea of guilty in a court case.

Under paragraph (A), it is intended that a defendant may plead guilty at the completion of the preliminary hearing or at any time prior thereto.

Prior to accepting a plea of guilty under this rule, it is suggested that the magisterial district judge consult with the attorney for the Commonwealth concerning the case, concerning the defendant's possible eligibility for ARD or other types of diversion, and concerning possible related offenses that might be charged in the same complaint. *See Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974).

Before accepting a plea:

(a) The magisterial district judge should be satisfied of jurisdiction to accept the plea, and should determine whether any other related offenses exist that might affect jurisdiction.

(b) The magisterial district judge should be satisfied that the defendant is eligible under the law to plead guilty before a magisterial district judge, and, when relevant, should check the defendant's prior record and inquire into the amount of damages.

(c) The magisterial district judge should advise the defendant of the right to counsel. For purposes of appointment of counsel, these cases should be treated as court cases, and the Rule 122 (Appointment of Counsel) procedures should be followed.

(d) The magisterial district judge should advise the defendant that, if the defendant wants to change the plea to not guilty, the defendant, within 30 days after imposition of sentence, must notify the magisterial district judge who accepted the plea of this decision in writing.

(e) The magisterial district judge should make a searching inquiry into the voluntariness of the defendant's plea. A colloquy similar to that suggested in Rule 590 should be conducted to determine the voluntariness of the plea. At a minimum, the magisterial district judge should ask questions to elicit the following information:

(1) that the defendant understands the nature of the charges pursuant to which the plea is entered;

(2) that there is a factual basis for the plea;

(3) that the defendant understands that he or she is waiving the right to trial by jury;

(4) that the defendant understands that he or she is presumed innocent until found guilty;

(5) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;

(6) that the defendant is aware that the magisterial district judge is not bound by the terms of any plea agreement tendered unless the magisterial district judge accepts such agreement; and

(7) that the defendant understands that the plea precludes consideration for ARD or other diversionary programs.

See Rule 590 and the Comment thereto for further elaboration of the required colloquy. *See also Commonwealth v. Minor*, 356 A.2d 346 (Pa. 1976), overruled on other grounds in *Commonwealth v. Minarik*, 427 A.2d 623, 627 (Pa. 1981); *Commonwealth v. Ingram*, 316 A.2d 77 (Pa. 1974); *Commonwealth v. Martin*, 282 A.2d 241 (Pa. 1971).

While the rule continues to require a written plea incorporating the contents specified in paragraph (C), the form of plea was deleted in 1985 because it is no longer necessary to control the specific form of written plea by rule.

Paragraph (C) does not preclude verbatim transcription of the colloquy and plea.

The time limit for withdrawal of the plea contained in paragraph (D) was increased from 10 days to 30 days in 2014 to place a defendant who enters a plea to a misdemeanor before a magisterial district judge closer to the position of a defendant who pleads guilty to the same offense in common pleas court or a defendant who pleads guilty to a summary offense before a magisterial district judge. A 30-day time period for withdrawal of the plea is consistent with the 30-day period for summary appeal and the 30-day common pleas guilty plea appeal period.

Withdrawal of the guilty plea is the only relief available before a magisterial district judge for a defendant who has entered a plea pursuant to this rule. Any further challenge to the entry of the plea must be sought in the court of common pleas.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

At the time of sentencing, or at any time within the 30-day period before transmitting the case to the clerk of courts pursuant to paragraph (E), the magisterial district judge may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.

If a plea is not entered pursuant to this rule, the papers must be transmitted to the clerk of courts of the judicial district in accordance with Rule 547. After the time set forth in paragraph (A) for acceptance of the plea of guilty has expired, the magisterial district judge no longer has jurisdiction to accept a plea.

Regardless of whether a plea stands or is timely changed to not guilty by the defendant, the magisterial district judge must transmit the transcript and all supporting documents to the appropriate court, in accordance with Rule 547.

Once the case is forwarded as provided in this rule and in Rule 547, the court of common pleas has exclusive jurisdiction over the case and any plea incident thereto. The case would thereafter proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation in those cases in which the magisterial district judge has accepted a guilty plea and imposed sentence.

Official Note: Rule 149 adopted June 30, 1977, effective September 1, 1977; Comment revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006; amended January 6, 2014, effective March 1, 2014; Comment revised March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Final Report explaining the August 22, 1997 amendments, that clarify the procedures following a district justice's acceptance of a guilty plea and imposition of sentence in a court case published with the Court's order at 27 Pa.B. 4548 (September 6, 1997).

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 December 9, 2005 changes to the rule clarifying the magisterial district judges' exercise of jurisdiction published with the Court's Order at 35 Pa.B. 6896 (December 24, 2005).

Final Report explaining the January 6, 2014 changes to the rule increasing the time for withdrawal of the guilty plea from 10 to 30 days published with the Court's Order at 44 Pa.B. 478 (January 25, 2014).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 705.1 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Source

The provisions of this Rule 550 amended December 9, 2005, effective February 1, 2006, 35 Pa.B. 6894; amended January 6, 2014, effective March 1, 2014, 44 Pa.B. 477; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532. Immediately preceding text appears at serial pages (370723) to (370725).

Rule 551. Withdrawal of Charges Pending Before Issuing Authority.

In any court case pending before an issuing authority, the attorney for the Commonwealth, or his or her designee, may withdraw one or more of the charges. The withdrawal shall be in writing.

Comment

This rule was amended in 1995 to make it clear that only the attorney for the Commonwealth or a designee has the authority to withdraw a prosecution.

In any case in which a summary offense is joined with the misdemeanor, felony, or murder charges:

(1) if only some of the charges are withdrawn, and the remainder are held for court, the joined summary offense, unless withdrawn, must be forwarded to the court of common pleas as required by Rule 543(F); and

(2) if all of the misdemeanor, felony, and murder charges are withdrawn pursuant to this rule, the issuing authority must dispose of the summary offense as provided in Rule 454 (Trial in Summary Cases).

Official Note: Rule 151 adopted September 18, 1973, effective January 1, 1974; amended August 14, 1995, effective January 1, 1996; renumbered Rule 551 March 1, 2000, effective April 1, 2001; amended March 9, 2006, effective September 1, 2006.

Committee Explanatory Reports:

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 1995).

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 March 3, 2006 amendments to the title and rule published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Source

The provisions of this Rule 551 amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385. Immediately preceding text appears at serial page (305481).

Rule 555. Transfer of Proceedings.

(A) In all cases in which charges arising from a single criminal episode occur in more than one judicial district:

(1) If the charges are filed in more than one judicial district, at any time after the case is held for court, the proceedings may be transferred to one of the judicial districts.

(2) If all the charges are filed in one judicial district, at any time after the case is held for court, the proceedings may be transferred to another one of the judicial districts.

(B) The judicial district to which the proceedings are to be transferred shall be determined either:

(1) by written agreement of the parties, filed with the clerk(s) of courts of the judicial district(s) in which the charges are pending; or

(2) by written agreement of the attorneys for the Commonwealth, filed with the clerk(s) of courts of the judicial district(s) in which the charges are pending, with service upon the defendant or defendant's counsel, and an opportunity for the defendant to object.

(C) Upon the filing of the agreement of the parties in paragraph (B)(1), the court promptly shall order the transfer of the proceedings.

(D) Upon the filing of the agreement of the attorneys for the Commonwealth in paragraph (B)(2),

(1) absent an objection within 10 days of filing, the court promptly shall order the transfer of the proceedings.

(2) In those cases in which an objection is filed by the defendant, the court shall promptly dispose of the objection. If the objection is denied, the court immediately thereafter shall order the transfer of the proceedings.

(E) Upon the issuance of the transfer order pursuant to paragraphs (C), (D)(1), or (D)(2), the clerk(s) of courts of the transferring judicial district(s) shall promptly transmit to the clerk of courts of the judicial district to which the proceedings are being transferred a certified copy of all docket entries, together with all the original papers filed in the proceeding in the clerk's judicial district, a copy

of the bail bond and any deposits in satisfaction of a monetary condition of bail, and a bill of the costs which have accrued but have not been collected prior to the transfer.

(F) When a proceeding is transferred pursuant to this rule, the case shall proceed to trial and judgment in the same manner as if the proceeding had been instituted in the transfer judicial district.

(1) If the proceeding is transferred before an information has been filed in the transferring judicial district, the attorney for the Commonwealth in the transfer judicial district shall join the charges from the transferring judicial district with the charges in the transfer judicial district in the same information.

(2) If the proceeding is transferred after an information has been filed, the attorney for the Commonwealth in the transfer judicial district shall proceed pursuant to Rule 582 (Joinder—Trial of Separate Indictments or Informations).

(3) The results of any pretrial proceedings that have been completed in the transferring judicial district shall be binding on the transfer judicial district proceedings.

(4) Costs, not previously collected, shall be collected in the transfer judicial district.

(G) If the defendant is in custody in a transferring judicial district, the order transferring the case shall provide that the defendant shall be delivered to the custody of the sheriff of the transfer judicial district.

Comment

Rule 555 permits the transfer of proceedings in cases in which multiple charges arising from a single criminal episode have occurred in more than one judicial district so all the charges may be tried together in one judicial district.

In many cases, multiple charges arising from a single criminal episode will be known to the police officers and attorneys for the Commonwealth involved in the case, and will be joined in the first instance in one criminal complaint, and filed before one issuing authority in one judicial district. See Rule 130(A)(3). However, since there may be cases in which this does not occur, and the charges are filed in more than one judicial district, Rule 555 establishes the procedures, after such a case is held for court, for the transfer of proceedings to one judicial district. See Rule 130(B) for the procedures for transferring charges prior to the preliminary hearing. Rule 555 also governs the transfer of charges in cases in which all the charges are filed in one judicial district, but the parties or the attorneys for the Commonwealth agree that the charges should have been filed in one of the other judicial districts in which the charges occurred.

The procedures in this rule are distinct from the Rule 584 (Motion for Change of Venue or Change of Venire) procedures for a change of venue in cases in which it is determined at a hearing that a fair and impartial trial cannot be had in the county in which the case is pending.

It is expected that the parties will be able to agree on the judicial district in which the case should proceed. However, if they cannot agree, paragraph (B)(2) provides for the determination to be by the agreement of the attorneys for the Commonwealth. In determining the judicial district to which the proceedings are to be transferred, the parties must consider in which judicial district it would be in the interests of justice to have the case proceed, based upon the convenience of the defendant and the witnesses, and the prompt administration of justice.

Pursuant to paragraph (B)(2), upon the filing of the agreement of the attorneys for the Commonwealth, the defendant must be served a copy of the agreement, and be given an opportunity to object to the transfer or to the judicial district selected for the trial.

When an agreement is filed pursuant to this rule, the clerk of courts must promptly transmit the agreement as provided in Rule 576.

Pursuant to paragraphs (C) and (D), the court, immediately upon receipt of the agreement, must issue a transfer order, unless the defendant challenges the transfer or the judicial district to which the case would be transferred. ''Court,'' as used in this rule, includes the judge assigned to handle miscellaneous motions in criminal matters or the president judge, unless a judge has already been assigned to the case.

The decision to transfer a proceeding under this rule should be made at the earliest time after the case is held for court, so that most, if not all, of the pretrial proceedings can be accomplished in the transfer judicial district.

For venue between magisterial districts, see Rule 21(A).

For the procedures for the joinder of offenses in a complaint, see Rule 505.

For the procedures for the joinder of offenses in an information, see Rule 563.

For the procedures for the joinder or consolidation for trial of offenses charged in separate informations, see Rule 1127.

For the procedures for nolle prosequi, see Rule 585.

When proceedings are transferred pursuant to this rule, the case is to proceed in the same manner as if the charges had been instituted in the transfer judicial district. If any pretrial proceedings have been conducted in the transferring judicial district, the results of those proceedings will be binding on the proceedings in the transfer judicial district. For example, if discovery has been initiated, and the judge in the transferring judicial district has ordered or denied disclosure, this order would be binding on the judge and parties in the transfer judicial district. See *Commonwealth v. Starr*, 664 A.2d 1326 (Pa. 1995), concerning the coordinate jurisdiction rule and the law of the case doctrine.

Any costs, except bail-related costs, collected before a proceeding is transferred will remain in the transferring judicial district. See Rule 535 concerning bail-related costs.

Official Note: Former Rule 300 rescinded June 28, 1974, effective immediately; rescinded and number reserved June 29, 1977, and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; new Rule 300 adopted April 20, 2000, effective July 1, 2000; renumbered Rule 555 effective April 1, 2000; amended May 21, 2004, effective July 1, 2004.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 30 Pa.B. 2219 (May 6, 2000).

Final Report explaining the May 21, 2004 changes published with the Court's Order at 34 Pa.B. 2911 (June 5, 2004).

Source

The provisions of this Rule 555 adopted April 20, 2000, effective July 1, 2000, 30 Pa.B. 2211; amended May 21, 2004, effective July 1, 2004, 34 Pa.B. 2910. Immediately preceeding text appears at serial pages (266550) to (266552).

PART E. Indicting Grand Jury

Rule 556. Indicting Grand Jury.

(A) Each of the several courts of common pleas may proceed with an indicting grand jury pursuant to these rules only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

(B) Any court of common pleas seeking to resume the use of indicting grand juries pursuant to these rules shall petition the Supreme Court of Pennsylvania in the following form:

(1) The petition shall identify the petitioner, who shall be either the president judge or a designee, and the judicial district. If the petition is seeking permission to resume the use of indicting grand juries in a two-county judicial district, and the indicting grand jury is sought for only one county, that county shall be identified in the petition. The president judge's designee shall be a member of the court of common pleas of the judicial district.

(2) The petition shall aver that the petitioner has reviewed the district attorney's certificate required under paragraphs (B)(4) and (5) and the petitioner agrees with the averments contained therein.

(3) An original and 2 copies of the petition shall be filed, and shall bear an original signature of the petitioner.

(4) There shall be appended to the petition a certificate from the district attorney for the judicial district or, in the case of a two-county judicial district, a certificate from the district attorney or district attorneys for the county or counties within the judicial district.

(5) The district attorney's certificate shall contain:

(a) the name and county of the district attorney;

(b) an averment that witness intimidation has occurred, is occurring, or is likely to occur in the judicial district or, in the case of a two-county district where an indicting grand jury is sought for only one county, the county;

(c) An averment that the district attorney believes that an indicting grand jury will remedy the problem of witness intimidation; and

(d) the original signature of the district attorney.

Comment

This rule was adopted in 2012 to permit the use of an indicting grand jury as an alternative to the preliminary hearing but only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

The Supreme Court, by Order issued with the promulgation of the new Rules of Criminal Procedure governing the indicting grand jury, requires that each of the judicial districts must petition the Court for permission to resume using the indicting grand jury, *but only* as provided in these rules. By further Order of the Supreme Court, the form and contents of the petition were established. *See* 43 Pa.B. 1706 (March 30, 2013). This rule was amended in 2015 to include the form and contents of the petition required to resume indicting grand juries as established by the Court's Order.

The rules in Chapter 5 Part E apply only to the indicting grand jury and do not apply to any county, regional, or statewide investigating grand jury.

Official Note: New Rule 556 adopted June 21, 2012, effective in 180 days; amended September 8, 2015, effective November 1, 2015.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the September 8, 2015 amendment regarding the content of the petition to resume using indicting grand juries published with the Court's Order at 45 Pa.B. 5786 (September 26, 2015).

Source

The provision of this Rule 556 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140; amended September 8, 2015, effective November 1, 2015, 45 Pa.B. 5785. Immediately preceding text appears at serial page (361838).

Rule 556.1. Summoning Panels of Grand Jurors.

(A) When the court of common pleas elects to proceed with an indicting grand jury, the president judge, or president judge's designee, shall order one or more grand juries to be summoned for the purpose of issuing indictments or shall order that the sitting investigating grand jury shall sit as the indicting grand jury.

(B) The judge shall order the officials designated by law to summon prospective jurors to summon such number of jurors who are eligible by law as the judge deems necessary to serve as a panel for grand jury service.

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

Comment

Pursuant to paragraph (A), the president judge, or president judge's designee, may order that an investigating grand jury that is sitting will also serve in the capacity of the indicting grand jury.

The number of persons who may be summoned is left to the discretion of the president judge or the president judge's designee to accommodate the needs of the judicial district.

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in 42 Pa.C.S. §§ 4501—4503, 4521—4527, and 4531—4532.

Official Note: New Rule 556.1 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.1 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.2. Proceeding by Indicting Grand Jury Without Preliminary Hearing.

(A) After a person is arrested or otherwise proceeded against with a criminal complaint, the attorney for the Commonwealth may move to present the matter to an indicting grand jury instead of proceeding to a preliminary hearing.

(1) The motion shall allege facts asserting that witness intimidation has occurred, is occurring, or is likely to occur.

(2) The motion shall be presented *ex parte* to the president judge, or the president judge's designee.

(3) Upon receipt of the motion, the president judge, or the president judge's designee, shall review the motion. If the judge determines the allegations establish probable cause that witness intimidation has occurred, is occurring, or is likely to occur, the judge shall grant the motion, and shall notify the proper issuing authority.

(a) Upon receipt of the notice from the judge that the case will be presented to the indicting grand jury, the issuing authority shall cancel the preliminary hearing, close out the case before the issuing authority, and forward the case to the court of common pleas as provided in Rule 547 for all further proceedings.

(b) Once the case has been forwarded to the court of common pleas, the case shall not be remanded to the issuing authority.

(4) The order granting the motion or the order denying the motion, and the motion shall be sealed.

(5) The attorney for the Commonwealth shall file the sealed order and the sealed motion with the clerk of courts.

(B) If not already assigned, the president judge shall assign one of the judges in the judicial district to serve as the supervising judge for the indicting grand jury.

(C) If the motion is granted, the case shall be presented to the grand jury within 21 days of the date of the order, unless:

(1) the grand jury proceedings are waived by the defendant with the consent of the attorney for the Commonwealth; or

(2) the attorney for the Commonwealth elects not to present the case to a grand jury.

If the case is not presented to the grand jury as provided in this paragraph, the defendant is entitled to a preliminary hearing in the court of common pleas.

Comment

An accused in Pennsylvania ordinarily has the right to a preliminary hearing before he or she may be indicted by the grand jury. *See Commonwealth v. Hoffman*, 396 Pa. 491, 152 A.2d 726 (1959). However, the 2012 amendments to the rules permit the attorney for the Commonwealth to proceed to

the indicting grand jury without first presenting the matter to an issuing authority for a preliminary hearing but only in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

Concerning the requirements in paragraph (A)(1), see paragraph (A)(2)(g) of Rule 575 (Motions) that requires, *inter alia*, any motion that sets forth facts that do not already appear of record in the case to be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Pursuant to paragraph (A)(2), the president judge may designate another judge to receive motions from the attorney for the Commonwealth. It is anticipated that this designee will be the judge designated to be the supervising judge of the grand jury.

Pursuant to paragraph (A)(3)(a) and (A)(3)(b), after the issuing authority receives notice that the case will be presented to the grand jury, the case before the issuing authority is closed out and forwarded to the court of common pleas for all further proceedings. This provision is consistent with the general rule that once a case has been forwarded to the court of common pleas, the case is not permitted to be remanded to the issuing authority.

See Rule 556.11 for the procedures when a case is presented to the grand jury.

See Rule 556.12 for the procedures for the defendant to waive the grand jury proceedings.

If, after a motion to proceed to a grand jury is granted, the attorney for the Commonwealth elects not to present the case to the grand jury, the case will proceed as any other criminal case following the preliminary arraignment, except that the proceedings will be conducted in the court of common pleas. *See* Rules 541—547.

Official Note: New Rule 556.2 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.2 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.3. Composition and Organization of the Indicting Grand Jury.

(A) There initially shall be impaneled to serve on an indicting grand jury 23 legally qualified jurors and a minimum of 7 and not more than 15 legally qualified alternates. During its term, the indicting 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 indicting grand jury is to be impaneled, the supervising judge in charge of the grand jury shall examine prospective jurors to determine which prospective jurors to excuse for cause. 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. Alternate jurors shall replace permanent jurors in the sequence in which the alternate jurors are selected.

(C) Alternate jurors shall attend and participate in sessions of the grand jury but they may not attend or participate 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 indicting 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 indict.

(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 indicting grand jury shall be considered at an end.

(G) The supervising judge shall appoint one of the grand jurors as foreperson and another juror as the deputy foreperson, who will act in the foreperson's absence. The grand jury shall select one of its members as a secretary to assist the foreperson in keeping a record of the action of the grand jury.

Comment

To accommodate the possibility that a grand jury would serve the dual function of both an investigating and indicting grand jury, see Rule 556.1(A), the procedures in this rule comport to the procedures in Rule 222 (Composition and Organization of the Investigating Grand Jury).

