

THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 9, 15 AND 17]

Proposed Amendments to Rules of Appellate Procedure 901, 1501, 1512, 1516, 1517, 1541 and 1561 and Proposed New Rule of Appellate Procedure 1770

The Appellate Court Procedural Rules Committee proposes to amend Pennsylvania Rules of Appellate Procedure 901, 1501, 1512, 1516, 1517, 1541 and 1561, and proposes new rule, Pa.R.A.P. 1770. These amendments and new rule are being submitted for public comments and suggestions prior to their submission to the Supreme Court.

Proposed additions are bold while deleted material is bold and bracketed.

All communications in reference to the proposed amendment should be sent no later than September 9, 2011 to:

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or Fax to 717-231-9551
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An Explanatory Comment precedes the proposed amendment and has been inserted by this Committee for the convenience of the bench and bar. It will not constitute part of the rule nor will it be officially adopted or promulgated.

*By the Appellate Court
 Procedural Rules Committee*

HONORABLE RENEE COHN JUBELIRER,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 901. Scope of Chapter.

This chapter applies to all appeals from a trial court to an appellate court except:

* * * * *

(4) **An appeal which may be taken by petition for review pursuant to Rule 1770, which governs placement in juvenile delinquency matters.**

(5) Automatic review of sentences pursuant to 42 Pa.C.S. § 9711(h) (review of death sentence). See Rule 1941 (review of death sentences).

[(5)] (6) An appeal which may be taken by petition for review pursuant to Rule 3331 (review of special prosecutions or investigations).

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

IN GENERAL

Rule 1501. Scope of Chapter.

* * * * *

Official Note: This chapter applies to review of any “determination” of a “government unit” as defined in Rule 102 assuming, of course, that the subject matter of the case is within the jurisdiction of a court subject to these rules (see Subdivision (d) of this rule). A “determination” means “action or inaction by a government unit which action or inaction is subject to judicial review by a court under Section 9 of Article V of the Constitution of Pennsylvania or otherwise. The term includes an order entered by a government unit.” The term “government unit” is all inclusive and means “the Governor and the departments, boards, commissions, officers, authorities and other agencies of the Commonwealth, including the General Assembly and its officers and agencies and any court or other officer or agency of the unified judicial system, and any political subdivision or municipal or other local authority or any officer or agency of any such political subdivision or local authority. The term includes a board of arbitrators whose determination is subject to review under 42 Pa.C.S. § 763(b) (awards of arbitrators).” The term “administrative agency” is not defined in these rules, although the term is used in these rules as a result of its appearance in Section 9 of Article V of the Constitution of Pennsylvania.

Subdivision (a)(4) was added in 2004 to recognize the references in various appellate rules and accompanying notes to petition for review practice. For example, the Notes to Rules 341 and 1311 direct counsel to file a petition for review of a trial court or government agency order refusing to certify an interlocutory order for immediate appeal. Similarly, Rule 1762 directs the filing of a petition for review when a party seeks release on bail before judgment of sentence is rendered[. See], see Rule 1762(b), and **Rule 1770 directs the filing of a petition for review when a juvenile seeks review of placement in a juvenile delinquency matter.** A petition for review is also the proper method by which to seek judicial review pursuant to Rule 3321 (regarding legislative reapportionment commission) and Rule 3331 (regarding special prosecutions or investigations). The 2004 and 2011 amendments clarify the use of petitions for review in these special situations.

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PETITION FOR REVIEW

Rule 1512. Time for Petitioning for Review.

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(b) *Special appellate provisions.*—A petition for review of:

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(5) A determination governed by Rule 1770 (review of dispositional order for out of home place-

ment in juvenile delinquency matters) shall be filed within ten days of the order sought to be reviewed.

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Rule 1516. Other Pleadings Allowed.

(a) *Appellate jurisdiction petitions for review.* No answer or other pleading to an appellate jurisdiction petition for review is authorized, unless the petition for review is filed pursuant to the Notes to Rules 341 or 1311 (seeking review of a trial court or other government unit's refusal to certify an interlocutory order for immediate appeal), Rule 1762 (regarding release in criminal matters), **Rule 1770 (regarding placement in juvenile delinquency matters)**, Rule 3321 (regarding appeals from decisions of the Legislative Reapportionment Commission) or Rule 3331 (regarding review of special prosecutions and investigations). Where an answer is authorized, the time for filing an answer shall be as stated in Rule 123(b).

