

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 2, 4 AND 5]

**Coverage: Issuing Warrants; Preliminary Arraignment and Summary Trial; Arrests Without Warrant and Release; and Setting and Accepting Bail**

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Pa.R.Crim.P. 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail),<sup>1</sup> make correlative amendments to Pa.Rs.Crim.P. 131, 132, 431, 441, 509, 519, 525, and 535, and approve the correlative revision of the Comment to Pa.R.Crim.P. 203. This supplemental proposal modifies the original proposal published in 33 Pa.B. 5607 (11/15/03) and in the *Atlantic Reporter* advanced sheets at 833 A.2d (11/21/03). This supplemental proposal resulted from the Committee's further review of the proposed rule changes in response to the extensive correspondence received after publication of our original explanatory Report addressing the continuous availability of issuing authorities by, inter alia, requiring the president judge of each judicial district to ensure sufficient availability of issuing authorities to provide the services required by the Criminal Rules. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights the Committee's considerations in formulating this supplemental proposal. Please note that the Committee's Supplemental 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 Supplemental Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

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no later than Monday, September 20, 2004.

*By the Criminal Procedural Rules Committee*

JOHN J. DRISCOLL,  
*Chair*

<sup>1</sup> To accommodate new Rule 117, current Rules 117 and Rule 118 are being renumbered Rule 118 and Rule 119 respectively.

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

##### PART A. Business of the Courts

**Rule 117. Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail.**

(A) The president judge of each judicial district shall ensure sufficient availability of issuing authorities to provide the services required by the Rules of Criminal Procedure as follows:

(1) continuous coverage for the issuance of search warrants pursuant to Rule 203 and arrest warrants pursuant to Rule 513;

(2) coverage using one or a combination of the systems of coverage set forth in paragraph (B) to: (a) conduct summary trials or set collateral in summary cases following arrests with a warrant issued pursuant to Rule 430(A) as provided in Rule 431(B)(3) and following arrests without a warrant as provided in Rule 441(C);

(b) conduct preliminary arraignments without unnecessary delay whenever a warrant of arrest is executed within the judicial district pursuant to Rule 516;

(c) set bail without unnecessary delay whenever an out-of-county warrant of arrest is executed within the judicial district pursuant to Rule 517(A);

(d) accept complaints and conduct preliminary arraignments without unnecessary delay whenever a case is initiated by an arrest without warrant pursuant to Rule 519(A)(1); and

(3) coverage during normal business hours for all other business.

(B) The president judge, taking into consideration the rights of the defendant and the judicial district's resources and coverage needs, by local rule promulgated pursuant to Rule 105, shall establish one or a combination of the following systems of coverage to provide the services enumerated in paragraph (A)(2):

(1) a traditional on-call system providing continuous coverage;

(2) an "after-hours court" or a "night court" staffed by an on-duty issuing authority and staff;

(3) a regional on-call system; or

(4) a schedule of specified times for after-hours coverage when the "duty" issuing authority will be available to conduct business.

(C) The president judge of each judicial district, by local rule promulgated pursuant to Rule 105, shall ensure that coverage is provided pursuant to Rule 520(B) to admit defendants to bail on any day and at any time in any case pending in any magisterial district within the judicial district.

##### Comment

By this rule, the Supreme Court is clarifying the responsibility of president judges in supervising their respective judicial districts to ensure compliance with the statewide Rules of Criminal Procedure to prevent the violation of the rights of defendants caused by the lack of

availability of the issuing authority. See also Rule 116 (General Supervisory Powers of President Judge) and Rule 131 (Location of Proceedings Before Issuing Authority).

Paragraph (A), derived from former Rule 132(A) (Continuous Availability), clarifies that it is the president judge's responsibility to make sure that there are issuing authorities available within his or her judicial district (1) on a continuous basis to issue search and arrest warrants, paragraph (A)(1); (2) pursuant to one or a combination of the systems of coverage enumerated in paragraph (B) to conduct summary trials and preliminary arraignments, and perform related duties, paragraph (A)(2); and (3) during normal business hours to conduct all other business of the minor judiciary, paragraph (A)(3). It is expected that the president judge will continue the established procedures in the judicial district or establish new procedures to ensure sufficient availability of issuing authorities consistent with this paragraph.

By providing the alternate systems of coverage in paragraph (B), this rule recognizes the differences in the geography and judicial resources the judicial districts.

An issuing authority is "available" pursuant to paragraph (A) when he or she is able to communicate in person or by using advanced communication technology ("ACT") with the person requesting services pursuant to this rule. See Rule 103 for the definition of ACT. Concerning the use of ACT, see Rule 118 (Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings). See also Rules 203, 513, 518, and 540 providing for the use of ACT to request and obtain warrants and conduct preliminary arraignments.

Nothing in this rule limits an issuing authority from exercising sound judicial discretion, within the parameters established by the president judge pursuant to paragraph (B), in deciding how to respond to a request for services outside normal business hours. See, e.g., Rule 203(E) that requires, when a search warrant is being requested for a nighttime search, that the affidavits show reasonable cause for such nighttime search; Rule 509(1) and (2) that authorize the use of summonses instead of warrants in certain court cases; and Rule 519(B) that requires the police officer to release a defendant arrested without a warrant in certain specified court cases.

In determining which system of coverage to elect, the president judge must consider the rights of the defendant, see, e.g. *Commonwealth v. Duncan*, 525 A.2d 1177 (Pa. 1987), and the judicial district's resources and coverage needs, as well as the obligations of the police and attorney for the Commonwealth to ensure the defendant is brought before an issuing authority without unnecessary delay as required by law, see, e.g., Rules 431, 441, 516, 517, and 519. See also *Commonwealth v. Perez*, A.2d (Pa. 2004).

The proceedings enumerated in paragraph (A)(2) include (1) setting bail before verdict pursuant to Rule 520(A) and Rule 540, and either admitting the defendant to bail or committing the defendant to jail, and (2) determining probable cause whenever a defendant is arrested without a warrant pursuant to Rule 540(C).

Pursuant to paragraph (C), the president judge also is responsible for making sure there is an issuing authority or other designated official available within the judicial district on a continuous basis to accept bail pursuant to Rule 520(B). The president judge, by local rule, may continue established procedures or establish new procedures for the after-hours acceptance of deposits of bail by

an issuing authority, a representative of the office of the clerk of courts, or such other individual designated by the president judge. See Rule 535(A). Given the complexities of posting real estate to satisfy a monetary condition of release, posting of real estate may not be feasible outside normal business hours.

When the president judge designates another official to accept bail deposits, that official's authority is limited under this rule to accepting the bail deposit, and under Rule 525 to releasing the defendant upon execution of the bail bond. Pursuant to Rule 535(A), the official is authorized only to have the defendant execute the bail bond and to deliver the bail deposit and bail bond to the issuing authority or clerk of courts.

The local rule requirements in paragraphs (B) and (C) (1) ensure there is adequate notice of (a) the system of coverage, thereby providing predictability in the issuing authority's duty schedule, and (b) the official authorized to accept bail, (2) promote the efficient administration of justice, and (3) provide a means for the Supreme Court to monitor the times and manner of coverage in each judicial district.

The local rules promulgated pursuant to this rule should include other relevant information, such as what are the normal business hours of operation or any special locations designated by the president judge to conduct business, that will assist the defendants, defense counsel, attorneys for the Commonwealth, police, and members of the public.

Concerning other requirements for continuous coverage by issuing authorities in Protection from Abuse Act cases, see 23 Pa.C.S. § 6110 and Pa.R.C.P.D.J. 1203.

**Official Note:** Former Rule 117 adopted September 20, 2002, effective January 1, 2003; renumbered Rule 118 , 2004, effective , 2004. New Rule 117 adopted , 2004, effective , 2004.

*Committee Explanatory Reports:*

Report explaining new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003). Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).

Rule [ 117 ] 118. Court Fees Prohibited For Two-Way Simultaneous Audio-Visual Communication.

\* \* \* \* \*

**Official Note:** New Rule 117 adopted September 20, 2002, effective January 1, 2003; **renumbered Rule 118 , 2004, effective , 2004.**

*Committee Explanatory Reports:*

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**Report explaining the renumbering of Rule 117 as Rule 118 published at 33 Pa.B. 5613 (November 12, 2003). Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).**

Rule [ 118 ] 119. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Nothing in this rule is intended to limit any right of a defendant to waive his or her presence at a criminal proceeding in the same manner as the defendant may

waive other rights. See, e.g., Rule 602 Comment. Negotiated guilty pleas when the defendant has agreed to the sentence and probation revocation hearings are examples of hearings in which the defendant's consent to proceed using two-way simultaneous audio-visual communication would be required. Hearings on post-sentence motions, bail hearings, **bench warrant hearings**, extradition hearings, and *Gagnon I* hearings are examples of proceedings that may be conducted using two-way simultaneous audio-visual communication without the defendant's consent. It is expected the court or issuing authority would conduct a colloquy for the defendant's consent when the defendant's constitutional right to be physically present is implicated.

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**Official Note:** New Rule 118 adopted August 7, 2003, effective September 1, 2003; **renumbered Rule 119 and Comment revised** , 2004, effective , 2004.

*Committee Explanatory Reports:*

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**Report explaining the renumbering of Rule 118 as Rule 119 published at 33 Pa.B. 5613 (November 12, 2003). Supplemental Report explaining the revision of the second paragraph of the Comment published at 34 Pa.B. 4421 (August 14, 2004).**

**PART C. Venue, Location, and Recording of Proceedings Before Issuing Authority**

**Rule 131. Location of Proceedings Before Issuing Authority.**

(A) An issuing authority within the magisterial district for which he or she is elected or appointed shall have jurisdiction and authority [at all times] to receive complaints, issue warrants, hold preliminary arraignments, set and receive bail, issue commitments to jail, and hold hearings and summary trials.

\* \* \* \* \*

**Comment**

\* \* \* \* \*

Paragraph (B) of this rule is intended to facilitate compliance with the requirement that defendants be represented by counsel at the preliminary hearing. *Coleman v. Alabama*, 399 U.S. 1[, 90 S.Ct. 1999] (1970).

\* \* \* \* \*

**Official Note:** Formerly Rule 156, paragraph (a) adopted January 16, 1970, effective immediately; paragraph (a) amended and paragraph (b) adopted November 22, 1971, effective immediately; renumbered Rule 22 September 18, 1973, effective January 1, 1974; renumbered Rule 131 and amended March 1, 2000, effective April 1, 2001; amended March 12, 2002, effective July 1, 2002; amended May 10, 2002, effective September 1, 2002; **amended** , 2004, effective , 2004.

*Committee Explanatory Reports:*

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**Report explaining the proposed deletion in paragraph (A) of "at all times" published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).**

Rule 132. [Continuous Availability and] Temporary Assignment of Issuing Authorities.

**[ (A) Continuous Availability**

**(1) The president judge of each judicial district shall be responsible for insuring the availability at all times within the judicial district of at least one issuing authority.**

**(2) The issuing authority assigned to be on duty after business hours shall set bail as provided in Chapter 5 Part C, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.**

**(B) Temporary Assignment**

**(1) (A)** The president judge may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed:

[ (a) ] **(1)** to satisfy the requirements of [ paragraph (A)(1) ] **Rule 117;**

[ (b) ] **(2)** \* \* \*

[ (c) ] **(3)** \* \* \*

[ (d) ] **(4)** \* \* \*

\* \* \* \* \*

[ (2) ] **(B)** \* \* \*

[ (3) ] **(C)** A motion may be filed requesting a temporary assignment under [ paragraph (B)(1) ] **this rule** on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

[ (4) ] **(D)** A motion shall be filed requesting a temporary assignment under paragraph [ (B)(1)(c) ] **(A)(3)** whenever the attorney for the Commonwealth elects to proceed under Rule 544(B) following the refile of a complaint.