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 ensure 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.

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: New Rule 556.3 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.3 adopted June 21, 2012, effective In 180 days, 42 Pa.B. 4140.

Rule 556.4. Challenges to Grand Jury and Grand Jurors.

(A) *Challenges*

The attorney for the Commonwealth or a defendant may challenge the grand jury on the ground that it was not lawfully drawn, summoned, or selected, and may challenge an individual juror on the ground that the juror is not legally qualified.

(1) The challenge shall be in the form of a written motion and shall allege the ground upon which the challenge is made.

(2) If a challenge to an individual grand juror is sustained, the juror shall be discharged and replaced with an alternate juror.

(B) *Motion to Dismiss*

(1) The attorney for the Commonwealth or a defendant may move to dismiss the information filed following the grand jury's vote to indict the defendant based on the following grounds:

(a) an objection to the grand jury or on an individual juror's lack of legal qualification, unless the court has previously ruled on the same objection under paragraph (A);

(b) the evidence did not establish a *prima facie* case that an offense has been committed and the defendant committed the offense;

(c) lack of jurisdiction of the grand jury; or

(d) expiration of the statute of limitations.

(2) The judge shall not dismiss the information on the ground that a grand juror was not legally qualified if the record shows that at least 12 qualified jurors concurred in the indictment.

(C) Any motion under paragraph (A) or paragraph (B) shall be made as part of the omnibus pretrial motion.

Comment

Concerning the right to challenge the array of the grand jury, see *Commonwealth v. Dessus*, 423 Pa. 177, 188, 224 A.2d 188, 194 (1966), in which the Court held, *inter alia*, that "the law . . . must not deprive an accused of any of his legal or Constitutional rights-in this case the right to promptly (a) challenge the array of the grand jury and (b) prove by legally competent evidence that one or more of the grand jurors should be disqualified for cause."

Nothing in this rule is intended to limit the availability of *habeas corpus* review as provided by law.

Nothing in this rule is intended to require notice to the defendant of the time and place of the impaneling of a grand jury, or to give the defendant the right to be present for the selection of the grand jury.

Official Note: New Rule 556.4 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.4 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.5. Duration of Indicting Grand Jury.

(A) The length of the grand jury term shall be determined by the president judge, or the president judge's designee, but shall not exceed 18 months, unless an order for discharge is entered earlier by the supervising judge upon determination by the grand jury, by majority vote, that its business has been completed, or an extension is granted pursuant to paragraph (B).

(B) At the end of its original term or any extension thereof, if the grand jury determines by majority vote that it has not completed its business, it may request the supervising judge to extend its term for an additional period of 6 months. No grand jury term shall exceed 24 months from the time the grand jury was originally summoned.

(1) The supervising judge shall grant a request for extension unless the judge determines that such request clearly is without basis.

(2) Failure to grant an extension of term under this rule may be appealed by the attorney for the Commonwealth to the Supreme Court in the manner prescribed by general rule.

(3) If an appeal is taken, the grand jury shall continue to exercise its powers pending the disposition of the appeal.

(C) At any time within the original term of a grand jury, or any extension thereof, if the supervising judge determines that the grand jury is not conducting proper indicting activity, the judge may order that the grand jury be discharged.

(1) An order of discharge under this rule shall not become effective less than 10 days after the date on which the order is issued and actual notice given to the attorney for the Commonwealth and the foreperson of the grand jury.

(2) The order may be appealed by the attorney for the Commonwealth to the Supreme Court in the manner prescribed by general rule.

(3) If an appeal is taken, the grand jury shall continue to exercise its powers pending the disposition of the appeal.

Comment

The procedures governing the duration of the indicting grand jury are consistent with the procedures for investigating grand juries as set forth in 42 Pa.C.S. § 4546.

Official Note: New Rule 556.5 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.5 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.6. Administering Oath to Grand Jury and Foreperson.

(A) After the selection of the members of the grand jury, the supervising judge shall administer the oath separately to the foreperson and deputy foreperson and then to the other grand jurors. The supervising judge shall then charge the grand jury concerning its duties.

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

> ''You, as grand jurors, do solemnly swear that you 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 neither approve any indictment or

present any person for hatred, envy or malice, or refuse to approve any indictment or 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 supervising judge shall administer the oath to the foreperson and deputy foreperson in substantially the following form:

''You, as foreperson, 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 neither approve any indictment or present any person for hatred, envy or malice, or refuse to approve any indictment or 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.''

Comment

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

Official Note: New Rule 556.6 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.6 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.7. Administration of Oath to Witnesses; Court Personnel.

(A) Each witness to be heard by the indicting grand jury shall be sworn by the foreperson before testifying.

(B) 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 supervising judge prior to their participation.

Comment

When it is necessary to give constitutional warnings to a witness, the warnings and the oath must be administered by the supervising judge. 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 (1971).

Official Note: New Rule 556.7 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.7 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.8. Recording of Testimony Before Indicting Grand Jury.

(A) Proceedings before an indicting grand jury, other than the deliberations and voting of the grand jury, shall be recorded by a court reporter or by a suitable recording device, and a transcript made.

(B) The supervising judge shall retain control of the recording device and the original and all copies of the transcript, and shall maintain their secrecy.

(C) When physical evidence is presented before the indicting grand jury, the supervising judge shall establish procedures for supervising custody.

Comment

This rule requires that the supervising judge retain control over the transcript of the indicting 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.

Official Note: New Rule 556.8 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.8 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.9. Who May Be Present During Sessions of Indicting Grand Jury.

(A) The attorney for the Commonwealth, the alternate grand jurors, the witness under examination, and a stenographer may be present while the indicting 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 indicting grand jury is in session.

(C) All persons who are to be present while the indicting 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

It is intended in paragraph (B) that when the supervising judge authorizes a certain individual to be present during a session of the indicting 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.

See also Rule 556.10 concerning secrecy and disclosure of indicting grand jury proceedings.

Nothing in these rules precludes the supervising judge from permitting a witness to testify using two-way simultaneous audio-visual communication.

Official Note: New Rule 556.9 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.9 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.10. Secrecy; Disclosure.

(A) *Secrecy*

(1) All evidence, including exhibits and all testimony presented to the grand jury, is subject to grand jury secrecy, and no person may disclose any matter occurring before the grand jury, except as provided in paragraph (B).

(2) A violation of grand jury secrecy rules may be punished as a contempt of court.

(B) *Disclosure*

No person may disclose any matter occurring before the grand jury, except as provided below.

(1) *Attorney for the Commonwealth:*

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

(2) *Defendant in a Criminal Case:*

If a defendant in a criminal case has testified before the indicting grand jury concerning the subject matter of the charges against him or her, upon application of such defendant, the supervising judge shall order that the defendant be furnished with a copy of the transcript of such testimony.

(3) *Witnesses*:

(a) A grand jury witness may disclose his or her testimony unless the attorney for the Commonwealth obtains an order from the supervising judge that the interests of justice dictate otherwise.

(b) The attorney for the Commonwealth may request that the supervising judge delay the disclosure of a grand jury witness' testimony, but such delay in disclosure shall not be later than the conclusion of direct testimony of that witness at trial.

(4) *Other Disclosures:*

(a) Disclosure of grand jury material or matters, other than the grand jury's deliberations and the vote of individual jurors, may be made to any law enforcement personnel that an attorney for the Commonwealth considers necessary to assist in the enforcement of the criminal law.

(b) Upon motion, and after a hearing into relevancy, the supervising judge may order that a transcript of testimony before an indicting grand jury, or physical evidence before the indicting grand jury, may be released to an investigative agency under such conditions as the supervising judge may impose.

(5) *Pretrial Discovery*:

Pretrial discovery in cases indicted by a grand jury is subject to Rule 573. Pretrial discovery does not include testimony or other evidence that would disclose the identity of any witness or victim who has been intimidated, is being intimidated, or who is likely to be intimidated. Disclosure of such testimony or other evidence shall be only as ordered by the supervising judge.

(C) The supervising judge shall close to the public any hearing relating to grand jury proceedings to the extent necessary to prevent disclosure of a matter occurring before a grand jury. Records, orders, and subpoenas relating to grand jury proceedings shall be kept under seal to prevent the unauthorized disclosure of a matter occurring before a grand jury.

Comment

The attorney for the Commonwealth has an affirmative duty to provide the defendant with any testimony before the indicting grand jury and any physical evidence presented to the grand jury that is exculpatory to the defendant consistent with 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.

Paragraph (B) establishes the limitations on pretrial discovery in cases in which a defendant has been indicted by a grand jury information. Although the Criminal Rules generally recognize the defendant's right to have pretrial discovery to be able to prepare his or her case, given the nature of the cases presented to the grand jury, see Rule 556, this rule places with the supervising judge the responsibility of determining when testimony and other evidence that would disclose the identity of any witness or victim who has been intimidated, is being intimidated, or who is likely to be intimidated will be discoverable.

Paragraph (B)(3)(b) permits the supervising judge to delay the time for the disclosure of a grand jury witness' testimony upon the request of the attorney for the Commonwealth. Under no circumstances may the extension be later than the completion of the witness' direct testimony at trial.

The supervising judge may grant a continuance to enable the defendant to review the grand jury testimony as the interests of justice require.

Official Note: New Rule 556.10 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.10 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.11. Proceedings When Case Presented to Grand Jury.

(A) A grand jury has the authority to:

(1) inquire into violations of criminal law through subpoenaing witnesses and documents; and

(2) based upon evidence it has received, including hearsay evidence as permitted by law, or upon a presentment issued by an investigating grand jury, if the grand jury finds the evidence establishes a *prima facie* case that (1) an offense has been committed and (2) the defendant has committed it, indict defendant for an offense under the criminal laws of the Commonwealth of Pennsylvania; or

(3) based upon evidence it has received, including hearsay evidence as permitted by law, or upon a presentment issued by an investigating grand jury, if the grand jury finds the evidence establishes a *prima facie* case that (1) an offense has been committed and (2) the person other than the defendant in the matter originally presented to the indicting grand jury has committed it, indict the individual for an offense under the criminal laws of the Commonwealth of Pennsylvania, but only if the offense arises from the same criminal conduct or episode that gave rise to the original referral to the indicting grand jury; or

(4) decline to indict.

(B) After a grand jury has considered the evidence presented, the grand jury shall vote whether to indict the defendant or the person other than the defendant who has been identified as having committed an offense as provided in paragraph (A)(3). The affirmative vote of at least 12 grand jurors is required to indict.

(C) In cases in which the grand jury votes to indict, an indictment shall be prepared setting forth the offenses on which the grand jury has voted to indict. The indictment shall be signed by the grand jury foreperson, or deputy foreperson if the foreperson is unavailable, and returned to the supervising judge.

(D) Upon receipt of the indictment, the supervising judge shall:

(1) provide a copy of the indictment to the Commonwealth authorizing the attorney to prepare an information pursuant to Rule 560; and

(2) forward the indictment to the clerk of courts.

(E) If the subject of the indictment has not been arrested on the charges contained in the indictment, upon receipt of a copy of the indictment, the attorney for the Commonwealth shall file a complaint with the clerk of courts of the judicial district in which the indicting grand jury sits, and shall request the supervising judge issue an arrest warrant.

(1) The indictment shall be used in lieu of the affidavit of probable cause.

(2) The supervising judge shall issue an arrest warrant.

(F) At the request of the attorney for the Commonwealth, the supervising judge shall order the indictment to be sealed.

(G) In cases in which the grand jury does not vote to indict, the foreperson promptly and in writing shall so report to the supervising judge who immediately shall dismiss the complaint and shall notify the clerk of courts of the dismissal.

Comment

Nothing in this rule is intended to preclude the investigating grand jury, when sitting as an indicting grand jury and as part of its determination of whether to indict, from considering evidence already presented to it during an investigation.

When the grand jury votes to indict the defendant, the vote to indict is the functional equivalent of holding the defendant for court following a preliminary hearing. In these cases, the matter will proceed in the same manner as when the defendant is held for court following a preliminary hearing. *See, e.g.*, Rules 547 and 560.

The indictment required by paragraph (C) no longer serves the traditional function of an indictment, but rather serves as an instrument authorizing the attorney for the Commonwealth to file an information. *See* Rule 103.

Concerning hearsay evidence before the indicting grand jury, see *Commonwealth v. Dessus*, 224 A.2d 188 (Pa. 1966).

This rule was amended in 2018 to clarify that a person who has not been previously charged may be indicted. A case must be properly before the grand jury as provided in Rule 556.2. If during the course of that grand jury proceeding, it is determined that a *prima facie* case exists that an offense has been committed by an individual who is not the defendant in the case that was originally presented to the indicting grand jury, that individual may be indicted. However, the offense for which this new defendant has been indicted must be related to the same criminal conduct or episode that originally resulted in the case being referred to the indicting grand jury. Thereafter, the attorney for the Commonwealth must file a complaint and a request that an arrest warrant be issued as provided in paragraph (E). The filing of this complaint marks the beginning of the time period for speedy trial under Rule 600. *See* Rule 556.13 for the procedures following the execution of an arrest warrant issued following indictment.

In cases in which the grand jury has declined to indict and the complaint has been dismissed, the attorney for the Commonwealth may reinstitute the charges as provided in Rule 544.

Official Note: New Rule 556.11 adopted June 21, 2012, effective in 180 days; amended November 27, 2018, effective March 1, 2019.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the November 27, 2018 amendment regarding the issuance of indictment of non-defendants published with the Court's Order at 48 Pa.B. 7632 (December 15, 2018).

Source

The provisions of this Rule 556.11 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140; amended November 27, 2018, effective March 1, 2019, 48 Pa.B. 7626. Immediately preceding text appears at serial pages (361847) to (361848).

Rule 556.12. Waiver of Grand Jury Action.

(A) A defendant, with the consent of the attorney for the Commonwealth and the approval of the supervising judge, may waive action by the grand jury and consent to be bound over to court. If the defendant is represented by counsel,

(1) the defendant thereafter is precluded from raising the sufficiency of the Commonwealth's *prima facie* case unless the parties have agreed at the time of the waiver that the defendant later may challenge the sufficiency.

(2) If the defendant waives the action of the grand jury by way of an agreement, made in writing or on the record, and the agreement is not accomplished, the defendant may challenge the sufficiency of the Commonwealth's *prima facie* case.

(B) The waiver shall be in writing and signed by the defendant and defense attorney, if any, and shall certify that:

(1) the defendant voluntarily waives the grand jury action and consents to be bound over to court, and

(2) when represented by counsel, the defendant understands that by waiving action by grand jury, he or she is thereafter precluded from raising challenges to the sufficiency of the *prima facie* case.

Comment

Nothing in this rule is intended to preclude a waiver of action by the grand jury by way of agreement in which both parties agree to the preservation of the defendant's ability to raise the sufficiency of the Commonwealth's *prima facie* case at a subsequent proceeding. Any such agreement must be in writing or made on the record.

Official Note: New Rule 556.12 adopted June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 556.12 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140.

Rule 556.13. Procedures Following Execution of Warrant of Arrest Issued Following Indictment.

(A) When a defendant has been arrested within the judicial district where the warrant of arrest has been issued by the supervising judge of an indicting grand jury following the receipt of the indictment as provided in Rule 556.11(E), the defendant shall be afforded a preliminary arraignment by the supervising judge or another judge designated by the president judge without unnecessary delay.

(B) When a defendant has been arrested outside of the judicial district where the warrant of arrest has been issued by the supervising judge of an indicting grand jury following the receipt of the indictment as provided in Rule 556.11(E), the case shall proceed as provided in Rules 517 and 518 and this rule.

(C) Following the preliminary arraignment provided pursuant to paragraph (A) and (B), the case shall proceed in the court of common pleas pursuant to Rules 560 and 571.

Comment

This rule provides the procedures following the arrest of a defendant pursuant to a warrant issued by the supervising judge of an indicting grand jury. The defendant must be provided a preliminary arraignment in a timely manner following arrest. Because a case that had been submitted to the indicting grand jury is transferred to the court of common pleas, the preliminary arraignment must be held before the supervising judge or another judge of the common pleas designated by the president judge.

An indictment by a grand jury is a *prima facie* determination made in lieu of a preliminary hearing in cases where witness intimidation has occurred, is occurring, or will occur. Therefore, following indictment, the case is in the same status as a case that has been held for court. The next steps following the preliminary arraignment in these situations would be the filing of the criminal information as provided in Rule 560 and the arraignment as provided in Rule 571.

Official Note: New Rule 556.13 adopted November 27, 2018, effective March 1, 2019.

Committee Explanatory Reports:

Final Report explaining new Rule 556.13 providing procedures following the execution of arrest warrants issued by the supervising judge of an investigating grand jury published with the Court's Order at 48 Pa.B. 7632 (December 15, 2018).

Source

The provisions of this Rule 556.13 adopted November 27, 2018, effective March 1, 2019, 48 Pa.B. 7626.

PART F. Procedures Following a Case Held for Court

Rule 559. Request for Bench Warrant.

In any case held for court following a preliminary hearing conducted in the defendant's absence pursuant to Rule 543(D), upon receipt of a request by the issuing authority for the common pleas court to issue a bench warrant, the court promptly shall act upon the request.

Comment

For the requirement that the issuing authority request a bench warrant from the court of common pleas in cases in which the defendant has failed to appear for the preliminary hearing, see Rule 543(D)(3)(b)(i) and (ii). See also Rule 547(C)(5) that requires the issuing authority to transmit the request for a bench warrant with the transcript of the proceedings before the issuing authority.

Official Note: Adopted May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.

Committee Explanatory Reports:

Final Report explaining new Rule 559 published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Source

The provisions of this Rule 559 adopted May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496.

Rule 560. Information: Filing, Contents, Function.

(A) After the defendant has been held for court following a preliminary hearing or an indictment, the attorney for the Commonwealth shall proceed by preparing an information and filing it with the court of common pleas.

(B) The information shall be signed by the attorney for the Commonwealth and shall be valid and sufficient in law if it contains:

(1) a caption showing that the prosecution is carried on in the name of and by the authority of the Commonwealth of Pennsylvania;

(2) the name of the defendant, or if the defendant is unknown, a description of the defendant as nearly as may be;

(3) the date when the offense is alleged to have been committed if the precise date is known, and the day of the week if it is an essential element of the offense charged, provided that if the precise date is not known or if the offense is a continuing one, an allegation that it was committed on or about any date within the period fixed by the statute of limitations shall be sufficient;

(4) the county where the offense is alleged to have been committed;

(5) a plain and concise statement of the essential elements of the offense substantially the same as or cognate to the offense alleged in the complaint;

(6) a concluding statement that ''all of which is against the Act of Assembly and the peace and dignity of the Commonwealth''; and

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

(C) The information shall contain the official or customary citation of the statute and section thereof, or other provision of law that the defendant is alleged

therein to have violated; but the omission of or error in such citation shall not affect the validity or sufficiency of the information.

(D) In all court cases tried on an information, the issues at trial shall be defined by such information.

Comment

The attorney for the Commonwealth may electronically prepare, sign, and transmit the information for filing.

Before an information is filed, the attorney for the Commonwealth may withdraw one or more of the charges by filing a notice of withdrawal with the clerk of courts. See Rule 561(A). Upon the filing of an information, any charge not listed on the information will be deemed withdrawn by the attorney for the Commonwealth. See Rule 561(B). After the information is filed, court approval is required before a nolle prosequi may be entered on a charge listed therein. See Rule 585.

In any case in which there are summary offenses joined with the misdemeanor, felony, or murder charges that are held for court, the attorney for the Commonwealth must include the summary offenses in the information. *See Commonwealth v. Hoffman*, 594 A.2d 772 (Pa. Super. 1991).

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.

When there is an omission or error of the type referred to in paragraph (C), the information should be amended pursuant to Rule 564.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing. When the preliminary hearing is held in the defendant's absence and the case is held for court, the attorney for the Commonwealth should proceed as provided in this rule.

See Chapter 5 Part E for the procedures governing indicting grand juries. As explained in the Comment to Rule 556.11, when the grand jury indicts the defendant, this is the functional equivalent to holding the defendant for court following a preliminary hearing.

Official Note: Rule 225 adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised April 23, 2004, effective immediately; Comment revised August 24, 2004, effective August 1, 2005; Comment revised March 9, 2006, effective September 1, 2006; amended June 21, 2012, effective in 180 days; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 1, 2018.

Committee Explanatory Reports:

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 1995).

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 23, 2004 Comment revision published with the Court's Order at 34 Pa.B. 2543 (May 15, 2004).

Final Report explaining the August 24, 2004 Comment revision concerning failure to appear for preliminary hearing published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the March 9, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the June 21, 2012 amendments to paragraph (A) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the January 5, 2018 amendment regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 490 (January 20, 2018).

