

THE COURTS

Title 225—RULES OF EVIDENCE

[225 PA. CODE ARTS. VIII AND IX]

Order Amending Rules 803(6), 803(8) and 803(10), Approving the Revision of the Comments to Rules 802, 803(7) and 803(9) and Adopting New Rule 902(13) of the Rules of Evidence; No. 715 Supreme Court Rules Doc.

Order

Per Curiam

And Now, this 9th day of November, 2016, upon the recommendation of the Committee on Rules of Evidence; the proposal having been published for public comment at 45 Pa.B. 6472 (November 7, 2015):

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

1) Pennsylvania Rules of Evidence 803(6), 803(8), and 803(10) are amended;

2) The Comments to Pennsylvania Rules of Evidence 802, 803(7), and 803(9) are revised; and

3) Pennsylvania Rule of Evidence 902(13) is adopted; in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective January 1, 2017.

Annex A

TITLE 225. RULES OF EVIDENCE

ARTICLE VIII. HEARSAY

Rule 802. The Rule Against Hearsay.

Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute.

Comment

* * * * *

Also, hearsay may be admitted pursuant to a state statute. Examples include:

1. A public record may be admitted pursuant to 42 Pa.C.S. § 6104. *See* Comment to Pa.R.E. 803(8) [**(Not Adopted)**].

* * * * *

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; Comment revised March 10, 2000, effective immediately; Comment revised March 29, 2001, effective April 1, 2001; rescinded and replaced January 17, 2013, effective March 18, 2013; **Comment revised February 19, 2014, effective April 1, 2014; Comment revised November 9, 2016, effective January 1, 2017.**

Committee Explanatory Reports:

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Final Report explaining the February 19, 2014 revision of the Comment published with the Court's Order at 44 Pa.B. 1309 (March 8, 2014).

Final Report explaining the November 9, 2016 revision of the Comment published with the Court's Order at 46 Pa.B. 7438 (November 19, 2016).

Rule 803(6). Records of a Regularly Conducted Activity.

(6) *Records of a Regularly Conducted Activity.* A record (which includes a memorandum, report, or data compilation in any form) of an act, event or condition if [,]:

(A) the record was made at or near the time by—or from information transmitted by—someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a “business”, which term includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) [**neither**] **the opponent does not show that** the source of information [**nor**] **or** other circumstances indicate a lack of trustworthiness.

Comment

Pa.R.E. 803(6) differs from F.R.E. 803(6). One difference is that Pa.R.E. 803(6) defines the term “record.” In the Federal Rules this definition appears at F.R.E. 101(b). Another difference is that Pa.R.E. 803(6) applies to records of an act, event or condition, but does not include opinions and diagnoses. This is consistent with prior Pennsylvania case law. *See Williams v. McClain*, [**513 Pa. 300**,] 520 A.2d 1374 (Pa. 1987); *Commonwealth v. DiGiacomo*, [**463 Pa. 449**,] 345 A.2d 605 (Pa. 1975). A third difference is that Pa.R.E. 803(6) allows the court to exclude business records that would otherwise qualify for exception to the hearsay rule if [**neither**] the “source of information [**nor**] **or** other circumstances indicate lack of trustworthiness.” The Federal Rule allows the court to do so only if [**neither**] **either** “the source of information [**nor**] **or** the method or circumstances of preparation indicate a lack of trustworthiness.”

If offered against a defendant in a criminal case, an entry in a record may be excluded if its admission would violate the defendant's constitutional right to confront the witnesses against him or her[. *See*], *see Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009); **however, forensic laboratory reports may be admissible in lieu of testimony by the person who performed the analysis or examination that is the subject of the report, see Pa.R.Crim.P. 574.**

Rule 803(7). Absence of a Record of a Regularly Conducted Activity (Not Adopted).

(7) Absence of a Record of a Regularly Conducted Activity (Not Adopted)

Comment

Pennsylvania has not adopted F.R.E. 803(7) which provides:

Evidence that a matter is not included in a record described in [**paragraph (6)**] [**F.R.E. 803(6)**] if:

- (A) the evidence is admitted to prove that the matter did not occur or exist; [**and**]
- (B) a record was regularly kept for a matter of that kind; and
- (C) [**neither**] the **opponent does not show that the possible source of the information [nor] or other circumstances indicate a lack of trustworthiness.**

Principles of logic and internal consistency have led Pennsylvania to reject this rule. The absence of an entry in a record is not hearsay, as defined in Pa.R.E. 801(c). Hence, it appears irrational to except it to the hearsay rule.