**Comment**

**[ This rule is intended to impose the responsibility of the president judge to prevent the violation of the rights of defendants caused by the lack of availability of the issuing authority.**

**Paragraph (A)(2) requires an issuing authority on duty after business hours to set bail, as provided by law, and to accept deposits of bail in any case pending in any magisterial district within the judicial district, so that a "defendant may be admitted to bail on any date and at any time." Rule 520(B).**

**Nothing in this rule is intended to preclude judicial districts from continuing established procedures or establishing new procedures for the after-hours acceptance of deposits of bail by a representative of the clerk of courts' office. ]**

**The provisions of former paragraph (A) (Continuous Availability) were incorporated into new Rule 117 in 2004.**

Paragraphs [ (B)(1)(b) ] (A)(2) and [ (3) ] (C) make explicit the authority of president judges to assign issuing authorities when necessary to insure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as "change of venue" at the district justice level. See, e.g., *Sufrich v. Commonwealth*, 447 A.2d 1124 (Pa. Cmwlth. 1982).

The motion procedure of paragraph [ (B)(3) ] (C) is intended to apply when a party requests temporary assignment to insure fair and impartial proceedings. The president judge may, of course, order a response and schedule a hearing with regard to such a motion. However, this paragraph is not intended to require "a formal hearing . . . beyond the narrow context of a motion for temporary assignment of issuing authority to insure fair and impartial proceedings predicated upon allegations which impugn the character or competence of the assigned issuing authority and which seek the recusal of the assigned issuing authority." See *Commonwealth v. Allem*, 532 A.2d 845 (Pa. Super. 1987) (filing and service of the written motion and answer, and allowance of oral argument were more than adequate to meet the rule's requirements).

Paragraphs [ (B)(1)(c) ] (A)(3) and [ (4) ] (D) govern those situations in which the attorney for the Commonwealth, after refileing the complaint following the withdrawal or dismissal of any criminal charges at, or prior to, a preliminary hearing, determines that the preliminary hearing should be conducted by a different issuing authority. See also Rule 544 (Reinstituting Charges Following Withdrawal or Dismissal). Under Rule 544, the president judge may designate another judge within the judicial district to handle reassignments.

\* \* \* \* \*

**Official Note:** Formerly Rule 152, adopted January 16, 1970, effective immediately; amended and renumbered Rule 23 September 18, 1973, effective January 1, 1974; amended October 21, 1983, effective January 1, 1984; amended February 27, 1995, effective July 1, 1995; amended October 8, 1999, effective January 1, 2000; renumbered Rule 132 and amended March 1, 2000, effective April 1, 2001; amended , 2004, effective , 2004.

*Committee Explanatory Reports:*

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**Report explaining the proposed changes to the rule correlative to the changes in proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).**

**CHAPTER 2. INVESTIGATIONS**

**PART A. Search Warrant**

**Rule 203. Requirements for Issuance.**

\* \* \* \* \*

**Comment**

\* \* \* \* \*

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

Paragraph (D) changes the procedure discussed in *Commonwealth v. Crawley*, 223 A.2d 885 (Pa. Super.

1966), aff'd per curiam 247 A.2d 226 (Pa. 1968). See *Commonwealth v. Milliken*, 300 A.2d 78 (Pa. 1973).

**Ordinarily, a law enforcement officer requesting a search warrant should make the request during the normal business hours of the issuing authority. When circumstances necessitate obtaining a search warrant outside normal business hours, the law enforcement officer must contact the proper issuing authority to determine when the issuing authority will be available to issue the search warrant. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).**

\* \* \* \* \*

**Official Note:** Rule 2003 adopted March 28, 1973, effective for warrants issued 60 days hence; renumbered Rule 203 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; **Comment revised , 2004, effective , 2004.**

*Committee Explanatory Reports:*

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**Report explaining the proposed changes to the rule correlative to the changes in proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the post-publication changes published at 34 Pa.B. 4421 (August 14, 2004).**

**CHAPTER 4. PROCEDURES IN SUMMARY CASES**

**PART D. Arrest Procedures In Summary Cases**

**PART D(1). Arrests With a Warrant**

Rule 430. Issuance of [ Arrest ] Warrant.

**(A) ARREST WARRANTS INITIATING PROCEEDINGS**

A warrant for the arrest of the defendant shall be issued when:

[ (1) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested;

(2) ] (1) the citation or summons is returned undelivered; or

[ (3) ] (2) \* \* \*

[ (4) the defendant has failed to appear for the execution of sentence as required in Rule 454(E)(3). ]

**(B) BENCH WARRANTS**

**(1) A bench warrant shall be issued when the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or**

**[ (B) ] (2) A bench warrant [ for the arrest of the defendant ] may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.**

**[ (C) ] (3) A bench warrant [ for the arrest of the defendant ] may be issued when:**

- [ (1) ] (a) \* \* \*
- [ (2) ] (b) \* \* \*
- [ (3) ] (c) \* \* \*

[ (D) ] (4) No warrant shall issue under paragraph [ (C) ] (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of **[ an arrest ] a bench** warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

**Comment**

Personal service of a citation under paragraph [ (A) ] (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue **[ an arrest ] a warrant** as provided in **either** paragraph (A)(1) **[ and (2) ] or (B)(1)**.

**[ An arrest ] A bench** warrant may not be issued under paragraph [ (A) ] (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

**[ Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (A)(1)(d) was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence. ]**

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a **bench** warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The **[ arrest ] bench** warrant issued under paragraph [ (C) ] (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph [ (C) ] (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph [ (D) ] (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the

10-day time period, the issuing authority will certify 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). Thereafter, the case will proceed pursuant to the Juvenile Act instead of these rules.

\* \* \* \* \*

**Official Note:** Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to 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; **amended February 28, 2003, effective July 1, 2003;** Comment revised August 7, 2003, effective July 1, 2004; **amended , 2004, effective , 2004.**

*Committee Explanatory Reports:*

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**Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the proposed changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published at 34 Pa.B. 4421 (August 14, 2004).**

**Rule 431. Procedure When Defendant Arrested With Warrant.**

(A) **[ A ] When a warrant of arrest is issued for a defendant in a summary case, the warrant:**

(1) shall be executed by a police officer as defined in Rule 103[ . ] ; and

(2) shall be executed only between the hours of 6 a.m. and 10 p.m., unless the time period is extended by the president judge by local rule enacted pursuant to Rule 105, or when the proper issuing authority determines extraordinary circumstances exist that necessitate the execution of the warrant at another time.

**(B) Arrest Warrants Initiating Proceedings**

(1) When **[ a ] an arrest** warrant **[ of arrest ]** is executed, the police officer shall either:

[ (1) ] (a) \* \* \*

[ (2) ] (b) \* \* \*

**[ (3) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; ] or**

**[ (4) ] (c) if the defendant is unable to pay,** cause the defendant to be taken without unnecessary delay before the proper issuing authority.

**[ (C) ] (2)** When the police officer accepts restitution, fine, and costs, or collateral under paragraphs (B)(1) **[ (2), or (3), ] (a) or (b)** the officer shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs, or collateral received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

**[ (D) ] (3)** When the defendant is taken before the issuing authority under paragraph (B)**[ (4) ] (1)(c)**,

[ (1) ] (a) \* \* \*

[ (2) ] (b) \* \* \*

[ (a) ] (i) \* \* \*

[ (b) ] (ii) the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged, in which event the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information[ ; or ].

[ (c) ] the warrant was issued for the collection of restitution, fine, and costs after a guilty plea or conviction, in which event the issuing authority shall proceed as specified in Rule 456.

(3) ] (c) \* \* \*

(4) The issuing authority immediately shall vacate the arrest warrant and order that notice of the vacated warrant promptly be given to all computer networks into which the arrest warrant has been entered.

**(C) Bench Warrants**

(1) When a bench warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant;

(c) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; or

(d) if the defendant is unable to pay, promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(3).

(2) When the defendant pays the restitution, fines, and costs, or collateral, the police office shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant does not pay the restitution, fines, and costs, or collateral, the defendant promptly shall be taken before the proper issuing authority if available for a bench warrant hearing.

(a) The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(b) If the bench warrant hearing cannot be conducted promptly after the arrest:

(i) the defendant shall be lodged in the county jail pending the hearing; and

(ii) the authority in charge of the county jail promptly shall notify the proper issuing authority that the defendant is being held pursuant to the bench warrant.

(c) The bench warrant hearing shall be conducted no later than the end of the next business day.

(i) If the warrant was issued for the collection of restitution, fine, and costs after a guilty plea or conviction, the issuing authority shall proceed as specified in Rule 456.

(ii) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant and order that notice of the vacated warrant promptly be given to all computer networks into which the bench warrant has been entered.

(d) If a bench warrant hearing is not held within the time limits in paragraph (C)(3)(c),

(i) the bench warrant shall expire by operation of law;

(ii) the individual promptly shall be given written notice to appear before the proper issuing authority on the next business day and shall be released from custody; and

(iii) notice of the expired warrant promptly shall be given to all computer networks into which the bench warrant has been entered.

**Comment**

For the procedure in court cases following arrest with a warrant initiating proceedings, see Rules 516 [ and ], 517, and 518.

\* \* \* \* \*

When the proper issuing authority makes the determination in paragraph (A)(2) that extraordinary circumstances exist requiring the warrant to be executed at a time outside the 6 am to 10 pm time limitation, the defendant must be taken before that issuing authority and the case proceed pursuant to these rules.

For what constitutes a "proper" issuing authority, see Rule 130.

Delay of trial under paragraph [ (D)(2)(b) ] (B)(3)(ii) is required by statutes such as 18 Pa.C.S. § 3929 (pre-trial fingerprinting and record-ascertainment requirements).

\* \* \* \* \*

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

For the procedures required before [ an arrest ] a bench warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 430[ (D) ] (B)(4). When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

[ For what constitutes a "proper" issuing authority, see Rule 130. ]

For the procedures when a bench warrant is issued in court cases, see Rule 117.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Pursuant to Rule 117(B), when establishing the system of coverage best suited for the judicial district, the president judge may re-

quire defendants arrested on summary case bench warrants after hours to be taken to the established night court where the defendant would be given a notice to appear in the proper issuing authority's office the next business day or be permitted to pay the full amount of fines and costs.

When a defendant appears in the proper issuing authority's office the next business day following a release pursuant to paragraph (C)(3)(d)(ii), if the issuing authority is unavailable or the summary trial cannot be conducted at that time, the defendant should be given a notice of when to appear for the trial or the opportunity to pay the fines and costs.

\* \* \* \* \*

**Official Note:** Rule 76 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 August 7, 2003, effective July 1, 2004; amended , 2004, effective , 2004.

*Committee Explanatory Reports:*

\* \* \* \* \*

Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the proposed changes distinguishing between procedures for warrants that initiate proceedings and bench warrants procedures in summary cases published at 34 Pa.B. 4421 (August 14, 2004).