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 560 amended April 23, 2004, effective immediately, 34 Pa.B. 2543; amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 487; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3575. Immediately preceding text appears at serial pages (390252) to (390253).

Rule 561. Withdrawal of Charges by Attorney for the Commonwealth.

(A) After a case is held for court, at any time before the information is filed, the attorney for the Commonwealth may withdraw one or more charges by filing notice with the clerk of courts.

(B) Upon the filing of the information, any charge not listed on the information shall be deemed withdrawn by the attorney for the Commonwealth.

(C) In any case in which all the misdemeanor, felony, and murder charges are withdrawn pursuant to this rule, any remaining summary offenses shall be disposed of in the court of common pleas.

Comment

Court approval is not required for the withdrawal of charges prior to the filing of an information. Cf. 42 Pa.C.S. § 8932 and Rule 585 (*Nolle Prosequi*).

Official Note: Former Rule 224 adopted November 22, 1971, effective immediately; amended February 15, 1974, effective immediately; amended April 26, 1979, effective July 1, 1979; rescinded August 12, 1993, effective September 1, 1993. New Rule 224 adopted August 14, 1995, effective January 1, 1996; renumbered Rule 561 and amended March 1, 2000, effective April 1, 2001; amended February 12, 2010, effective April 1, 2010.

Committee Explanatory Reports:

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

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 1995).

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 12, 2010 amendments adding new paragraph (C) concerning disposition of summary offenses at the court of common pleas published at 40 Pa.B. 1068 (February 27, 2010).

Source

The provisions of this Rule 561 amended February 12, 2010, effective April 1, 2010, 40 Pa.B. 1068. Immediately preceding text appears at serial pages (328097) to (328098).

Rule 562. Copy of Information to be Furnished Defendant.

The clerk of courts shall, upon request, furnish each defendant against whom an information or informations have been filed with a copy of the information or informations filed against the defendant.

Official Note: Rule 227 adopted February 15, 1974, effective immediately; renumbered Rule 562 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 563. Joinder of Offenses in Information.

(A) Two or more offenses, of any grade, may be charged in the same information if:

(1) the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion; or

(2) the offenses charged are based on the same act or transaction.

(B) There shall be a separate count for each offense charged.

Comment

Under these rules, it is assumed that offenses charged in the same information will be tried together, unless the court orders separate trials. For joint trial of offenses or defendants charged in separate informations, see Rule 582. For severance of offenses or defendants, see Rule 583.

Official Note: Rule 228 adopted February 15, 1974, effective immediately; amended December 11, 1981, effective July 1, 1982; amended August 14, 1995, effective January 1, 1996; renumbered Rule 563 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the August 14, 1995 changes published with the Court's Order at 25 Pa.B. 3471 (August 26, 1995).

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 564. Amendment of Information.

The court may allow an information to be amended, provided that the information as amended does not charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge that the defendant would be unfairly prejudiced. Upon amendment, the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

Comment

The rule was amended in 2016 to more accurately reflect the interpretation of this rule that has developed since it first was adopted in 1974. *See Commonwealth v. Brown*, 727 A.2d 541 (Pa. 1999). *See also Commonwealth v. Beck*, 78 A.3d. 656 (Pa. Super. 2013); *Commonwealth v. Page*, 965 A.2d 1212 (Pa. Super. 2009); *Commonwealth v. Sinclair*, 897 A.2d 1218 (Pa. Super. 2006).

Official Note: Rule 229 adopted February 15, 1974, effective immediately; renumbered Rule 564 and amended March 1, 2000, effective April 1, 2001; amended December 21, 2016, effective December 21, 2017.

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 December 21, 2016 amendment regarding the standard for amendment published with the Court's Order at 47 Pa.B. 186 (January 14, 2017).

Source

The provisions of this Rule 564 amended December 21, 2016, effective December 21, 2017, 46 Pa.B. 185. Immediately preceding text published at serial page (361853).

Rule 565. Presentation of Information Without Preliminary Hearing.

(A) When the attorney for the Commonwealth certifies to the court of common pleas that a preliminary hearing cannot be held for a defendant for good cause, the court may grant leave to the attorney for the Commonwealth to file an information with the court without a preliminary hearing.

(B) When a juvenile has been transferred for prosecution as an adult, the attorney for the Commonwealth may file an information with the court without a preliminary hearing.

Comment

The prior language of the rule, authorizing the attorney for the Commonwealth, with the permission of the court, to bypass the preliminary hearing to toll the statute of limitations or to extradite a defendant, was deleted in 1993 in light of changes in the law simplifying the process for obtaining

custody of the defendant. It is intended that use of the bypass procedure as set forth in paragraph (A) will be limited to exceptional circumstances only.

Under the Rules of Juvenile Court Procedure and the Juvenile Act, a juvenile is entitled to substantially the same rights at a transfer hearing as a defendant would be at a preliminary hearing. See Rules of Juvenile Court Procedure 394 and 395 and Juvenile Act, 42 Pa.C.S. § 6355. Therefore, to avoid duplicative proceedings, this rule permits the attorney for the Commonwealth to bypass the preliminary hearing when a juvenile has been transferred for prosecution as an adult.

Nothing in this rule is intended to preclude the attorney for the Commonwealth from filing an information or from having the date for the arraignment scheduled in those cases in which the issuing authority has conducted the preliminary hearing in the defendant's absence as provided in Rule 543(D).

Official Note: Rule 231 adopted February 15, 1974, effective immediately; amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 565 and amended March 1, 2000, effective April 1, 2001; Comment revised August 24, 2004, effective August 1, 2005; Comment revised April 1, 2005, effective October 1, 2005.

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. 1478 (March 18, 2000).

Final Report explaining the August 24, 2004 Comment revision concerning preliminary hearing in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

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

Source

The provisions of this Rule 565 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended April 1, 2005, effective October 1, 2005, 35 Pa.B. 2210. Immediately preceeding text published at serial page (305487).

Rule 566. Application of Indictment Statutes to Information.

The term ''indictment'' in any statute shall be construed to include the term ''information'' unless the purpose of the statute manifestly relates only to indictment by grand jury.

Comment

For the definition of ''information,'' see Rule 103.

See also Section 8931(g) and (h) of the Judicial Code, 42 Pa.C.S. § 8931(g), (h).

Official Note: Rule 232 adopted February 15, 1974, effective immediately; Comment revised August 12, 1993, effective September 1, 1993; renumbered Rule 566 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the August 12, 1993 Comment revision 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 567. Notice of Alibi Defense.

(A) NOTICE BY DEFENDANT

A defendant who intends to offer the defense of alibi at trial shall file with the clerk of courts not later than the time required for filing the omnibus pretrial motion provided in Rule 579 a notice specifying an intention to offer an alibi defense, and shall serve a copy of the notice and a certificate of service on the attorney for the Commonwealth.

(1) The notice and a certificate of service shall be signed by the attorney for the defendant, or the defendant if unrepresented.

(2) The notice shall contain specific information as to the place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses whom the defendant intends to call in support of the claim.

(B) FAILURE TO FILE NOTICE

(1) If the defendant fails to file and serve the notice of alibi as required by this rule, the court may exclude entirely any evidence offered by the defendant for the purpose of proving the defense, except testimony by the defendant, may grant a continuance to enable the Commonwealth to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the defendant omits any witness from the notice of alibi, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the Commonwealth to investigate the witness, or may make such other order as the interests of justice require.

(C) RECIPROCAL NOTICE OF WITNESSES

Within 10 days after receipt of the defendant's notice of defense of alibi, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall file and serve upon defendant's attorney, or the defendant if unrepresented, written notice of the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of alibi.

(D) FAILURE TO FILE RECIPROCAL NOTICE

(1) If the attorney for the Commonwealth fails to file and serve a list of its witnesses required by this rule, the court may exclude any evidence offered by the Commonwealth for the purpose of disproving the alibi defense, may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the attorney for the Commonwealth omits a witness from the list of its witnesses required by paragraph (C), the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the defense to investigate the witness, or may make such other order as the interests of justice require.

(E) CONTINUING DUTY TO DISCLOSE

If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the notice furnished under paragraphs (A) or (C), the party promptly shall notify the other party's attorney, or if unrepresented, the party, of the existence and identity of such additional witness.

(F) FAILURE TO CALL WITNESSES

No adverse inference may be drawn against the defendant, nor may any comment be made concerning the defendant's failure to call available alibi witnesses, when such witnesses have been prevented from testifying by reason of this rule, unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

(G) IMPEACHMENT

A defendant may testify concerning an alibi notwithstanding that the defendant has not filed notice, but if the defendant has filed notice and testifies concerning his or her presence at the time of the offense at a place or time different from that specified in the notice, the defendant may be cross-examined concerning such notice.

Comment

This rule, which is derived from paragraphs (C)(1)(a), (c)—(g), and (D) of Rule 573 (Pretrial Discovery and Inspection) and was made a separate rule in 2006, sets forth the notice procedures when a defendant intends to raise an alibi defense at trial.

The reference in paragraph (A) to Rule 579 (Time for Omnibus Pretrial Motion and Service) contemplates consideration of the exceptions to the time for filing set forth in Rule 579(A).

The notice-of-alibi provision is intended to comply with the requirement of *Wardius v. Oregon*, 412 U. S. 470 (1973), by the inclusion of reciprocal disclosure responsibilities placed upon the Commonwealth in paragraph (C). See also *Commonwealth v. Contakos*, 455 Pa. 136, 314 A.2d 259 (1974).

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

Official Note: Adopted January 27, 2006, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 567 governing notice of alibi defense published at 36 Pa.B. 700 (February 11, 2006).

Source

The provisions Rule 567 adopted January 27, 2006, effective August 1, 2006, 36 Pa.B. 694.

Rule 568. Notice of Defense of Insanity or Mental Infirmity; Notice of Expert Evidence of a Mental Condition.

(A) NOTICE BY DEFENDANT

(1) Notice of Defense of Insanity or Mental Infirmity

A defendant who intends to offer at trial the defense of insanity or mental infirmity shall file with the clerk of courts not later than the time required for filing an omnibus pretrial motion provided in Rule 579 a notice of the intention to offer the defense of insanity or mental infirmity, and shall serve a copy of the notice and a certificate of service on the attorney for the Commonwealth.

(a) The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.

(b) The notice shall contain specific available information as to the nature and extent of the alleged insanity or mental infirmity, the period of time that the defendant allegedly suffered from such insanity or mental infirmity, and the names and addresses of witnesses, expert or otherwise, whom the defendant intends to call to establish such defense.

(2) Notice of Expert Evidence of Mental Condition

Except as provided in Rule 841, a defendant who intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing (1) on the issue of guilt, or (2) in a capital case, on the issue of punishment, shall file with the clerk of courts not later than the time required for filing an omnibus pretrial motion provided in Rule 579 a notice of the intention to offer this expert evidence, and shall serve a copy of the notice and a certificate of service on the attorney for the Commonwealth.

(a) The notice and certificate shall be signed by the attorney for the defendant, or the defendant if unrepresented.

(b) The notice shall contain specific available information as to the nature and extent of the alleged mental disease or defect or any other mental condition, the period of time that the defendant allegedly suffered from such mental disease or defect or any other mental condition, and the names and addresses of the expert witness(es) whose evidence the defendant intends to introduce.

(B) FAILURE TO FILE NOTICE

(1) If the defendant fails to file and serve a notice of insanity or mental infirmity defense, or a notice of expert evidence of a mental condition as required by this rule, the court may exclude entirely any evidence offered by the defendant for the purpose of proving the defense, except testimony by the defendant, may grant a continuance to enable the Commonwealth to investigate such evidence, or may make any other order as the interests of justice require.

(2) If the defendant omits a witness from the notice of insanity or mental infirmity defense or a notice of expert evidence of a mental condition, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the Commonwealth to investigate such evidence, may grant a continuance to enable the Commonwealth to investigate the witness, or may make any other order as the interests of justice require.

(C) RECIPROCAL NOTICE OF WITNESSES

Within 10 days after receipt of the defendant's notice of the insanity or mental infirmity defense, or notice of expert evidence of a mental condition, or within such other time as allowed by the court upon cause shown, the attorney for the Commonwealth shall file and serve upon defendant's attorney, or the defendant if unrepresented, written notice of the names and addresses of all witnesses the attorney for the Commonwealth intends to call to disprove or discredit the defendant's claim of insanity or mental infirmity, or mental disease, defect, or other mental condition.

(D) FAILURE TO SUPPLY RECIPROCAL NOTICE

(1) If the attorney for the Commonwealth fails to file and serve a list of its witnesses as required by this rule, the court may exclude any evidence offered by the Commonwealth for the purpose of disproving the insanity or mental infirmity defense, may grant a continuance to enable the defense to investigate such evidence, or may make such other order as the interests of justice require.

(2) If the attorney for the Commonwealth omits a witness from the list of its witnesses required by this rule, the court at trial may exclude the testimony of the omitted witness, may grant a continuance to enable the defense to investigate the witness, or may make such other order as the interests of justice require.

(E) CONTINUING DUTY TO DISCLOSE

If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the notice furnished under paragraphs (A) or (C), the party shall promptly notify the other party's attorney, or if unrepresented, the other party, of the existence and identity of such additional witness.

(F) FAILURE TO CALL WITNESSES

No adverse inference may be drawn against the defendant, nor may any comment be made concerning the defendant's failure to call available witnesses with regard to the insanity or mental infirmity defense, when such witnesses have been prevented from testifying by reason of this rule, unless the defendant or the defendant's attorney shall attempt to explain such failure to the jury.

Comment

This rule, which is derived from paragraphs (C)(1)(b), (c)—(f), and (D) of Rule 573 (Pretrial Discovery and Inspection) and was made a separate rule in 2006, sets forth the notice procedures when a defendant intends to raise a defense of insanity or mental infirmity, or introduce evidence relating to a mental disease or defect or any other mental condition at trial.

For the procedures related to the determination of mental retardation precluding imposition of a sentence of death, see Chapter 8 Part (B).

The reference in paragraph (A) to Rule 579 (Time for Omnibus Pretrial Motion and Service) contemplates consideration of the exceptions to the time for filing set forth in Rule 579(A).

See Rule 569 (Examination of Defendant by Mental Health Expert) for the procedures for the examination of the defendant by the Commonwealth's expert when the defendant provides notice of an intention to raise a defense of insanity or mental infirmity or an intention to introduce expert evidence concerning his or her mental condition.

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

Official Note: Adopted January 27, 2006, effective August 1, 2006; amended July 31, 2013, effective October 1, 2013.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 568 governing notice of insanity or mental infirmity defense and notice of expert evidence of a mental condition published at 36 Pa.B. 700 (February 11, 2006).

Final Report explaining the July 31, 2013 amendment to paragraph (A)(2) and Comment revisions regarding notice of mental retardation published with the Court's Order at 43 Pa.B. 4722 (August 17, 2013).

Source

The provisions of this Rule 568 adopted January 27, 2006, effective August 1, 2006, 36 Pa.B. 694; amended July 31, 2013, effective October 1, 2013, 43 Pa.B. 4715. Immediately preceding text appears at serial pages (361856) to (361858).

Rule 569. Examination of Defendant by Mental Health Expert.

(A) EXAMINATION OF DEFENDANT

(1) BY AGREEMENT

(a) The defendant, defendant's counsel, and the attorney for the Commonwealth may agree to an examination of the defendant by the mental health expert(s) designated in the agreement.

(b) The agreement shall be in writing and signed by the defendant, defendant's counsel, and the attorney for the Commonwealth, or made orally on the record.

(c) Unless otherwise agreed, the mental health expert(s) promptly shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

(2) BY COURT ORDER

(a) Upon motion of the attorney for the Commonwealth, if the court determines the defendant has provided notice of an intent to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant pursuant to Rule 568, the court shall order that the defendant submit to an examination by one or more mental health experts specified in the motion by the Commonwealth for the purpose of determining the mental condition put in issue by the defendant.

(b) When the court orders an examination pursuant to this paragraph, the court on the record shall advise the defendant in person and in the presence of defendant's counsel:

(i) of the purpose of the examination and the contents of the court's order;

(ii) that the information obtained from the examination may be used at trial; and

(iii) the potential consequences of the defendant's refusal to cooperate with the Commonwealth's mental health expert(s).

(c) The court's order shall:

(i) specify who may be present at the examination; and

(ii) specify the time within which the mental health expert(s) must submit the written report of the examination.

(d) Upon completion of the examination of the defendant, the mental health expert(s), within the time specified by the court as provided in paragraph (A)(2)(c)(ii), shall prepare a written report stating the subject matter, the substance of the facts relied upon, and a summary of the expert's opinions and the grounds for each opinion.

(B) DISCLOSURE OF REPORTS BETWEEN PARTIES

(1) The mental health experts' reports shall be confidential, and not of public record.

(2) Any mental health expert whom either party intends to call to testify concerning the defendant's mental condition must prepare a written report. No mental health expert may be called to testify concerning the defendant's mental condition until the expert's report has been disclosed as provided herein.

(3) The court shall set a reasonable time after the Commonwealth's expert's examination for the disclosure of the reports of the parties' mental health experts.

(C) PROTECTIVE ORDERS

Upon a sufficient showing, the court may at any time order that the disclosure of a report or reports be restricted or deferred for a specified time, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made in camera.

(D) SANCTIONS FOR NON-COMPLIANCE

At any time during the course of the proceedings, upon motion or sua sponte, if the court determines there has been a failure to comply with this rule, the court may order compliance, may grant a continuance, or may grant other appropriate relief. Upon motion, any hearing to determine if there has been a failure to comply may be held in camera and the record sealed until after disposition of the case.

(E) This rule does not apply to competency proceedings.

Comment

This rule establishes the procedures for the examination of the defendant by a mental health expert(s) retained by the prosecution pursuant to an agreement by the parties, see paragraph (A)(1), or a court order, see paragraph (A)(2).

''Mental Health Expert,'' as used in this rule, includes a psychiatrist, a licensed psychologist, a physician, or any other expert in the field of mental health who will be of substantial value in the determination of the issues raised by the defendant concerning his or her mental condition.

Examination of Defendant

Paragraph (A)(1) is intended to encourage the defendant, defendant's counsel, and the attorney for the Commonwealth to agree to an examination of the defendant by the Commonwealth's mental health expert(s).

When the defendant, defendant's attorney, and the attorney for the Commonwealth agree that the defendant will be examined under this rule, at a minimum, the agreement should specify the time, place, and conditions of the examination, who may be present during the examination, and the time within which the parties will disclose the reports of their experts.

For the procedures when the Commonwealth files a motion pursuant to paragraph (A)(2)(a), see Rules 575 (Motions and Answers), 576 (Filing and Service by Parties), 577 (Procedures Following Filing of Motion).

It is intended that the examining mental health expert(s), whether appointed pursuant to the agreement of the parties or a Commonwealth's motion, have substantial discretion in how to conduct an examination. The conduct of the examination, however, must conform to generally recognized and

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accepted practices in that profession. Therefore, the examination of the defendant may consist of such interviewing, clinical evaluation, and psychological testing as the examining mental health expert(s) considers appropriate, within the limits of non-experimental, generally accepted medical, psychiatric, or psychological practices.

Nothing in this rule is intended to limit the number of examining experts the defense may use, nor is it to be construed as a limitation on any party with regard to the number of other expert or lay witnesses they may call to testify concerning the defendant's mental condition.

The court is required in paragraph (A)(2)(b) to inform the defendant, in person on the record, about the request for a compelled examination. *See* Rule 119 (Use of Two-Way Simultaneous Audio-Video Communication in Criminal Proceedings). The court is to explain that the examination is being conducted at the request of the attorney for the Commonwealth and that the purpose of the examination is to obtain information about defendant's mental condition. In addition, the court should explain the procedures for the examination that are included in the court's order as set forth in paragraph (A)(2)(b), and explain the potential consequences of the defendant's failure to cooperate with the examination.

Paragraph (A)(2)(d) requires that the examining mental health expert(s) promptly prepare a written report and sets forth the minimum contents of that report. It is intended that the scope of the mental health expert's report be limited in the court's order to matters related to the defendant's mental condition at the time put into issue by the defendant.

Disclosure of Reports

After the examination of the defendant by the Commonwealth's mental health expert(s) is completed and the mental health expert's report has been prepared, the defendant and the Commonwealth are required in paragraph (B) to disclose the reports that are made by any experts either party intends to call to testify concerning the defendant's mental condition. The reports must be in writing, and should comply with the content requirements in paragraph (A)(2)(d). An expert witness cannot testify until the report is disclosed as provided in paragraph (B)(2) and (3). There may be situations in which the court would have to call a short recess to permit the expert to complete a written report and to give the parties an opportunity to review the report, such as when a mental health expert(s) is observing the defendant during the trial and will be called to testify on these observations.