On analysis, absence of an entry in a business record is circumstantial evidence—it tends to prove something by implication, not assertion. Its admissibility is governed by principles of relevance, not hearsay. *See* Pa.R.E. 401, *et seq.*

Pennsylvania law is in accord with the object of F.R.E. 803(7), *i.e.*, to allow evidence of the absence of a record of an act, event, or condition to be introduced to prove the nonoccurrence or nonexistence thereof, if the matter was one which would ordinarily be recorded. *See Klein v. F.W. Woolworth Co.*, [**309 Pa. 320,**] 163 A. 532 (Pa. 1932) (absence of person’s name in personnel records admissible to prove that he was not an employee). *See also Stack v. Wapner*, [**244 Pa. Super. 278,**] 368 A.2d 292 (Pa. Super. 1976).

Rule 803(8). Public Records [**(Not Adopted)**].

(8) *Public Records [(Not Adopted)]*. A record of a public office if:

- (A) the record describes the facts of the action taken or matter observed;
- (B) the recording of this action or matter observed was an official public duty; and
- (C) the opponent does not show that the source of the information or other circumstances indicate a lack of trustworthiness.

Comment

[Pennsylvania has not adopted F.R.E. 803(8). An exception to the hearsay rule for public records is provided by 42 Pa.C.S. § 6104 which provides:

- (a) *General rule.*—A copy of a record of governmental action or inaction authenticated as provided in section 6103 (relating to proof of official records) shall be admissible as evidence that the governmental action or inaction disclosed therein was in fact taken or omitted.
- (b) *Existence of facts.*—A copy of a record authenticated as provided in section 6103 disclosing the existence or nonexistence of facts which

have been recorded pursuant to official duty or would have been so recorded had the facts existed shall be admissible as evidence of the existence or nonexistence of such facts, unless the sources of information or other circumstances indicate lack of trustworthiness.

Subsection (b) of the statute is limited to “facts.” It does not include opinions or diagnoses. This is consistent with Pa.R.E. 803(6), and Pennsylvania case law. *See* Comment to Pa.R.E. 803(6).]

Pa.R.E. 803(8) differs from F.R.E. 803(8) insofar as it reflects the hearsay exception for public records provided in 42 Pa.C.S. § 6104. *See* Rules 901(b)(7), 902(1)—(4) and 42 Pa.C.S. §§ 5328, 6103, and 6106 for authentication of public records.

Rule 803(9). Public Records of Vital Statistics (Not Adopted).

(9) Public Records of Vital Statistics (Not Adopted)

Comment

Pennsylvania has not adopted F.R.E. 803(9). Records of vital statistics are also records of a regularly conducted activity and may be excepted to the hearsay rule by Pa.R.E. 803(6). Records of vital statistics are public records and they may be excepted to the hearsay rule by 42 Pa.C.S. § 6104 [**(text quoted in Comment to Pa.R.E. 803(8))**].

* * * * *

Rule 803(10). [**Absence**] **Non-Existence** of a Public Record [**(Not Adopted)**].

(10) [*Absence of a Public Record (Not Adopted)*] **Non-Existence of a Public Record.** Testimony—or a certification—that a diligent search failed to disclose a public record if:

- (A) the testimony or certification is admitted to prove that
 - (i) the record does not exist; or
 - (ii) a matter did not occur or exist, if a public office regularly kept a record for a matter of that kind.
- (B) in a criminal case:
 - (i) the attorney for the Commonwealth who intends to offer a certification files and serves written notice of that intent upon the defendant’s attorney or, if unrepresented, the defendant, at least 20 days before trial; and
 - (ii) defendant’s attorney or, if unrepresented, the defendant, does not file and serve a written demand for testimony in lieu of the certification within 10 days of service of the notice.

Comment

[Pennsylvania has not adopted F.R.E. 803(10) for the same reasons that it did not adopt F.R.E. 803(7). *See* Comment to Pa.R.E. 803(7).

42 Pa.C.S. § 6104(b), provides for admissibility of evidence of the absence of an entry in a public record to prove the nonexistence of a fact:

- (b) *Existence of facts.*—A copy of a record authenticated as provided in section 6103 disclosing the..nonexistence of facts which..would have been..recorded had the facts existed shall be admissible as evidence of the..nonex-

istence of such facts, unless the sources of information or other circumstances indicate lack of trustworthiness.