**PART D(2). Arrests Without Warrant**

**Rule 441. Procedure Following Arrest Without Warrant.**

\* \* \* \* \*

(B) When a defendant has been arrested without a warrant, the arresting officer [may, when the officer deems it appropriate,] shall promptly release the defendant from custody when the following conditions have been met:

[ (1) the defendant is a resident of the Commonwealth;

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

[ (3) ] (2) the arresting officer has reasonable grounds to believe that the defendant will appear as required [ ; and ].

[ (4) the defendant does not demand to be taken before an issuing authority. ]

A citation shall be issued to the defendant at the time of release and thereafter the case shall proceed in accordance with Rules 405—409 as if the proceedings had been instituted by issuing a citation to the defendant.

(C) When the defendant has not been released from custody under paragraph (B),

(1) if the arrest is made during the normal business hours of the proper issuing authority, the defendant shall be taken without unnecessary delay before the issuing authority where a citation shall be filed against the defendant, and

[ (1) ] (a) \* \* \*

[ (2) ] (b) \* \* \*

[ (a) ] (i) \* \* \*

[ (b) ] (ii) \* \* \*

(2) If the arrest is made outside the normal business hours of the proper issuing authority, before taking the defendant to the issuing authority, the police officer promptly shall contact the issuing authority to determine when the issuing authority will be available, as provided in Rule 117, to proceed under this rule.

\* \* \* \* \*

**Comment**

This rule [provides] was amended in 2004 to require the arresting police officer [with a choice to be made based upon the criteria set forth in paragraph (B). Under the rule, the police will either] to promptly arrange for the defendant's release [or, if it is necessary to detain the defendant, provide for immediate trial] if the two criteria set forth in paragraph (B) are met. Prompt release allows for the completion of any post-arrest procedures authorized by law.

"Reasonable grounds" as used in paragraph (B)(2) 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.

The 2004 amendments added the requirement when a defendant in a summary case cannot be released pursuant to paragraph (B), if the arrest occurs outside the normal business hours of the proper issuing authority, before taking the defendant before the issuing authority, the police officer must contact the issuing authority to determine when the issuing authority will be available to conduct the proceedings. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

\* \* \* \* \*

With regard to the "proper" issuing authority as used in these rules, see [Rule] Rules 103 and 130.

For the procedure in court cases initiated by arrest without warrant, see Rule 518.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

**Official Note:** Rule 71 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; amended August 9, 1994, effective January 1, 1995; amended May 14, 1999, effective July 1, 1999; renumbered Rule 441 and amended

March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; amended , 2004, effective , 2004.

*Committee Explanatory Reports:*

\* \* \* \* \*

Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the proposed changes concerning release of defendant following arrest and procedures when defendant is not released published at 34 Pa.B. 4421 (August 14, 2004).

**CHAPTER 5. PRETRIAL PROCEDURES  
IN COURT CASES**

**PART B(1). Complaint Procedures**

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

If a complaint charges an offense [ **which** ] 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 [ **punishable by a sentence to imprisonment of not more than one year** ] is a misdemeanor of the first degree, except as set forth in paragraph (2);

(2) issue a warrant of arrest when:

(a) [ **the offense charged is punishable by a sentence to imprisonment of more than five years** ] 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 immediate physical harm to any other person or to himself or herself; or

[ (c) ] (d) \* \* \*

[ (d) ] (e) \* \* \*

[ (e) ] (f) the identity of the defendant is unknown [ ; ].

[ (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); or

(4) when a defendant is charged with more than one offense and one of such offenses is punishable by a sentence to imprisonment for more than five years, issue a warrant of arrest. ]

**Comment**

[ This rule provides for the mandatory use of a summons instead of a warrant in court cases except in special circumstances as specified therein. This change of procedure is provided for relatively minor cases even though they are indictable.

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. Appropriate 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 sever-

ity 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 518(B), a summons shall be issued. ]

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).

*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; amended , 2004, effective , 2004.

*Committee Explanatory Reports:*

\* \* \* \* \*

Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining proposed amendments concerning in which cases a summons or a warrant are issued published at 34 Pa.B. 4421 (August 14, 2004).

**PART B(3). Arrest Procedures in Court Cases**

**(b). Arrests Without Warrant**

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

\* \* \* \* \*

**(B) RELEASE**

(1) [ **When the arresting officer deems it appropriate, the** ] The officer [ **may** ] 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** ] first degree;

[ **(b) the defendant is a resident of the Commonwealth;**

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

[ **(d) (c) the arresting officer has reasonable grounds to believe that the defendant will appear as required [ ; and ]**.

[ **(e) the defendant does not demand to be taken before an issuing authority.** ]

(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, [ a summons, not a warrant of arrest, shall be issued and the case ] the issuing authority shall proceed as provided in Rule [ 510 ] 509.

Comment

\* \* \* \* \*

Paragraph (B)(1) [ provides an exception to the requirement that a defendant be afforded a preliminary arraignment after a warrantless arrest. It permits an ] 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 1994, this exception applied to all DUI cases, but in other cases was only available at the election of individual judicial districts. With the 1994 amendments, the exception is now an option available to arresting officers statewide and ] Prior to the 2004 amendments, the release provision in paragraph (B) was optional. With the 2004 amendments, release is mandatory if the three criteria are met, and this requirement may not be [ prohibited ] modified by local rule.

“Reasonable grounds” as used in paragraph (B)(1)(b) 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, contact the proper issuing authority to determine when the issuing authority will be available to conduct the preliminary arraignment. 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 post-arrest procedures authorized by law.

\* \* \* \* \*

[ Appropriate circumstances for following the procedure under paragraph (B)(1) may vary. Among the factors that may be taken into account are whether the defendant resides in the Commonwealth, and whether he or she can safely be released without danger to self or others. ]

\* \* \* \* \*

[ 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. ]

\* \* \* \* \*

**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 , 2004, effective , 2004.

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining proposed amendments concerning in which cases a defendant must be promptly released published at 34 Pa.B. 4421 (August 14, 2004).

PART C(1). Release Procedures

Rule 525. Bail Bond.

(A) A bail bond is a document [ executed by a defendant, and, when applicable, one or more sureties, ] 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) prepare the bail bond; 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 incarceration.

(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.

[ (B) ] (E) \* \* \*

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

[ (D) A ] (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.

\* \* \* \* \*

**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 , 2004, effective , 2004.

Committee Explanatory Reports:

\* \* \* \* \*

Report explaining proposed addition of new paragraph (C) concerning the bail authority’s responsibility to prepare the bail bond published at 33 Pa.B.

5613 (November 12, 2003.) Supplemental Report explaining the proposed published at 34 Pa.B. 4421 (August 14, 2004).

**PART C(2). General Procedures In All Bail Cases  
Rule 535. Receipt for Deposit; Return of Deposit.**

(A) [ The issuing authority or the clerk of courts who accepts a deposit of cash in satisfaction of a monetary condition of bail shall give the depositor an itemized receipt, and shall note on the transcript or in the list docket entries and the bail bond the amount deposited and the name of the person who made the deposit. ] 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 [ such ] 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 [ shall be ] 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 on the docket the amount deposited and the name of the person who made the deposit, and shall place the bond in the criminal case file.

\* \* \* \* \*  
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.**

A deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be retained to pay for the defendant's court costs and/or fines. See *Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978).

**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.**

\* \* \* \* \*

**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 [ 535 ] 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 , 2004, effective , 2004.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Report explaining the proposed changes to the rule correlative to the changes in proposed new Rule 117 published at 33 Pa.B. 5613 (November 12, 2003.) Supplemental Report explaining the proposed published at 34 Pa.B. 4421 (August 14, 2004).**

**SUPPLEMENTAL REPORT**

*Proposed New Pa.R.Crim.P. 117, Correlative Amendments to Pa.Rs.Crim.P. 131, 132, 431, 441, 509, 519, 525, and 535, Correlative Revision of the Comment to Pa.R.Crim.P. 203, Renumbering Rule 117 as Rule 118 and Rule 118 as Rule 119*

**Coverage: Issuing Warrants; Preliminary Arraignment and Summary Trial; Arrests Without Warrant and Release; and setting And Accepting Bail**

**I. INTRODUCTION**

The Criminal Procedural Rules Committee's original proposal<sup>2</sup> was for a new Pa.R.Crim.P. 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail); and for correlative amendments to Pa.Rs.Crim.P. 131 (Location of Proceedings Before Issuing Authority), 132 (Continuous Availability and Temporary Assignment of Issuing Authorities), 525 (Bail Bond), and 535 (Receipt for Deposit; Return of Deposit); and the renumbering of current Rule 117 as Rule 118 and current Rule 118 as Rule 119. In this Supplemental Report, the Committee is explaining several changes to proposed new Rule 117, and the addition of a number of proposed correlative amendments to Pa.Rs.Crim.P. 413 (Procedure When Defendant Arrested with Warrant), 441 (Procedure Following Arrest without Warrant), 509 (Use of Summons or Warrant of Arrest in Court Cases), and 519 (Procedure in Court Cases Initiated by Arrest without Warrant), and a correlative revision of the Comment to Rule 203 (Requirements for Issuance).<sup>3</sup>

The core of the proposal as published remains the same.<sup>4</sup> The major changes in this supplemental proposal address a number of the issues raised in the publication responses, as well as some fine tuning by the Committee. Briefly, these changes include:<sup>5</sup>

- modifications to Rules 117, 203, 509, and 519 making the rules clearer concerning when the issuing authority

<sup>2</sup> See 33 Pa.B. 5607 (11/15/03) and the *Atlantic Reporter* advanced sheets, 833 A.2d (11/21/03).

<sup>3</sup> In addition, the Comment to Rule 119 would be revised to reference bench warrant hearings.

<sup>4</sup> See the Introduction, Background, and first part of the discussion sections of the Committee's November 2003 explanatory Report for the explanation of the development and the core aspects of the proposal.

<sup>5</sup> There are no changes to the published version of Rules 118, 131, or 132.

must conduct after-hours proceedings, giving the issuing authority some discretion with regard to the actual time to conduct after-hours proceedings

- cross-references in the Rule 117 Comment to Rules 203, 509, and 519 providing examples of situations that would not require an issuing authority's immediate availability and when it would be appropriate for the police officer to call and determine when the issuing authority will be available for that case
- amendments to Rule 509 modifying the criteria for when a summons is to be issued and when an arrest warrant is to be issued following the filing of a complaint in a court case
- amendments to Rule 519 modifying the criteria for release of the defendant in court cases following an arrest without a warrant, and making the release provisions mandatory rather than discretionary with the police officer
- changes to Rules 430, 431, and 441 that address the issue of after-hours availability of issuing authorities in summary cases by (1) distinguishing between arrest warrants that institute proceedings and arrest warrants that are bench warrants, (2) establishing specific bench warrant procedures for summary cases, (3) establishing time limits in Rule 431 for the execution of summary case warrants, and (4) amending Rule 441 modifying the criteria for the release of a defendant in a summary case following an arrest without a warrant and making the release provisions mandatory rather than discretionary with the police officer
- changes to Rules 525 and 535 that (1) require the issuing authority to sign the bail bond verifying the conditions of bail before sending the bail bond with the defendant to the prison, (2) require the individual who releases the defendant to sign the bail bond indicating he or she released the defendant, and (3) caution that the posting of real estate may not be feasible outside normal business hours given the complexities of posting realty for bail

In all other respects, the rules as published remain the same.