* * * * *

Official Note: The 2004 and 2011 amendments made clear that, with [five] six limited exceptions, no answer or other pleading to a petition for review addressed to an appellate court's appellate jurisdiction is proper. With regard to original jurisdiction proceedings, practice is patterned after Rules of Civil Procedure 1017(a) (Pleadings Allowed) and 1026 (Time for Filing, Notice to Plead). The ten additional days in which to file a subsequent pleading are in recognition of the time required for agency coordination where the Commonwealth is a party. See Rule 1762(b)(2) regarding bail applications. **See Rule 1770 regarding placement in juvenile delinquency matters.**

Rule 1517. Applicable Rules of Pleading.

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Official Note: See Rule 1762(b)(2) regarding bail applications. **See Rule 1770 regarding placement in juvenile delinquency matters.** See also Rule 3331 regarding Review of Special Prosecutions or Investigations.

Rule 1541. Certification of the Record.

* * * * *

Official Note: Rule 102 defines "government unit" to include "any court or other officer or agency of the unified judicial system." Thus, if the order to be reviewed was filed by a trial court, that court shall certify the record. This occurs when the petition for review was filed pursuant to Rule 1762, **1770**, 3321 or 3331, or the note to Rules 341 or 1311.

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Rule 1561. Disposition of Petition for Review.

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(d) *Review of detention and placement of a juvenile.*—Except as prescribed by Rule 1762(b)(2), which governs applications relating to bail when no appeal is pending, **by Rule 1770, which governs placement in juvenile delinquency matters**, or by Rule 3331 (review of special prosecutions or investigations), review in the nature of criminal habeas corpus or post conviction relief may not be granted under this chapter.

Official Note: Subdivision (a) is based on 42 Pa.C.S. § 706 (disposition of appeals).

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See Rule 1762(b)(2) regarding bail applications. **See Rule 1770 regarding placement in juvenile delinquency matters.**

CHAPTER 17. EFFECT OF APPEALS; SUPERSEDEAS AND STAYS

REVIEW OF DISPOSITIONAL ORDER FOR OUT OF HOME PLACEMENT IN JUVENILE DELINQUENCY MATTERS

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

Rule 1770. Review of Out of Home Placement in Juvenile Delinquency Matters.

(a) *General rule.* If a court under the Juvenile Act, 42 Pa.C.S. § 6301 *et seq.*, enters an order after an adjudication of delinquency of a juvenile pursuant to Rules of Juvenile Court Procedure 409(A)(2) and 515, which places the juvenile in an out of home overnight placement in any agency or institution that shall provide care, treatment, supervision or rehabilitation of the juvenile ("Out of Home Placement"), the juvenile may seek review of that order pursuant to a petition for review under Chapter 15 (judicial review of governmental determinations). The petition shall be filed within ten days of the said order.

(b) *Answer.* Any answer shall be filed within ten day of service of the petition, and no other pleading is authorized. Rule 1517 (applicable rules of pleading) and Rule 1531 (intervention) through 1551 (scope of review) shall not be applicable to a petition for review filed under subsection (a).

(c) *Content.* A petition for review under subdivision (a) shall contain: (i) a specific description of any determinations made by the juvenile court; (ii) the matters complained of; (iii) a concise statement of the reasons the juvenile court abused its discretion in ordering the Out of Home Placement; and (iv) the proposed terms and conditions of an alternative disposition for the juvenile. Any order(s) and opinion(s) relating to the Out of Home Placement and the transcript of the juvenile court's findings shall be attached as appendices. The petition shall be supported by a certificate of counsel to the effect that it is presented in good faith and not for delay.

(d) *Objection to specific agency or institution, or underlying adjudication, not permitted.*

(1) A petition for review under subdivision (a) shall not challenge the specific agency or specific institution that is the site of the Out of Home Placement and instead shall be limited to the Out of Home Placement itself.

(2) A petition for review under subdivision (a) shall not challenge the underlying adjudication of delinquency.

(e) *Service.* A copy of the petition for review and any answer thereto shall be served on the judge of the juvenile court. All parties in the juvenile court shall be served in accordance with Rule 121(b) (service of all papers required). The Attorney General of Pennsylvania need not be served in accordance with Rule 1514(c) (service), unless the Attorney General is a party in the juvenile court.

