

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Proposed Amendment to Pa.R.O.C.P. No. 15.6 and Explanatory Note

The Orphans' Court Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 15.6 to create a procedure for data collection for the Office of Children and Families in the Courts. The proposal also recommends the addition of an Explanatory Note to Rule 15.6 concerning this amendment. This proposal has not been submitted for review by the Supreme Court of Pennsylvania prior to publication.

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

The text of the proposed amendments to the rule follows the Explanatory 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,

Lisa M. Rhode, Counsel
Supreme Court of Pennsylvania
Orphans' Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9551
e-mail: orphanscourtproceduralrules@pacourts.us

no later than Monday, October 8, 2012.

*By the Orphans' Court
Procedural Rules Committee*

MARGARET GALLAGHER THOMPSON, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

RULE 15: ADOPTIONS

Rule 15.6. Notice to persons; method [and time]; certification filed at dependency docket.

(A) Notice to every person to be notified shall be by personal service, service at his or her residence on an adult member of the household, or by registered or certified mail to his or her last known address. If such service is unobtainable and the registered mail is returned undelivered, then:

(1) no further notice shall be required in proceedings under Rules 15.2 or 15.3, and

(2) in proceedings under Rules 15.4 and 15.5, further notice by publication or otherwise shall be given if required by general rule or special order of the local Orphans' Court. If, after reasonable investigation, the identity of a person to be notified is unknown, notice to him or her shall not be required.

(B) When the child is in the custody of a county agency:

(1) **within three (3) days of filing of a petition to terminate parental rights under Rules 15.2 or 15.4, or a petition to adopt under Rule 15.5, the county agency shall file a written certification with the clerk of courts where the child was declared dependent using the caption of the dependency proceeding, indicating the name of the petition and date of filing in substantially the following form:**

(Dependency Caption)

I hereby certify that the following has been filed on _____ with the orphans' court in _____ County concerning the above-child:

- A petition to relinquish parental rights of _____ .
- A petition to terminate parental rights of _____ .
- A petition for adoption.

Date: _____

On behalf of: (county agency)

(2) **within three (3) days of receiving the court's disposition of the petitions described in subparagraph (B)(1), the county agency shall file a written certification with the clerk of courts where the child was declared dependent using the caption of the dependency proceeding, indicating the disposition of the petition and date of the order in substantially the following form:**

(Dependency Caption)

I hereby certify that the following has been entered on _____ by the orphans' court in _____ County concerning the above-child:

- An order granting denying (circle one) the petition to relinquish parental rights of _____ .
- An order granting denying (circle one) the petition to terminate parental rights of _____ .

- With the above-order relinquishing or terminating parental rights, the child is available for adoption. Do not check if at least one parent still has parental rights.
- An order granting denying (circle one) the petition for adoption.

Date: _____

On behalf of: (county agency)

(3) if a notice of appeal from an order described in subparagraph (B)(2) is filed, then within three (3) days of service of the notice of appeal, the county agency shall file a written certification with the clerk of courts where the child was declared dependent using the caption of the dependency proceeding, indicating the date of the appeal in substantially the following form:

(Dependency Caption)

I hereby certify that an appeal has been filed on _____ concerning the above-child _____ from the following orphans' court order:

- An order granting denying (circle one) the petition to terminate parental rights of _____ .
- An order granting denying (circle one) the petition for adoption.

Date: _____

On behalf of: (county agency)

(4) within three (3) days of receiving the appellate court's disposition of the appeal described in subparagraph (B)(3), the county agency shall file a written certification with the clerk of courts where the child was declared dependent using the caption of the dependency proceeding, indicating the disposition of the appeal and the date of the decision in substantially the following form:

(Dependency Caption)

I hereby certify that the appeal from the orphans' court order concerning the above-child has been disposed on _____ in the following manner:

- Quashed Affirmed Reversed Vacated & Remanded
- Other: _____

Date: _____

On behalf of: (county agency)

Explanatory Note: This Rule was amended in 2012 to add paragraph (B). The purpose of this amendment was to provide a procedure for the collection of data concerning children who have been declared dependent under the Juvenile Act and placed in the custody of the county agency. The information is entered into the Common Pleas Case Management System-Dependency Module for federal reporting requirements and to monitor children in the foster care system. Unlike a "notice", as used in paragraph (A), the county agency is not required to serve the certification upon the other party to the dependency, termination, or adoption proceeding. The definition of "county agency" as used in this Rule is that contained in Pa.R.J.C.P. 1120. Where used in this Rule, "orphans' court" is intended to include the family court of the First Judicial District.