When the parties agree to the examination, the time for the disclosure of the reports should be set by the agreement of the parties. The agreement should permit adequate time to review the reports and prepare for the proceeding. If the parties cannot agree, in cases proceeding pursuant to court order under paragraph (A)(2), the court should set the time for the disclosure of reports, which should afford the parties adequate time to review the reports and prepare for the proceeding.

Establishing a reasonable time frame and providing for the reciprocal disclosure are intended to further promote the fair handling of these cases. In no case should the disclosure occur until after the defendant has been examined by the Commonwealth's mental health expert(s) and the mental health expert(s) has prepared and submitted a written report. When the defendant intends to introduce an expert's psychiatric findings at the penalty phase of a death penalty case only, the disclosure may not take place until the penalty phase. *See Commonwealth v. Sartin*, 561 Pa. 522, 751 A.2d 1140 (2000) (the results of any examinations of the defendant by a Commonwealth's expert must be sealed ''until such time as the penalty phase commences and the defendant declares his intent to present his own psychiatric evidence in mitigation.'')

There may be cases in which, although proceeding pursuant to a court order, the parties, with the court's approval, agree to an earlier time for disclosure consistent with the purposes of this rule. This rule would not preclude such an agreement.

The procedures in paragraph (C) are similar to the existing procedures for protective orders in Rule 573(F).

Use of Information Obtained Under This Rule

Information obtained from the examination of a defendant by a Commonwealth's expert is not to be disclosed or used except as permitted by case law, which is evolving. *See, e.g.*, *Commonwealth v. Santiago*, 541 Pa. 188, 662 A.2d 610 (1995), *Commonwealth v. Morley*, 545 Pa. 420, 681 A.2d 1254 (1996), *Commonwealth v. Szuchon*, 548 Pa. 37, 693 A.2d 959 (1997), *Commonwealth v. Karenbauer*, 552 Pa. 420, 715 A.2d 1086 (1998), and *Commonwealth v. Sartin*, 561 Pa. 522, 751 A.2d 1140 (2000).

See the Pennsylvania Rules of Evidence concerning the admissibility of the experts' reports and information from any examinations of the defendant by an expert.

Sanctions

The sanctions authorized by paragraph (D) may be imposed on any person who has failed to comply with any of the provisions of this rule, including the attorney for the Commonwealth, the defendant, defendant's counsel, or an expert.

When the defendant has refused to cooperate in the examination by the Commonwealth's mental health expert(s), before imposing a sanction, the court should consider whether the defendant's failure to cooperate (1) was intentional, (2) was the result of the defendant's mental illness, and (3) will have an adverse and unfair impact on the Commonwealth's ability to respond to the defendant's claim. The court also should consider whether ordering the defendant to resubmit to the examination would result in the defendant's cooperation. *See* ABA Criminal Justice Mental Health Standards, Std. 7-3.4(c), for examples of possible sanctions to impose on a defendant.

Mental Health Procedures Act

Section 7402 (Incompetence to Proceed on Criminal Charges and Lack of Criminal Responsibility as Defense) of the Mental Health Procedures Act, 50 P. S. § 7402, prescribes, *inter alia*, procedures for conducting court-ordered examinations of a defendant when the defendant's competency is an issue. The procedures in Section 7402 related to competency are distinct from the procedures set forth in this rule.

Official Note: Adopted January 27, 2006, effective August 1, 2006; Comment revised September 21, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 569 governing the examination of the defendant by mental health experts published with the Court's Order at 36 Pa.B. 700 (February 11, 2006).

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

Source

The provisions of this Rule 569 adopted January 27, 2006, effective August 1, 2006, 36 Pa.B. 694; amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247. Immediately preceding text appears at serial pages (361859) to (361862).

PART G. Procedures Following Filing of Information

Rule 570. Pretrial Conference.

(A) At any time after the filing of an information, upon motion, or upon its own motion, the court may order the attorney for the Commonwealth and the defense attorney or the pro se defendant to appear before it for a conference in open court, unless agreed by the defendant to be in chambers, to consider:

(1) the terms and procedures for pretrial discovery and inspection;

(2) the simplification or stipulation of factual issues, including admissibility of evidence;

(3) the qualification of exhibits as evidence to avoid unnecessary delay;

(4) the number of witnesses who are to give testimony of a cumulative nature;

(5) the defenses of alibi and insanity, as to which appropriate rulings may be made; and

(6) such other matters as may aid in the disposition of the proceeding.

(B) The parties shall have the right to record an objection to rulings of the court during the conference.

(C) The court shall place on the record the agreements or objections made by the parties and rulings made by the court as to any of the matters considered in the pretrial conference. Such order shall control the subsequent proceedings unless modified at trial to prevent injustice.

Comment

The following are suggested topics for the pretrial conference. The list is meant only to be suggestive and by no means exhaustive of the possible subjects for consideration.

(1) All motions including those for pretrial discovery and inspection, and for a bill of particulars.

(2) The establishing of the time and place of the offense charged and the corpus delecti.

(3) The qualifying of pictures, documents, confessions, records, or the like as evidence.

(4) The obtaining of admissions of fact.

(5) Pleas to various counts in the information(s) and whether the jury should be informed of such pleas.

(6) The nolle prosequi or other disposition of some counts of the information(s).

(7) All objections or defenses which are capable of determination before trial.

(8) Whether a defense of alibi, or insanity, or diminished responsibility resulting from other mental infirmity, or other defenses will be raised at the trial.

(9) The determination of the suppression or return of evidence.

(10) Whether there shall be any severance as to defendants or as to information(s) or counts thereof.

(11) The number of counsel who are to participate and examine witnesses.

(12) The order or procedure when there is more than one defendant.

(13) The length and number of addresses of counsel.

(14) The number of challenges of jurors.

(15) The procedure of voir dire, if pertinent.

The 1978 addition of the phrase ''or a pro se defendant'' in paragraph (A), and the deletion of paragraph (d), were made pursuant to the decision of the United States Supreme Court in *Faretta v. California*, 422 U. S. 806 (1975).

See Rule 595 for the requirements for a mandatory status conference following the arraignment in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

Official Note: Rule 311 adopted June 30, 1964, effective January 1, 1965; amended February 15, 1974, effective immediately; amended June 29, 1977 and November 22, 1977, effec-

tive as to cases in which the indictment or information is filed on or after January 1, 1978; amended August 12, 1993, effective September 1, 1993; renumbered Rule 570 March 1, 2000, effective April 1, 2001; Comment revised July 31, 2012, effective November 1, 2012.

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. 1478 (March 18, 2000).

Final Report explaining July 31, 2012 Comment revision cross-referencing proposed new Rule 595 concerning requests for transfer from criminal proceedings to juvenile proceedings published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Source

The provisions of this Rule 570 amended July 31, 2012, effective November 1, 2012, 42 Pa.B. 5333. Immediately preceding text appears at serial pages (361862) to (361864).

Rule 571. Arraignment.

(A) Except as otherwise provided in paragraph (D), arraignment shall be in such form and manner as provided by local court rule. Notice of arraignment shall be given to the defendant as provided in Rule 114 or by first class mail. Unless otherwise provided by local court rule, or postponed by the court for cause shown, arraignment shall take place no later than 10 days after the information has been filed.

(B) In the discretion of the court, the arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When the counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the arraignment.

(C) At arraignment, the defendant shall be advised:

(1) of the right to be represented by counsel;

(2) of the nature of the charges contained in the information;

(3) of the right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, a Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322, and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed; and.

(4) if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including trial, that the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.

If the defendant or counsel has not received a copy of the information(s) pursuant to Rule 562, a copy thereof shall be provided.

(D) A defendant may waive appearance at arraignment if the following requirements are met:

(1) the defendant is represented by counsel of record and counsel concurs in the waiver; and

(2) the defendant and counsel sign and file with the clerk of courts a waiver of appearance at arraignment that acknowledges the defendant:

(a) understands the nature of the charges;

(b) understands the rights and requirements contained in paragraph (C) of this rule; and

(c) waives his or her right to appear for arraignment.

Comment

The main purposes of arraignment are: to ensure that the defendant is advised of the charges; to have counsel enter an appearance, or if the defendant has no counsel, to consider the defendant's right to counsel; and to commence the period of time within which to initiate pretrial discovery and to file other motions. Although the specific form of the arraignment is not prescribed by this rule, judicial districts are required to ensure that the purposes of arraignments are accomplished in all court cases.

Concerning the waiver of counsel, see Rule 121.

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. See Rule 543.

Under paragraph (A), in addition to other instances of ''cause shown'' for delaying the arraignment, the arraignment may be delayed when the defendant is unavailable for arraignment within the 10-day period after the information is filed.

Within the meaning of paragraph (B), counsel is present when physically with the defendant or with the judicial officer presiding over the arraignment.

Under paragraph (B), the court has discretion to order that a defendant appear in person for the arraignment.

Under paragraph (B), two-way simultaneous audio-visual communication is a form of advanced communication technology.

Paragraph (C)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. *See* Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (''[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'").

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule 114.

See Rule 596 for the procedures for requesting transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302. *See also* Rules 595 (mandatory status conference), 597 (procedures when motion filed), and 598 (place of detention).

Official Note: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and

amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 31, 2012, effective November 1, 2012; amended May 2, 2013, effective June 1, 2013.

Committee Explanatory Reports:

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

Final Report explaining the May 1, 1995 changes published with the Court's Order at 25 Pa.B. 1944 (May 20, 1995).

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 November 17, 2000 amendments concerning a defendant's waiver of appearance at arraignment published with the Court's Order at 30 Pa.B. 6184 (December 2, 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 March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the August 24, 2004 addition of paragraph (E) and the correlative Comment provisions published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 deletion of paragraph (E) and the correlative Comment provisions published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Final Report explaining the July 31, 2012 amendments concerning requests for transfer from criminal proceedings to juvenile proceedings published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

Source

The provisions of this Rule 571 amended November 17, 2000, effective January 1, 2001, 30 Pa.B. 6183; amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended May 1, 2007, effective September 4, 2007, 37 Pa.B. 2496; amended July 31, 2012, effective November 1, 2012, 42 Pa.B. 5333; amended May 2, 2013, effective June 1, 2013, 43 Pa.B. 2704. Immediately preceding text appears at serial pages (363584) to (363586).

Rule 572. Bill of Particulars.

(A) A request for a bill of particulars shall be served in writing by the defendant upon the attorney for the Commonwealth within 7 days following arraignment. The request shall promptly be filed and served as provided in Rule 576.

(B) The request shall set forth the specific particulars sought by the defendant, and the reasons why the particulars are requested.

(C) Upon failure or refusal of the attorney for the Commonwealth to furnish a bill of particulars after service of a request, the defendant may make written motion for relief to the court within 7 days after such failure or refusal. If further particulars are desired after an original bill of particulars has been furnished, a motion therefor may be made to the court within 5 days after the original bill is furnished.

(D) When a motion for relief is made, the court may make such order as it deems necessary in the interests of justice.

Comment

The traditional function of a Bill of particulars is to clarify the pleadings and to limit the evidence which can be offered to support the information.

Official Note: Rule 304 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; amended June 19, 1996, effective July 1, 1996; renumbered Rule 572 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004.

Committee Explanatory Reports:

Final Report explaining the June 19, 1996 amendments published with the Court's Order at 26 Pa.B. 3128 (July 6, 1996).

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 March 3, 2004 amendments to paragraph (A) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Source

The provisions of this Rule 572 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547. Immediately preceeding text appears at serial pages (289105) and (264279).

Rule 573. Pretrial Discovery and Inspection.

(A) INFORMAL

Before any disclosure or discovery can be sought under these rules by either party, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party which the other party has refused to disclose, the demanding party may make appropriate motion. Such motion shall be made within 14 days after arraignment, unless the time for filing is extended by the court. In such motion the party must set forth the fact that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this provision shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

(B) DISCLOSURE BY THE COMMONWEALTH

(1) MANDATORY:

In all court cases, on request by the defendant, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the defendant's attorney all of the following requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items.

(a) Any evidence favorable to the accused that is material either to guilt or to punishment, and is within the possession or control of the attorney for the Commonwealth;

(b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;

(c) the defendant's prior criminal record;

(d) the circumstances and results of any identification of the defendant by voice, photograph, or in-person identification;

(e) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the defendant that are within the possession or control of the attorney for the Commonwealth;

(f) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; and

(g) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

(2) DISCRETIONARY WITH THE COURT:

(a) In all court cases, except as otherwise provided in Rules 230 (Disclosure of Testimony Before Investigating Grand Jury) and 556.10 (Secrecy; Disclosure), if the defendant files a motion for pretrial discovery, the court may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:

(i) the names and addresses of eyewitnesses;

(ii) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses the Commonwealth intends to call at trial;

(iii) all written and recorded statements, and substantially verbatim oral statements, made by co-defendants, and by co-conspirators or accomplices, whether such individuals have been charged or not; and

(iv) any other evidence specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interests of justice.

(b) If an expert whom the attorney for the Commonwealth intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare, and that the attorney for the Commonwealth disclose, a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(C) DISCLOSURE BY THE DEFENDANT

(1) In all court cases, if the Commonwealth files a motion for pretrial discovery, upon a showing of materiality to the preparation of the Commonwealth's case and that the request is reasonable, the court may order the defendant, subject to the defendant's rights against compulsory self-incrimination, to allow the attorney for the Commonwealth to inspect and copy or photograph any of the following requested items:

(a) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, that the defendant intends to introduce as evidence in chief, or were prepared by a witness whom the defendant intends to call at the trial, when results or reports relate to the testimony of that witness, provided the defendant has requested and received discovery under paragraph (B)(1)(e); and

(b) the names and addresses of eyewitnesses whom the defendant intends to call in its case-in-chief, provided that the defendant has previously requested and received discovery under paragraph (B)(2)(a)(i).

(2) If an expert whom the defendant intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare and the defendant disclose a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(D) CONTINUING DUTY TO DISCLOSE

If, prior to or during trial, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party shall promptly notify the opposing party or the court of the additional evidence, material, or witness.

(E) REMEDY

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the defendant, or it may enter such other order as it deems just under the circumstances.

(F) PROTECTIVE ORDERS

Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court enters an order granting relief following a showing in camera, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

(G) WORK PRODUCT

Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the Commonwealth or the attorney for the defense, or members of their legal staffs.

Comment

This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U. S. 83 (1963), and the refinements of the Brady standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of ''court case'' and ''summary case,'' see Rule 103.

See Rule 556.10(B)(5) for discovery in cases indicted by a grand jury.

The attorney for the Commonwealth should not charge the defendant for the costs of copying pretrial discovery materials. However, nothing in this rule is intended to preclude the attorney for the Commonwealth, on a case-by-case basis, from requesting an order for the defendant to pay the copying costs. In these cases, the trial judge has discretion to determine the amount of costs, if any, to be paid by the defendant.

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

See Rule 576(B)(4) and Comment for the contents and form of the certificate of service.

See Rule 569 (Examination of Defendant by Mental Health Expert) for the procedures for the examination of the defendant by the mental health expert when the defendant has given notice of an intention to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant.

Included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

Pursuant to paragraphs (B)(2)(b) and (C)(2), the trial judge has discretion, upon motion, to order an expert who is expected to testify at trial to prepare a report. However, these provisions are not intended to require a prepared report in every case. The judge should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

Whenever the rule makes reference to the term ''identification,'' or ''in-person identification,'' it is understood that such terms are intended to refer to all forms of identifying a defendant by means of the defendant's person being in some way exhibited to a witness for the purpose of an identification: e.g., a line-up, stand-up, show-up, one-on-one confrontation, one-way mirror, etc. The purpose of this provision is to make possible the assertion of a rational basis for a claim of improper identification based upon *Stovall v. Denno*, 388 U. S. 293 (1967), and *United States v. Wade*, 388 U. S. 218 (1967).

This rule is not intended to affect the admissibility of evidence that is discoverable under this rule or evidence that is the fruits of discovery, nor the standing of the defendant to seek suppression of such evidence. See Rule 211 for the procedures for disclosure of a search warrant affidavit(s) that has been sealed.

Paragraph (C)(1), which provided the requirements for notice of the defenses of alibi, insanity, and mental infirmity, was deleted in 2006 and moved to Rules 567 (Notice of Alibi Defense) and 568 (Notice of Defense of Insanity or Mental Infirmity).

It is intended that the remedies provided in paragraph (E) apply equally to the Commonwealth and the defendant as the interests of justice require.

The provision for a protective order, paragraph (F), does not confer upon the Commonwealth any right of appeal not presently afforded by law.

It should also be noted that as to material which is discretionary with the court, or which is not enumerated in the rule, if such information contains exculpatory evidence as would come under the *Brady* rule, it must be disclosed. Nothing in this rule is intended to limit in any way disclosure of evidence constitutionally required to be disclosed.

The limited suspension of Section 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5720, see Rule 1101(E), is intended to insure that the statutory provision and Rule 573(B)(1)(g) are read in harmony. A defendant may seek discovery under paragraph (B)(1)(g) pursuant to the time frame of the rule, while the disclosure provisions of Section 5720 would operate within the time frame set forth in Section 5720 as to materials specified in Section 5720 and not previously discovered.

Official Note: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; Comment revised July 28, 1997, effective immediately; Comment revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised March 26, 2004, effective July 1, 2004; amended January 27, 2006, effective August 1, 2006; amended June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

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

Final Report explaining the May 13, 1996 amendments published with the Court's Order at 26 Pa.B. 2488 (June 1, 1996).

Final Report explaining the July 28, 1997 Comment revision deleting the references to the ABA Standards published with the Court's Order at 27 Pa.B. 3997 (August 9, 1997).

Final Report explaining the August 28, 1998 Comment revision concerning disclosure of remuneration published with the Court's Order at 28 Pa.B. 4883 (October 3, 1998).

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 March 3, 2004 amendments to paragraphs (A), (C)(1)(a), and (C)(1)(b), and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the March 26, 2004 Comment revision concerning costs of copying discovery materials published with the Court's Order at 34 Pa.B. 1933 (April 10, 2004).

Final Report explaining the January 27, 2006 changes to paragraph (C) deleting the notice of defenses of alibi, insanity, and mental infirmity published with the Court's Order at 36 Pa.B. 700 (February 11, 2006).

Final Report explaining the June 21, 2012 amendments concerning discovery when case is indicted by grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

The provisions of this Rule 573 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended March 26, 2004, effective July 1, 2004, 34 Pa.B. 1932; amended January 27, 2006, effective August 1, 2006, 36 Pa.B. 694; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140. Immediately preceeding text appears at serial pages (328104) to (328108) and (321817).

Rule 574. Forensic Laboratory Report; Certification in Lieu of Expert Testimony.

(A) In any trial, the attorney for the Commonwealth may seek to offer into evidence a forensic laboratory report supported by a certification, as provided in paragraph (E), in lieu of testimony by the person who performed the analysis or examination that is the subject of the report.

(B) *Notice*

(1) If the attorney for the Commonwealth intends to offer the forensic laboratory report and accompanying certification as provided in paragraph (A) as evidence at trial, the attorney for the Commonwealth shall file and serve, as provided in Rule 576, upon the defendant's attorney or, if unrepresented, the defendant a written notice of that fact at the time of the disclosure of the report but no later than 20 days prior to the start of trial.

(2) The notice shall include a statement informing the defendant that, as provided in paragraph (C)(3), if no written demand for testimony by the person who performed the analysis or examination that is the subject of the forensic laboratory report is made within 10 days of the service of the notice, the forensic laboratory report and accompanying certification are admissible in evidence without the person who performed the analysis or examination testifying.

(3) Except as provided in paragraph (C), the laboratory report and accompanying certification are admissible in evidence to the same effect as if the person who performed the analysis or examination had personally testified.

(C) *Demand*

(1) Within 10 days of service of the notice provided in paragraph (B), the defendant's attorney, or if unrepresented, the defendant may file and serve, as provided in Rule 576, upon the attorney for the Commonwealth a written demand for the person who performed the analysis or examination that is the subject of the forensic laboratory report to testify at trial.

(2) If a written demand is filed and served, the forensic laboratory report and accompanying certification are not admissible under paragraph (B)(3) unless the person who performed the analysis or examination testifies.

(3) If no demand for live testimony regarding the forensic laboratory report and accompanying certification is filed and served within the time allowed by this section, the forensic laboratory report and accompanying certification are admissible in evidence without the person who performed the analysis or examination testifying.

(D) For cause shown, the judge may extend the time period for filing the notice or the demand for live testimony, or may grant a continuance of the trial.