Pennsylvania also has a complementary statute, 42 Pa.C.S. § 5328, entitled “Proof of Official Records,” which provides, in pertinent part:

(d) *Lack of record.*—A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in this section in the case of a domestic record, or complying with the requirements of this section for a summary in the case of a record in a foreign country, is admissible as evidence that the records contain no such record or entry.]

Pa.R.E. 803(10)(A) differs from F.R.E. 803(10)(A) insofar as it does not include “statements.” This rule is consistent with Pennsylvania law. See 42 Pa.C.S. §§ 5328(d) and 6103(b). See also Pa.R.E. 902(13) (authentication of certificate).

Pa.R.E. 803(10)(B) differs from F.R.E. 803(10)(B) insofar as it is made consistent with aspects of Pa.R.Crim.P. 574. Like the federal rule, this rule is intended to provide a mechanism for a defendant to exercise the constitutional right to confront the witnesses against him or her. See *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). Nothing in this evidentiary rule is intended to supersede procedural requirements within the Pennsylvania Rules of Criminal Procedure, see, e.g., Pa.R.Crim.P. 576 (Filing and Service by Parties), or limit the ability of the court to extend the time periods contained herein.

Official Note: Adopted May 8, 1998, effective October 1, 1998; Comment revised March 23, 1999, effective immediately; Comment revised March 10, 2000, effective immediately; Comment revised May 16, 2001, effective July 1, 2001; amended November 2, 2001, effective January 1, 2002; rescinded and replaced January 17, 2013, effective March 18, 2013; amended November 9, 2016, effective January 1, 2017.

Committee Explanatory Reports:

Final Report explaining the March 23, 1999 technical revisions to the Comment for paragraph 25 published with the Court’s Order at 29 Pa.B. 1714 (April 3, 1999).

Final Report explaining the March 10, 2000 revision of the Comment for paragraph 25 published with the Court’s Order at 30 Pa.B. 1641 (March 25, 2000).

Final Report explaining the May 16, 2001 revision of the Comment for paragraph 18 published with the Court’s Order at 31 Pa.B. 2789 (June 2, 2001).

Final Report explaining the November 2, 2001[,] amendments to paragraph 6 published with the Court’s Order at 31 Pa.B. 6384 (November 24, 2001).

Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the November 9, 2016 amendments to paragraph 6, 8, 10, and revision of the Comment for paragraph 7 and 9 published with the Court’s Order at 46 Pa.B. 7438 (November 19, 2016).

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION

Rule 902. Evidence That is Self-Authenticating.

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

* * * * *

(12) *Certified Foreign Records of a Regularly Conducted Activity.* In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification rather than complying with a statute or Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

(13) *Certificate of Non-Existence of a Public Record*—A certificate that a document was not recorded or filed in a public office as authorized by law if certified by the custodian or another person authorized to make the certificate.

Comment

* * * * *

Pa.R.E. 902(11) and (12) permit the authentication of domestic and foreign records of regularly conducted activity by verification or certification. Pa.R.E. 902(11) is similar to F.R.E. 902(11). The language of Pa.R.E. 902(11) differs from F.R.E. 902(11) in that it refers to Pa.R.C.P. No. 76 rather than to Federal law. Pa.R.E. 902(12) differs from F.R.E. 902(12) in that it requires compliance with a Pennsylvania statute rather than a Federal statute.

Pa.R.E. 902(13) has no counterpart in the Federal Rules. This rule provides for the self-authentication of a certificate of the non-existence of a public record, as provided in Pa.R.E. 803(10)(A).

Official Note: Adopted May 8, 1998, effective October 1, 1998; amended November 2, 2001, effective January 1, 2002; amended February 23, 2004, effective May 1, 2004; rescinded and replaced January 17, 2013, effective March 18, 2013; amended November 9, 2016, effective January 1, 2017.

Committee Explanatory Reports:

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Final Report explaining the January 17, 2013 rescission and replacement published with the Court’s Order at 43 Pa.B. 651 (February 2, 2013).

Final Report explaining the November 9, 2016 addition of paragraph (13) published with the Court’s Order at 46 Pa.B. 7438 (November 19, 2016).