(f) *Opinion of juvenile court.* Upon receipt of a copy of a petition for review under subdivision (a), if the judge who made the disposition of the Out of Home Placement did not state the reasons for such placement on the record at the time of disposition pursuant to Rule of Juvenile Court Procedure 512(D), the judge shall file of record a brief statement of the reasons for the determination or where in the record such reasons may be found, within five days of service of the petition for review.

(g) *Non-waiver of objection to placement.* Where the juvenile declines to seek review under this rule of the Out of Home Placement that shall not constitute a waiver of the juvenile's right to seek review of the placement in a notice of appeal filed by the juvenile from a disposition after an adjudication of delinquency.

Official Note: This Rule provides a mechanism for the expedited review of an order of Out of Home Placement entered pursuant to Rule of Juvenile Court Procedure 515. This expedited review is the same expedited review available in Rule 1762 from an order under 42 Pa.C.S. § 6322 granting or denying a juvenile's motion to transfer from a criminal proceeding to a juvenile proceeding, or an order under 42 Pa.C.S. § 6355 granting or denying the Commonwealth's motion to transfer from a juvenile proceeding to a criminal proceeding. *See* 42 Pa.C.S. § 6322(c) ("Expedited Review of Transfer Orders"). Rule of Juvenile Court Procedure 512(D) requires the juvenile court judge to place the reasons for an Out of Home Placement on the record at the time of the disposition. The Juvenile Act, 42 Pa.C.S. § 6352, sets forth the considerations for a dispositional order following an adjudication of delinquency and the alternatives for disposition. The standard for review of a dispositional order is an abuse of discretion. *See In the Interest of A.D.*, 771 A. 2d 45 (Pa. Super. 2001) (en banc).

EXPLANATORY COMMENT

The Interbranch Commission on Juvenile Justice was created in 2009 by an act of the General Assembly with the support of the Governor and the Supreme Court. Its purpose was to investigate circumstances that led to corruption in the juvenile court of Luzerne County resulting in federal criminal charges against two judges; to restore public confidence in the administration of justice, and to prevent similar events from occurring there or elsewhere in the Commonwealth.

The Interbranch Commission issued its Final Report on May 31, 2010. The Interbranch Commission made certain recommendations regarding appellate rights and appellate review, which are found at pp. 55-56 of the Commission's Final Report. The Recommendation of the Appellate Court Procedural Rules Committee is the Committee's response to those Recommendations.

The Recommendation proposes amendments to Pa.R.A.P. 901, 1501, 1512, 1516, 1517, 1541, 1561 and a new Rule, Pa.R.A.P. 1770 ("Review of Out of Home Placements in Juvenile Matters"). New Rule 1770 provides a mechanism for the expedited review of an order of out of home placement entered pursuant to the Rules of Juvenile Court Procedure. In juvenile matters, out of home placements can evade effective appellate review, especially when the placement is shorter than the time period to process an ordinary appeal. The Interbranch Commission has recommended an expedited appeal procedure for out of home placements. Proposed new Rule 1770 would permit the juvenile to use a petition for review as the procedural vehicle for limited expedited appellate review of the out of home placement only. The amendments to existing rules are proposed to conform those rules to new Rule 1770.

[Pa.B. Doc. No. 11-1215. Filed for public inspection July 22, 2011, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 10]

Amendment of Rule 1002 of the Rules of Criminal Procedure; No. 396 Criminal Procedural Rules Doc.

Amended Order

(Editor's Note: This order amends the order published at 41 Pa.B. 216 (January 8, 2011). A paragraph in the Comment of the rule adopted by the Supreme Court and deposited with the Legislative Reference Bureau was inadvertently omitted. The paragraph was included in the version of the Comment printed with the order published at 41 Pa.B. 216 and codified in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 436).)

Per Curiam

And Now, this 22nd day of December, 2010 the proposal having been made without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of justice and efficient administration:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1002 of the Pennsylvania Rules of Criminal Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 20, 2011.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA TRAFFIC COURT

PART A. Philadelphia Municipal Court Procedures

Rule 1002. Procedure in Summary Cases.