(E) *Certification*

The person who performed the analysis or examination that is the subject of the forensic laboratory report shall complete a certification in which the person shall state:

(1) the education, training, and experience that qualify him or her to perform the analysis or examination;

(2) the entity by which he or she is employed and a description of his or her regular duties;

(3) the name and location of the laboratory where the analysis or examination was performed;

(4) any state, national, or international accreditations of the laboratory at which the analysis or examination was performed; and

(5) that the analysis or examination was performed under industry-approved procedures or standards and the report accurately reflects the findings and opinions of the person who performed the analysis or examination regarding the results of the analysis or examination.

Comment

This rule was adopted in 2014 to address the issues raised by the U.S. Supreme Court's decision in *Melendez-Diaz v. Massachusetts*, 129 U.S. 2527 (2009), that held that the 6th Amendment confrontation right precluded presentation of laboratory reports without a live witness testifying in the trial. In *Melendez-Diaz*, the U.S. Supreme Court noted with approval the use of ''notice and demand'' procedures as a means of permitting routine laboratory reports to be admitted without the expense of supporting the admission by live expert testimony while protecting a defendant's confrontation rights.

This rule provides a ''notice and demand'' procedure for Pennsylvania. Under the rule, the attorney for the Commonwealth may seek to admit a forensic laboratory report as evidence without the testimony of the analyst who performed the testing that was the subject of the report if notice requirements are met and no demand for the presence of the analyst is made. If the defendant makes such a demand, the analyst would be required to testify before the report could be admitted into evidence.

Nothing in this rule is intended to preclude a stipulation agreed to by the parties for the admission of the laboratory report without the analyst's presence.

Nothing in the rule would prevent further stipulation by the parties in light of the admission of the report and certification.

Nothing in this rule is intended to change the requirement for the provision of discovery under Rule 573.

Under paragraph (D), the trial judge may permit filing of the notice or demand after the time period required in the rule if the party seeking the late filing shows cause for the delay. In the situation where the judge permits the late filing of the notice, the defendant still has 10 days in which to make the demand for the live testimony of the analyst. This may necessitate a continuance of the trial.

The certification in paragraph (E) does not require a description of the actual tests performed for the analysis. This information more properly belongs in the report itself. Since one of the goals of this rule is to permit the defendant to make an informed decision regarding whether to demand the live testimony of the analyst, the report should provide information sufficient to describe the methodology by which the results were determined.

For purposes of this rule, a laboratory is ''accredited'' when its management, personnel, quality system, operational and technical procedures, equipment and physical facilities meet standards established by a recognized state, national, or international accrediting organization such as the American Society of Crime Laboratory Directors/Laboratory Accrediting Board (ASCLD/LAB) or Forensic Quality Services—International (FQS-I).

Official Note: New Rule 574 adopted February 19, 2014, effective April 1, 2014.

Committee Explanatory Reports:

Final Report explaining new Rule 574 providing for notice and demand procedures regarding forensic laboratory reports published with the Court's Order at 44 Pa.B. 1311 (March 8, 2014).

Source

The provisions of this Rule 574 adopted February 19, 2014, effective April 1, 2014, 44 Pa.B. 1309.

PART G(1). Motion Procedures

Rule 574. Motions [Reserved].

Official Note: Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; rescinded and replaced by Rule 575 March 3, 2004, effective July 1, 2004.

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).

Final Report explaining the March 3, 2004 rescission of Rule 574 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Source

The provisions of this Rule 574 reserved March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547. Immediately preceeding text appears at serial page (264285).

Rule 575. Motions and Answers.

(A) MOTIONS

(1) All motions shall be in writing, except as permitted by the court or when made in open court during a trial or hearing.

(2) A written motion shall comply with the following requirements:

(a) The motion shall be signed by the person or attorney making the motion. The signature of an attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay. The motion also shall contain a certification that the motion complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

(b) The motion shall include the court, caption, term, and number of the case in which relief is requested.

(c) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

(d) The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(e) The motion shall include any requests for hearing or argument, or both.

(f) The motion shall include a certificate of service as required by Rule 576(B)(4).

(g) If the motion sets forth facts that do not already appear of record in the case, the motion shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

(3) The failure, in any motion, to state a type of relief or a ground therefor shall constitute a waiver of such relief or ground.

(4) Any motion may request such alternative relief as may be appropriate.

(5) Rules to Show Cause and Rules Returnable are abolished. Notices of hearings are to be provided pursuant to Rules 114(B) and 577(A)(2).

(B) ANSWERS

(1) Except as provided in Rule 906 (Answer to Petition for Post-Conviction Collateral Relief), an answer to a motion is not required unless the judge orders an answer in a specific case as provided in Rule 577. Failure to answer shall not constitute an admission of the facts alleged in the motion.

(2) A party may file a written answer, or, if a hearing or argument is scheduled, may respond orally at that time, even though an answer is not required.

(3) A written answer shall comply with the following requirements:

(a) The answer shall be signed by the person or attorney making the answer. The signature of an attorney shall constitute a certification that the attorney has read the answer, that to the best of the attorney's knowledge, information, and belief there is good ground to support the answer, and that it is not interposed for delay. The answer also shall contain a certification that the answer complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

(b) The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

(c) The answer shall include a certificate of service as required by Rule 576(B)(4).

(d) If the answer sets forth facts that do not already appear of record in the case, the answer shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such

a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

(e) The answer shall be filed not later than 10 days after service of the motion, unless otherwise ordered by the court.

(C) Format of Motions, Answers, and Briefs

All motions, answers, and briefs must conform to the following requirements:

(1) The document shall be on 8 1/2 inch by 11 inch paper.

(2) The document shall be prepared on white paper (except for dividers and similar sheets) of good quality.

(3) The first sheet shall contain a 3-inch space from the top of the paper for all court stampings, filing notices, etc.

(4) The text must be double spaced, but quotations more than two lines long may be indented and single spaced. Margins must be at least one inch on all four sides.

(5) The lettering shall be clear and legible and no smaller than point 12. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents may be lettered on both sides of a page.

(6) Documents and papers shall be firmly bound.

(D) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a party to attach a proposed order to a motion or an answer, requiring an answer to every motion, or requiring a cover sheet or a backer for any motion or answer.

Comment

For the definition of ''motion,'' see Rule 103.

See Rule 1005 for the procedures for pretrial applications for relief in the Philadelphia Municipal Court.

''Rules to Show Cause'' and ''Rules Returnable'' were abolished in 2004 because the terminology is arcane, and the concept of these ''rules'' has become obsolete. These ''rules'' have been replaced by the plain language ''notice of hearings'' provided in Rule 577(A)(2).

Pursuant to paragraphs (A)(2)(f) and (B)(3)(c), and Rule 576(B)(4), all filings by the parties must include a certificate of service setting forth the date and manner of service, and the names, addresses, and phone numbers of the persons served.

Although paragraph (B)(1) does not require an answer to every motion, the rule permits a judge to order an answer in a specific case. See Rule 114 for the requirements for the filing and serving of orders, and for making docket entries.

Paragraph (B)(1) changes prior practice by providing that the failure to answer a motion in a criminal case never constitutes an admission. Although this prohibition applies in all cases, even those in which an answer has been ordered in a specific case or is required by the rules, the judge would have discretion to impose other appropriate sanctions if a party fails to file an answer ordered by the judge or required by the rules.

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.

Paragraph (C), added in 2006, sets forth the format requirements for all motions, answers, and briefs filed in criminal cases. These new format requirements are substantially the same as the format requirements in Pennsylvania Rule of Appellate Procedure 124(a) and Pennsylvania Rule of Civil Procedure 204.1.

The format requirements in paragraph (C) are not intended to apply to pre-printed and computer-generated forms prepared by the Administrative Office of Pennsylvania Courts; to charging documents; to documents routinely used by court-related agencies; or to documents routinely prepared or utilized by the courts.

Pro se defendants may submit handwritten documents that comply with the other requirements in paragraph (C) and are clearly readable.

Paragraph (D), titled ''Unified Practice,'' was added in 2004 to emphasize that local rules must not be inconsistent with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules) and Pa.R.J.A. No. 103(d), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. *See* Pa.R.J.A. No. 103(d)(1). The term ''local rule'' includes every rule, regulation, directive, policy, custom, usage, form or order of general application. *See* Pa.R.J.A. No. 103(d)(1).

The prohibition on local rules mandating cover sheets was added because cover sheets are no longer necessary with the addition of the Rule 576(B)(1) requirement that the court administrator be served a copy of all motions and answers.

Although paragraph (D) precludes local rules that require a proposed order be included with a motion, a party should consider whether to include a proposed order. Proposed orders may aid the court by defining the relief requested in the motion or answer.

Official Note: Former Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004. Former Rule 9021 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 575 and amended March 1, 2000, effective April 1, 2001; Rules 574 and 575 combined as Rule 575 and amended March 3, 2004, effective July 1, 2004; amended July 7, 2006, effective February 1, 2007; amended January 5, 2018, effective January 6, 2018; amended June 1, 2018, effective July 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 March 3, 2004 rule changes combining Rule 574 with Rule 577 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the July 7, 2006 addition of the format requirements in paragraph (C) published with the Court's Order at 36 Pa.B. 3808 (July 22, 2006).

Final Report explaining the January 5, 2018 amendment regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 490 (January 20, 2018).

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 575 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended July 7, 2006, effective February 1, 2007, 36 Pa.B. 3808; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 487; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3575. Immediately preceding text appears at serial pages (390256) and (390591) to (390593).

Rule 576. Filing and Service by Parties.

(A) FILING

(1) All written motions and any written answers, and any notices or documents for which filing is required, shall be filed with the clerk of courts.

(2) Filing shall be:

(a) by personal delivery to the clerk of courts;

(b) by mail addressed to the clerk of courts. Except as provided by law, filing by mail shall be timely only when actually received by the clerk of courts within the time fixed for filing; or,

(c) in a judicial district that permits electronic filing pursuant to Rule 576.1, as provided in Rule 576.1(E).

(3) The clerk of courts shall accept all written motions, answers, notices, or documents presented for filing. When a document, which is filed pursuant to paragraph (A)(1), is received by the clerk of courts, the clerk shall timestamp it with the date of receipt and make a docket entry reflecting the date of receipt, and promptly shall place the document in the criminal case file.

(4) In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall accept it for filing, time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and place the document in the criminal case file. A copy of the time stamped document shall be forwarded to the defendant's attorney and the attorney for the Commonwealth within 10 days of receipt.

(5) If a defendant submits a document *pro se* to a judge without filing it with the clerk of courts, and the document requests some form of cognizable legal relief, the judge promptly shall forward the document to the clerk of courts for filing and processing in accordance with this rule.

(6) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring that a document has to be presented in person before filing or requiring review by a court or court administrator before a document may be filed.

(B) SERVICE

(1) All written motions and any written answers, and notices or documents for which filing is required, shall be served upon each party and the court administrator concurrently with filing.

(2) Service on the parties shall be by:

(a) personal delivery of a copy to a party's attorney, or the party if unrepresented; or

(b) personal delivery of a copy to the party's attorney's employee at the attorney's office; or

(c) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

(d) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, when counsel has agreed to receive service by this method, leaving a copy for the attorney in the attorney's box; or

(e) sending a copy to an unrepresented party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement; or

(f) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has made a written request for this method of service for the document; or

(g) delivery to the party's attorney, or the party if unrepresented, by carrier service.

(3) Service on the court administrator shall be by:

(a) mailing a copy to the court administrator; or

(b) in those judicial districts that maintain in the courthouse assigned boxes for the court administrator to receive service, leaving a copy for the court administrator in the court administrator's box; or

(c) leaving a copy for the court administrator at the court administrator's office; or

(d) sending a copy to the court administrator by facsimile transmission or other electronic means if authorized by local rule; or

(e) delivery to the court administrator by carrier service.

(4) Certificate of Service

(a) All documents that are filed and served pursuant to this rule shall include a certificate of service.

(b) The certificate of service shall be in substantially the form set forth in the Comment, signed by the party's attorney, or the party if unrepresented, and shall include the date and manner of service, and the names, addresses, and phone numbers of the persons served.

(5) In a judicial district that permits electronic filing pursuant to Rule 576.1, service shall be made as provided in Rule 576.1(D)(2) and (H)(1).

(C) Any non-party requesting relief from the court in a case shall file the motion with the clerk of courts as provided in paragraph (A), and serve the defendant's attorney, or the defendant if unrepresented, the attorney for the Commonwealth, and the court administrator as provided in paragraph (B).

Comment

For the procedures for electronic filing and service as a local option, see Rule 576.1.

Paragraph (A)(1) requires the filing of all written motions, and answers. The provision also applies to notices and other documents only if filing is required by some other rule or provision of law. *See, e.g.*, the notice of withdrawal of charges provisions in Rule 561 (Withdrawal of Charges by Attorney for the Commonwealth), the notice of alibi defense and notice of insanity defense or mental infirmity defense provisions in Rule 573 (Pretrial Discovery and Inspection), the notice that offenses or defendants will be tried together provisions in Rule 582 (Joinder—Trial of Separate Indictments or Informations), the notice of aggravating circumstances provisions in Rule 802 (Notice of Aggravating Circumstances), and the notice of challenge to a guilty plea provisions in Municipal Court cases in Rule 1007 (Challenge to Guilty Plea).

When a motion, notice, document, or answer is presented for filing pursuant to paragraph (A)(1), the clerk of courts must accept it for filing even if the motion, notice, document, or answer does not comply with a rule or statute or appears to be untimely filed. It is suggested that the judicial district implement procedures to inform the filing party when a document is not in compliance with these rules or a local rule so the party may correct the problem.

See Commonwealth v. Jones, 700 A.2d 423 (Pa. 1997); and *Commonwealth v. Little*, 716 A.2d 1287 (Pa. Super. 1998) concerning the timeliness of filings by prisoners proceeding *pro se* (the ''prisoner mailbox rule'').

The 2004 amendments to paragraph (A)(4) modified the procedure by which the clerks of courts handle filings by represented defendants when the defendant's attorney has not signed the document being filed by the defendant. As amended, paragraph (A)(4) requires, in all cases in which a repre-

sented defendant files a document, that the clerk of courts make a docket entry of the defendant's filing and place the document in the criminal case file, and then forward a copy of the document to both the attorney of record and the attorney for the Commonwealth. *See Commonwealth v. Castro*, 766 A.2d 1283 (Pa. Super. 2001). *Compare* Pa.R.A.P. 3304 (Hybrid Representation). The requirement that the clerk time stamp and make docket entries of the filings in these cases only serves to provide a record of the filing, and does not trigger any deadline nor require any response. *See* Rules 120 (Attorneys—Appearance and Withdrawals) and 122 (Assignment of Counsel) concerning the duration of counsel's obligation under the rules.

Paragraph (A)(4) only applies to cases in which the defendant is represented by counsel, not cases in which the defendant is proceeding *pro se*.

The purpose of paragraph (A)(5) is to ensure documents raising cognizable legal issues submitted to the judge are transmitted to the clerk of courts, and does not relieve the defendant from complying with the other requirements of the rules. When a document is forwarded to the clerk from a judge, if the defendant is unrepresented, the clerk is to proceed as provided in paragraph (A)(3) and the defendant is to be treated like any other party. If the defendant is represented, the clerk is to proceed pursuant to paragraph (A)(4).

Paragraph (A)(6), titled ''Unified Practice,'' was added in 2004 to emphasize that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all Criminal Rules through Rule 105 (Local Rules) and Rule of Judicial Administration 103 (Procedures for Adoption, Filing, and Publishing Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. *See* the first paragraph of the *Note* to Pa.R.J.A. No. 103. The term ''local rule'' includes every rule, regulation, directive, policy, custom, usage, form or order of general application. *See* Pa.R.J.A. No. 103(d)(1).

Any local rule that requires personal appearance in addition to filing with the clerk of courts is inconsistent with this rule.

See Rule 113 (Criminal Case File and Docket Entries) for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

Paragraph (B)(1) requires that, concurrently with filing, the party must serve a copy on the court administrator. This requirement provides flexibility to accommodate the various practices for scheduling. However, it is not intended to replace the requirement that the party must file with the clerk of courts.

When a judge is assigned to a case, in addition to the requirements of paragraph (B)(1), it is suggested counsel send the judge a courtesy copy of any filings.

Under any system of scheduling, once a hearing or argument is scheduled, the court or court administrator must give notice of the hearing or argument to the parties, and a copy of the notice must be filed in the criminal case file and a docket entry made. *See* Rule 114(C)(2).

Although paragraph (B)(2)(d) permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(2)(f). The authorization for service by facsimile transmission or other electronic means under this rule is document specific and only valid for an individual document. Counsel will have to renew the authorization for each document.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

For the definition of ''carrier service,'' see Rule 103.

Paragraph (B)(4) requires the filing party to include with the document filed a certificate of service. The certificate of service should be in substantially the following form:

I hereby certify that I am this day serving upon the persons and in the manner indicated below. The manner of service satisfies the requirements of Pa.R.Crim.P. 575.

Service by first class mail addressed as follows: (NAME) _____ (717) 787-0000
Deputy Attorney General
Office of the Attorney General
16 Floor Strawberry Square
Harrisburg PA 17120
(Attorney for the Commonwealth)

Service in person as follows:

(NAME) _____ (717) 240-0000
Assistant District Attorney
Cumberland County Courthouse
Carlisle, PA
(Attorney for the Commonwealth)

Service by leaving a copy at the office of:

(NAME) _____ (717) 240-0000
Court Administrator
Cumberland County Courthouse
Carlisle, PA

Service by certified mail, return receipt requested, as follows:

(NAME) _____ (no phone)
Drawer 00000000
Camp Hill, PA

Service by electronic means addressed as follows:

(NAME) _____ (717) 545-0000
000 Magnolia Ave, Suite A
Harrisburg PA 17122
email address: johndoe@hotmail.com
(Attorney for the Defendant)
Dated:
(S) _____
(NAME), Esq. (Attorney Registration No. 00000)

Under 18 Pa.C.S. § 4904 (unsworn falsification to authorities), a knowingly false certificate of service constitutes a misdemeanor of the second degree.

See Rule 451 (Service) for the procedures for service in summary cases.

See Rule 114 (Orders and Court Notices: Filing, Service, and Docket Entries) for the requirements for docketing and service of court orders and notices.

See Rule 103 (Definitions) for the definitions of court administrator, clerk of courts, and motion.

Official Note: Former Rule 9022 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective January 1, 1994; amended July 9, 1996, effective September 1, 1996; renumbered Rule 576 and amended March 1, 2000, effective April 1, 2001. Former Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effec-

tive September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004. Rules 576 and 577 combined and amended March 3, 2004, effective July 1, 2004, Comment revised June 4, 2004, effective November 1, 2004; Comment revised September 18, 2008, effective February 1, 2009; Comment revised September 21, 2012, effective November 1, 2012; amended January 25, 2018, effective May 1, 2018.

Committee Explanatory Reports:

Final Report explaining the March 22, 1993 amendments to former Rule 9022 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the June 2, 1994 amendments to former Rule 9023 published at 23 Pa.B. 5008 (October 23, 1993).

Final Report explaining the July 9, 1996 amendments to former Rule 9022 published with the Court's Order at 26 Pa.B. 3532 (July 27, 1996).

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 March 3, 2004 changes amending and combining Rule 576 with former Rule 577 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

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

Final Report explaining the January 25, 2018 amendment regarding electronic filing and service pursuant to Rule 576.1 published with the Court's Order at 48 Pa.B. 861 (February 10, 2018).

Source

The provisions of this Rule 576 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended June 4, 2004, effective November 1, 2004, 34 Pa.B. 3105; amended September 18, 2008, effective February 1, 2009, 38 Pa.B. 5425; amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247; amended January 25, 2018, effective May 1, 2018, 48 Pa.B. 856. Immediately preceding text appears at serial pages (390259) and (363831) to (363835).

Rule 576.1. Electronic Filing and Service of Legal Papers.

(A) The president judge of a judicial district by local rule promulgated pursuant to Rule 105 and Rule of Judicial Administration 103 may authorize electronic filing of legal papers with the clerk of courts in cases in the courts of common pleas and in the Philadelphia Municipal Court through the statewide electronic filing system as provided in this rule.

(B) *Local Rule*

(1) The local rule required under this rule shall include the following provisions:

(a) subject to the provisions in paragraph (B)(2), a statement that the electronic filing system is permissive and specify the legal papers subject to

the rule, but in no case shall legal papers prohibited from being filed electronically by this rule be permitted to be filed electronically;

(b) a provision for the procedures to ensure that any party who declines to participate in the system, or who is unable to electronically file or accept service of legal papers which were filed electronically, or who is otherwise unable to access the system, at a minimum, shall be able to file legal papers in a physical paper format and be served legal papers in a physical format which were electronically filed;

(c) any additional provisions as the court may deem necessary to provide a full and complete procedure for the use of the system within the judicial district; and

(d) a notation that the Administrative Office of Pennsylvania Courts and the judicial district have agreed upon an implementation plan for PACFile in the judicial district.