## II. DISCUSSION

### 1. Rule 117

As explained in the Introduction, the core aspects of the Rule 117 proposal remain the same:

- (1) the president judges are responsible for ensuring that the coverage needs of the judicial district are met;
- (2) there are three categories of coverage requirements for issuing authorities: continuous coverage by issuing authorities to handle search warrants and arrest warrants; one of the systems of coverage provided in the rule to conduct summary trials and preliminary arraignments following arrests, set collateral or bail, and accept complaints; coverage during normal business hours for all other matters handled by the issuing authorities;
- (3) there are four systems of coverage that a president judge may choose from for the conduct of the proceedings: a traditional on-call system providing continuous coverage; an "after-hours court" or "night court" staffed by an on-duty issuing authority and staff; a regional on-call system; and a schedule of specified times for after-hours coverage when the "duty" issuing authority will be available to conduct business; and

(5) the president judges are required to designate the individual or individuals to provide coverage pursuant to Rule 520(B) to admit defendants to bail on any day and any time.

The Committee is proposing the following changes to Rule 117 to address some of the issues raised in the publication correspondence:

- (1) a clarification in paragraph (A)(2) and (B) that the president judge may choose one or a combination of systems of coverage enumerated in paragraph (B) to provide coverage for the proceedings set forth in paragraph (A)(2);
- (2) a change in terminology from "district justice" to "issuing authority" to make it clear the Rule 117 provisions apply not only to district justices but to all members of the minor judiciary and common pleas court judges when sitting as district justices;
- (3) additional language explaining in the rule and Comment when an issuing authority will be "available" permitting an issuing authority to communicate in person or by using advanced communication technology in the appropriate circumstances;
- (4) an additional provision in the Comment explaining there are situations when a police officer should not demand an issuing authority's immediate availability, and should call to see when the issuing authority will be available; and
- (5) a cautionary provision in the Comment noting, given the complexities of posting realty for bail, the posting of real estate may not be feasible outside normal business hours.<sup>6</sup>

### 2. Search Warrants; Arrest Warrants in Court Cases

The Committee is proposing correlative changes to Rules 203 (Requirements of Issuance), 509 (Use of Summons or Warrant of Arrest in Court Cases), and 519 (Procedure in Court Cases Initiated by Arrest Without Warrant) that address a major area of concern raised in the publication correspondence: what "continuous coverage" means, and whether district justices are required to make themselves available immediately for every call from law enforcement regardless of whether the nature of the matter really necessitates immediate availability. The correspondents suggested the issuing authority should be "on call" to answer the after-hours phone calls, but then should have discretion to determine whether the call necessitates immediate availability, and if not, to set a reasonable time when the issuing authority will be available to conduct the proceeding. The Committee re-examined the rules with this suggestion in mind. We agreed providing the issuing authority with some discretion in establishing their availability within the parameters of Rule 117 is a reasonable idea, and concluded that changes to Rules 203, 509, and 516 to accommodate this concept. The proposed changes discussed below provide guidance in court cases to both law enforcement officers and issuing authorities concerning the types of cases when it is necessary for issuing authorities to be available "at all times" after-hours, and the types of cases the issuing authorities would have discretion to set reasonable times when they will be available.

#### a. Search Warrant Procedures

Proposed new Rule 117(A)(1) includes a provision requiring "continuous coverage" for the issuance of search

<sup>6</sup> A similar cautionary provision is being added to the Rule 535 Comment.

and arrest warrants, reflecting one of the generally accepted principles in criminal justice few question even though the search warrant rules do not specifically state this premise. In reconsidering the “continuous availability” provision and search warrants, the Committee noted Rule 203(E) requires additional probable cause before a nighttime search may be authorized and Rule 205 provides the warrant be “served in the daytime unless otherwise authorized on the warrant, provided that, for purposes of the rules of Chapter 200, Part A, the term ‘daytime’ shall be used to mean the hours of 6 a.m. to 10 p.m.” Based on this rule language, the Committee reasoned these current restrictions concerning night-time searches support the conclusion that issuing authorities should be able to exercise discretion in determining when they will be available after-hours to issue search warrants. In these situations, the law enforcement officer should call the issuing authority to determine when the issuing authority will be available. This phone-in process will afford the issuing authority an opportunity to discuss the matter with law enforcement and decide the urgency of the request.

In view of these considerations, the Committee is proposing a revision to the Rule 203 Comment explaining that ordinarily search warrants should be requested during the normal business hours of the issuing authority. In an extraordinary circumstance, the law enforcement officer should call the issuing authority to determine when he or she will be available to issue the search warrant. In addition, we are including in the Rule 117 Comment a cross-reference to Rule 203(E) to emphasize that, in most cases, the police should not request a search warrant outside the normal business hours of the issuing authority unless the matter falls within the nighttime search requirements.

#### b. Arrest Procedures in Court Cases

The Committee also re-examined the rule procedures related to arrests with and without a warrant, specifically Rule 509 (Use of Summons or Warrant of Arrest in Court Cases), which sets forth the criteria for the issuing authority to use when determining whether to issue a summons or an arrest warrant, and Rule 519 (Procedure in Court Cases Initiated by Arrest without Warrant), which sets forth the criteria the police officer is to use when determining whether to release the defendant or bring the defendant before the issuing authority for a preliminary arraignment. The Committee considered (1) the substantive and procedural requirements for a prompt preliminary arraignment are only triggered when there has been an arrest, and (2) Rules 509 and 519 provide for non-custodial proceedings in certain cases involving misdemeanors.<sup>7</sup> After reviewing these “exceptions” to the arrest procedures, the current criteria in Rules 509 and 519 when these exceptions may be used, and the offenses that are graded misdemeanors, the Committee concluded Rules 509 and 519 should be the same concerning the grade of misdemeanor that would trigger the mandatory summons provisions in Rule 509 and the mandatory release provisions in Rule 519, and therefore both rules should be amended to expand the application of the “exceptions” to cases in which the “most serious offense is a misdemeanor of the first degree.” See Rule 509(1) and Rule 519(B)(1)(a).

Correlative to these changes to Rules 509 and 519, the Committee is proposing some changes to the respective

<sup>7</sup> Rule 509 authorizes the issuance of a summons rather than an arrest warrant in certain cases and Rule 519 authorizes the police officer to release a defendant in lieu of taking the defendant for a preliminary arraignment in certain cases.

Comments. We agreed the usual procedure when the case meets the Rule 509 summons requirements would be for the police officer to proceed during the normal business hours of the issuing authority with whom the officer will file the complaint, and this is explained in the Rule 509 Comment.

The Committee also is proposing a correlative changes the Rule 519 Comment explaining in those cases in which it is necessary to detain the defendant, the police officer should contact the issuing authority who will conduct the preliminary arraignment to determine when the issuing authority will be available. This initial contact will afford the issuing authority and police officer an opportunity to review the status of the case.

#### Rule 509

In addition to the changes the Committee is proposing for Rule 509(1) that would require the issuing authority to issue a summons and not a warrant when the most serious offense charged is a misdemeanor of the first degree, the Committee is proposing the following correlative changes to Rule 509:

(1) paragraph (2)(a) will be amended to require an arrest warrant when “one or more of the offenses charged is a felony or murder;”

(2) a new paragraph (2)(c) would add as a consideration when an arrest warrant should be issued rather than a summons, cases in which the defendant poses a threat of any physical harm to any other person or to himself or herself; and

(3) current paragraphs (3) and (4) and the current Comment provisions will be deleted as no longer necessary in view of the changes to paragraphs (1) and (2).

#### Rule 519

The Committee also is proposing some additional correlative changes to Rule 519(B). The Committee noted the concept of prompt release following an arrest without a warrant in Rule 519(B) was originally added to the rules in 1979 to apply only to drunk driving cases in the discretion of the police officer. The procedure subsequently was expanded in 1981 to apply other misdemeanor cases by local option, and in 1994 to apply uniformly statewide.<sup>8</sup> The reasons offered in the 1981 Report in support of the prompt release provision—the substantial burden the requirement of a prompt preliminary arraignment in misdemeanor cases places on the local police, the district justices, and the defendant—remain valid today, suggesting the time is ripe to propose another expansion of the rule to permit the prompt release of defendants in all misdemeanor cases. The Committee reassessed the discretionary aspect of the provision and the criteria that must be met for release, and agreed once the police officer determines the defendant meets the criteria for release, the prompt release should be mandatory. From the members’ experience and from our research, we did not discern any reasons in support of maintaining the discretionary nature of the release provision. We, therefore, are proposing paragraph (B) be amended to require the police officer to release the defendant when the defendant satisfies the criteria set forth in the rule.

In reviewing the five criteria set forth in paragraph (B)(1), the members concluded the residency requirement

<sup>8</sup> See discussion of the historical development of this procedure in the Committee’s explanatory Reports at 9 Pa.B. 2326 (July 14, 1979), 11 Pa.B. 495 (January 31, 1981), and 24 Pa.B. 4342 (August 27, 1994).

in paragraph (a) and the criteria that the defendant does not demand to be taken before the issuing authority in paragraph (e) are unnecessary because the police officer should be considering these two criteria when making a judgment whether there are reasonable grounds to believe the defendant will appear as required, the criteria in paragraph (d). Accordingly, the Committee is proposing Rule 519(B) be amended to require the police officer to promptly release a defendant following an arrest without a warrant when (1) the most serious offense is a misdemeanor of the first degree, (2) the defendant poses no threat of immediate physical harm to any other person or to himself or herself, and (3) the arresting officer has reasonable grounds to believe the defendant will appear as required. The Comment includes an explanation of what would be considered "reasonable grounds" as a guide to the police officer.

### 3. Summary Case Arrest Procedures

A major issue raised in the publication responses concerned the continuous availability requirement as applied to summary trials. This has been a difficult issue throughout the development of the Rule 117 proposal with strong views on both sides of the issue—those concerned about defendants in a summary cases being unnecessarily detained pending the summary trial, and those concerned about the unnecessary burden on the magisterial district courts and the police in these cases involving less serious offenses. Sensitive to the concerns expressed about the impact of the current summary case arrest procedures, and cognizant about the impact any changes in the procedures could have, the Committee explored possible changes to lessen the burden on the minor judiciary and police while protecting the rights of the defendant.

The Committee reviewed the summary warrant procedures in Rules 430 and 431, and noted that most of the cases when summary arrest warrants are authorized under Rules 430 and 431 are cases in which the defendant has failed to do something—failed to pay the fines and costs or failed to appear, cases more akin to the bench warrant cases in common pleas court. As with court cases, the Committee thought these summary bench warrant situations should be treated differently procedurally than the warrants issued to initiate summary cases. Although a defendant arrested pursuant to a bench warrant is entitled to a hearing within a reasonable amount of time, these cases do not fall within the constitutional requirement of appearing before the issuing authority without unnecessary delay that applies to arrests that initiate the proceedings.

Another aspect of the issues related to the summary warrant procedures concerns when the warrants are executed. From time to time, the Committee has examined the feasibility of limiting the execution of summary case arrest warrants to specific hours, such as between 6 am and 10 pm, which is found in other jurisdictions' rules.<sup>9</sup> The Committee considered that the basis for summary case warrants ordinarily does not necessitate the warrant be executed at all hours, and, therefore, it would be reasonable to establish the hours when the warrant may be executed that would fall either during the normal business hours of the issuing authority or at such times that a defendant would not be unnecessarily detained.

<sup>9</sup> We also discussed a procedure requiring the police officer to release the defendant on ROR when the warrant is executed after these hours. However, in view of the other changes the Committee is proposing, this suggestion was not deemed necessary.

The Committee also reviewed Rule 441, and considered the suggestion, which has been raised with the Committee at various times, that the requirement that the defendant must be a resident of the Commonwealth to be considered for prompt release is unnecessary and could be deleted.<sup>10</sup>

### Rule 430

Agreeing that the summary case rules should distinguish between warrants to initiate proceedings, "arrest warrants," and "bench warrants," the Committee is proposing that Rule 430 be divided into two sections: warrants to initiate summary proceedings and warrants that would be issued in all the other circumstances enumerated in Rule 430, paragraphs (A)(1), (B), and (C). Paragraph (A) will address only the warrants that initiate proceedings. New paragraph (B) will address bench warrants, incorporating the provisions of current Rule 430(A)(1), (B), (C), and (D).

### Rule 431

Rule 431 currently sets forth the procedures to be used when a summary case warrant is executed, and does not distinguish between arrest warrants and bench warrants. To clarify the distinction and establish different procedures for bench warrants, the Committee is proposing several changes to the rule.

Paragraph (A) is being amended to be an introductory paragraph that will be applicable to all summary case warrants issued for the arrest of the defendant. A new paragraph (A)(2) establishes the time limitation for the execution of summary case warrants—between the hours of 6 am and 10 pm.<sup>11</sup> There are two exceptions to the times set. First, the president judge is authorized to extend the hours. If the president judge extends the hours, the time extension must be done by local rule in compliance with Rule 105. The other exception is when there are extraordinary circumstances, but only after the police officer has received authorization from the issuing authority to execute the warrant after-hours. The Committee believes establishing the time limitation and requiring that the police officer communicate with the district justice before executing a warrant after-hours will alleviate many of the concerns of the publication correspondents by significantly reducing the number of times a district justice is called out to conduct a summary trial after-hours.

Paragraph (B) sets forth the procedures when the warrant initiates proceedings. The procedures are, for the most part, the procedures in current Rule 431. Noting the rule encourages police officer to accept the defendant's plea and the fines and costs or collateral rather than taking the defendant before the issuing authority, the Committee agreed to limit the cases when the police officer may take the defendant in to those cases in which the defendant is unable to pay, further emphasizing that accepting the pleas and payments is the preferred procedure in summary cases. A final change to paragraph (B) addresses a recurring problem raised with the Committee at different times: ensuring executed warrants are removed from the court and police systems. The Committee is adding, as a new paragraph (4), the requirement that the issuing authority immediately vacate the warrant and order that notice of the vacated warrant be given to all computer networks.

Paragraph (C) sets forth the new bench warrant procedures. New paragraph (C)(1) enumerates the same op-

<sup>10</sup> See discussion of this issue in the Rule 519 (B)(1)(b) section above.

<sup>11</sup> The Committee agreed to use the 6-10 time period because it is consistent with the concept of "daytime" defined for the service of search warrants in Rule 205(5).

tions to be considered when executing a summary bench warrant that are in current Rule 431(B), with the three payment options set out first to encourage the police to accept payments rather than taking the defendant into custody. New paragraph (C)(2) is the same as current Rule 431(C).

Paragraph (C)(3) establishes the new procedures when a defendant is taken into custody on a bench warrant in a summary case. Paragraph (3) requires the defendant to be taken for the bench warrant hearing before the proper issuing authority if available. Paragraph (3)(a) permits the use of two-way simultaneous audio-visual communication to conduct the hearing.

Paragraph (3)(b)—(d) set forth the procedures when the bench warrant hearing cannot be conducted immediately. In those cases in which the bench warrant hearing cannot be conducted immediately, the defendant is to be taken to the county jail, and the authority in charge of the county jail must notify the proper issuing authority that the defendant is in custody. In these cases, the bench warrant hearing must be conducted no later than the end of the next business day. If the bench warrant hearing is not conducted within this time frame, the bench warrant expires by operation of law and the defendant must be released after being given a notice to appear before the proper issuing authority on the next business day. In all cases, either at the conclusion of the bench warrant hearing or if the bench warrant expires by operation of law, notice of the vacated or expired warrant must be given to all computer networks into which the bench warrant has been entered.

The Comment elaborates on some of the new bench warrant provisions. The Comment points out that the president judge, in determining the system of coverage for his or her judicial district pursuant to Rule 117, could require the defendant to be taken to night court if there is an established night court in lieu of taking the defendant to the county jail following an after-hours arrest. In these cases, the defendant would be given a notice to appear in the proper issuing authority's office the next business day or the opportunity to pay the full amount of fines and costs. Similarly, if the issuing authority is unavailable when the defendant appears in this scenario, the defendant should receive a notice to appear for the trial or hearing on another day or be given the opportunity to pay.

#### *Rule 441*

The Committee is proposing changes to Rule 441 that are the same as or comparable to the changes discussed above for Rule 519. The prompt release provisions are mandatory if the criteria in paragraph (B) are met, and the residency requirement is deleted, and "reasonable grounds" is explained in the Comment.

In addition to the changes correlative to the Rule 519 changes, the Committee is proposing changes to paragraph (C) to distinguish the procedures in those cases in which a defendant is taken into custody during the normal business hours of the issuing authority and outside the normal business hours. The current procedures in paragraph (C) apply when the defendant is taken before the issuing authority during normal business hours. However, if the arrest is made outside normal business hours, new paragraph (C)(2) requires the police officer to promptly contact the issuing authority to determine when he or she will be available to proceed under this rule. See also the Rule 117 discussion above.

#### *4. Bail-related Issues: Rule 525*

Several of the individuals who commented on the Committee's published proposal raised concerns about the proposed changes to Rule 525 that provided for the preparation of the bail bond by the issuing authority and sending the bond to the place of incarceration when the defendant is unable to post the bail at the time it is set. They expressed concern about sending an unexecuted bail bond in these cases, interpreting the requirement for the bond to be "executed" to mean signed by the bail authority. The Committee noted current Rule 525 does not require the signature of the bail authority; only the defendant and any sureties are required to execute the bond. See Rule 525(A). In view of the concerns raised in the publication responses, the Committee re-examined Rule 525 and agreed to propose a few changes that will address these concerns as well as provide further clarification of the procedures when the defendant is unable to post the bail at the time it is set. We are proposing a new paragraph (B) that will require the bail authority at the time bail is set to prepare the bond and to sign it verifying the conditions the bail authority has imposed. In addition, as an added precaution against potential abuses, the Committee is proposing the additional requirement that the person who releases the defendant when the bail is posted is to sign the bail bond indicating he or she released the defendant.

[Pa.B. Doc. No. 04-1476. Filed for public inspection August 13, 2004, 9:00 a.m.]

## **Title 25—LOCAL COURT RULES**

### **BEAVER COUNTY**

#### **Local Rules of Criminal Procedure; No. 286 Misc. of 2004**

#### **Order**

Pennsylvania Rule of Criminal Procedure Number 574 having been rescinded by the Supreme Court of Pennsylvania, Beaver County Local Rule of Criminal Procedure Numbers 106 and 574 are likewise rescinded, effective immediately.

Certified copies of this order shall be distributed by the Court Administrator of Beaver County as follows:

A. Seven (7) copies with the Administrative Office of Pennsylvania Courts;

B. Two (2) copies with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. One (1) copy to the Criminal Procedural Rules Committee of the Pennsylvania Supreme Court;

D. One (1) copy to be kept continuously available for public inspection and copying at the Clerk of Courts office in Beaver County.

*By the Court*

ROBERT E. KUNSELMAN,  
*President Judge*

[Pa.B. Doc. No. 04-1477. Filed for public inspection August 13, 2004, 9:00 a.m.]

**BEAVER COUNTY****Local Rules of Criminal Procedure; No. 10130 of 2001****Amended Order**

Local Rules L205.2(a) and (b), L206.1(a), L206.4(c), L208.2(e), L208.3(b), L210, L 1028(c), L1034(a) and L1035.2(a) are adopted pursuant to Pa. R.C.P. Nos. 239.1, 239.2, 239.3, 239.4, 239.5, 239.6 and 239.7, effective July 26, 2004. All local rules inconsistent with the foregoing local rules are suspended as of the effective date of the foregoing rules.

In accordance with Pa. R.C.P. No. 239, the Court Administrator of Beaver County shall transmit certified copies of this order and the foregoing Local Rules as follows:

A. Seven (7) certified copies with the Administrative Office of Pennsylvania Courts;

B. Two (2) certified copies and a diskette containing the rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. One (1) certified copy to the Civil Procedural Rules Committee of the Pennsylvania Supreme Court;

D. One (1) copy in the office of the Prothonotary of Beaver County to be kept continuously available for public inspection and copying. In addition, one (1) copy shall be delivered to the Beaver County Law Library.

In addition, the Court Administrator of Beaver County shall cause the foregoing rules to be published on the website of the Administrative Office of Pennsylvania Courts and on the Beaver County website.

*By the Court*

ROBERT E. KUNSELMAN,  
*President Judge*

[Pa.B. Doc. No. 04-1478. Filed for public inspection August 13, 2004, 9:00 a.m.]

**BUTLER COUNTY****Local Civil Court Rules; MSD 04-40246****Amended Administrative Order of Court**

And now, this 26th day of July, 2004, in order to comply with the Pennsylvania Rule of Civil Procedure, 239.8, it is hereby ordered and decreed that the Butler County Local Rules of Procedure are herewith adopted. It is further ordered that all prior Local Rules of Procedure that have been adopted and/or revised by this Court at various times and docketed to several different docket numbers are herewith rescinded.

This Order of Court shall be effective July 26, 2004.

The Butler County District Court Administrator is ordered and directed to:

1. File seven certified copies of this Administrative Order, including the newly adopted rules, with the Administrative Office of the Pennsylvania Courts.

2. File two certified copies and one diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one certified copy with the Pennsylvania Civil Procedural Rules Committee.

4. Electronically submit to the Administrative Office of the Pennsylvania Courts a copy of the local rules for publication on the AOPC website.

5. Forward one copy for publication in the *Butler County Legal Journal*.

6. Forward one copy to the Butler County Law Library.

7. Keep continuously available for public inspection copies of the Order of Court and Local Rules in the office of the Prothonotary of Butler County.

*By the Court*

THOMAS J. DOERR,  
*President Judge*

[Pa.B. Doc. No. 04-1479. Filed for public inspection August 13, 2004, 9:00 a.m.]

**CAMBRIA COUNTY****Rules of Civil Procedure; 2004-2377**

*And Now*, this 26th day of July, 2004, it is hereby *Ordered* as follows:

1. Former Rule 100(c) CC is hereby renumbered as Rule 205.2(a) CC, shown following this Order.

2. Former Rule 1018.2(1) CC is hereby renumbered as Rule 205.2(b) CC and is amended to read as shown following this Order.

3. Former Rule 400 CC is hereby renumbered as Rule 206.4(c) CC and is amended to read as shown following this Order.

4. Rule 200 CC and 200.1 CC are hereby combined, amended and renumbered as Rule 208.3(a) CC to read as shown following this Order

5. Rule 1028(c) CC, Rule 1034(a) CC and Rule 1035.2(a) CC, following this Order, are hereby adopted as new Local Rules of Civil Procedure.

The Rule changes implemented by Paragraphs 1 through 5 of this Order shall become effective on July 26, 2004.

The Prothonotary of Cambria County is *Ordered* and *Directed* to do the following:

1. Keep continually available for public inspection and copying, copies of this Order and of the Cambria County Rules of Civil Procedure including the amendments as herein approved, adopted and promulgated.

2. File with the Administrative Office of the Pennsylvania Courts seven (7) certified copies of this Order and the following amendments to the Cambria County Rules of Civil Procedure.

3. Distribute two (2) certified copies of this Order and the following amendments to the Cambria County Rules of Civil Procedure to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. File one (1) certified copy of this Order and the following amendments to the Cambria County Rules of Civil Procedure with the Civil Procedural Rules Committee.

5. Upon request and the payment of reasonable costs of reproduction and mailing, furnish a copy of this Order

and the following amendments to the Cambria County Rules of Civil Procedure to any person.

6. The Prothonotary of Cambria County shall cause a copy of this Order and the following amendments to the Cambria County Rules of Civil Procedure as herein approved, adopted and promulgated, to be published one (1) time in the *Cambria County Legal Journal*.

By the Court

GERARD LONG,  
President Judge

**Rule 205.2 CC. Pleadings and Legal Papers.**

(a) All papers filed shall conform to the Rules of Appellate Procedure, except that they shall be bound at the top.

(b) All complaints in civil actions and proceedings filed and docketed in the Prothonotary's Office shall have a cover sheet substantially in the following form:

JOHN DOE and MARY	:	IN THE COURT OF
DOE, Husband and	:	COMMON PLEAS OF
Wife,	:	CAMBRIA COUNTY,
	:	PENNSYLVANIA
	:	
Plaintiffs	:	CIVIL ACTION—LAW (or)
vs.	:	CIVIL ACTION—EQUITY
	:	
FRANK SMITH,	:	ACTION IN _____
	:	
Defendant	:	FOR TRIAL (or) FOR
	:	ARBITRATION
	:	(or) FOR OTHER
	:	DISTRIBUTION
	:	_____
	:	
	:	TYPE OF DOCUMENT:
	:	_____
	:	
	:	COUNSEL OF RECORD
	:	FOR PARTY:
	:	
	:	Name
	:	Address
	:	Telephone
	:	Supreme Court I.D. No.

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by your attorney, an filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the court, without further notice, for any money claimed in the Complaint, or of any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAUREL LEGAL SERVICES, INC.  
225-227 Franklin Street  
Suite 400 Franklin Center  
Johnstown, Pennsylvania 15901-2524  
Telephone Number: (814) 536-8917

\_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(Telephone Number)

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

(1) A Petition containing a Rule to Show Cause shall be made returnable, not less than 10 days after issuance, unless a statute or the Rules of Civil Procedure require another return day.

(2) A Rule to Show Cause shall not operate as a stay of proceedings unless the Court shall so order.

(3) The party obtaining said Rule shall, within 5 days, serve the Rule and Petition in compliance with Rule of Civil Procedure 440 and 441.

(4) All subsequent proceedings shall be in accordance with Rule of Civil Procedure 206.7.

(5) If no Answer is filed by the return date, the Court, upon request, shall make the Rule absolute.

(6) All Petitions for Rule to Show Cause prior to the case being assigned to a Judge pursuant to Rule 1018.2 CC shall be filed with the Prothonotary and scheduled in accordance with Motions Court procedure under Rule 208.3(a) CC.

(7) All Petitions for Rule to Show Cause after the case has been assigned to a Judge pursuant to Rule 1018.2 CC shall be filed with the Prothonotary and scheduled at the direction of the assigned Judge.

**Rule 208.3(a) CC. Motions.**

1. Motions shall be in writing and shall comply with the requirements of Rule of Civil Procedure 208.2.

2. In all cases where there are opposing counsel of record and unrepresented parties, no Motion will be entertained and no Order of Court made unless notice has been given to opposing counsel or the unrepresented party, personally, in advance thereof and a written certification of notice accompanies the Motion and the Court has been satisfied with the sufficiency of the notice.

3. All Motions shall include a proposed Order of Court.

4. All Motions that do not require an evidentiary hearing and all Motions prior to the case being assigned to a judge, pursuant to Rule 1018.2 CC, shall be heard in Motions Court.

5. Motions Court shall be held on every Monday (unless a holiday) at 9:15 a.m., at the Court House, in Ebensburg, before the judge assigned to Motions Court for that month.

6. All Motions filed before Noon on Thursday will be scheduled for the following Monday's session of Motions Court.

7. Counsel shall file these Motions with the Prothonotary and serve a copy thereof on the Court Administrator and on opposing parties, or their counsel, with an affidavit of service attached to the original Motion, certifying how service was effected.



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

Preliminary Objections filed with the Prothonotary shall be scheduled by the Prothonotary for Argument Court in accordance with the procedure set forth in Rule 227.2 CC. The Prothonotary shall mail to all counsel of record, at least two weeks before Argument Court, a printed list of all cases listed for argument, with the names of counsel for the respective parties, and a Briefing Schedule. If a party is not represented by counsel, the Prothonotary shall mail the list to him at his address appearing in the proceedings.

**Rule 1034(a) CC. Motions for Judgment on the Pleadings.**

Motions for Judgment on the Pleadings filed with the Prothonotary shall be scheduled by the Prothonotary for Argument Court in accordance with the procedure set forth in Rule 227.2 CC. The Prothonotary shall mail to all counsel of record, at least two weeks before Argument Court, a printed list of all cases listed for argument, with the names of counsel for the respective parties, and a Briefing Schedule. If a party is not represented by counsel, the Prothonotary shall mail the list to him at his address appearing in the proceedings.

**Rule 1035.2(a) CC. Motions for Summary Judgment.**

Motions for Summary Judgment filed with the Prothonotary shall be scheduled by the Prothonotary for Argument Court in accordance with the procedure set forth in Rule 227.2 CC. The Prothonotary shall mail to all counsel of record, at least two weeks before Argument Court, a printed list of all cases listed for argument, with the names of counsel for the respective parties, and a Briefing Schedule. If a party is not represented by counsel, the Prothonotary shall mail the list to him at his address appearing in the proceedings.

[Pa.B. Doc. No. 04-1480. Filed for public inspection August 13, 2004, 9:00 a.m.]

**FAYETTE COUNTY**

**Local Rules 305, 305.1 and 575; No. 34 AD 2004, 35 AD 2004, 36 AD 2004**

**Order**

And Now, this 29th day of July, 2004, pursuant to Rule 105 the Pennsylvania Rules of Criminal Procedure, it is hereby ordered that Local Rules 305 and 305.1 are hereby rescinded and the new Local Rule 575 is hereby promulgated to read as follows.

The Clerk of Courts is directed as follows:

- (1) Seven certified copies of the Local Rules shall be filed with the Administrative Office of Pennsylvania Courts.
- (2) Two certified copies and diskette of the Local Rules shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
- (3) One certified copy of the Local Rules shall be sent to the State Criminal Procedural Rules Committee.
- (4) One certified copy shall be sent to the Fayette County Law Library and to the Editor of the *Fayette Legal Journal*.

F.C.R. Crim. P. 575 shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

*By the Court*

CONRAD B. CAPUZZI,  
*President Judge*

**Rule 575 Motions Court Procedure**

(a) In order to provide a uniform means of presenting to the Court all matters which require action by the Court, Motions Court will be held daily at 9:00 o'clock A.M. in the courtroom of the Motions Judge. The name of the assigned Motions Judge for each day shall be published periodically in the *Fayette County Legal Journal*.

(b) All applications for Court action, including motions, petitions, and any other applications shall be presented to the Court by following this Motions Court procedure.

(c) As used herein, the term "motion" shall include every type of motion, petition, or other application for action by the Court, and shall be designated as either "Priority" or "Routine," presentation of the latter not requiring the presence of the parties or counsel for either side. By definition, a "priority" motion is one which may be subject to contest or is so unusual as to require discussion or explanation, while "routine" motions include all other applications, such as uncontested matters to which the parties have consented in writing, requests for hearing, or requests for later argument.

(d) All motions and other applications for Court action presented as uncontested require certification as such, if no joinder has been attached.

(e) Any motion relating to discovery must contain a certification that counsel has conferred or attempted to confer with the District Attorney in order to resolve the matter without court action.

(f) All motions filed and served pursuant to this rule shall include a Certificate of Service, signed by the party's attorney, or the party if unrepresented, setting forth the date and manner of service (personal delivery, mail, facsimile), and the names, addresses and phone numbers of the persons served. The Certificate of Service shall be substantially in the following form:

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving the within document upon the persons and in the manner indicated below.

1. Service by certified mail, return receipt requested: (Name of person served) \_\_\_\_\_, \_\_\_\_\_ Phone Number \_\_\_\_\_ Address \_\_\_\_\_

2. Service by facsimile at FAX number \_\_\_\_\_: (Name of person served) \_\_\_\_\_, \_\_\_\_\_ Phone number \_\_\_\_\_ Address \_\_\_\_\_

3. Service in person: (Name of person served) \_\_\_\_\_, \_\_\_\_\_ Phone number \_\_\_\_\_ Address \_\_\_\_\_

Date: \_\_\_\_\_ Signature \_\_\_\_\_

(g) All motions shall be accompanied by a Certificate of Presentation as set forth in F.C.R. CRIM.P 547(n).

(h) All motions and other applications for Court action must set forth a specific citation to relevant constitutional provisions, case law, statutory provisions or rules that

provide the Court's authority to grant the relief requested. Said citation shall be placed on a Certificate of Presentation.

(i) The moving party shall file the original motion, Certificate of Presentation, and any attachments in the appropriate office before presentment in Motions Court. An original proposed order (if any), a copy of the Certificate of Presentation, motion and Certificate of Service, assembled in that order, shall be delivered to the Court Administrator and every other party of record. Pursuant to Pa.R.Crim.P. 576(B)(1), all motions and other documents for which filing is required shall be served on each party so as to be received at least two (2) business days before presentation in Motions Court, unless there are emergency circumstances specified in the motion requiring presentation within a shorter time.

(j) All priority motions pertaining to matters already ruled on by a Judge shall be presented to that Judge in Motions Court, except in emergencies as set forth in paragraph (i) of this Rule immediately above.

(k) The Court Administrator shall maintain a Motions Docket and shall make daily entries of all motions filed and the disposition thereof.

(l) The Court Administrator shall assign any motion not otherwise assigned to a Judge for disposition.

(m) Failure to accurately provide the information required by paragraph (n) below may result in the matter not being listed for Motions Court.

(n) The Certificate of Presentation shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA

:  
:  
:  
:  
:  
: NO. \_\_\_\_\_ OF \_\_\_\_\_

CERTIFICATE OF PRESENTATION

1. The undersigned, \_\_\_\_\_, represents \_\_\_\_\_, the moving party herein.

2. The attached motion will be presented in Motions Court on \_\_\_\_\_, \_\_\_\_\_, 20 \_\_\_\_\_ at 9:00 o'clock A.M.

3. The attached motion shall be classified as a Routine/Priority motion. (If the motion is Routine, parties or counsel are not required to be present in Motions Court.)

4. Judge \_\_\_\_\_ has been assigned or has previously ruled on a matter relevant to this motion. (See attached relevant ruling.)

5. The SPECIFIC citation for the Court's authority to grant the relief requested is \_\_\_\_\_.

6. Estimated time for hearing or argument to resolve the motion on its merits: \_\_\_\_\_.

Respectfully submitted,  
\_\_\_\_\_

Date: \_\_\_\_\_

[Pa.B. Doc. No. 04-1481. Filed for public inspection August 13, 2004, 9:00 a.m.]

LUZERNE COUNTY

Order Adopting and/or Amending Rules of Civil Procedure; No. 4905C/04

Order

Now, this 19th day of July, 2004, the Court hereby adopts the following Rules 206.4(c), 208.3(a), 216, 1028(c), 1034(a), 1035.2(a) of the Luzerne County Rules of Civil Procedure and amends Rule 210 of the Luzerne County Rules of Civil Procedure.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Criminal Procedural Rules Committee, once (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue. This Revision shall also be published on the website of the Administrative Office of Pennsylvania Courts (www.aopc.org).

It is further ordered that the effective date of this order shall be effective July 26, 2004.

It is further ordered that these local rules shall be kept continuously available for public inspection and copying in the Prothonotary's Office and the Clerk of Court's Office.

By the Court

MICHAEL T. CONAHAN,  
*President Judge*

L.R.CIV.P. 206.4(c) Procedure for Issuance of Rule to Show Cause

(1) A party seeking a rule to show cause shall present the same along with the underlying motion/petition, a comprehensive brief in support and proposed order, to Motions Court for consideration.

(i) Motions Court is held Monday through Friday from 8:30 a.m. to 9:15 a.m., with the exception of legal holidays.

(ii) The assignment of a Judge of the Court of Common Pleas to Motions Court is made on a rotating basis and available at the Office of the Court Administrator.

(2) If the Motions Court Judge issues the rule to show cause, the moving party shall:

(i) serve a copy of the executed rule to show cause, the underlying motion/petition, the comprehensive brief and proposed order upon the Court Administrator, who will assign a return date for the rule to show cause in accordance with internal operating procedures of the Court of Common Pleas; and

(ii) file with the Court Administrator a Civil Argument Sheet, which is available at the Court Administrator's Office.

(3) Once the Court Administrator assigns the return date, the executed rule to show cause indicating the assigned return date, the moving party shall file the underlying motion/petition, the comprehensive brief and proposed order with the Prothonotary and shall immediately serve a copy of the aforementioned upon all opposing parties.

(4) Within twenty (20) days of service of the motion/petition, supporting brief and proposed order, any party wishing to contest the same shall file a comprehensive brief in opposition with the Prothonotary and serve the same upon all parties and the Court Administrator who shall then assign it to a Judge and shall so notify all parties.

(5) The matter shall be ruled upon without oral argument unless requested by any party. Said request must be filed with the Court Administrator contemporaneously with the filing of the party's brief or by the Judge to whom the matter has been assigned.

(6) If the party filing the matter fails to file a comprehensive brief as required by this Rule, the Court Administrator shall present an Order to Motions Court who shall dismiss the matter. If any opposing party fails to file its brief in opposition within the time provided in this Rule, that party shall be deemed not to oppose the matter and the Judge to whom the assignment has been made shall dispose of it in accordance with the law as a matter of course.

(7) Service shall be made within three (3) days of filing by delivering a copy or by mailing a copy of the party's counsel of record, or where the party is unrepresented, to that party either personally or at the party's last known address.

(8) Proof of service shall be filed and shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel.

(9) This rule shall apply to all pending actions. Failure of the proponent of the matter to file a brief within thirty (30) days of the effective date of this Rule shall result in its dismissal as of course by Motions Court upon motion of any other party.

#### **L.R.CIV.P. 208.3(a) Motions Procedure**

(1) With respect to a "motion" as defined by Pa.R.Civ.P. 208.1, which is uncontested by all parties of record, a party shall present the same along with a proposed order to Motions Court for consideration.

(i) Motions Court is held Monday through Friday from 8:30 a.m. to 9:15 a.m., with the exception of legal holidays.

(ii) The assignment of a Judge of the Court of Common Pleas to Motions Court is made on a rotating basis and available at the Office of the Court Administrator.

(2) The Motions Court Judge may consider the uncontested "motion" and issue an appropriate order concerning the same. In such case, the moving party shall file the executed order and the underlying motion with the Prothonotary and serve a copy of the same upon the Court Administrator and all parties of record.

(3) All other "motions" as defined by Pa.R.Civ.P. 208.1 are governed by, and disposed of in accordance with, the procedures set forth in L.R.Civ.P. 206.4 (c).

#### **L.R.CIV.P. 210 Form of Brief**

(a) At the time of filing of any motion, petition, or rule to show cause, the Proponent of the same shall file with the Prothonotary and serve upon the Court Administrator and all parties a comprehensive brief in support thereof. The brief should contain a factual and procedural history of the case, the issues involved, argument with adequate citation in support thereof and conclusion. A brief in support thereof is not be required in the following instances: child or spousal abuse, change of name, routine actions for quiet title, civil in forma pauperis applications,

appeals to withdraw as counsel, and motions to compel answers to interrogatories to which no objection have been filed.

(b) Any party who wishes to contest the motion or petition shall file a comprehensive brief in opposition with the Prothonotary and shall serve the same upon the Court Administrator and all parties in accordance with the time limits imposed by the Pennsylvania Rules of Civil Procedure and these local rules, unless so ordered by the Court. The brief in opposition should contain a factual and procedural history of the case, the issues involved, argument with adequate citation in support thereof and conclusion.

#### **L.R.CIV.P. 216 Motions for Continuance and/or Extension of Time**

(a) Where a party is granted a continuance pursuant to Pennsylvania Rule of Civil Procedure 216, the party shall file said order and/or agreement with the Prothonotary and serve a copy of the same upon the Court Administrator and all parties of record.

(b) Where a party is granted an extension of time within which the party is required to act pursuant to the Pennsylvania Rules of Civil Procedure and/or these local rules, the party shall file a document evidencing the extension of time with the Prothonotary and serve a copy of the same upon the Court Administrator and all parties of record.

#### **L.R.CIV.P. 1028(c) Procedure for Filing of Preliminary Objections**

(1) A party filing preliminary objections shall file the same, along with a comprehensive brief in support and proposed order, with the Prothonotary. A rule to show cause shall not be presented or filed with preliminary objections.

(2) After filing as provided in subsection (a), the moving party shall immediately:

(i) serve a copy of the preliminary objections, the comprehensive brief and proposed order upon the Court Administrator;

(ii) file with the Court Administrator a Civil Argument Sheet, which is available at the Court Administrator's Office; and

(iii) serve a copy of the aforementioned upon all opposing parties.

(3) Within twenty (20) days of service of the matter, supporting brief and proposed order, any party wishing to contest the same shall file a comprehensive brief in opposition with the Prothonotary and serve the same upon all parties and the Court Administrator who shall then assign it to a Judge and shall so notify all parties.

(4) The matter shall be ruled upon without oral argument unless requested by any party. Said request must be filed with the Court Administrator contemporaneously with the filing of the party's brief or by the Judge to whom the matter has been assigned.

(5) If the party filing the matter fails to file a comprehensive brief as required by this Rule, the Court Administrator shall present an Order to Motions Court who shall dismiss the matter. If any opposing party fails to file its brief in opposition within the time provided in this Rule, that party shall be deemed not to oppose the matter and the Judge to whom the assignment has been made shall dispose of it in accordance with the law as a matter of course.

(6) Service shall be made within three (3) days of filing by delivering a copy or by mailing a copy of the party's counsel of record, or where the party is unrepresented, to that party either personally or at the party's last known address.

(7) Proof of service shall be filed and shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel.

(8) This rule shall apply to all pending actions. Failure of the proponent of the matter to file a brief within thirty (30) days of the effective date of this Rule shall result in its dismissal as of course by Motions Court upon motion of any other party.

**L.R.CIV.P. 1034(a) Procedure for Filing of Motions for Judgment on the Pleadings**

(1) A party filing a motion for judgment on the pleadings shall file the same, along with a comprehensive brief in support and proposed order, with the Prothonotary. A rule to show cause shall not be presented or filed with a motion for judgment on the pleadings.

(2) After filing as provided in subsection (a), the moving party shall immediately:

(i) serve a copy of the motion for judgment on the pleadings, the comprehensive brief and proposed order upon the Court Administrator;

(ii) file with the Court Administrator a Civil Argument Sheet, which is available at the Court Administrator's Office; and

(iii) serve a copy of the aforementioned upon all opposing parties.

(3) Within thirty (30) days of service of the motion, supporting brief and proposed order, any party wishing to contest the same shall file a comprehensive brief in opposition with the Prothonotary and serve the same upon all parties and the Court Administrator who shall then assign it to a Judge and shall so notify all parties.

(4) The matter shall be ruled upon without oral argument unless requested by any party. Said request must be filed with the Court Administrator contemporaneously with the filing of the party's brief or by the Judge to whom the matter has been assigned.

(5) If the party filing the matter fails to file a comprehensive brief as required by this Rule, the Court Administrator shall present an Order to Motions Court who shall dismiss the matter. If any opposing party fails to file its brief in opposition within the time provided in this Rule, that party shall be deemed not to oppose the matter and the Judge to whom the assignment has been made shall dispose of it in accordance with the law as a matter of course.

(6) Service shall be made within three (3) days of filing by delivering a copy or by mailing a copy of the party's counsel of record, or where the party is unrepresented, to that party either personally or at the party's last known address.

(7) Proof of service shall be filed and shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel.

(8) This rule shall apply to all pending actions. Failure of the proponent of the matter to file a brief within thirty (30) days of the effective date of this Rule shall result in its dismissal as of course by Motions Court upon motion of any other party.

**L.R.CIV.P. 1035.2(a) Procedure for Filing of Motion for Summary Judgment**

(1) A party filing a motion for summary judgment shall file the same, along with a comprehensive brief in support, supporting documents, and proposed order, with the Prothonotary. A rule to show cause shall not be presented or filed with a motion for summary judgment.

(2) After filing as provided in subsection (a), the moving party shall immediately:

(i) serve a copy of the motion for summary judgment, the comprehensive brief, supporting documents and proposed order upon the Court Administrator;

(ii) file with the Court Administrator a Civil Argument Sheet, which is available at the Court Administrator's Office; and

(iii) serve a copy of the aforementioned upon all opposing parties.

(3) Within thirty (30) days of service of the motion, supporting brief and proposed order, any party wishing to contest the same shall file a comprehensive brief in opposition with the Prothonotary and serve the same upon all parties and the Court Administrator who shall then assign it to a Judge and shall so notify all parties.

(4) The matter shall be ruled upon without oral argument unless requested by any party. Said request must be filed with the Court Administrator contemporaneously with the filing of the party's brief or by the Judge to whom the matter has been assigned.

(5) If the party filing the matter fails to file a comprehensive brief as required by this Rule, the Court Administrator shall present an Order to Motions Court who shall dismiss the matter. If any opposing party fails to file its brief in opposition within the time provided in this Rule, that party shall be deemed not to oppose the matter and the Judge to whom the assignment has been made shall dispose of it in accordance with the law as a matter of course.

(6) Service shall be made within three (3) days of filing by delivering a copy or by mailing a copy of the party's counsel of record, or where the party is unrepresented, to that party either personally or at the party's last known address.

(7) Proof of service shall be filed and shall be by written acknowledgment of service, by affidavit of the person making service or by certification of counsel.

(8) This rule shall apply to all pending actions. Failure of the proponent of the matter to file a brief within thirty (30) days of the effective date of this Rule shall result in its dismissal as of course by Motions Court upon motion of any other party.

[Pa.B. Doc. No. 04-1482. Filed for public inspection August 13, 2004, 9:00 a.m.]

## LUZERNE COUNTY

## Order Adopting the Revision, Reorganization and Renumbering Rules of Civil and Criminal Procedure and Rules Concerning Election Code; No. 4904C/04; 395 MISC-04

## Order

Now, this 19th day of July, 2004, Luzerne County Rules of Civil Procedure are hereby revised, reorganized and/or renumbered as follows:

1. The following Luzerne County Rules of Civil Procedure are hereby rescinded: 400.1(b)(1), 1910.14, 1910.27(a), 1910.27(b), 1910.27(c), and 2353(c).

2. The following Luzerne County Rules of Civil Procedure are hereby reorganized and renumbered as follows:

NOTE: The text of the rules are unchanged unless as provided herein.

Rule [ <b>206</b> ]	<u>206.4(c)</u>	RULES TO SHOW CAUSE
Rule [ <b>212(a)</b> ]	<u>212.1</u>	PRE-TRIAL CONFERENCE—COMPLETION OF DISCOVERY AND PRAECIPE FOR TRIAL
Rule [ <b>212(b)</b> ]	<u>213.3(a)</u>	PRE-TRIAL CONFERENCE—LAWYER'S PRE-TRIAL CONFERENCE
Rule [ <b>212(c)</b> ]	<u>213.2</u>	PRE-TRIAL CONFERENCE—PRE-TRIAL MEMORANDUM
Rule [ <b>212(d)</b> ]	<u>213.3(b)</u>	PRE-TRIAL CONFERENCE—JUDGE'S PRETRIAL CONFERENCE
Rule [ <b>233(a)</b> ]	<u>440</u>	SERVICE
Rule [ <b>233(b)</b> ]	<u>430(a)</u>	OFFICIAL PERIODICAL
Rule [ <b>233(c)</b> ]	<u>430(b)</u>	PUBLICATION
Rule [ <b>253</b> ]	<u>206.6</u>	STAY OF PROCEEDINGS
Rule [ <b>270</b> ]	<u>208.3</u>	ARGUMENT COURT AND ARGUMENT LISTS
Rule [ <b>1053</b> ]	<u>430(c)</u>	SERVICE BY PUBLICATION
Rule [ <b>1064</b> ]	<u>410</u>	SERVICE BY PUBLICATION
Rule [ <b>1504(3)</b> ]	<u>430(d)</u>	SERVICE BY PUBLICATION
Rule [ <b>1910.1</b> ]	<u>1910.1</u>	SCOPE
Rule [ <b>1910.2(a)</b> ]	<u>1910.1(c)</u>	ESTABLISHMENT
Rule [ <b>1910.2(b)</b> ]	<u>1910.1(d)</u>	CLERK
Rule [ <b>1910.3</b> ]	<u>1910.2</u>	VENUE AND TRANSFER OF ACTION
Rule [ <b>1910.4</b> ]	<u>1910.6.1</u>	INDEXING AND DOCKETING
Rule [ <b>1910.5</b> ]	<u>1910.1(e)</u>	POWERS
Rule [ <b>1910.6</b> ]	<u>1910.6.2</u>	COMMENCEMENT OF ACTION (FEE)
Rule [ <b>1910.7</b> ]	<u>1910.6.3</u>	NOTIFICATION
Rule [ <b>1910.8</b> ]	<u>1910.7</u>	NO DEFENSE PLEADING REQUIRED
Rule [ <b>1910.9</b> ]	<u>1910.3</u>	REPRESENTATION
Rule [ <b>1910.10</b> ]	<u>1910.12(a)</u>	CONFERENCE PROCEDURES
Rule [ <b>1910.11</b> ]	<u>1910.12(b)</u>	MASTER'S HEARING REPORT
Rule [ <b>1910.12</b> ]	<u>1910.12(c)</u>	COMPLEX CASES
Rule [ <b>1910.13</b> ]	<u>1910.9</u>	DISCOVERY
Rule [ <b>1910.17</b> ]	<u>1910.19</u>	MODIFICATION. TERMINATION
Rule [ <b>1910.18</b> ]	<u>1910.20</u>	ENFORCEMENT
Rule [ <b>1910.19</b> ]	<u>1910.21</u>	ATTACHMENT OF INCOME
Rule [ <b>1910.20</b> ]	<u>1910.25</u>	CONTEMPT
Rule [ <b>1910.21</b> ]	<u>1910.12.1</u>	CONTINUANCES
Rule [ <b>1910.22</b> ]	<u>1910.20.1</u>	COUNSEL FEES
Rule [ <b>1910.23(a)</b> ]	<u>1910.27(a)</u>	FORM OF COMPLAINT, ORDER
Rule [ <b>1910.23(b)</b> ]	<u>1910.27(b)</u>	FORM OF COMPLAINT; ORDER, INCOME AND EXPENSE STATEMENT
Rule [ <b>1910.23(c)</b> ]	<u>1910.27(c)</u>	INCOME AND EXPENSE STATEMENT
Rule [ <b>1910.24</b> ]	<u>1910.12.2</u>	FORM—EXCEPTIONS TO SUPPORT OFFICER'S RECOMMENDATIONS
Rule [ <b>1910.25</b> ]	<u>1910.12.3</u>	FORM—EXCEPTIONS TO MASTER'S REPORT AND RECOMMENDATIONS
Rule [ <b>1910.28</b> ]	<u>1910.27</u>	FORM OF PETITION FOR MODIFICATION
Rule [ <b>1910.29</b> ]	<u>1910.25.1</u>	FORM—PETITION FOR CONTEMPT
Rule [ <b>1910.31</b> ]	<u>1910.21.1</u>	FORM—NOTICE OF ATTACHMENT
Rule [ <b>1910.32(a)</b> ]	<u>1910.21.2</u>	FORM—NOTICE OF DECISION UPON OBJECTIONS TO ISSUANCE OF ORDER OF ATTACHMENT
Rule [ <b>1910.32(b)</b> ]	<u>1910.21.3</u>	FORM—ORDER OF ATTACHMENT OF INCOME
Rule [ <b>1920.3(a)</b> ]	<u>1920.3</u>	FILINGS OF PLEADINGS
Rule [ <b>1920.4(f)</b> ]	<u>1920.4</u>	ACCEPTANCE OF SERVICE
Rule [ <b>1920.12(d)</b> ]	<u>1920.12</u>	NOTICE TO DEFEND AND CLAIM OF RIGHTS

Rule [ <b>1920.14(c)</b> ]	<u>1920.14</u>	COUNTER AFFIDAVIT
Rule [ <b>1920.22(c)</b> ]	<u>1920.22</u>	COMPLETION OF DISCOVERY
Rule [ <b>1920.31(b)(2)(i)</b> ]	<u>1920.31</u>	SUPPORT AND ALIMONY
Rule [ <b>1920.34(a)</b> ]	<u>1920.43</u>	STAY OF PROCEEDINGS
Rule [ <b>1920.45(d)(1)</b> ]	<u>1920.45(a)</u>	COUNSELING
Rule [ <b>1920.45(e)</b> ]	<u>1920.45(b)</u>	APPOINTMENT OF COUNSELOR
Rule [ <b>1920.51(f)</b> ]	<u>1920.51(a)</u>	MOTION FOR APPOINTMENT OF MASTER
Rule [ <b>1920.51(g)</b> ]	<u>1920.51(b)</u>	CLASSIFICATION OF MASTER AND DUTIES
Rule [ <b>1920.51(h)</b> ]	<u>1920.51(c)</u>	PAYMENT TO PROTHONOTARY
Rule [ <b>1920.51(i)</b> ]	<u>1920.51(d)</u>	APPOINTMENT AND COMPENSATION OF COMMISSIONER
Rule [ <b>1920.51(k)</b> ]	<u>1920.51(e)</u>	MASTER'S RULING ON EVIDENCE
Rule [ <b>1920.51(l)</b> ]	<u>1920.51(f)</u>	FINAL NOTICE
Rule [ <b>1920.51(m)</b> ]	<u>1920.51(g)</u>	RULE TO FILE MASTER'S REPORT
Rule [ <b>1920.51(n)</b> ]	<u>1920.51(h)</u>	FINAL DECREE
Rule [ <b>1920.52(e)</b> ]	<u>1920.51(i)</u>	SEVERANCE OF CLAIMS
Rule [ <b>1920.53(d)</b> ]	<u>1920.53(a)</u>	RECORD IN CONTESTED MATTERS
Rule [ <b>1920.53(e)</b> ]	<u>1920.53(b)</u>	MINUTES ON MASTERS
Rule [ <b>1920.62(d)</b> ]	<u>1920.62</u>	PROCEEDINGS BY INDIGENT PARTIES

3. Luzerne County Rule of Civil Procedure 295 is hereby reorganized and renumbered as Luzerne County Rule of Criminal Procedure 536.

4. Luzerne County Rule of Civil Procedure 501, 504, 505, and 510 are hereby reorganized and renumbered as the Luzerne County Rule Concerning Election Code 501, 504, 505, and 510 and shall be placed separate and apart from the Luzerne County Rules of Civil Procedure in a new section entitled "Luzerne County Rules Concerning Election Code."

5. It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee, one (1) certified copy to the Criminal Procedural Rules Committee, one (1) certified copy to the Judicial Council of Pennsylvania Statewide Rules Committee, and one (1) copy to the *Luzerne Legal Register* for publication in the next issue.

6. It is further ordered that the effective date of this order shall be thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

7. It is further ordered that these local rules shall be kept continuously available for public inspection and copying in the Prothonotary's Office and the Clerk of Court's Office.

*By the Court*

MICHAEL T. CONAHAN,  
*President Judge*

[Pa.B. Doc. No. 04-1483. Filed for public inspection August 13, 2004, 9:00 a.m.]

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**MERCER COUNTY**  
**Local Rule L320; 2004-2375**

**Order**

*And Now*, July 27, 2004, Local Rule L320 is rescinded in that termination of inactive civil cases is now comprehensively covered by R.C.P. 230.2.

*By the Court*

FRANCIS J. FORNELLI,  
*President Judge*

[Pa.B. Doc. No. 04-1484. Filed for public inspection August 13, 2004, 9:00 a.m.]

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**MERCER COUNTY**  
**Local Rule of Civil Procedure L320; No. 2004-2375**

**Order**

*And Now*, this 30th day of July, 2004, the court hereby *Approves, Adopts and Promulgates* the following order rescinding Local Rule of Civil Procedure L320. This order shall be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is *Ordered and Directed* the Court Administrator of Mercer County, in accordance with Pa. Rule of Civil Procedure 239, shall file seven (7) certified copies of these Rules with the Administrative Office of Pennsylvania Courts, furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, file one certified copy with the Civil Procedural Rules Committee.

It is further *Ordered and Directed* that Local Rules shall be kept continuously available for public inspection and copying in the Office of the Prothonotary of Mercer County. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish

to any person a copy of the Local Rules. This order shall be published in the *Mercer County Law Journal*.

*By the Court*

FRANCIS J. FORNELLI,  
*President Judge*

[Pa.B. Doc. No. 04-1485. Filed for public inspection August 13, 2004, 9:00 a.m.]

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## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Disbarment

Notice is hereby given that John P. Gross having been disbarred from the practice of law in the State of New

Jersey by Order dated January 21, 2004, the Supreme Court of Pennsylvania issued an Order on July 29, 2004, disbaring John P. Gross from the Bar of this Commonwealth, effective August 28, 2004. 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 and Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 04-1486. Filed for public inspection August 13, 2004, 9:00 a.m.]

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