(A) Except as provided in this rule or by local rule authorized by this rule, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused only of one or more non-traffic summary offenses or violations of municipal criminal ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

(B) Non-traffic summary proceedings shall be instituted either by a citation issued to the defendant or arresting without a warrant when arrest is specifically authorized by law.

(1) Issuance of Citation

(a) The law enforcement officer shall issue the citation to the defendant pursuant to Rule 405 (Issuance of Citation), together with a notice to appear, unless required to proceed pursuant to paragraph (B)(1)(e). The notice to appear shall:

(i) direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room, **and**

(ii) **shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial de novo.**

(b) When authorized by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer may prepare, verify, and transmit a citation electronically.

The law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule 403(A) (Contents of Citation) and a notice to appear. The notice to appear shall:

(i) direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room, **and**

(ii) shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

(c) Within 5 days after issuance of the citation and notice to appear, the citation shall be filed with the clerk of Municipal Court.

(d) When the defendant appears before the judge or trial commissioner as provided in paragraph (B)(1)(a) or (B)(1)(b), the judge or trial commissioner shall explain the process to the defendant.

(i) If the defendant enters a guilty plea, the judge or trial commissioner shall impose the fines and costs.

(ii) If the defendant enters a not guilty plea, the judge or trial commissioner shall set a date for trial before a judge and issue a subpoena to the defendant. **The judge or trial commissioner shall advise the defendant that failure to appear at the trial shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.**

(iii) If applicable, after paying any fee imposed, the defendant may be accepted into the Municipal Court's summary case diversionary program, or any other diversionary program offered pursuant to local rule promulgated pursuant to Rule 105 (Local Rules). When the defendant successfully completes the Municipal Court's summary case diversionary program, the defendant's arrest record automatically will be expunged.

(e) When required by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the law enforcement officer or a superior officer shall prepare and issue the citation to the defendant. Thereafter, the law enforcement officer without unnecessary delay shall transport the defendant to the Municipal Court for proceedings before a judge, and the case shall proceed as provided by local rule promulgated pursuant to Rule 105 (Local Rules).

(f) The defendant shall not be slated, fingerprinted, or photographed, except as provided by law.

(2) Arrest Without a Warrant

(a) When an arrest without a warrant in a non-traffic summary case is authorized by law, the police officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the police officer or a superior officer shall prepare and issue a citation to the defendant.

(b) Except when the police officer is required to proceed pursuant to paragraph (B)(1)(e), or as otherwise provided in this rule, the case shall proceed as provided in Rule 441.

(c) If the defendant is to be released pursuant to Rule 441(B), the defendant shall be released on his or her own recognizance and given a notice to appear on a date and at a time certain in a specified court room. **The notice to**

appear shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

(d) If the defendant is not released under Rule 441(B), the defendant without unnecessary delay shall be brought before a judge, who shall proceed as provided in Rule 441(C).

(C) If the defendant fails to appear pursuant to the notice to appear issued as required by paragraphs (B)(1)(a), (B)(1)(b) or (B)(2)(c), or a subpoena[; a bench warrant shall be issued] issued as required by paragraph (B)(1)(d)(ii), the case shall proceed as provided in paragraph (D).

(D) If the defendant fails to appear as required in (C), the trial shall be conducted in the defendant's absence, unless the judge determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the judge shall issue a bench warrant for the defendant's arrest.

(1) At trial, the judge shall proceed to determine the facts and render a verdict in the same manner as trials in criminal cases are conducted in the Common Pleas Court when a jury trial has been waived; however, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant. The allegations in the citation may be recited on behalf of the observing law enforcement officer by his or her representative or designee. The failure of the defendant to appear will be deemed to be a waiver of the right to present defense witnesses.

(2) If the defendant is found guilty, the judge shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, of the right to file an appeal within 30 days for a trial *de novo*, and of the consequences for failing to pay the costs and fines imposed.

(3) In appeals from the summary conviction, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(a) the defendant waives the presence of the law enforcement officer in open court on the record;

(b) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(c) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

[(D)] (E) When the same conduct is proscribed under an Act of Assembly and a municipal criminal ordinance, the charge shall be brought under the Act of Assembly and not under the ordinance.

Comment

This rule, which replaced former Rule 1002 in 2005, was developed to accommodate the procedures Philadel-

phia Municipal Court has implemented to address the issues in non-traffic summary cases unique to Philadelphia to more efficiently handle the vast number of non-traffic summary cases, to protect the defendants' rights to a fair and prompt disposition of their cases, and, when appropriate, to provide the necessary rehabilitation or social services. Municipal Court is required to implement local rules pursuant to Rule 105 (Local Rules) enumerating the details of the summary proceedings following the issuance of a citation or a summons. For purposes of this rule, "local rule" includes all memoranda of understanding and administrative orders that affect non-traffic summary case procedures.

Once a summary case is appealed to the Court of Common Pleas for trial *de novo*, the case shall remain in the Court of Common Pleas. *See also* Rule 462 and its Comment.

The 2009 amendments to paragraph (B) conform the non-traffic summary citation procedures in Philadelphia with the statewide procedures governing the institution of a non-traffic summary case by issuing a citation to the defendant in person or arresting the defendant without a warrant. *See* Rules 405 (Issuance of Citation) and 440 (Arrest Without Warrant). The amendments require the police officer to issue a citation as provided in Rule 405 and proceed pursuant to paragraph (B)(1)(a) or (B)(1)(b), unless the case falls within the jurisdiction of one of Philadelphia Municipal Court's Nuisance Night Courts or Community Courts, or to arrest without a warrant when such an arrest is authorized by law.

The contents of the citation must comply with the requirements of Rule 403(A). The notice to appear required by paragraphs (B)(1)(a), (B)(1)(b), and (B)(2)(c) may be added to the citation form.

Nothing in this rule is intended to permit the admission of double hearsay.

Arrests without a warrant in summary cases are authorized only in exceptional circumstances, such as cases involving enhanced penalties, or when the defendant fails to produce identification, or when there is violence or the imminent threat of violence, or when there is a likelihood that the defendant will flee.

Nothing in this rule prevents the filing of a citation pursuant to Rules 410 and 411.

The 2009 amendments do not modify the current procedures governing Philadelphia Municipal Court's Nuisance Night Courts and Community Courts that are implemented by paragraph (B)(1)(e).

Although defendants in summary cases ordinarily are not slated, photographed, or fingerprinted, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. *See, e.g.*, 18 Pa.C.S. § 3929(g) concerning fingerprinting in retail theft cases.

The 2010 amendments added new paragraph (D) and related changes to clarify that summary trials in Philadelphia courts may be conducted in the defendant's absence, conforming Philadelphia practice with the statewide procedures governing trials in the defendant's absence. Compare Rules 454, 455 and 462.

Nothing in paragraph (D) requires that the trial in absentia be conducted immediately.

All summary offenses under the motor vehicle laws and parking violations are under the jurisdiction of the Philadelphia Traffic Court. *See* 42 Pa.C.S. §§ 1301—1303, 1321.

Official Note: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002; amended May 12, 2009, effective February 1, 2010; Comment revised February 12, 2010, effective April 1, 2010; **amended December 22, 2010, effective February 20, 2011.**

Committee Explanatory Reports:

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

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

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 4914 (September 3, 2005).

Final Report explaining the May 12, 2009 changes to paragraph (B) concerning issuing citations and arrest without warrants in summary cases published at 39 Pa.B. 2568 (May 23, 2009).

Final Report explaining the February 12, 2010 Comment revision concerning the disposition of summary offenses at the court of common pleas published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

[Pa.B. Doc. No. 11-1216. Filed for public inspection July 22, 2011, 9:00 a.m.]

Title 25—LOCAL COURT RULES

LANCASTER COUNTY

Rules of Criminal Procedure No. 531; Qualifications of Surety; No. 7 AD 2011; CPJ. No. 7, Page 1357

Administrative Order

And Now, this 28th day of June, 2011, it is hereby Ordered that new Lancaster County Rule of Criminal Procedure No. 531 is adopted as follows:

The Court Administrator is directed to:

1. File one (1) certified copy of this Order and Rule with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified paper copies and one (1) diskette or CD-ROM containing this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. Publish a copy of this Order and Rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>
4. Keep continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

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

By the Court

JOSEPH C. MADENSPACHER,
President Judge

Rule 531. Qualifications of Surety.

A. Approved Bondsman List

1. The Clerk of Courts shall compile, maintain, and make available for public inspection a list of approved bondsman (professional or fidelity/surety agent), hereinafter referred to as the "Approved Bondsman List", qualified to act as bail sureties in Lancaster County.