(2) Any judicial district that authorized electronic filing for a period of two years thereafter may amend their local rule, subject to the requirements of Rule 105 and Rule of Judicial Administration 103, to make participation in electronic filing mandatory.

(C) As used in this rule, the following words shall have the following meanings:

''electronic filing,'' the electronic submission of legal papers by means other than facsimile transmission and the acceptance of the document by the clerk of courts;

''filing party,'' an attorney, defendant, or other person who files a legal paper by means of electronic filing;

''legal paper,'' a pleading or other submission to the court, including motions, answers, notices, or other documents, of which filing is required or permitted, including orders, copies of exhibits, and attachments, but excluding

(1) applications for search warrants,

(2) applications for arrest warrants,

(3) any grand jury materials, except the indicting grand jury indictment or the investigating grand jury presentment,

(4) submissions filed *ex parte* as authorized by law,

(5) submissions filed or authorized to be filed under seal, and

(6) exhibits offered into evidence, whether or not admitted, in a court proceeding;

''original document,'' a legal paper filed electronically shall be deemed the original document, but copies of exhibits electronically filed do not constitute the original of the exhibit for evidentiary purposes; and

''the system,'' the PACFile electronic filing system, developed and administered by the Administrative Office of Pennsylvania Courts, is the exclusive system for electronic filing.

(D) *Participation*

(1) The system shall permit attorneys and defendants proceeding without counsel to file electronically.

(a) In order to participate in the system, an attorney shall establish an account in the system by procedures established by the Administrative Office of Pennsylvania Courts.

(b) A defendant who is proceeding without counsel shall be permitted to utilize the system through an authorization process established by the Administrative Office of Pennsylvania Courts.

(2) Establishment of an account by an attorney or authorization of a defendant proceeding without counsel in the system, to the extent so authorized by the Administrative Office of Pennsylvania Courts pursuant to paragraph (D)(1), shall constitute consent to participate in electronic filing, including acceptance of service electronically of any document filed on the system in any judicial district that permits electronic filing.

(3) An attorney or defendant participating in the system is permitted to file a legal paper either in an electronic format or in a physical paper format. Service upon an attorney or defendant participating in the system shall be done electronically.

(E) *Filing*

(1) When a legal paper is to be electronically filed, it shall be submitted to the system at the Unified Judicial System web portal at http://ujsportal.pacourts.us, in accordance with this rule, any local rule adopted pursuant to this rule, and any filing instructions as may be otherwise provided at the web portal site.

(2) Electronic filings may be submitted at any time, except during times of periodic maintenance. The electronic submission must be completed by 11:59:59 p.m. EST/EDT to be considered filed that day.

(3) The time and date on which a legal paper is submitted to the system shall be recorded by the system. The system shall provide an acknowledgement to the filing party that the legal paper has been submitted.

(4) The time and date on which the legal paper is accepted by the clerk of courts office also shall be recorded by the system. The system shall provide an acknowledgement to the filing party that the legal paper has been accepted.

(5) A legal paper shall be considered filed upon submission of the legal paper to the system and acceptance of the filing by the clerk of courts. If the clerk of courts determines that the requirements for filing have been met, the time and date of filing shall be the time and date that the legal paper was submitted to the system. If the clerk of courts finds that the requirements for filing are not met, the clerk may reject the filing.

(6) A filing party shall be responsible for any delay, disruption, and interruption of the electronic signals and legibility of the document electronically filed, except when caused by the failure of the system's website.

(7) The system shall attribute the filing of an electronic legal paper to the party whose account is used to log onto the system and file the legal paper.

(8) Legal papers shall be presented for filing in portable document format (".pdf").

(9) All legal papers electronically filed shall be maintained and retained by the clerk of courts in an electronic format. Neither the clerk of courts nor the court is required to maintain in a physical paper format any legal paper filed electronically as provided in this rule.

(10) Any legal paper submitted for filing to the clerk of courts in a physical paper format shall be accepted by the clerk of courts in that format and shall be retained by the clerk of courts as may be required by applicable rules of court and record retention policies. The clerk of courts shall convert such legal paper in a physical paper format to .pdf and add it to the system. However, those submissions that are excluded from the definition of "legal paper" under paragraph (C) shall not be converted and added to the system.

(11) No legal paper that complies with the Pennsylvania Rules of Criminal Procedure shall be refused for filing by the clerk of courts or the electronic filing system based upon a requirement of a local rule or local administrative procedure or practice pertaining to the electronic filing of legal papers.

(F) *Signature*

(1) Except as provided in paragraph (F)(3), an electronic signature of the filer as provided for in the system is permitted on electronic filings in the following form: */s/ John L. Doe*.

(2) The electronic filing of a motion or answer that includes an electronic signature constitutes a certification pursuant to Pa.R.Crim.P. 575 that the filing party or attorney has read the legal paper, that to the best of the filing party's or attorney's knowledge, information and belief there is good ground to support the motion or answer, and that it is not interposed for delay.

(3) Any motion that, pursuant to Rule 575(A)(2)(g), avers facts not of record and requiring a sworn affidavit must be created in a physical paper form, have a physical signature placed on it, and then be converted into a .pdf before it may be electronically filed.

(4) The original of a sworn or verified legal paper that is an electronic filing or is contained within an electronic filing shall be maintained by the electronic filer in either electronic or paper format and made available upon direction of the court or reasonable request of the signatory or opposing party.

(G) The court by local rule shall provide for the maintenance by the clerk of courts of an electronic file only, or of such electronic and physical paper format files as set forth in the local rule. Those legal papers that are not permitted to be electronically filed pursuant to paragraph (C) shall be maintained in a physical paper format only.

(H) *Service*

(1) Upon the submission of a legal paper for electronic filing, the system shall provide an electronic notification to other parties and attorneys to the case who are participating in electronic filing that the legal paper has been submit ted. This notification upon submission shall satisfy the service requirements of Rules 114(B) and 576(B) on any attorney or party who has established a system account.

(2) Upon the acceptance by the clerk of courts office of a legal paper for electronic filing, the system shall provide an electronic notification to other parties and attorneys to the case who are participating in electronic filing that the legal paper has been accepted.

(3) Service of electronic filings on any attorney or party who has not established a UJS web portal account or who is unable to file or receive legal papers electronically or otherwise unable to access the system shall be made by the procedures provided under Rules 114(B) and 576(B).

Comment

This rule, adopted in 2018, permits as a local practice the electronic filing of legal papers. This rule does not require the implementation of electronic filing by a local court. To provide a uniform system for electronic filing, the Administrative Office of Pennsylvania Courts has developed the PACFile electronic filing system. This is the only authorized system for electronic filing of legal documents in criminal court cases in the courts of common pleas and Philadelphia Municipal Court.

Paragraph (B) requires that a judicial district that desires to participate in the electronic filing system must adopt a local rule to that effect. As part of the initial ''opting into'' electronic filing, this local rule must provide that participation is voluntary. Once a judicial district has allowed electronic filing for two years, participation may be made mandatory. Paragraph (B)(1)(b) requires that all judicial districts in which electronic filing is allowed must make accommodations for those parties who are unable to participate. In no event shall access to the court filing be precluded solely on the basis of participation in the electronic filing system.

This rule is applicable to cases in courts of record. *See* Rule 103 for the definition of a ''court.''

The UJS Portal contains other automated services beside PACFile. There may be circumstances when an attorney, who has registered as a user on another service of the UJS Portal, may have an established account that would be usable for PACFile. Any questions about the requirements of registration or accessibility to PACFile should be referred to the Administrative Office of Pennsylvania Courts.

The system permits a user to designate other users as proxies on individual cases. These proxies all receive notice of any filing in the case. It is anticipated that offices such as those of a district attorney or public defender would be able to establish general user accounts with particular attorneys assigned and their supervisors or back-ups listed as proxies in individual cases.

An attorney is responsible for the actions of other individuals whom the attorney authorizes to use the attorney's account.

The local rule required by this rule must conform to the requirements of Rule 105 (Local Rules) and Rule of Judicial Administration 103 (Procedures for Adoption, Filing, and Publishing Rules).

A file in physical paper format is not required by this rule. If the local rule requires a file in physical paper format, the requirement may extend to all cases or only to certain specified cases. For

example, the court may require files in physical paper format for cases listed for trial or scheduled for argument while maintaining only electronic files for all other cases.

Upon submission of the electronic filing of a legal paper, the electronic filing system shall automatically send notice of the filing to all parties who have agreed to service by electronic transmission , see paragraph (D). If the electronic filing system sends notice of such filing, the party filing the legal paper only need serve those parties who are not served by the electronic filing system. An electronic mail address set forth on letterhead is not a sufficient basis under this rule to permit electronic service of legal papers.

Nothing in this rule is intended to prohibit the use of advanced communication technology to submit an application for search warrant as provided in Rule 203(A) or to submit an application for an arrest warrant using advanced communications technology as provided in Rule 513(B)(1).

In addition to the filing fees now applicable, an online payment convenience fee for use of the PACFile system may be imposed. *See* 204 Pa. Code § 207.3.

See Rule 114(B) providing for the clerk of courts to serve orders and court notices by facsimile transmission or other means.

Legal papers filed electronically should be consistent with the formatting requirements of Rule 575(C).

See Rule 576(B) governing service of motions and any written answers, and any notices or documents for which filing is required by facsimile transmission or other means.

See Rule 1002, for the applicability of this rule to summary cases filed in the Philadelphia Municipal Court.

Official Note: New Rule 576.1 adopted January 25, 2018, effective May 1, 2018; amended August 3, 2020, effective October 1, 2020.

Committee Explanatory Reports:

Final Report explaining new Rule 576.1 providing for electronic filing published with the Court's Order at 48 Pa.B. 861 (February 10, 2018).

Final Report regarding the August 3, 2020 amendments clarifying the definition of ''legal papers'' and correcting a Comment reference to the initiation of electronic service published with the Court's Order at 50 Pa.B. 4127 (August 15, 2020).

Source

The provisions of this Rule 576.1 adopted January 25, 2018, effective May 1, 2018, 48 Pa.B. 856; amended January 25, 2018, effective May 1, 2018, 48 Pa.B. 2759; amended August 3, 2020, effective October 1, 2020, 50 Pa.B. 4124. Immediately preceding text appears at serial pages (392770) to (392775).

Rule 577. Service [Reserved].

Official Note: Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004, and replaced by Rule 576(B).

Committee Explanatory Reports:

Report explaining the June 2, 1994 amendments published at 23 Pa.B. 5008 (October 23, 1993).

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 March 3, 2004 rescission of the rule published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Source

The provisions of this Rule 577 reserved March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547. Immediately preceeding text appears at serial pages (264287) to (264288).

Rule 577. Procedures Following Filing of Motion.

(A) Following the filing of a motion,

(1) if the judge determines an answer is necessary, the court may order a written answer, or it may order an oral response at the time of a hearing or argument on a motion. Any written order shall be filed, a docket entry made, and served by the clerk of courts pursuant to Rule 114(B), (C), and (D).

(2) If the judge determines the motion requires a hearing or argument, the court or the court administrator shall schedule the date and time for the hearing or argument. Pursuant to Rule 114(B)(2), notice of the date and time for the hearing or argument shall be served by the clerk of courts, unless the president judge has designated the court or court administrator to serve these notices.

(B) The judge promptly shall dispose of any motion.

(C) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a personal appearance as a prerequisite to a determination of whether a hearing or argument is scheduled.

Comment

In all cases, the notice of the date and time of the hearing or argument must be filed and served, and docket entries made, as required by Rule 114.

Paragraph (C), titled ''Unified Practice,'' emphasizes that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all criminal rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 Comment. The term ''local rule'' includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

The practice in some counties of requiring an attorney to take a motion to a judge for the scheduling of a hearing is inconsistent with this rule.

Official Note: Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 3, 2004, effective July 1, 2004, and replaced by Rule 576(B). New Rule 577 adopted March 3, 2004, effective July 1, 2004.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Source

The provisions of this Rule 577 adopted March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547.

Rule 578. Omnibus Pretrial Motion for Relief.

Unless otherwise required in the interests of justice, all pretrial requests for relief shall be included in one omnibus motion.

Comment

Types of relief appropriate for the omnibus pretrial motions include the following requests:

(1) for continuance;

(2) for severance and joinder or consolidation;

(3) for suppression of evidence;

(4) for psychiatric examination;

(5) to quash or dismiss an information;

(6) for change of venue or venire;

(7) to disqualify a judge;

(8) for appointment of investigator;

(9) for pretrial conference;

(10) challenging the array of an indicting grand jury;

(11) for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C..S. § 6322; and

(12) proposing or opposing the admissibility of scientific or expert evidence.

The omnibus pretrial motion rule is not intended to limit other types of motions, oral or written, made pretrial or during trial, including those traditionally called motions *in limine*, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

See Pa.R.E. 702 and 703 regarding the admissibility of scientific or expert testimony. Pa.R.E. 702 codifies Pennsylvania's adherence to the test to determine the admissibility of expert evidence first established in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and adopted by the Pennsylvania Supreme Court in *Commonwealth v. Topa*, 369 A.2d 1277 (Pa. 1977). Given the potential complexity when the admissibility of such evidence is challenged, such challenges should be raised in advance of trial as part of the omnibus pretrial motion if possible. However, nothing in this rule precludes such challenges from being raised in a motion *in limine* when circumstances necessitate it.

All motions filed pursuant to this rule are public records. However, in addition to restrictions placed by law and rule on the disclosure of confidential information, the motions are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and may require further precautions, such as placing certain types of information in a "Confidential Information Form" or providing both a redacted and unredacted version of the filing. *See* Rule 113.1.

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.

See Rule 556.4 for challenges to the array of an indicting grand jury and for motions to dismiss an information filed after a grand jury indicts a defendant.

Official Note: Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; Comment revised October 25, 1990, effective January 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised June 21, 2012, effective in 180 days; Comment revised July 31, 2012, effective November 1, 2012; Comment revised September 21, 2017, effective January 1, 2018; Comment revised January 5, 2018, effective January 6, 2018; Comment revised June 1, 2018, effective July 1, 2018.

Committee Explanatory Reports:

Report explaining the October 25, 1990 Rule 306 Comment revision published at 20 Pa.B. 1696 (March 24, 1990).

Report explaining the August 12, 1993 Comment revision 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. 1478 (March 18, 2000).

Final Report explaining the June 21, 2012, revision of the Comment referencing indicting grand jury rules published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the July 31, 2012 Comment revision adding motions for transfer published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the September 21, 2017 Comment revision regarding pretrial challenges to the admissibility of expert evidence published with the Court's Order at 47 Pa.B. 6173 (October 7, 2017).

Final Report explaining the January 5, 2018 Comment revisions regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 490 (January 20, 2018).

Comment revisions 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 578 adopted June 21, 2012, effective in 180 days, 42 Pa.B. 4140; amended July 31, 2012, effective November 1, 2012, 42 Pa.B. 5333; amended September 21, 2017, effective January 1, 2018, 47 Pa.B. 6173; amended January 5, 2018, effective January 6, 2018, 48 Pa.B. 487; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3575. Immediately preceding text appears at serial pages (390261) to (390262).

Rule 579. Time for Omnibus Pretrial Motion and Service.

(A) Except as otherwise provided in these rules, the omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment, unless opportunity therefor did not exist, or the defendant or defense attorney, or the attorney for the Commonwealth, was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown.

(B) Copies of all pretrial motions shall be served in accordance with Rule 576.

Comment

Contemplated within the concept of cause shown is a finding by the court that discovery has not been completed, or a bill of particulars has not been furnished, or that contested motions for discovery or for a bill of particulars are pending. "Arraignment" for purposes of this rule also means any proceeding held in lieu of arraignment in accordance with local rule, as permitted under Rule 571. This rule is not intended to preclude the filing by any party of a motion prior to arraignment when circumstances necessitate such a motion and when otherwise not precluded by rule or by law.

For general requirements concerning the filing and service of motions, notices, and other documents by parties, see Rule 576.

Official Note: Formerly Rule 305 adopted June 30, 1964, effective January 1, 1965; renumbered Rule 307 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; renumbered Rule 579 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004.

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).

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Source

The provisions of this Rule 579 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547. Immediately preceeding text appears at serial page (264289).

Rule 580. Disposition of Pretrial Motions.

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

Comment

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

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

Committee Explanatory Reports:

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

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

Source

The provisions of this Rule 580 amended June 4, 2013, effective July 4, 2013, 43 Pa.B. 3330. Immediately preceding text appears at serial page (363590).

Rule 581. Suppression of Evidence.

(A) The defendant's attorney, or the defendent if unrepresented, may make a motion to the court to suppress any evidence alleged to have been obtained in violation of the defendant's rights.

(B) Unless the opportunity did not previously exist, or the interests of justice otherwise require, such motion shall be made only after a case has been returned to court and shall be contained in the omnibus pretrial motion set forth in Rule 578. If timely motion is not made hereunder, the issue of suppression of such evidence shall be deemed to be waived.

(C) Such motion shall be made to the court of the county in which the prosecution is pending.

(D) The motion shall state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the facts and events in support thereof.

(E) A hearing shall be scheduled in accordance with Rule 577 (Procedures Following Filing of Motion). A hearing may be either prior to or at trial, and shall afford the attorney for the Commonwealth a reasonable opportunity for investigation. The judge shall enter such interim order as may be appropriate in the interests of justice and the expeditious disposition of criminal cases.

(F) The hearing, either before or at trial, ordinarily shall be held in open court. The hearing shall be held outside the presence of the jury. In all cases, the

court may make such order concerning publicity of the proceedings as it deems appropriate under Rules 110 and 111.

(G) A record shall be made of all evidence adduced at the hearing.

(H) The Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant's rights. The defendant may testify at such hearing, and if the defendant does testify, the defendant does not thereby waive the right to remain silent during trial.

(I) At the conclusion of the hearing, the judge shall enter on the record a statement of findings of fact and conclusions of law as to whether the evidence was obtained in violation of the defendant's rights, or in violation of these rules or any statute, and shall make an order granting or denying the relief sought.

(J) If the court determines that the evidence shall not be suppressed, such determination shall be final, conclusive, and binding at trial, except upon a showing of evidence which was theretofore unavailable, but nothing herein shall prevent a defendant from opposing such evidence at trial upon any ground except its suppressibility.

Comment

The rule is designed to provide one single procedure for the suppression of evidence alleged to have been obtained in violation of the defendant's rights. The first revision of this rule extended its coverage to violation of the fourth, fifth, and sixth amendments of the Constitution of the United States; such as those proscribed by *Mapp v. Ohio*, 367 U. S. 643, 81 S.Ct. 1684 (1961); *Escobedo v. Illinois*, 378 U. S. 478, 84 S.Ct. 1758 (1964); *Jackson v. Denno*, 378 U. S. 368, 84 S.Ct. 1774 (1964); *Miranda v. Arizona*, 384 U. S. 436, 86 S.Ct. 1602 (1966); *United States v. Wade*, 388 U. S. 218, 87 S.Ct. 1926 (1967); and *Gilbert v. California*, 388 U. S. 263, 87 S.Ct. 1951 (1967). Later Pennsylvania cases such as *Commonwealth v. Futch*, 447 Pa. 389, 290 A.2d 417 (1972), sanctioned the use of Rule 581 to test certain violations of Pennsylvania Rules of Criminal Procedure; however, *Commonwealth v. Murphy*, 459 Pa. 297, 328 A.2d 842 (1974), questioned whether the rule in its earlier form permitted such a challenge. The rule was therefore further revised in 1977 to permit use of the suppression motion to test admissibility of evidence where the issue is the method by which the evidence was obtained. The rule merely provides a vehicle by which the court may determine the issues involved and sets the time at which the application is to be made. The rule and the 1977 revision do not purport to define or expand the basis on which suppression may be had. There is no longer a multi-county provision for suppression hearings because it is the opinion of the Committee that the prosecution county is the most interested forum for determining the admissibility of challenged evidence. In addition, the order of the judge determining admissibility is to be final and binding at trial, absent newly discovered and hitherto undiscoverable evidence.

It should be noted that failure to file the motion within the appropriate time limit constitutes a waiver of the right to suppress. However, once the motion is timely filed, the hearing may be held at any time prior to or at trial.