FINAL REPORT¹

Amendment of Pa.R.E. 803(6), (8), (10) with Revision of the Comment to Pa.R.E. 802, 803(7), 803(9), and Adoption of Pa.R.E. 902(13)

On November 9, 2016, effective January 1, 2017, upon recommendation of the Committee on Rules of Evidence, the Court ordered the amendment of Pa.R.E. 803(6), (8), (10), together with the revision of the Comment to Pa.R.E. 802, 803(7), 803(9) and adoption of Pa.R.E. 902(13). As more fully set forth in the publication report

¹ The Committee’s Final 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 Committee’s explanatory Final Reports.

at 45 Pa.B. 6472 (November 7, 2015), the Committee recommended these changes to specify the burden shift to the opponent to show a lack of trustworthiness in Rule 803(6), to codify statutory requirements regarding the proof of public records and the absence thereof in Rules 803(8) and 803(10), respectively, and to provide for the authentication of a certificate of the non-existence of a public record in Rule 902. These changes necessitated corollary revisions to the Comment to Rule 802, Rule 803(7), and Rule 803(9).

[Pa.B. Doc. No. 16-2031. Filed for public inspection November 23, 2016, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4 AND 7]

Order Adopting New Rule 791 and Amending Rules 490 and 790 of the Rules of Criminal Procedure; No. 481 Criminal Procedural Rules Doc.

Order

Per Curiam

And Now, this 9th day of November, 2016, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 45 Pa.B. 5913 (October 3, 2015) and 46 Pa.B. 3637 (July 9, 2016), and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that new Pennsylvania Rule of Criminal Procedure 791 and the amendments to Pennsylvania Rules of Criminal Procedure 490 and 790 are adopted, in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective November 14, 2016.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART H. Summary Case Expungement Procedures

Rule 490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

(A) [*Petition for Expungement*] PETITION FOR EXPUNGEMENT

* * * * *

(3) [**A**] Unless the attorney for the Commonwealth agrees to waive this requirement, a current copy of the petitioner’s Pennsylvania State Police criminal [**record**] **history report** shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. **Absent a waiver by the attorney for the Commonwealth, the judge shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.**

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) [*Objections; Hearing*] OBJECTIONS; HEARING

* * * * *

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) [**The**] **Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.**

* * * * *

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal [**record**] **history report** to the petition. **The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition. The Commonwealth’s agreement to the waiver may be made orally or in writing, or averred in the petition.**

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.]

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

“Petition,” as used in this rule, is a “motion” for purposes of Rules 575, 576, and 577.

The “reason for expungement” in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, “criminal justice agency” includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, [**594 Pa. 346**,] 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, [**563 Pa. 248**,] 759 A.2d 1269 (Pa. 2000).

Official Note: Adopted September 22, 2010 effective in 90 days; amended November 9, 2016, effective November 14, 2016.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

Final Report explaining the November 9, 2016 amendment regarding the stay of expungement when the Commonwealth has consented and petition and order forms published for comment at 46 Pa.B. 7442 (November 26, 2016).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART C. Court Case Expungement Procedures

Rule 790. Procedure for Obtaining Expungement in Court Cases; Expungement Order.

(A) [Petition for Expungement] PETITION FOR EXPUNGEMENT

* * * * *

(3) [A] Unless the attorney for the Commonwealth agrees to waive this requirement, a current copy of the petitioner's Pennsylvania State Police criminal [record] history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. **Absent a waiver by the attorney for the Commonwealth, the judge shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.**

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) [Objections; Hearing] OBJECTIONS; HEARING

* * * * *

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) [The] Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

* * * * *

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in court cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under this rule.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary case expungement

procedures, and 35 P.S. § 780-119 for expungement procedures under [The] the Controlled Substance, Drug, Device, and Cosmetic Act.

This rule sets forth the only information that must be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal [record] history report to the petition. **The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition. The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition.**

An order for expungement under [The] the Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. § 780-119, also must include the information in paragraph (C).

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.]

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

"Petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

When a summons instead of an arrest warrant is issued pursuant to Rule 519, the date of the summons constitutes the "date of arrest" for purposes of paragraph (A)(2)(f).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, [594 Pa. 346,] 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, [563 Pa. 248,] 759 A.2d 1269 (Pa. 2000).

Official Note: Adopted September 22, 2010 effective in 90 days; amended November 9, 2016, effective November 14, 2016.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 790 providing the procedures for expungements in court cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

Final Report explaining the November 9, 2016 amendment regarding the stay of expungement when the Commonwealth has consented and petition and order forms published with the Court's Order at 46 Pa.B. 7442 (November 26, 2016).

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

Rule 791. Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access.

(A) PETITION FOR ORDER FOR LIMITED ACCESS

(1) