

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 82]

Amendment of Section 18 of the Pennsylvania Continuing Legal Education Board Regulations; No. 254 Supreme Court Rules Doc. No. 1

Order

Per Curiam:

And Now, this 12th day of October, 2000, Section 18 of the Pennsylvania Continuing Legal Education Board Regulation is amended as follows.

To the extent that notice of proposed rulemaking would be required by Pa.R.J.A. No. 103, the amendment of the rule is hereby found to be required in the interest of efficient administration.

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

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart A. PROFESSIONAL RESPONSIBILITY

CHAPTER 82. CONTINUING LEGAL EDUCATION

Subpart B. CONTINUING LEGAL EDUCATION BOARD REGULATIONS

Section 18. Board Fee Schedule.

Following is a schedule of fees established by the Board to be paid by providers and lawyers. This schedule will be reviewed annually by the Board and may be modified at any time upon approval by the Pennsylvania Supreme Court.

	* * * * *
Fee per credit hour to be paid by provider with attendance certification	[\$2.00/] \$1.50 [*]
Fee per credit hour to be paid by lawyer for certification when fee not paid by provider	[\$2.00/] \$1.50 [*]
Fee per credit hour when lawyer requests CLE credit for teaching course	[\$2.00/] \$1.50 [*]
	* * * * *
Fee for late compliance with annual CLE requirement	\$100.00
Fee for continued late compliance with annual CLE requirement	\$100.00
	* * * * *

[Charges] The following charges are to be paid by a provider for failure to comply with the rules or these regulations:

* * * * *

[*Reduction to \$1.50 effective May 1, 1997]

[Pa.B. Doc. No. 00-1849. Filed for public inspection October 27, 2000, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 50]

Proposed Amendments Relating to Procedures in Summary Cases

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 53 and 76, and approve the revisions of the Comments to Pa.Rs.Crim.P. 51, 59, 64, 69, 75, 83, and 84. These rule changes clarify the procedures in summary cases when the defendant is a juvenile and make other correlative and conforming changes. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901, no later than Monday, November 27, 2000.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 50. PROCEDURE IN SUMMARY CASES PART I. INSTITUTING PROCEEDINGS

Rule 51. Means of Instituting Proceedings in Summary Cases.¹

* * * * *

Official Note: Previous Rule 51, adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment re-

¹ Rule 51 will become Rule 400 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

vised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; **renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

For general procedures applicable in all summary cases, see Chapter 4 Part E, Rules 80, 81, 82, 83, 84, 85, 87, and 90.²

For the procedures for appealing to the court of common pleas for a trial de novo, see Chapter 4 Part F, Rule 86.³

* * * * *

The Rules of Criminal Procedure generally do not apply to juvenile proceedings, but these rules do apply to proceedings in summary cases involving juveniles to the extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act [§§ 6302—6303], 42 Pa.C.S. §§ 6302[—], 6303, and 6326; Vehicle Code [§ 6303], 75 Pa.C.S. § 6303. See also 42 Pa.C.S. §§ 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

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Committee Explanatory Reports:

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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).

Report explaining the proposed Comment revision concerning the citation to the Juvenile Act published at 30 Pa.B. 5531 (October 28, 2000).

PART II. CITATION PROCEDURES

Rule 53. Contents of Citation.⁴

* * * * *

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

* * * * *

(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, **or when the defendant is a juvenile**, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

² Rules 80, 81, 82, 83, 84, 85, and 90 will become Rules 451, 452, 453, 454, 455, 456, 457, and 458 respectively as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

³ Rule 86 will become Rules 460, 461 and 462 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

⁴ Rule 53 will become Rule 403 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

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Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; **renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended _____, 2000, effective _____, 2000.**

Comment

* * * * *

Paragraph (B)(4)(a) provides notice to the defendant who is a juvenile that a summons will be issued if the defendant fails to respond to the citation.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

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Committee Explanatory Reports:

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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, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (March 18, 2000).

Report explaining the proposed amendments concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART IIA. PROCEDURES WHEN CITATION IS ISSUED TO DEFENDANT

Rule 59. Guilty Pleas.⁵

* * * * *

Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; **renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

Nothing is this rule is intended to require that an issuing authority should proceed as provided in para-

⁵ Rule 59 will become Rule 409 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

graph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

When the defendant is a juvenile and appears as provided in paragraph (C), if there is a likelihood of imprisonment, the issuing authority should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

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Committee Explanatory Reports:

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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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART IIB. PROCEDURES WHEN CITATION FILED

Rule 64. Guilty Pleas.⁶

* * * * *

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; **renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

When the defendant is a juvenile and appears as provided in paragraph (C), if there is a likelihood of imprisonment, the issuing authority should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

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Committee Explanatory Reports:

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⁶ Rule 64 will become Rule 414 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART III. PROCEDURES IN SUMMARY CASES WHEN COMPLAINT FILED

Rule 69. Guilty Pleas.⁷

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Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; **renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

When the defendant is a juvenile and appears as provided in paragraph (C), if there is a likelihood of imprisonment, the issuing authority should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

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Committee Explanatory Reports:

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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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART V. PROCEDURES REGARDING ARREST WARRANTS IN SUMMARY CASES

Rule 75. Issuance of Arrest Warrant.⁸

* * * * *

Official Note: Rule 75 [Adopted] adopted July 12, 1985, effective January 1, 1986; effective date extended to

⁷ Rule 69 will become Rule 424 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

⁸ Rule 75 will become Rule 430 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.

Comment

Personal service of a citation under paragraph [(1)(a)](A)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 51[(a)](A) and the rules of [Part II A] Chapter 4, Part B(1).⁹

When the defendant is a juvenile, and the defendant has failed to respond to the citation, the issuing authority should issue a summons as provided in Rule 53(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue an arrest warrant as provided in paragraph (A)(1) and (2).

* * * * *

When the defendant is a juvenile and has not paid the fine and costs, the issuing authority may not issue a warrant, but should issue the notice required by paragraph (D) to the juvenile and the juvenile's parents, guardian, or other custodian. The notice should inform the defendant and defendant's parents, guardian, or other custodian that, in lieu of a warrant of arrest as permitted by the rules, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will provide notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv).

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

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Committee Explanatory Reports:

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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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

Rule 76. Procedure When Defendant Arrested with Warrant.¹⁰

* * * * *

(D) When the defendant is taken before the issuing authority under paragraph (B)(4),

(1) the defendant shall enter a plea; and

(2) if the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

⁹ Rule 51 will become Rule 400 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

¹⁰ Rule 76 will become Rule 431 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

[(1)] (a) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, [in which event] and in any of these circumstances, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial;

[(2)] (b) ***

[(3)] (c) ***

(3) If the defendant is a juvenile and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

Official Note: Rule 76 [Adopted] adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended _____, 2000, effective _____, 2000.

Comment

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Delay of trial under paragraph (D)[(1)] (2)(b) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements).

Although the defendant's trial may be delayed under this rule, the requirement that an arrested defendant be taken without unnecessary delay before the proper issuing authority remains unaffected.

In cases in which the juvenile has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. See the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302.

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Committee Explanatory Reports:

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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).

Report explaining the proposed amendments concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

PART VI. GENERAL PROCEDURES IN SUMMARY CASES

Rule 83. Trial in Summary Cases.¹¹

* * * * *

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18,

¹¹ Rule 83 will become Rule 454 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; **renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

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Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant is a juvenile, if there is a likelihood of imprisonment, the issuing authority should not conduct the trial, but should forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

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Committee Explanatory Reports:

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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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

Rule 84. Trial in Defendant's Absence.¹²

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Official Note: Rule 84 [Adopted] adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; [27 Pa.B. 2116] amended October 1, 1997, effective October 1, 1998; **renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

In those cases in which the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence, the issuing authority may issue a warrant for the arrest of the defendant in order to have the defendant brought before the issuing authority for the summary trial. See Rule 75(B).¹³ The trial would then be conducted with the defendant present as provided in these rules. See Rule 83.¹⁴

When the defendant is a juvenile, if there is a likelihood of imprisonment, the issuing authority should not conduct the trial, but should forward

¹² Rule 84 will become Rule 455 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

¹³ Rule 75 will become Rule 430 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

¹⁴ Rule 83 will become Rule 454 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

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Committee Explanatory Reports:

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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).

Report explaining the proposed Comment revisions concerning summary case procedures in cases involving juveniles published at 30 Pa.B. 5531 (October 28, 2000).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 53 and 76, and Revisions of the Comments to Pa.Rs.Crim.P. 51, 59, 64, 69, 75, 83, and 84

Summary Case Procedures When Defendant is a Juvenile

I. Background

One area of criminal practice that continues to be a source of confusion concerns the handling of summary cases in which the defendant is a juvenile. The Juvenile Act (the Act), 42 Pa.C.S. §§ 6302, 6303, and 6326, only applies to proceedings in summary cases involving juveniles (1) when the summary offense arises out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed and (2) when the defendant has failed to comply with a lawful sentence imposed by the issuing authority. In addition, the Juvenile Act prohibits the detention of juveniles in summary cases and the imposition of a sentence of imprisonment. The summary case rules, however, do not provide procedures when these circumstances occur. For example, the Committee received several inquiries asking whether, when a juvenile defendant fails to respond to a citation, the issuing authority should proceed pursuant to Rule 75 (Issuance of Arrest Warrant) and issue a warrant, and, if such a warrant is issued, how the issuing authority should proceed when the juvenile is apprehended. Others asked whether the issuing authority should issue a warrant or the notice required by Rule 75(D) when a juvenile has failed to pay fines and costs and the fact of the non-compliance is to be certified to the common pleas court.¹⁵

The Committee agreed that the minor judiciary, the bar, law enforcement, and the criminal justice system in general would be greatly assisted if the rules were amended to clarify the procedures, particularly when a warrant is issued.

II. Discussion

A. Juvenile Act-Related Changes

The Committee initiated this project by reviewing the Juvenile Act, 42 Pa.C.S. §§ 6301 et seq. As noted in the Comments to Rules 1 and 51, the Criminal Rules apply to proceedings involving juveniles "only to the extent the Juvenile Act does not vest jurisdiction in the Juvenile Court." It is clear from Section 6302 (Definitions), which provides, *inter alia*:

¹⁵ One district justice had inquired whether the Administrative Offices of Pennsylvania Courts' (AOPC) Judicial Computer Project (JPC) computerized form of notice could be modified to use for juvenile defendants, giving them notice that the case will be certified to the court of common pleas rather than notice of the warrant.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"DELINQUENT ACT."

* * * * *

(2) The term shall not include:

(iv) Summary offenses, unless the child fails to comply with a lawful sentence imposed thereunder, in which event notice of such fact shall be certified to the court. ["Court" is defined as court of common pleas.]

that summary cases involving juveniles ordinarily are not within the scope of the Juvenile Act. The confusion the correspondents noted arises because of other provisions of the Act. First, Section 6303 (Scope of Chapter), paragraph (b), provides, *inter alia*:

(b) Minor Judiciary.—No child shall be detained, committed or sentenced to imprisonment by a district justice or a judge of the minor judiciary unless the child is charged with an act set forth in paragraph (2)(i), (ii), (iii) or (v) of the definition of "delinquent act" in Section 6302 (relating to definitions). [Paragraph (2)(i)-(iii) and (v) pertains to murder and the enumerated crimes committed by a defendant 15 years and older that would be tried in adult court.]

Because this provision makes specific reference to the other paragraphs that are excluded from the definition of "delinquent act," but not the paragraph concerning summary offenses, it has been interpreted as meaning that the minor judiciary may not sentence a juvenile in a summary case to imprisonment, nor may they detain these juveniles. How the provision is implemented is one source of confusion.

To further cloud the issue, three sections of the Act address custody and detention. Section 6324 (Taking into custody) provides that a child may be taken into custody (1) pursuant to an order of the court under this chapter and (2) pursuant to the laws of arrest. Section 6325 (Detention of child) provides:

A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required, or an order for his detention or shelter care has been made by the court pursuant to this chapter.

Finally, Section 6326 (Release or delivery to court) provides, *inter alia*,

(a) General rule—A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall:

(1) notify the parent, guardian or other custodian of the apprehension of the child and his whereabouts;

(2) release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under section 6325 (relating to detention of child); or

(3) bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is

believed to suffer from a serious physical condition or illness which requires prompt treatment. He shall promptly give written notice, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

(b) Detention in police lockup generally prohibited—Unless a child taken into custody is alleged to have committed a crime or summary offense or to be in violation of conditions of probation or other supervision following an adjudication of delinquency, the child may not be detained in a municipal police lockup or cell or otherwise held securely within a law enforcement facility or structure which houses an adult lockup.

(c) Detention in police lockup under certain circumstances—A child alleged to have committed a crime or summary offense or to be in violation of conditions of probation or other supervision following an adjudication of delinquency may be held securely in a municipal police lockup or other facility which houses an adult lockup only under the following conditions:

(1) the secure holding shall only be for the purpose of identification, investigation, processing, releasing or transferring the child to a parent, guardian, other custodian, or juvenile court or county children and youth official, or to a shelter care or juvenile detention center;

(2) the secure holding shall be limited to the minimum time necessary to complete the procedures listed in paragraph (1), but in no case may such holding exceed six hours; and

(3) if so held, a child must be separated by sight and sound from incarcerated adult offenders and must be under the continuous visual supervision of law enforcement officials or facility staff.

After reviewing these provisions of the Act, the Committee considered how the rules could be modified to comport with the provisions of the Act while providing guidance to the minor judiciary, the bar, and law enforcement officers. The first issue addressed was the procedures when the defendant failed to comply with a lawful sentence. Rule 75(C) provides for an arrest warrant when a defendant fails to pay the fines and costs. Rule 75(D) provides for a notice to the defendant before the warrant is issued for failure to pay.¹⁶ This notice requirement was added to the rules in 1997 to give the defendant notice of the consequence of failing to pay the fines and costs, and to give the defendant a 10-day window of opportunity to comply before the warrant is issued. The Committee decided that it made sense in cases involving a juvenile to provide comparable safeguards, and is proposing the seventh paragraph of the Rule 75 Comment be revised to explain what the issuing authority is to do when a juvenile defendant fails to pay the fine and costs. The issuing authority would give the 10-day notice provided by the rule, but the notice would advise the defendant that failure to pay or appear within the 10 days will result in a notice of the non-compliance to the court of common pleas rather than issuance of a warrant.¹⁷ The Committee included that the notice also should be given the defendant's parents, guardian, or other custodian, consistent with the requirements of the Act. A comparable

¹⁶ JPC has designed a computerized form that is used by the minor judiciary for providing this notice.

¹⁷ If this change is approved, the DJS will have to design a separate form for the juvenile's notice.

revision would be made to the Comment to Rule 76 (Procedure When Defendant Arrested with Warrant).

A second and related issue concerns the cases when a defendant fails to respond to the citation. Rule 75(A) requires that a warrant should be issued. An exception to this is set forth in Rule 53 (Contents of Citation) for cases involving a violation of an ordinance or any parking offense. In these cases, a summons must be issued before a warrant, giving the defendant a second opportunity to respond. The Committee agreed that a comparable exception should apply to juveniles, and is proposing that Rule 53(B)(4)(a) be amended by the addition of "or when the defendant is a juvenile," with a brief explanation of this change in the Comments to Rules 53 and 75. If the juvenile fails to respond to the summons, the case would proceed in the same manner as any summary case, and a warrant would be issued pursuant to Rule 75(A). This would be explained in a new second paragraph in the Rule 75 Comment.

The third issue the Committee addressed related to the prohibition in Section 6303 that "no child shall be detained, committed or sentenced to imprisonment by a district justice or a judge of the minor judiciary. . . ." Considering first the prohibition on detaining and committing a juvenile, the Committee noted the rules provide for the payment of fines and costs or collateral, and for the prompt release of a defendant when certain criteria are satisfied following an arrest without a warrant. Because the rules provide for the prompt release of a defendant, the Committee concluded nothing additional was necessary concerning these procedures when a juvenile is involved.¹⁸ The rules also provide that the defendant, arrested with or without a warrant, be taken without unnecessary delay before the issuing authority for an immediate trial. The Committee agreed if an immediate trial cannot be held and the defendant is a juvenile, the juvenile must be released on his or her own recognizance. To make this clear, the Committee is proposing that Rule 76 be amended by the addition of a new paragraph (D)(3) requiring, in cases in which the juvenile cannot be given an immediate trial, that the issuing authority promptly give notice of the date and time for the summary trial to the defendant and defendant's parents, guardian, or other custodian. In addition, the paragraph requires the issuing authority to release the juvenile on recognizance when the summary trial cannot immediately be held.

Addressing the second prong of Section 6303's prohibition—no child shall be sentenced to imprisonment—was a more difficult question. The language of the Act is subject to a number of interpretations. We questioned whether the Act intended, in a case in which there was a likelihood of imprisonment, that a summary trial be conducted by the district justice but the sentence imposed in the common pleas court. Alternatively, could the trial only be held if the district justice determined there was no likelihood of imprisonment; in these cases, would the district justice be prohibited from imposing a sentence of imprisonment? When there is a likelihood of imprisonment, would the district justice be required to send the entire matter to the common pleas court? We settled on the last option—sending the case to the common pleas court for the trial—because this creates the least amount of confusion while ensuring no juvenile would be sen-

tenced to imprisonment by a member of the minor judiciary. To make this clear, the Committee is proposing the Comments to the guilty plea rules, Rules 59, 64, 69, and the trial rules, Rules 83 and 84, be revised by the addition of cautionary language to alert the issuing authority that, when the defendant is a juvenile and there is a likelihood of imprisonment, the case should be forwarded to the court of common pleas for disposition.

As we were working on this proposal, the Committee reviewed the other summary case rules, and noted the cross-reference to Sections 6302 and 6303 of the Act in the Comment to Rule 51 (Means of Instituting Proceedings in Summary Cases). We agreed that there also should be a reference to Section 6326 because of its provisions for detention of juveniles arrested in summary cases, and have revised the Comment accordingly.

B. Miscellaneous Changes

The Committee agreed that Rule 76 should be amended to conform to changes to other rules. The changes to paragraphs (D)(1) and (D)(2), which apply to all summary cases, not just those involving juveniles, conform Rule 76 to the provisions in Rule 83 and provide guidance to the minor judiciary about how to proceed when a defendant is brought before the issuing authority following an arrest. If a defendant is taken before an issuing authority, the defendant must enter a plea. If the defendant pleads guilty, the issuing authority imposes sentence, or, if the defendant pleads not guilty, the defendant is given an immediate trial.

Paragraph (D)(2)(a) would be amended by the addition of "not capable of proceeding" to be consistent with the comparable provision in Rule 71, which was amended in 1999 to make it clear that the district justice may decide not to hold the trial when a defendant is incapacitated in some way and not able to proceed with the trial.

[Pa.B. Doc. No. 00-1850. Filed for public inspection October 27, 2000, 9:00 a.m.]