EXPLANATORY REPORT

Proposed Amendment to Pa.R.O.C.P. No. 15.6 & Explanatory Note

Certification Filed at Dependency Docket

Background

The Orphans' Court Procedural Rules Committee ("Committee") was approached by the Office of Children & Families in the Courts ("Office"), seeking assistance in the form of a procedural rule that would assist the Office in data collection and reporting. There is an impending federal requirement pursuant to the Court Improvement Project to report outcome data for dependent children. Relevant to this particular proposal, the data sought pertains to voluntary relinquishment of parental rights to a county agency, involuntary termination of parental rights initiated by a county agency, and adoption proceedings involving these dependent children, including appeals thereof.

At the state-level, the Court has expanded the Common Pleas Case Management System (CPCMS) to include a dependency module, which, among other things, enhances data collection and monitors children in dependency proceedings. However, the CPCMS does not yet include

orphans' court proceedings; nor does it appear that such an expansion will be implemented in time for the Office's reporting needs.

Absent a CPCMS orphans' court module, there is no automated way for the two court systems to exchange information. Since the CPCMS dependency module is operational, the Committee considered, *inter alia*, that data from the orphans' court docket be manually conveyed to the dependency court clerk for entry into the CPCMS dependency module so the necessary reports can be generated.

Precedent for using procedural rules to collect data exists with the coversheet requirement for civil actions. On February 25, 2010, the Court adopted Pa.R.C.P. No. 205.5, requiring a coversheet form to be filed with the prothonotary in civil actions for gathering caseload data by the type of case.

Proposed Rule

The procedure embodied in this recommendation would require the county agency to file a certification to be entered on the dependency court docket disclosing limited information about the orphans' court proceedings. In all of the proceedings, whether in the dependency court or orphans' court, the one ever-present party (other than the child) is the county agency. The county agency would

have knowledge of the placement of the child and the stage of the legal proceedings concerning the child; therefore, the rule requires the county agency to file the certification.

To maintain consistency of data collection and minimize administrative burden, the Committee proposes the use of a certification, substantially in the form contained in the proposed amendment of Rule 15.6(B).

[Pa.B. Doc. No. 12-1728. Filed for public inspection September 7, 2012, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 5 AND 6]

Proposed Amendments to Pa.Rs.Crim.P. 571 and 602

The Supreme Court of Pennsylvania is considering amendments to Rules of Criminal Procedure 571 and 602 to clarify the procedures when a defendant fails to appear without cause for a court proceeding.

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

The text of the proposed changes to the rules precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

The Court requests that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Criminal Procedural Rules Committee through counsel,

Jeffrey M Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
Pennsylvania Judicial Center

601 Commonwealth Ave., Suite 6200, P. O. Box 62635
Harrisburg, PA 17106-2635

fax: (717) 231-9521 or e-mail: criminal.rules@pacourts.us

no later than Monday, October 8, 2012.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART G. Procedures Following Filing of Information

Rule 571. Arraignment.

* * * * *

(C) At arraignment, the defendant shall be advised [of]:

(1) **of** the right to be represented by counsel;

(2) **of** the nature of the charges contained in the information[; **and**]

(3) **of** the right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed[.]; **and**

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

If the defendant or counsel has not received a copy of the information(s) pursuant to Rule 562, a copy thereof shall be provided.

* * * * *

Comment

* * * * *

Paragraph (C)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant's failure to appear for trial.

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court proceedings requiring the defendant's presence, see Rule 114.

Official Note: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; Comment revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; **amended , 2012, effective , 2012.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed changes to paragraph (C)(4) concerning notice of consequences of failing to appear published for comment at 42 Pa.B. 5733 (September 8, 2012).

CHAPTER 6. TRIAL PROCEDURES IN COURT
CASES

PART A. General Provisions

Rule 602. Presence of the Defendant.

(A) The defendant shall be present at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause shall not preclude proceeding with the trial, including the return of the verdict and the imposition of sentence. **If the defendant fails to appear without establishing cause for the failure, the judge may conduct the trial in the defendant's absence and shall conduct the trial upon request of the Commonwealth.**

(B) A corporation may appear by its attorney for all purposes.

Comment

The 2012 amendment to paragraph (A) requires the trial judge to conduct the trial in the defendant's absence upon the request of the Commonwealth when the defendant fails to appear without cause. To the extent that the case law makes the judge's decision completely discretionary, that case law is superseded by this rule.

Nothing in this rule is intended to preclude a defendant from affirmatively waiving the right to be present at any stage of the trial, *see, e.g., Commonwealth v. Vega*, 719 A.2d 227 (Pa. 1998) (plurality) (requirements for a knowing and intelligent waiver of a defendant's presence at trial includes a full, on-the-record colloquy concerning consequences of forfeiture of the defendant's right to be present) or from waiving the right to be present by his or her actions, *see, e.g., Illinois v. Allen*, 397 U.S. 337, 343 (1970) (“[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom”).

A defendant's presence may be deemed waived by the defendant intentionally failing to appear at any stage of the trial. *See Commonwealth v. Wilson*, 551 Pa. 593, 712 A.2d 735 ([Pa.] 1998) (defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present); *Commonwealth v. Sullens*, 533 Pa. 99, 619 A.2d 1349 (1992) (when a defendant is absent without cause at the time his or her trial is scheduled to begin, the defendant may be tried *in absentia*).

[Former Rule 1117(c) was moved to Rule 462 (Trial *de novo*) in 2000 as part of the reorganization of the rules.]

Official Note: Rule 1117 adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001; amended December 8, 2000, effective January 1, 2001; **amended** , 2012, **effective 2012.**

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments concerning trials in the defendant's absence published for comment at 42 Pa.B. 5733 (September 8, 2012).

REPORT

Proposed amendments to Pa.Rs.Crim.P. 571 and 602

Trial in Absentia

This proposal is intended to address the concern that the number of cases in which a defendant, after receiving notice of a court proceeding, fails to appear without cause thus leading to unnecessary and lengthy delays. These delays have resulted in witnesses becoming unavailable.

One recommended solution has been to make changes to the rules to clarify that, when a defendant who has received notice of a trial proceeding fails to appear for a court proceeding without cause, the court may conduct the court proceeding in the defendant's absence. Also, when the attorney for the Commonwealth requests that the trial be conducted in the defendant's absence, the judge would be required to conduct the trial.

The Sixth Amendment of the United States Constitution, Article 1, § 9 of the Pennsylvania Constitution, and Rule of Criminal Procedure 602(A) guarantee the right of the accused to be present in court at every stage of a criminal trial, including the empaneling of the jury, the return of the verdict, and the imposition of sentence. However, a defendant may waive this right, expressly or by his or her actions. *See, e.g. Illinois v. Allen*, 397 U.S. 337, 343 (1970) (“[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.”)

While the Commonwealth must prove by a preponderance of the evidence that the defendant waived the Constitutional right to be present, *Commonwealth v. Tizer*, 454 Pa.Super. 1, 684 A.2d 597 (1996), it is the defendant's burden to establish that his absence was “with cause.” *Commonwealth v. Bond*, 693 A.2d 220 (Pa.Super.1997), citing *Commonwealth v. Doleno*, 406 Pa.Super. 286, 594 A.2d 341 (1991).

This concept has been codified in Rule 602(A) since its adoption as then-Rule 1117(A) in 1967. A clarification was added to the Comment in 1998 following the decision in *Commonwealth v. Wilson*, 712 A.2d 735 (Pa. 1998), a case in which the defendant was deemed to have knowingly and voluntarily waived by his actions the right to be present when he fled the courthouse after the jury was impaneled.