All motions to supress must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

In all cases, the burden of production is now upon the Commonwealth. See *Commonwealth ex rel. Butler v. Rundle*, 429 Pa. 141, 239 A.2d 426 (1968). The burden of persuasion is there as well. See *Miranda v. Arizona*, 384 U. S. 436, 479, 86 S.Ct. 1602, 1630 (1966). See also, *Commonwealth ex rel. Butler v. Rundle, supra.*, which establishes a preponderance of the evidence as the standard of proof.

With regard to the recording and transcribing of the evidence adduced at the hearing, see Rule 115.

Formerly, the law provided that a suppression hearing would be held in camera on motion of the defendant. Recently, however, developments in the law have established minimum constitutional requirements that are to be met before a court may order any criminal proceeding closed.

The law on closure of criminal proceedings is still developing. The 1985 amendments, therefore, are intended to remove the possibility that the rule will be mistaken to imply that the defendant has an absolute right to closure of a suppression hearing. It is intended that a suppression hearing will be held in open court unless the court orders all or part of the hearing closed in accordance with the existing case law. See, e.g., *United States v. Criden*, 675 F.2d 550 (3d Cir. 1982); *Commonwealth v. Hayes*, 489 Pa. 419, 414 A.2d 318 (1980); *Commonwealth v. Buehl*, 316 Pa.Super. 215, 462 A.2d 1316 (1983), in which the courts recognized the public's general constitutional right to access to criminal proceedings, which right is to be balanced with the defendant's constitutional right to a fair trial. With regard to a court ordering part of a criminal proceeding closed, see *Commonwealth v. Contakos*, 499 Pa. 340, 453 A.2d 578 (1982), in which a new trial was ordered because the public had been excluded from a portion of the trial although the press was present.

In all cases it is the continuing duty of the trial court to guard against public disclosure of prejudicial matters by invoking Rules 110 and 111.

In *Commonwealth v. Millner*, 585 Pa. 237, 888 A.2d 680 (2005), the Court reiterated the importance of a specific and contemporaneous announcement of findings of fact and conclusions of law at the conclusion of the suppression hearing.

Paragraph (J) does not change the Massachusetts or ''humane'' rule (whereby a defendant may raise the issue of voluntariness of a confession to the jury following denial of a motion to suppress) which is followed in the Commonwealth.

Official Note: Rule 323 adopted March 15, 1965, effective September 15, 1965; amended November 25, 1968, effective February 3, 1969. The 1968 amendment, suspended, amended, and consolidated former Rules 323, 324, 2000 and 2001 of the Pennsylvania Rules of Criminal Procedure. This was done in accordance with Section 1 of the Act of July 11, 1957, P. L. 819, 17 P. S. § 2084. Paragraph (f) amended March 18, 1972, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraphs (f) and (g) and Comment amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 581 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; Comment revised November 2, 2007, effective February 1, 2008.

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).

Final Report explaining the March 3, 2004 amendments to paragraphs (A) and (E) and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the November 2, 2007 revisions to the Comment regarding the requirement for the judge to make findings of fact and conclusions of law at the conclusion of the suppression hearing published with the Court's Order at 37 Pa.B. 6204 (November 24, 2007).

Source

The provisions of this Rule 581 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended November 2, 2007, effective February 1, 2008, 37 Pa.B. 6203. Immediately preceeding text appears at serial pages (303683) to (303686).

Rule 582. Joinder—Trial of Separate Indictments or Informations.

(A) STANDARDS

(1) Offenses charged in separate indictments or informations may be tried together if:

(a) the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion; or

(b) the offenses charged are based on the same act or transaction.

(2) Defendants charged in separate indictments or informations may be tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

(B) PROCEDURE

(1) Notice that offenses or defendants charged in separate indictments or informations will be tried together shall be in writing and filed with the clerk of courts. A copy of the notice shall be served on the defendant at or before arraignment.

(2) When notice has not been given under paragraph (B)(1), any party may move to consolidate for trial separate indictments or informations, which motion must ordinarily be included in the omnibus pretrial motion.

Comment

Ordinarily offenses or defendants charged in separate indictments or informations will be tried separately. Under the scheme set forth in this rule, it can be assumed that offenses charged in the same indictment or information will be tried together. *See* Rule 563. Similarly, offenses or defendants will be tried together if written notice is served pursuant to paragraph (B)(1) of this rule. In these situations, the court may order separate trials either when the standards in paragraph (A) are not met or pursuant to Rule 583. Absent joinder in the same indictment or information or absent written notice pursuant to paragraph (B)(1), a motion for consolidation is required under paragraph (B)(2). A party may oppose such a motion either on the ground that the standards in paragraph (A) are not met, or pursuant to Rule 583.

Paragraph (A)(1)(a) is based upon *Commonwealth v. Morris*, 493 Pa. 164, 425 A.2d 715 (1981). Paragraph (A)(1)(b) is based upon statutory and case law that, ordinarily, if all offenses arising from the same criminal episode or transaction are not tried together, subsequent prosecution on any such offense not already tried may be barred. *See* the Crimes Code, 18 Pa.C.S. §§ 109—110; *Commonwealth v. Campana*, 452 Pa. 233, 304 A.2d 432 (1973), vacated and remanded, 414 U. S. 808 (1973), addendum opinion on remand, 455 Pa. 622, 314 A.2d 854 (1974); *Commonwealth v. Tarver*, 467 Pa. 401, 357 A.2d 539 (1976). The court has also held that a defendant's failure to move for consolidation does not ordinarily constitute a waiver of an objection to a subsequent, separate trial of any such offense. *See, e.g., Commonwealth v. Stewart*, 493 Pa. 24, 425 A.2d 346 (1981).

See Rule 571 concerning arraignment procedures.

Although most references to indictments and indicting grand juries were deleted from these rules in 1993 since the indicting grand jury was abolished in all counties (see PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931(b)), the reference was retained in paragraphs (A) and (B) of this rule because there may be some cases still pending that were instituted under the former indicting grand jury rules prior to the abolition of the indicting grand jury in 1993. These references to ''indictment'' do not apply in the context of an indicting grand jury convened pursuant to the new indicting grand jury procedures adopted in 2012 in which an information would be filed after a grand jury indicts a defendant. *See* Rules 103 and 556.11.

Official Note: Rule 1127 adopted December 11, 1981, effective July 1, 1982; amended August 12, 1993, effective September 1, 1993; amended August 14, 1995, effective January 1, 1996; renumbered Rule 582 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; Comment revised June 21, 2012, effective in 180 days.

Committee Explanatory Reports:

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

Final Report explaining the August 14, 1995 changes published with the Court's Order at 25 Pa.B. 3471 (August 26, 1995).

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 to paragraph (B) published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the June 21, 2012 revision of the last paragraph of the Comment concerning the abolition of the indicting grand jury published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Source

Provisions of this Rule 582 amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140. Immediately preceding text appears at serial pages (331728) and (303687).

Rule 583. Severance of Offenses or Defendants.

The court may order separate trials of offenses or defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by offenses or defendants being tried together.

Comment

This rule provides the procedure whereby the court may, because of prejudice to a party, order separate trials of offenses or defendants that otherwise would be properly tried together under Rule 582. A defendant may also request severance of offenses or defendants on the ground that trying them together would be improper under Rule 582.

Under Rule 578 (Omnibus Pretrial Motion for Relief), any request for severance must ordinarily be made in the omnibus pretrial motion or it is considered waived unless a later filing is permitted under the exceptions enumerated in Rule 579. See Rules 578 and 579.

Official Note: Rule 1128 adopted December 11, 1981, effective July 1, 1982; renumbered Rule 583 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 584. Motion for Change of Venue or Change of Venire.

(A) All motions for change of venue or for change of venire shall be made to the court in which the case is currently pending. Venue or venire may be changed by that court when it is determined after hearing that a fair and impartial trial cannot otherwise be had in the county where the case is currently pending.

(B) An order for change of venue or venire shall be certified forthwith to the Supreme Court. The Supreme Court shall designate and notify the county of transfer or the county from which the jury is to be impanelled. Unless otherwise ordered by the Supreme Court, a judge from the county in which the complaint was filed shall preside over all proceedings in the trial court.

(C) Whenever a change of venue has been ordered, the docket entries and all original papers in the proceedings shall be certified and transmitted to the clerk of courts of the county of transfer immediately prior to trial.

(D) Whenever a change of venire has been ordered, the jury shall be summoned, selected, and impanelled in the designated county of impanelment. The trial judge shall conduct the voir dire, unless otherwise ordered by the Supreme Court. The jury shall be transported to the county of the court where the case is currently pending.

(E) All costs accruing from a change of venue or from a change or venire shall be paid by the county in which the complaint was filed.

Comment

As used in paragraph (A) of this rule, ''court in which the case is currently pending'' and ''county where the case is currently pending'' will ordinarily refer to the court or the county in which the complaint was filed. However, when a change of venue has been previously ordered, the case would be considered pending in the court or the county to which the case had been transferred.

Ordinarily, a judge from the county in which the complaint was filed will be the trial judge and in change of venue cases will proceed with the case to the county of transfer. However, it is contemplated that the Supreme Court may assign a different trial judge when it determines that the particular circumstances of the case require such a change.

''Proceedings in the trial court,'' as used in paragraph (B), is intended to include, but is not limited to, voir dire in the county of impanelment and pretrial, post-verdict, and post-sentence matters in the trial court, as well as the trial.

Under this rule, the trial judge may sit to handle pretrial matters either in the county in which the complaint was filed or in the county of transfer. In deciding in which court the trail judge will sit to handle these matters, the following points, at a minimum, should be considered: (1) the potential cost and inconvenience of transporting the witnesses, parties, and counsel; (2) the possibility that the pretrial matters will result in prejudicial publicity which could taint the trial proceedings; (3) the type of pretrial matter and the relationship between it and the reasons for changing venue; and (4) the time of filing the pretrial matter.

As used in this rule, ''change of venire'' is intended to refer to the summoning, selecting, and impaneling of a jury in a county other than the one in which the trial is to be held, and the jury's transportation to the county of trial, pursuant to an order entered under Section 8702 of the Judicial Code, 42 Pa.C.S. § 8702. A change of venire in the first instance would also dictate that the trial court consider the need to sequester the jury.

Paragraph (E), which prior to the 1981 amendment of this rule was the last sentence of paragraph (B), is merely a restatement of the cost allocation procedures in change of venue cases and also applies to cases in which a change of venire has been ordered. No change in procedure from the previous version is intended.

Official Note: Rule 313 adopted June 30, 1964, effective January 1, 1965; Comment added June 28, 1976, effective July 1, 1976; renumbered Rule 312, and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended December 11, 1981, effective July 1, 1982; renumbered Rule 584 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 amendment correcting a typographical error in paragraph (A) published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Source

The provisions of this Rule 584 amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247. Immediately preceding text appears at serial pages (361887) to (361888).

Rule 585. Nolle Prosequi.

(A) Upon motion of the attorney for the Commonwealth, the court may, in open court, order a nolle prosequi of one or more charges notwithstanding the objection of any person.

(B) Upon a nolle prosequi, costs may be imposed as the court may direct.

Comment

Section 8932 of the Judicial Code, 42 Pa.C.S. § 8932, prohibits the district attorney from entering a nolle prosequi without court approval at any time after the filing of an information.

Before an information is filed, the attorney for the Commonwealth may withdraw one or more of the charges by filing a notice of withdrawal with the clerk of courts. See Rule 561(A). Upon the filing of an information, any charge in the complaint not listed on the information will be deemed withdrawn by the attorney for the Commonwealth. See Rule 561(B). After the information is filed, court approval is required before a nolle prosequi may be entered on a charge listed therein. See 42 Pa.C.S. § 8932.

In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge: (1) the judge may order a nolle prosequi on all the charges including the summary offense; and (2) if the judge has ordered a nolle prosequi on all the misdemeanor, felony, or murder charges pursuant to this rule, the judge may not remand the summary offense to the issuing authority for disposition, but must dispose of the summary offense in the court of common pleas as required by Rule 589 (Pretrial Disposition of Summary Offenses Joined With Misdemeanor, Felony, or Murder Charges).

Official Note: Rule 314 adopted June 30, 1964, effective January 1, 1965; Comment revised February 15, 1974, effective immediately; renumbered Rule 313 and Comment revised

June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; amended August 14, 1995, effective January 1, 1996; renumbered Rule 585 and amended March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006.

Committee Explanatory Reports:

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

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 1995).

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 March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Source

The provisions of this Rule 585 amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1390. Immediately preceding text appears at serial pages (303689) to (303690).

Rule 586. Court Dismissal Upon Satisfaction or Agreement.

When a defendant is charged with an offense which is not alleged to have been committed by force or violence or threat thereof, the court may order the case to be dismissed upon motion and a showing that:

(1) the public interest will not be adversely affected; and

(2) the attorney for the Commonwealth consents to the dismissal; and

(3) satisfaction has been made to the aggrieved person or there is an agreement that satisfaction will be made to the aggrieved person; and

(4) there is an agreement as to who shall pay the costs.

Comment

This rule applies only to courts of common pleas. Neither magisterial district judges, Philadelphia Municipal Court judges, nor any other issuing authority may dismiss a case under this rule, but rather only as provided in Rule 546.

This rule sets forth concisely the criteria a defendant must satisfy before the court has the discretion to order dismissal under this rule.

If a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, a dismissal of the case pursuant to this rule may include a dismissal of the summary offense. See the Comment to Rule 502 (Instituting Proceedings in Court Cases).

Official Note: Rule 315 adopted June 30, 1964, effective January 1, 1965; amended September 18, 1973, effective January 1, 1974; renumbered Rule 314 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended January 28, 1983, effective July 1, 1983; renumbered Rule 586 and amended March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 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 March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Source

The provisions of this Rule 586 amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1390. Immediately preceding text appears at serial page (303690).

Rule 587. Motion for Dismissal.

(A) *Untimely Filing of Information.*

(1) Upon motion and a showing that an information has not been filed within a reasonable time, the court may order dismissal of the prosecution, or in lieu thereof, make such other order as shall be appropriate in the interests of justice.

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

(B) *Double Jeopardy.*

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

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

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

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

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

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

Comment

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

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

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

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

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

Although the judge is required to advise the defendant of his or her appellate rights in paragraphs (B)(5) and (B)(6) upon dismissing the motion, nothing in this rule is intended to preclude the defendant from proceeding to trial without first appealing the double jeopardy question. *See, e.g., Commonwealth v. Lee,* 490 Pa. 346, 350, 416 A.2d 503, 504 (1980) (''Unquestionably, appellant could have sought immediate appellate review of the question involved. For whatever reason, however, appellant proceeded to trial without first appealing the double jeopardy question. We believe that a defendant may choose to proceed to trial and if convicted, still challenge the propriety of the pretrial motion to dismiss on double jeopardy grounds on appeal.'' (citations omitted)).

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

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

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

Committee Explanatory Reports:

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. 1478 (March 18, 2000).

Final Report explaining the March 3, 2004 amendment of paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the March 3, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

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

Source

The provisions of this Rule 587 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385; amended June 4, 2013, effective July 4, 2013, 43 Pa.B. 3330. Immediately preceeding text appears at serial page (361890).

Rule 588. Motion for Return of Property.

(A) A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession thereof. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.

(B) The judge hearing such motion shall receive evidence on any issue of fact necessary to the decision thereon. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

(C) A motion to suppress evidence under Rule 581 may be joined with a motion under this rule.

Comment

A motion for the return of property should not be confused with a motion for the suppression of evidence, governed by Rule 581. However, if the time and effect of a motion brought under the instant rule would be, in the view of the judge hearing the motion, substantially the same as a motion for suppression of evidence, the judge may dispose of the motion in accordance with Rule 581.

Official Note: Rule 324 adopted October 17, 1973, effective 60 days hence; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; renumbered Rule 588 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 589. Pretrial Disposition of Summary Offenses Joined with Misdemeanor, Felony, or Murder Charges.

(A) In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, when there is a dismissal of all misdemeanor, felony, and murder charges, unless the Commonwealth appeals the disposition, the trial judge shall dispose of the summary offense.

(B) In any case in which all the misdemeanor, felony, and murder charges are withdrawn pursuant to Rule 561, any remaining summary offenses shall be disposed of in the court of common pleas.

Comment

In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, and therefore is part of the court case, when an appeal of a pretrial disposition of the misdemeanor, felony, or murder charge is taken, disposition of the summary offense should be delayed pending the appeal. *See* Rules of Appellate Procedure 311 (Interlocutory Appeals as of Right), 903 (Time for Appeal), and 1701 (Effect of Appeal Generally).

Notwithstanding the provisions of this rule, a dismissal of the prosecution pursuant to Rule 586 (Court Dismissal Upon Satisfaction or Agreement) may include the dismissal of the summary offense.

For the procedures for *nolle prosequi* see Rule 585 (*Nolle Prosequi*).

Official Note: Adopted March 9, 2006, effective September 1, 2006; amended February 12, 2010, effective April 1, 2010.

Committee Explanatory Reports:

Final Report explaining the new rule published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).

Final Report explaining the February 12, 2010 amendments to paragraph (B) concerning the disposition of summary offenses at the court of common pleas published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Source

The provisions of this Rule 589 adopted March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385; amended February 12, 2010, effective April 1, 2010, 40 Pa.B. 1068. Immediately preceding text appears at serial pages (347928) and (338919).

PART H. Plea Procedures

Rule 590. Pleas and Plea Agreements.

(A) GENERALLY.

(1) Pleas shall be taken in open court.

(2) A defendant may plead not guilty, guilty, or, with the consent of the judge, nolo contendere. If the defendant refuses to plead, the judge shall enter a plea of not guilty on the defendant's behalf.

(3) The judge may refuse to accept a plea of guilty or nolo contendere, and shall not accept it unless the judge determines after inquiry of the defendant that the plea is voluntarily and understandingly tendered. Such inquiry shall appear on the record.

(B) PLEA AGREEMENTS.

(1) At any time prior to the verdict, when counsel for both sides have arrived at a plea agreement, they shall state on the record in open court, in the presence of the defendant, the terms of the agreement, unless the judge orders, for good cause shown and with the consent of the defendant, counsel for the defendant, and the attorney for the Commonwealth, that specific conditions in the agreement be placed on the record in camera and the record sealed.

(2) The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea or plea of nolo contendere is based.

(3) Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule mandating deadline dates for the acceptance of a plea entered pursuant to a plea agreement.

(C) MURDER CASES.

In cases in which the imposition of a sentence of death is not authorized, when a defendant enters a plea of guilty or nolo contendere to a charge of murder generally, the degree of guilt shall be determined by a jury unless the attorney for the Commonwealth elects to have the judge, before whom the plea was entered, alone determine the degree of guilt.

Comment

The purpose of paragraph (A)(2) is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea or plea of nolo contendere is voluntarily and understandingly tendered. On the mandatory nature of this practice, see *Commonwealth v. Ingram*, 316 A.2d 77 (Pa. 1974); *Commonwealth v. Campbell*, 304 A.2d 121 (Pa. 1973); *Commonwealth v. Jackson*, 299 A.2d 209 (Pa. 1973).

It is difficult to formulate a comprehensive list of questions a judge must ask of a defendant in determining whether the judge should accept the plea of guilty or a plea of nolo contendere. Court decisions may add areas to be encompassed in determining whether the defendant understands the full impact and consequences of the plea, but is nevertheless willing to enter that plea. At a minimum the judge should ask questions to elicit the following information:

(1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or nolo contendere?

(2) Is there a factual basis for the plea?

(3) Does the defendant understand that he or she has the right to trial by jury?

(4) Does the defendant understand that he or she is presumed innocent until found guilty?

(5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?

(6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement?

(7) Does the defendant understand that the Commonwealth has a right to have a jury decide the degree of guilt if the defendant pleads guilty to murder generally?

The Court in *Commonwealth v. Willis*, 369 A.2d 1189 (Pa. 1977), and *Commonwealth v. Dilbeck*, 353 A.2d 824 (Pa. 1976), mandated that, during a guilty plea colloquy, judges must elicit the information set forth in paragraphs (1) through (6) above. In 2008, the Court added paragraph (7) to the list of areas of inquiry.

Many, though not all, of the areas to be covered by such questions are set forth in a footnote to the Court's opinion in *Commonwealth v. Martin*, 282 A.2d 241, 244-245 (Pa. 1971), in which the colloquy conducted by the trial judge is cited with approval. *See also Commonwealth v. Minor*, 356 A.2d 346 (Pa. 1976), and *Commonwealth v. Ingram*, 316 A.2d 77 (Pa. 1974). As to the requirement that the judge ascertain that there is a factual basis for the plea, see *Commonwealth v. Maddox*, 300 A.2d 503 (Pa. 1973) and *Commonwealth v. Jackson*, 299 A.2d 209 (Pa. 1973).

It is advisable that the judge conduct the examination of the defendant. However, paragraph (A) does not prevent defense counsel or the attorney for the Commonwealth from conducting part or all of the examination of the defendant, as permitted by the judge. In addition, nothing in the rule would preclude the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the plea proceedings. This written colloquy would have to be supplemented by some on-the-record oral examination. Its use would not, of course, change any other requirements of law, including these rules, regarding the prerequisites of a valid guilty plea or plea of nolo contendere.

The ''terms'' of the plea agreement, referred to in paragraph (B)(1), frequently involve the attorney for the Commonwealth—in exchange for the defendant's plea of guilty or nolo contendere, and per-

haps for the defendant's promise to cooperate with law enforcement officials—promising concessions such as a reduction of a charge to a less serious offense, the dropping of one or more additional charges, a recommendation of a lenient sentence, or a combination of these. In any event, paragraph (B) is intended to insure that all terms of the agreement are openly acknowledged for the judge's assessment. *See, e.g., Commonwealth v. Wilkins*, 277 A.2d 341 (Pa. 1971).

The 1995 amendment deleting former paragraph (B)(1) eliminates the absolute prohibition against any judicial involvement in plea discussions in order to align the rule with the realities of current practice. For example, the rule now permits a judge to inquire of defense counsel and the attorney for the Commonwealth whether there has been any discussion of a plea agreement, or to give counsel, when requested, a reasonable period of time to conduct such a discussion. Nothing in this rule, however, is intended to permit a judge to suggest to a defendant, defense counsel, or the attorney for the Commonwealth, that a plea agreement should be negotiated or accepted.

Paragraph (B)(1) was amended and paragraph (B)(3) was added in 2018 to clarify that the intent of this rule is that a plea made pursuant to an agreement may be entered any time prior to verdict. Any local rule that places a time limit for the entry of such pleas prior to verdict is in conflict with this rule and therefore invalid.

Under paragraph (B)(1), upon request and with the consent of the parties, a judge may, as permitted by law, order that the specific conditions of a plea agreement be placed on the record in camera and that portion of the record sealed. Such a procedure does not in any way eliminate the obligation of the attorney for the Commonwealth to comply in a timely manner with Rule 573 and the constitutional mandates of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. Similarly, the attorney for the Commonwealth is responsible for notifying the cooperating defendant that the specific conditions to which the defendant agreed will be disclosed to third parties within a specified time period, and should afford the cooperating defendant an opportunity to object to the unsealing of the record or to any other form of disclosure.

When a guilty plea, or plea of nolo contendere, includes a plea agreement, the 1995 amendment to paragraph (B)(2) requires that the judge conduct a separate inquiry on the record to determine that the defendant understands and accepts the terms of the plea agreement. *See Commonwealth v. Porreca*, 595 A.2d 23 (Pa. 1991).

Former paragraph (B)(3) was deleted in 1995 for two reasons. The first sentence merely reiterated an earlier provision in the rule. See paragraph (A)(3). The second sentence concerning the withdrawal of a guilty plea was deleted to eliminate the confusion being generated when that provision was read in conjunction with Rule 591. As provided in Rule 591, it is a matter of judicial discretion and case law whether to permit or direct a guilty plea or plea of nolo contendere to be withdrawn. *See also Commonwealth v. Porreca*, 595 A.2d 23 (Pa. 1991) (the terms of a plea agreement may determine a defendant's right to withdraw a guilty plea).

For the procedures governing the withdrawal of a plea of guilty or nolo contendere, see Rule 591.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

Paragraph (C) reflects a change in Pennsylvania practice, that formerly required the judge to convene a panel of three judges to determine the degree of guilt in murder cases in which the imposition of a sentence of death was not statutorily authorized. The 2008 amendment to paragraph (C) and the Comment recognizes the Commonwealth's right to have a jury determine the degree of guilt following a plea of guilty to murder generally. *See* Article I, § 6 of the Pennsylvania Constitution that provides that ''the Commonwealth shall have the same right to trial by jury as does the accused.'' *See also Commonwealth v. White*, 910 A.2d 648 (Pa. 2006).

Official Note: Rule 319 (a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective 30 days hence; specific areas of inquiry in Comment deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraph (c) added and Comment revised May 22, 1978, effective July 1, 1978; Comment revised November 9, 1984, effective January 2, 1985; amended December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000;

renumbered Rule 590 and Comment revised March 1, 2000, effective April 1, 2001; amended September 18, 2008, effective November 1, 2008; Comment revised March 9, 2016, effective July 1, 2016; amended January 18, 2018, effective April 1, 2018.

Committee Explanatory Reports:

Final Report explaining the December 22, 1995 amendments published with the Court's Order at 26 Pa.B. 8 (January 6, 1996).

Final Report explaining the July 15, 1999 changes concerning references to nolo contendere pleas and cross-referencing Rule 320 published with the Court's Order at 29 Pa.B. 4057 (July 31, 1999).

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 18, 2008 amendments to paragraph (C) concerning juries determining degree of guilt published with the Court's Order at 38 Pa.B. 5431 (October 4, 2008).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 705.1 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Final Report explaining the January 18, 2018 amendments concerning plea agreement deadlines published with the Court's Order at 48 Pa.B. 730 (February 3, 2018).

Source

The provisions of this Rule 590 amended September 18, 2008, effective November 1, 2008, 38 Pa.B. 5429; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532; amended January 18, 2018, effective April 1, 2018, 48 Pa.B. 729. Immediately preceding text appears at serial pages (380218) to (380220).

Rule 591. Withdrawal of Plea of Guilty or *Nolo Contendere*.

(A) At any time before the imposition of sentence, the court may, in its discretion, permit, upon motion of the defendant, or direct, sua sponte, the withdrawal of a plea of guilty or nolo contendere and the substitution of a plea of not guilty.

(B) When a defendant moves for the withdrawal of a plea of guilty or nolo contendere, the attorney for the Commonwealth shall be given 10 days to respond.

Comment

Under paragraph (A), when a defendant moves to withdraw a plea of guilty or nolo contendere, ordinarily the motion should be filed in writing before the date of the sentencing hearing. For the procedures governing motions, see Chapter 5 Part F(1). However, nothing in this rule would preclude a defendant from making an oral and on-the-record motion to withdraw a plea at the sentencing hearing prior to the imposition of sentence.

When the defendant orally moves to withdraw a plea of guilty or nolo contendere at the sentencing hearing, the court should conduct an on-the-record colloquy to determine whether a fair and just reason to permit the withdrawal of the plea exists. If the court finds that there is not a fair and just reason, then the motion should be denied, and the court should proceed to sentencing. If the court finds that there may be a fair and just reason, then pursuant to paragraph (B), the court must give the attorney for the Commonwealth 10 days to respond to the motion.

Under paragraph (B), the trial court may not permit the withdrawal of a guilty plea or plea of nolo contendere until the expiration of the 10 days from the date on which the attorney for the Commonwealth receives the defendant's motion to withdraw the plea, unless the attorney for the Commonwealth responds prior to the expiration, nor may it compel the attorney for the Commonwealth to respond prior to the expiration of the 10-day period.

After the attorney for the Commonwealth has had an opportunity to respond, a request to withdraw a plea made before sentencing should be liberally allowed. *See Commonwealth v. Randolph*, 553 Pa. 224, 718 A.2d 1242 (1998); *Commonwealth v. Forbes*, 450 Pa. 185, 299 A.2d 268 (1973).

When a defendant is permitted to withdraw a guilty plea or plea of *nolo contendere* under this rule and proceeds with a non-jury trial, the court and the parties should consider whether recusal might be appropriate to avoid prejudice to the defendant. *See, e.g., Commonwealth v. Pierce*, 515 Pa. 153, 527 A.2d 973 (1987).

For a discussion of plea withdrawals when a guilty plea or plea of *nolo contendere* includes a plea agreement, see the Comment to Rule 590.

For the procedures for withdrawal of guilty pleas entered before a magisterial district judge in a court case, see Rule 550(D).

Official Note: Rule 320 adopted June 30, 1964, effective January 1, 1965; Comment added June 29, 1977, effective September 1, 1977; Comment revised March 22, 1993, effective January 1, 1994; Comment deleted August 19, 1993, effective January 1, 1994; new Comment approved December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 591 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised January 6, 2014, effective March 1, 2014.

Committee Explanatory Reports:

Committee Note explaining the August 12, 1993 deletion of the Comment published with the Court's Order at 23 Pa.B. 4215 (September 4, 1993).

Final Report explaining the new Comment approved on December 22, 1995 published with the Court's Order at 26 Pa.B. 8 (January 6, 1996).

Final Report explaining the July 15, 1999 amendments concerning the requirements for the withdrawal of a plea published with the Court's Order at 29 Pa.B. 4057 (July 31, 1999).

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 6, 2014 revision to the Comment cross-referencing Rule 550 published with the Court's Order at 44 Pa.B. 478 (January 25, 2014).

Source

The provisions of this Rule 591 amended January 6, 2014, effective March 1, 2014, 44 Pa.B. 477. Immediately preceding text appears at serial pages (363264) and (363591).

PART I. Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings

Rule

Source

The provisions of this Part I adopted July 31, 2012, effective November 1, 2012, 42 Pa.B. 5333.

Rule 595. Mandatory Status Conference.

(A) In all cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the judge shall hold a status conference.

(1) The status conference shall be held no later than 40 days after the arraignment.

(2) The defendant, the defendant's attorney, and the attorney for the Commonwealth shall be present at the status conference.

(B) At the status conference, the judge shall determine whether the defendant has filed a motion requesting the transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322, or is requesting additional time to file a motion for transfer, or does not intend to file a motion.

(1) If the defendant is requesting additional time to file the motion for transfer and the judge agrees to the request, the judge shall set the date by which the motion for transfer shall be filed.

(2) When the defendant has filed a motion, the judge shall determine whether the motion for transfer is ready to be heard and the case shall proceed as provided in Rule 597.

(3) If the defendant is not going to file a motion for transfer or the judge denies the defendant's request for additional time to file a motion, the case shall continue to proceed as a court case under the Rules of Criminal Procedure.

Comment

This rule mandates a status conference in all cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense, was charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, and therefore may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322. *Cf.* Rule 570 (pretrial conference discretionary with judge).

See Rule 596 for the procedures for filing a motion requesting transfer from criminal proceedings to juvenile proceedings.

See Rule 597 for the procedures after a motion for transfer has been filed.

See Rule 598 for the procedures concerning the pretrial place of detention of the defendant who was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302. *See also* 42 Pa.C.S. § 6327(c.1).

At the status conference, in addition to determining whether a motion for transfer has been or will be filed,

(1) the judge and parties may consider matters related to the conduct of the hearing including the simplification or stipulation of factual issues, including admissibility of evidence; the qualification of exhibits as evidence to avoid unnecessary delay; the number of witnesses who are to give testimony of a cumulative nature; and such other matters as may aid in the disposition of the motion.

(2) The parties may request an order from the judge for the release of records or other materials relevant to the defendant's motion for transfer, for the appointment of experts, for the examination of the defendant, for a report from the juvenile probation office, or for any other aids necessary to the disposition of the motion for transfer. The request, if authorized by law, may be made *ex parte*.

(3) The parties have the right to record an objection to rulings of the judge during the status conference.

(4) The judge must place on the record the agreements or objections made by the parties and rulings made by the judge as to any of the matters considered in the status conference. Such order controls the subsequent proceedings unless modified at the hearing on the transfer motion to prevent injustice.

Nothing in this rule gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of a defendant to have his or her parents, guardian, or other custodian present.

As used in this rule, ''judge'' means judge of the court of common pleas.

(390278) No. 521 Apr. 18

Official Note: Adopted July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the July 31, 2012 new rule published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 596. Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings.

A request for the transfer from criminal proceedings to juvenile proceedings in a case in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302 shall be made in the form of a motion.

(1) Any motion under this rule shall be filed after the preliminary hearing but not later than 30 days after arraignment.

(2) The motion shall be filed with the clerk of courts.

(3) A copy of the motion shall be served on the attorney for the Commonwealth concurrently with filing.

Comment

The rule establishes the latest time for filing a motion requesting transfer from criminal to juvenile proceedings by requiring that any motion must be filed no later than 30 days after the arraignment. However, as with omnibus pretrial motions, the judge may extend the time for filing for cause shown. Contemplated within the concept of ''cause shown'' is, for example, a finding by the court that discovery has not been completed, or that contested motions for discovery or for a bill of particulars are pending.

By permitting the motion to be filed at any time after the preliminary hearing, this rule encompasses what is the practice in a number of judicial districts and recognizes the importance of prompt determinations in these cases. Furthermore, nothing in this rule is intended to preclude judicial districts by local rule from imposing a shorter period of time after the preliminary hearing within which the motion must be filed.

For the general requirements concerning the filing and service of motions, notices, and other documents by parties, see Rule 576.

Official Note: Adopted July 31, 2012, effective November 1, 2012.

Committee Explanatory Reports:

Final Report explaining the July 31, 2012 new rule published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 597. Procedures Following the Filing of a Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings.

(A) If the judge at the status conference conducted pursuant to Rule 595 determines the motion for transfer is not ready to be heard, the judge shall schedule additional status conferences no later than every 60 days after the first status conference until the motion for transfer is ready to be heard. At the status conference, the parties shall advise the judge of the status of all matters pertinent to whether the motion for transfer is ready to be heard.

(B) When the judge determines the motion for transfer is ready to be heard, the judge shall schedule the hearing on the motion for transfer to be held no later than 30 days after the determination. Notice of the hearing date shall be given to the defendant, the defendant's attorney, and the attorney for the Commonwealth.

(C) At the conclusion of the hearing, but in no case longer than 20 days after the conclusion of the hearing, the judge shall announce the decision in open court. The judge shall enter an order granting or denying the motion for transfer, and set forth in writing or orally on the record the findings of fact and conclusions of law.

(D) If the judge does not render a decision within 20 days of the conclusion of the hearing, the motion for transfer shall be denied by operation of law. The clerk of courts immediately shall enter an order on behalf of the judge.

(E) If the judge grants the motion,

(1) the judge immediately shall order the transfer of the case from criminal proceedings to juvenile proceedings and the case shall proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act, except as provided in paragraph (E)(3).

(2) The judge shall order the defendant to be taken forthwith to the juvenile probation office, except as provided in paragraph (E)(3).

(3) If, within 30 days of the judge's order transferring the case from criminal proceedings to juvenile proceedings, the attorney for the Commonwealth files a notice of appeal from the order, the judge shall:

(a) stay the juvenile proceedings pending disposition of the appeal; and

(b) review the defendant's bail status and may release the defendant conditioned upon the defendant being detained in a secure detention facility pursuant to Rule 598.

(F) If the judge denies the motion for transfer or the clerk of courts enters an order denying the motion for transfer on behalf of the judge, the case shall continue to proceed as a court case under the Rules of Criminal Procedure.

(G) The clerk of courts shall serve copies of the order granting or denying the motion for transfer to the defendant, the defendant's attorney, and the attorney for the Commonwealth.

Comment

At the additional status conferences, the parties may request additional orders from the judge for the release of records or other materials relevant to the defendant's motion for transfer, for the appointment of experts, for the examination of the defendant, for a report from the juvenile probation office, or for any other aids necessary to the disposition of the motion for transfer. The request, if authorized by law, may be made *ex parte*.

Nothing in this rule is intended to preclude the practice in some judicial districts of notifying the juvenile probation office when a motion requesting transfer is filed or of the date of the hearing on the motion.

Pursuant to 42 Pa.C.S. § 6322(a) of the Juvenile Act, at the hearing on the motion for transfer, the burden of proof is on the defendant "to establish by a preponderance of the evidence that the transfer will serve the public interest."

Paragraph (C) is derived from the 42 Pa.C.S. § 6322(b) of the Juvenile Act. The judge, when making his or her findings of fact and conclusions of law, must comply with the Juvenile Act's requirement that the judge "make findings of fact, including specific references to the evidence, and conclusions of law in support of the transfer order."

Paragraph (D) also is derived from the requirements of 42 Pa.C.S. § 6322(a) of the Juvenile Act, that "the defendant's petition to transfer the case shall be denied by operation of law" in any case in which the judge "does not make its finding within 20 days of the hearing on the petition to transfer the case."

When the judge grants a motion to transfer, paragraph (E)(2) requires that the case immediately be transferred for juvenile proceedings pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act, and the criminal court no longer has jurisdiction over the case. However, because the transfer order is immediately appealable by the Commonwealth, *Commonwealth v. Johnson*, 542 Pa. 568, 669 A.2d 315 (1995), an appeal by the Commonwealth would preclude the transfer of the case and proceedings pursuant to the Rules of Juvenile Court Procedure. *See*, 42 Pa.C.S. § 6322(d).

When the defendant is taken to the juvenile probation office following the granting of a transfer motion as required in paragraph (E)(2), the juvenile probation officer will determine, pursuant to 42 Pa.C.S. § 6325, whether the defendant should be detained or placed in shelter care or released to the custody of his or her parent, guardian, custodian, or other person legally responsible for him or her. *See, also*, 42 Pa.C.S. § 6322(d).

Paragraph (E)(3) recognizes the right of the Commonwealth to appeal the transfer order. If the Commonwealth files a notice of appeal, the judge will stay the juvenile proceedings and review the bail status of the defendant, considering whether the defendant should be detained in a secure detention facility during the stay. Pursuant to the rule, the judge may release the defendant from custody in an adult jail conditioned upon the defendant being detained in a secure detention facility. *See* Rule 524(C)(2) that permits a judge to release a defendant on nonmonetary conditions.

Nothing in this rule gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of a defendant to have his or her parents, guardian, or other custodian present.

As used in this rule, ''judge'' means judge of the court of common pleas.

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Committee Explanatory Reports:

Final Report explaining the July 31, 2012 new rule published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Rule 598. Place of Detention During Procedures for Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322.

(A) Except as provided in paragraph (B), a defendant who is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of ''delinquent act'' in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302 shall be detained in the county jail unless released on bail.

(B) A defendant, who may seek or is seeking transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 and has not been released on bail, may file a motion in the court of common pleas requesting that he or she be detained in a secure detention facility.

(1) If the attorney for the Commonwealth consents to the motion requesting detention in a secure detention facility, the judge may order that the defendant be detained in a secure detention facility until:

(a) the defendant is released on bail; or

(b) the judge determines that the defendant is not seeking transfer of the case pursuant to 42 Pa.C.S. § 6322; or

(c) the judge denies the motion for transfer filed pursuant to 42 Pa.C.S. § 6322.

(2) In no event may the defendant be detained in a secure detention facility after the defendant's 18th birthday, unless:

(a) the judge has granted the motion to transfer filed pursuant to 42 Pa.C.S. § 6322; or

(b) the juvenile court has issued an order for the defendant's secure detention in a separate delinquency case.

(3) If the attorney for the Commonwealth files a notice of appeal from the judge's order transferring the case from criminal proceedings to juvenile proceedings pursuant to Rule 597, the judge may order the release of the defendant conditioned upon the defendant being detained in a secure detention facility pending the disposition of the appeal.

(C) After the defendant has been detained in a secure detention facility pursuant to the judge's order issued as provided in paragraph (B), the judge promptly shall order the defendant's transfer to the county jail if:

(1) the judge denies the defendant's motion to transfer;

(2) the judge determines that the defendant is not filing a motion to transfer or is no longer seeking transfer; or

(3) the judge determines that the defendant has reached his or her 18th birthday and a juvenile court has not ordered the defendant to be detained in the secure detention facility in a separate delinquency case.

(D) Except as provided in Rule 597(E)(3), if the defendant's motion for transfer is granted, the judge shall order the defendant to be taken to the juvenile probation office pursuant to Rule 595(G)(2).

Comment

As provided in paragraph (B), a defendant, who may seek transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322, with the consent of the attorney for the Commonwealth, may be transferred to a secure detention facility during the pendency of proceedings under this rule. *See also* 42 Pa.C.S. § 6327(c.1).

As used in this rule, ''secure detention facility'' is a facility approved by the Department of Public Welfare to provide secure detention of alleged and adjudicated delinquent children, see 55 *Pa. Code* § 3800.5, and does not include shelter care.

Nothing in this rule is intended to restrict or enlarge the defendant's eligibility for release on bail or ability to post bail. If the Commonwealth files a notice of appeal of the judge's order transferring the case from criminal proceedings to juvenile proceedings, the judge must review the defendant's bail status and may release the defendant conditioned upon the defendant being detained in a secure detention facility. *See* Rule 597(E)(3). *See also* Rule 524(C)(2) that permits a judge to release a defendant on nonmonetary conditions.

As used in this rule, ''judge'' means judge of the court of common pleas. Neither Philadelphia Municipal Court judges nor magisterial district judges are permitted to order a defendant who may seek or is seeking transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 to be detained in a secure detention facility.

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