2. A bondsman (professional or fidelity/surety agent) is not permitted to act as a bail surety in Lancaster County unless he/she appears on the Approved Bondsman List on the date the bond is signed.

3. The Clerk of Courts shall promptly notify the District Attorney's Office, Solicitor's Office, Prison Warden, Bail Administration, the Office of the Prothonotary, and Court Administration of the addition or removal of any bondsman to the Approved Bondsman List.

B. Professional Bondsman

A professional bondsman shall not be included on the Approved Bondsman List unless he/she:

1. Provides the Clerk of Courts with a currently valid registration and license from the Commonwealth of Pennsylvania, Department of Insurance pursuant to 42 Pa.C.S.A. § 5742;

2. Provides the Clerk of Courts with proof that he/she maintains an office within Lancaster County, Pennsylvania, from which he/she conducts business pursuant to 42 Pa.C.S.A. § 5744, and;

3. Posts and maintains as security with the Clerk of Courts, a Reserve Account in the amount of twenty-five thousand dollars (\$25,000.00) in United States currency.

C. Fidelity/Surety Company and Agent

1. A fidelity/surety company shall not be permitted to have agents on the Approved Bondsman List unless a currently valid registration and license from the Commonwealth of Pennsylvania, Department of Insurance pursuant to 40 P.S. §§ 831 et. seq. is provided to the Clerk of Courts.

2. Each agent of the fidelity/surety company must post and maintain as security with the Clerk of Courts a Reserve Account in the amount of twenty-five thousand dollars (\$25,000.00) in United States currency.

D. Removal from Approved Bondsman List

1. A bondsman (professional or fidelity/surety agent) may be removed from the Approved Bondsman List for any of the following reasons:

a. failure to comply with any of the rules as set forth herein;

b. failure to comply with any applicable law or regulation of the Commonwealth of Pennsylvania or Rule of Court of Pennsylvania or of Lancaster County;

c. suspension or revocation of a license or registration by the Commonwealth of Pennsylvania, Department of Insurance or by any Court of Common Pleas;

d. failure to maintain a Reserve Account in the amount of twenty-five thousand dollars (\$25,000.00);

e. the amount of the professional bondsman's outstanding bail forfeitures exceeds three hundred thousand dollars (\$300,000.00) as determined by the Lancaster County Solicitor's Office;

f. failure to pay a bail obligation into the Bail Judgment Account, referred to in Rule 536.1, as required, or;

g. failure to file quarterly reports with the Clerk of Courts within thirty (30) days of the end of each quarter.

2. A fidelity/surety company and its agents may be removed from the Approved Bondsman List if the aggregate amount of outstanding bail forfeitures for the fidelity/surety company exceeds five hundred thousand dollars (\$500,000.00) as determined by the Lancaster County Solicitor's Office.

3. Prior to the removal of a bondsman or fidelity/surety company from the Approved Bondsman List, the bondsman or fidelity/surety company shall be notified in writing of the intent to remove the bondsman or fidelity/surety company from the Approved Bondsman List and the reason(s) for removal and shall be provided with ten (10) days to remedy the basis for removal.

E. Reserve Account

1. The Clerk of Courts shall create and maintain a separate account known as the "Reserve Account" for each bondsman or fidelity/surety company on the Approved Bondsman List.

2. The bondsman or fidelity/surety company shall be solely responsible for making the deposits into his/her/its respective Reserve Account as required by this Rule.

[Pa.B. Doc. No. 11-1217. Filed for public inspection July 22, 2011, 9:00 a.m.]

LANCASTER COUNTY

Rules of Criminal Procedure No. 536; Bail Pieces; No. 8 AD 2011; CPJ. No. 7, Page 1357

Administrative Order

And Now, this 28th day of June, 2011, it is hereby Ordered that new Lancaster County Rule of Criminal Procedure No. 536 is adopted as follows:

The Court Administrator is directed to:

1. File one (1) certified copy of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified paper copies and one (1) diskette or CD-ROM containing this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of this Order and Rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

4. Keep continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

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

By the Court

JOSEPH C. MADENSPACHER,
President Judge

Rule 536. Bail Pieces; Exoneration of Surety.