[234 PA. CODE CHS. 300 AND 1500]

Proposed Amendment of Rules 316 and 1504 Relating to Appointed Counsel

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 316 and 1504 to clarify that appointed counsel's obligation extends until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the

¹⁸ The Committee, relying on the provision in Section 6324 that a child may be taken into custody pursuant to the laws of arrest, reasoned that it is appropriate for police officers to arrest defendants who are juveniles for summary offenses when the arrest is authorized by law. Furthermore, Section 6326(b) appears to authorize the police to take a defendant who is a juvenile into custody, albeit with a number of limitations.

Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901, no later than Monday, November 27, 2000.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 300. PRETRIAL PROCEEDINGS

Rule 316. Assignment of Counsel.¹

* * * * *

(C) *In all Cases.*

* * * * *

(3) [**Where**] **When** counsel has been assigned, such assignment shall be effective until final judgment, including any proceedings upon direct appeal.

Official Note: [Adopted] Rule 318 adopted November 29, 1972, effective 10 days hence; replacing prior rule; amended September 18, 1973, effective immediately; [**formerly Rule 318,**] renumbered Rule 316 and amended June 29, 1977, and **October 21, 1977**, effective through November 22, 1977, effective as to cases in which the indictment of information is filed on or after January 1, 1978; **renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

This rule is designed to implement the decisions of *Argersinger v. Hamlin*, 407 U. S. 25 (1972), and *Coleman v. Alabama*, 399 U. S. 1 (1970), that no defendant in a summary case be sentenced to imprisonment unless [**he**] **the defendant** was represented at trial by counsel, and that every defendant in a court case has counsel starting no later than the preliminary hearing stage.

Assignment of counsel can be waived, if such waiver is knowing, intelligent, and voluntary. See *Faretta v. California*, 422 U. S. 806 (1975). [**With regard to**] **Concerning** the appointment of standby counsel for the defendant who elects to proceed pro se, see Rule 318.²

In both summary and court cases, the assignment of counsel to indigent defendants remains in effect until all appeals on direct review have been completed.

Ideally, counsel should be assigned to indigent defendants immediately after they are brought before the issuing authority in all summary cases in which a jail sentence is possible, and immediately after preliminary arraignment in all court cases. This rule strives to accommodate the requirements of the Supreme Court of the United States to the practical problems of implementation. Thus, in summary cases, paragraph [(a)] (A) requires a pretrial determination by the issuing authority as to whether a jail sentence would be likely in the event of a finding of guilt in order to determine whether trial counsel should be assigned to indigent defendants. It is expected that the issuing authorities will in most instances be guided by their experience with the particular offense with which defendants are charged. This is the

¹ Rule 316 will become Rule 122 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

² Rule 318 will become Rule 121 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

procedure recommended by the ABA Standards Relating to Providing Defense Services § 4.1 (Approved Draft, 1968) and cited in the United States Supreme Court's opinion in *Argersinger*, supra. If there is any doubt, the issuing authority can seek the advice of the attorney for the Commonwealth, if one is prosecuting the case, as to whether the Commonwealth intends to recommend a jail sentence in case of conviction.

In court cases, paragraph [(b)] (B) requires counsel to be assigned at least in time to represent the defendant at preliminary hearing. Although difficulty may be experienced in some judicial districts in meeting the Coleman requirement, it is believed that this is somewhat offset by the prevention of many post-conviction proceedings which would otherwise be brought based on the denial of the right to counsel. However, there may be cases in which counsel has not been assigned prior to the preliminary hearing stage of the proceedings; e.g., counsel for the preliminary hearing has been waived, or a then-ineligible defendant subsequently becomes eligible for assigned counsel. In such cases it is expected that the defendant's right to assigned counsel will be effectuated at the earliest appropriate time.

Subparagraph [(c)] (C)(1) retains in the issuing authority or judge the power to assign counsel regardless of indigency or other factors when, in [**his**] **issuing authority's or judge's** opinion, the interests of justice require it.

Subparagraph [(c)(iii)] (C)(3) [**implements the decisions of *Douglas v. California*, 372 U. S. 353 (1963), and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969), by providing**] makes it clear that **appointed counsel [appointed originally shall retain] retains his or her** assignment until final judgment, which includes [**appellate procedure**] **all avenues of appeal through the Supreme Court of Pennsylvania. See *Commonwealth v. Daniels*, 420 A.2d 1323 (Pa. 1980).**

This rule neither addresses counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U. S. 745, nor ineffective assistance of counsel, see *Wainwright v. Torna*, 455 U. S. 586 (1982).

For suspension of Acts of Assembly, see Rule 340.³

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).

Report explaining the proposed Comment revision concerning duration of counsel's obligation published at 30 Pa.B. 5535 (October 28, 2000).

CHAPTER 1500. POST-CONVICTION COLLATERAL PROCEEDINGS

Rule 1504. Appointment of Counsel; in Forma Pauperis.⁴

* * * * *

(F) Appointment of Counsel in Death Penalty Cases.

* * * * *

³ Rule 340 will become Rule 1101 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

⁴ Rule 1504 will be renumbered Rules 904 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

(2) The appointment of counsel shall be effective throughout the post-conviction **collateral** proceedings, including any appeal from disposition of the petition for post-conviction collateral relief.

* * * * *

Official Note: Previous Rule 1504 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982; rescinded February 1, 1989, effective July 1, 1989, and replaced by Rule 1507. Present Rule 1504 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; amended January 21, 2000, effective July 1, 2000; **renumbered Rule 904 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

* * * * *

Consistent with Pennsylvania post-conviction practice [under former Rules 1503 and 1504], it is intended that counsel be appointed in every case in which a defendant has filed a petition for post-conviction collateral relief for the first time and is unable to afford counsel or otherwise procure counsel. However, the rule now limits appointment of counsel on second or subsequent petitions so that counsel should be appointed only if the judge determines that an evidentiary hearing is required. Of course, the judge has the discretion to appoint counsel in any case when the interests of justice require it.

Paragraph (D) makes it clear that appointed counsel retains his or her assignment until final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. See *Commonwealth v. Daniels*, 420 A.2d 1323 (Pa. 1980).

This rule neither addresses counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745, nor ineffective assistance of counsel, see *Wainwright v. Torna*, 455 U.S. 586 (1982).

* * * * *

Committee Explanatory Reports:

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

Final Report explaining the January 21, 2000 amendments adding paragraph (F) concerning appointment of counsel published with the Court's Order at 30 Pa.B. 624 (February 5, 2000).

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).

Report explaining the proposed Comment revision concerning duration of counsel's obligation published at 30 Pa.B. 5535 (October 28, 2000).

Report

Proposed Amendments to Pa.Rs.Crim.P. 316 and 1504

Duration of Appointed Counsel's Obligation

The Committee undertook a review of the duration of appointed counsel's obligation provisions in Rule 316

(Assignment of Counsel) at the request of the Court.⁵ The Court asked the Committee to consider the general issue of whether the provision in Rule 316(C)(3) "such assignment shall be effective until final judgment, including any proceedings upon direct appeal" continues through the allocatur process. The Court also asked the Committee to consider whether the Court's May 9, 2000 Order concerning the exhaustion of state remedies for purposes of federal habeas corpus relief should impact on the scope of Rule 316.

A. Duration of Appointed Counsel's Obligation

The Committee considered first the Court's question concerning the duration of appointed counsel's obligation, and reviewed the Rule 316 history and case law interpreting Rule 316. When the Committee recommended the appointment of counsel rule in 1964, the submission to the Court explained that the Committee was proposing that the rule provide counsel's assignment shall be effective until final judgment including any proceedings upon direct appeal, and that the proposal was based on the United States Supreme Court's decision in *Douglas v. California*, 372 U.S. 353 (1963). The Committee, however, did not explain what was intended by "any proceedings upon direct appeal." *Douglas* is not conclusive as to the meaning of "direct appeal" because the Supreme Court limited the scope of the decision saying "We are not here concerned with the problems that might arise from the denial of counsel for the preparation of a petition for discretionary review or mandatory review beyond the stage in the appellate process at which the claims have once been presented by a lawyer and passed upon by an appellate court."

Subsequently, the Court decided *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969). The *Hickox* opinion directs appointed counsel following the affirmance of defendant's sentence by the Superior Court "to proceed in accordance with the Rule," suggesting that in 1969 the Court interpreted the use of "direct appeal" in Rule 316 to include discretionary appeals. The citation to *Hickox* was added to the Rule 316 Comment. The Committee concluded the addition of *Hickox* supported the premise that the intent of the rule is that appointed counsel is to stay in the case through the state courts' discretionary appeal process.

The issue of the length of appointed counsel's obligation has continued to arise in cases. The United States Supreme Court again addressed the issue in 1974 in *Ross v. Moffitt*, 417 U.S. 600 (1974). The Supreme Court held that there is no constitutional right to appointed counsel for discretionary appeals, noting that the decision should be made at the state level. The Pennsylvania Supreme Court did just that in 1980 when, in *Commonwealth v. Daniels*, 420 A.2d 1323 (Pa. 1980), it noted "by this Rule [Rule 316], this Court long has guaranteed that a person seeking allowance of appeal is entitled to the assistance of counsel." Since *Daniels*, there have been several Superior Court cases addressing this issue in the context of ineffective assistance of counsel for failing to seek allowance of appeal to the Supreme Court, all accepting the premise that appointed counsel stays in the case through discretionary appeal. See, e.g., *Commonwealth v. Morrow*, 474 A.2d 322 (Pa. Super. 1984) and *Commonwealth v. West*, 482 A.2d 1339 (Pa. Super. 1984).

In view of the Committee rule history and the case law, the Committee reaffirmed that the appointment of counsel pursuant to Rule 316 extends through appeals to the

⁵ References in the Report to "Supreme Court" mean the U.S. Supreme Court, and references to "Court" mean the Pennsylvania Supreme Court.