However, when a defendant is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily, he is not absent “without cause” and therefore cannot be tried *in absentia*. *Commonwealth v. Bond*, 693 A.2d 220 (Pa.Super. 1997) (citing *Commonwealth v. Sullens*, 533 Pa. 99, 619 A.2d 1349 (1992)). *See also Commonwealth v. Hill*, 737 A.2d 255, (Pa.Super.,1999).

Therefore, in view of this caselaw, to provide further clarification in the rules, the proposed amendments would add the requirement to Rule 571 that, at arraignment, the defendant would be advised of the consequences, i.e. trial in absentia, for failing to appear for proceedings as required. This is comparable to the notice provided to the defendant under Rule 540 (Preliminary Arraignment) regarding the similar consequence to a defendant for failing to appear without cause for proceedings before an issuing authority.

Additionally Rule 602(A) would be amended to explicitly state that when a defendant fails to appear without cause, the judge may conduct the trial in the defendant's absence. However, if the judge determines that the defendant's absence was without cause and the Commonwealth requests that the trial proceed, the trial must be conducted.

[Pa.B. Doc. No. 12-1729. Filed for public inspection September 7, 2012, 9:00 a.m.]

Title 237—JUVENILE RULES

PART I. RULES

[237 PA. CODE CH. 1]

Order Amending Rule 161 of the Rules of Juvenile Court Procedure; No. 576 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 23rd day of August, 2012, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3), and an Explanatory Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rule 161 of the Rules of Juvenile Court Procedure are approved in the following form.

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

Annex A

TITLE 237. JUVENILE RULES

PART I. RULES

Subpart A. DELINQUENCY MATTERS

CHAPTER 1. GENERAL PROVISIONS

PART C. RECORDS

PART C(1). ACCESS TO JUVENILE RECORDS

Rule 161. Inspecting, Copying, and Disseminating Juvenile Probation Files.

A. *Inspecting and copying.* Except as provided in paragraph (C), juvenile probation files shall be open to inspection and/or copying only by:

- 1) the juvenile's attorney;
- 2) the attorney for the Commonwealth;
- 3) the **State Sexual [Offender] Offenders** Assessment Board; [or]

- 4) **the Juvenile Court Judges' Commission; or**
- 5) any other person, agency, or department by order of court.

* * * * *

Official Note: Rule 161 adopted May 21, 2012, effective August 1, 2012. **Amended August 23, 2012, effective immediately.**

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 161 published with the Court's Order at 42 Pa.B. 5734 (September 8, 2012).

EXPLANATORY REPORT August 2012

The Supreme Court of Pennsylvania has adopted the modifications to Rule 161. This change is effective August 23, 2012.

Modifications to Rule 161 correct the name of the State Sexual Offenders Assessment Board and allow the Juvenile Court Judges' Commission to inspect and/or copy juvenile probation files.

Pursuant to 42 Pa.C.S. §§ 6309, 6373, and 6374, inspecting and copying juvenile probation files is necessary for the Juvenile Court Judges' Commission to fulfill its legislative mandate.

[Pa.B. Doc. No. 12-1730. Filed for public inspection September 7, 2012, 9:00 a.m.]

PART I. RULES

[237 PA. CODE CHS. 1, 11 AND 18]

[Correction]

Proposed Amendments to Rules 1151, 1152, 1154 and 1800 and New Rules 153, 157, 183, 1153 and 1183

An error occurred in the document which appeared at 42 Pa.B. 5470 (August 25, 2012). The due date for comments was inadvertently omitted. The correct version of the introductory language is as follows. Annex A is accurate as printed.

The Juvenile Court Procedural Rules Committee is eliciting public comment on proposed modifications to Rules 1151, 1152, 1154 and 1800 and new Rules 153, 157, 183, 1153, and 1183 before it considers any recommendations to the Supreme Court of Pennsylvania. These proposed modifications establish the role and duties of attorneys in juvenile court proceedings.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenilerules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq.
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P. O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Monday, September 24, 2012.

*By the Juvenile Court
Procedural Rules Committee*

HONORABLE TODD A. HOOVER,
Chair

[Pa.B. Doc. No. 12-1633. Filed for public inspection August 24, 2012, 9:00 a.m.]