A. In all cases where a bail piece is lodged, the case shall proceed in accordance with the following procedures:

1. In all cases where the Defendant is lodged in the Lancaster County Prison pursuant to a bail piece, the Warden or his designee shall notify the District Court Administrator within twelve (12) hours of commitment.

2. After notice from the Warden or his designee, the District Court Administrator shall schedule a hearing to take place within seven (7) days of the date the bail piece was lodged.

3. The District Court Administrator shall give prompt notice of the hearing to the Office of the Public Defender, District Attorney's Office, the Clerk of Courts of Lancaster County, and any surety involved in the matter. The District Attorney and Public Defender shall each assign an attorney for the hearing.

4. The daily Business Judge shall conduct hearings on bail proceedings held pursuant to this Rule.

5. A copy of the Court's Order following the hearing shall be promptly forwarded to the Lancaster County Prison.

6. At any hearing conducted pursuant to [this] Rule 536(A), the only determination shall be whether to dismiss the bail piece or whether bail shall be reset. No decision regarding the exoneration or remittance of any surety shall be made at a hearing conducted pursuant to [this] Rule 536(A). **Rule 536(B) shall be the exclusive process to request exoneration or remission of any bondsman or fidelity/surety company.**

B. If a defendant is apprehended and returned to the Lancaster County Prison, the bondsman or fidelity/surety company or agent, may petition the Court of Common Pleas for full or partial exoneration or remittance of the amount of the bail bond under the following procedures:

1. All petitions for exoneration or remittance must be made in writing.

2. All petitions for exoneration or remittance must be served on the Office of the District Attorney, who shall have ten (10) days to respond to the petition.

3. A hearing on the petition shall be conducted upon the request of either party or by the Court sua sponte.

4. No hearing shall be conducted until the expiration of the ten (10) day response period, unless agreed to by both parties.

5. A petition for exoneration or remittance will not be considered if the funds in the Bail Judgment Account referred to in Rule 536.1 have been transferred to the General Fund as outlined in Rule 536.1(D).

[Pa.B. Doc. No. 11-1218. Filed for public inspection July 22, 2011, 9:00 a.m.]

LANCASTER COUNTY

Rules of Criminal Procedure No. 536.1; Bail Judgment Account; No. 9 AD 2011; CPJ. No. 7, Page 1357

Administrative Order

And Now, this 28th day of June, 2011, it is hereby Ordered that new Lancaster County Rule of Criminal Procedure No. 536.1 is adopted as follows:

The Court Administrator is directed to:

1. File one (1) certified copy of this Order and Rule with the Administrative Office of Pennsylvania Courts.

2. File two (2) certified paper copies and one (1) diskette or CD-ROM containing this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Publish a copy of this Order and Rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>

4. Keep continuously available for public inspection copies of the Order and Rule in the Prothonotary and Clerk of Courts Office.

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

By the Court

JOSEPH C. MADENSPACHER,
President Judge

Rule 536.1. Bail Judgment Account.

A. The Solicitor's Office shall create and maintain a separate account known as the "Bail Judgment Account."

B. If a bail bond remains forfeited for a period of six (6) months, the Solicitor's Office shall notify the bondsman or the fidelity/surety company that the full amount of the bail bond must be placed in the Bail Judgment Account within twenty (20) days of the notice.

C. If the bondsman or fidelity/surety company fails to place the appropriate funds into the Bail Judgment Account, any funds in the bondsman's or fidelity/surety company's Reserve Account, up to the amount of the forfeited bail bond, may be transferred to the Bail Judgment Account at the discretion and direction of the Solicitor's Office.

D. Upon expiration of a one year period from the date of the forfeiture of the bail bond, any amount in the Bail Judgment Account, up to the amount of the forfeited bail bond, shall be transferred to the County's General Fund at the discretion and direction of the Solicitor's Office. The Solicitor's Office shall notify the bondsman or the fidelity/surety company of the transfer.

[Pa.B. Doc. No. 11-1219. Filed for public inspection July 22, 2011, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that David Keith Burgess having been disbarred from the practice of law in the State of California by Order of the Supreme Court of California dated May 31, 2002, the Supreme Court of Pennsylvania issued an Order on July 6, 2011, disbaring David Keith Burgess from the Bar of this Commonwealth, effective August 5, 2011. 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,
Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 11-1220. Filed for public inspection July 22, 2011, 9:00 a.m.]