Pennsylvania Supreme Court. Because of the Court's inquiry and the fact that the issue continues to arise, the Committee agreed that Rule 316 should be clarified. Because the sixth paragraph of the Rule 316 Comment currently addresses this issue, the Committee agreed the clarification should be made in that paragraph.

The present Comment provides:

Paragraph (C)(3) implements the decisions of *Douglas v. California*, 372 U.S. 353 (1963), and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969), by providing that counsel appointed originally shall retain his or her assignment until final judgment, which includes appellate procedure.

The Committee initially considered merely substituting "which includes appellate procedure" in the last line of the paragraph with a phrase such as "which includes discretionary appeal." We reconsidered this because the *Douglas* and *Hickox* opinions involved cases in which the appeal was an appeal as of right, and both Courts appear to use "direct appeal" in that context. The Committee agreed a reasonable interpretation of the "implements" language would be that "direct appeal" only goes through the appeal as of right stage. Although paragraph (C)(3) initially was the result of those two cases, subsequent Pennsylvania cases have clearly interpreted Rule 316 as applying through discretionary appeals to the Pennsylvania Supreme Court. In view of this, and because Pennsylvania courts have gone in a different direction than the federal courts since *Ross v. Moffitt*, the Committee was concerned the "implements" language in the Rule 316 Comment was confusing. Accordingly, we are proposing the "implements" language be deleted. In addition, to make the provision clearer concerning the duration of appointed counsel's obligation, we are proposing the paragraph be revised to explain that paragraph (C)(3) "makes it clear that appointed counsel retains his or her assignment until final judgement, which includes all avenues of appeal through the Supreme Court of Pennsylvania."⁶ We are proposing a citation to *Commonwealth v. Daniels* be added because this is the most recent decision in which the Court has addressed the issue, and more clearly states the proposition.

During the course of our discussions concerning these proposed changes, several members expressed concern that the changes would result in an appointed attorney being forced to file a petition for allowance of appeal even when counsel, in exercising his or her professional judgment, determines it is inappropriate. Although the Committee agreed that Rule 316 only addresses the appointment of counsel, not counsel's professional responsibilities, the members were sensitive to the concerns being raised, and are proposing an additional paragraph be added to the *Comment* to clarify this point. This new paragraph includes cross-references to *Jones v. Barnes*, 463 U.S. 745 (1983), concerning counsel's professional obligations, and *Wainwright v. Torna*, 455 U.S. 586 (1982), concerning ineffective assistance of counsel.

As we discussed Rule 316, we noted that comparable issues arise in the context of Rule 1504 (Appointment of Counsel; In Forma Pauperis), and are proposing the same changes to the Rule 1504 Comment.

B. Court's May 9, 2000 Order

Turning to the second part of the Court's inquiry concerning the impact of its May 9, 2000 Order on Rule 316, the Committee reviewed *O'Sullivan v. Boerckel*, 526

U.S. 838 (1999). In *Boerckel*, the Supreme Court addressed the exhaustion doctrine, holding, inter alia, "state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process," and when that process is two-tiered, both tiers should be utilized if the discretionary review is a normal part of the established review process. The Supreme Court went on to say "nothing in our decision today requires exhaustion of any specific state remedy when a State has provided that that remedy is unavailable," suggesting the states can by rule or statute provide that a given procedure is not available. Based on our review of this case and the Court's Order, the Committee concluded that no changes to Rule 316 with regard to the May 9, 2000 Order were necessary.

[Pa.B. Doc. No. 00-1851. Filed for public inspection October 27, 2000, 9:00 a.m.]

Title 25—LOCAL COURT RULES

LYCOMING COUNTY

Amendments to Rules of Civil Procedure; #00-00666

Order

And now, this 5th day of October, 2000, it is hereby *Ordered and Directed* as follows:

1. Lycoming County Rule of Civil Procedure L430 is hereby revised as set forth as follows:
 2. The Prothonotary is directed to:
 - a. File seven (7) certified copies of this order with the Administrative Office of the Pennsylvania Courts.
 - b. Distribute two (2) certified copies of this order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
 - c. File one (1) certified copy of this order with the Pennsylvania Civil Procedural Rules Committee.
 - d. Forward one (1) copy of this order to the Lycoming Reporter for publication therein.
 - e. Forward one (1) copy to the chairman of the Lycoming County Customs and Rules Committee.
 - f. Keep continuously available for public inspection copies of this order.
3. The rule revision approved by this order shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

By the Court

CLINTON W. SMITH,
President Judge

⁶ Rule 75 will become Rule 430 as part of the reorganization and renumbering of the rules adopted March 1, 2000, effective April 1, 2001.

L.430 Service by Publication.

A. Any request for service pursuant to a special order of court under Pa.R.C.P. 430 shall [**be accompanied by a proposed order**] **comply with Rule L206.**

B. Service by publication shall be made in such a manner that the person so served shall have at least ten (10) days after publication to act on the matter served by publication.

C. Service shall be complete upon the appearance of the last complete publication. Proofs of publication shall be filed before judgment or any other action is taken by the plaintiff.

D. Where service by publication is permitted by Pa.R.C.P. 410 (concerning real property actions), the notice shall be published for one week in the *Lycoming Reporter* and at least one newspaper of general circulation. The notice shall be **in the form required by the rules and shall include a description of the land involved. [substantially in the following form:]**

[_____ [caption of case]

To: _____
Name(s) of Defendant(s)

You are notified that the plaintiff(s) has (have) commenced an action to quiet title against you which you are required to defend.

You are required to plead to the complaint within twenty (20) days after the last appearance of this notice, that is, no later than _____ . If you fail to answer the complaint within said twenty (20) days, a preliminary judgment may be entered against you thirty (30) days thereafter.

**This action concerns the land here described:
 (describe land)**

If you wish to defend you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE.

IF YOU DO NOT HAVE A LAWYER CONTACT:

**Prothonotary
 Lycoming County Courthouse
 Williamsport, PA 17701
 Telephone 570-327-2251**

IF YOU CANNOT AFFORD A LAWYER CONTACT:

**Susquehanna Legal Services Office
 329 Market Street
 Williamsport, PA 17701
 Telephone 570-323-8741]**

[Pa.B. Doc. No. 00-1852. Filed for public inspection October 27, 2000, 9:00 a.m.]

**WYOMING AND SULLIVAN COUNTIES
 2001 Court Calendar; No. 2000-1063**

And Now, the 6th day of October, 2000,

It Is Ordered that the Court Calendar of the Court of Common Pleas of the 44th Judicial District of Pennsylvania for the Year 2001, be and the same is hereby established in accordance with the schedule hereto and made a part hereof.

By the Court

BRENDAN J. VANSTON,
President Judge

2001 Court Calendar for Wyoming County

Account Confirmation

January	2
February	6
March	6
April	3
May	1
June	5
July	5
August	7
September	4
October	2
November	6
December	4

Arraignments

January	10
February	14
March	14
April	11
May	9
June	13
July	11
August	8
September	12
October	10
November	7
December	12

Domestic Relations

<i>De Novos</i>	
January	9
February	13
March	13
April	10
May	8
June	12
July	10
August	6
September	11
October	9
November	5 (1:15)
December	11

Contempts

11
8
15
12
10
14
5
2
13
11
8
13

General Call

September	4
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Juveniles

January	3
February	7
March	7
April	4
May	2
June	6
July	2

Juveniles

August	1
September	5
October	3
November	5
December	5

Criminal Trial Weeks

February	26
April	23
June	25
August	13
October	15
December	17

Guilty Pleas & Status Call

January	5
February	2
March	9
April	6
May	11
June	8
July	6
August	10
September	7
October	5
November	2
December	7

Dependency

January	11
February	8
March	12
April	12
May	10
June	14
July	12
August	2
September	13
October	11
November	8
December	13

Civil Trial Weeks

January 15, 2001
March 19, 2001
May 21, 2001
July 16, 2001
September 17, 2001
November 13, 2001

Close Civil Trial List

December 1, 2000	(March, 2001)
February 2, 2001	(May 2001)
April 6, 2001	(July, 2001)
June 1, 2001	(September, 2001)
August 3, 2001	(November, 2001)
October 5, 2001	(January, 2002)
December 7, 2001	(March, 2002)

Sentences & ARD Hearings

January	10
February	14
March	14
April	11
May	9
June	13
July	11
August	8
September	12
October	10
November	7
December	12

Prison Board

January	2
February	6
March	6
April	3
May	1
June	5
July	3
August	7
September	4
October	2
November	6
December	4

Miscellaneous, Arraignments and Account Confirmations

January	4
February	1
March	8
April	5
May	3
June	7
July	3
August	9
September	6
October	4
November	1
December	6

Civil & Criminal Trial Weeks

January 22, 2001
March 26, 2001
May 29, 2001
September 24, 2001
October 22, 2001

Close Civil Trial List

December 1, 2000	(March, 2001 Trial Term)
March 2, 2001	(May, 2001 Trial Term)
June 8, 2001	(September, 2001 Trial Term)
August 3, 2001	(October, 2001 Trial Term)
October 5, 2001	(January, 2002 Trial Term)
December 7, 2001	(March, 2002 Trial Term)

General Call

September 6, 2000

[Pa.B. Doc. No. 00-1853. Filed for public inspection October 27, 2000, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Christopher G. Martucci having been disbarred by consent from the practice of law in the State of New Jersey by Order of the Supreme Court of New Jersey dated July 12, 2000, the Supreme Court of Pennsylvania issued an Order dated October 5, 2000, disbaring Christopher G. Martucci from the Bar of this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 00-1854. Filed for public inspection October 27, 2000, 9:00 a.m.]
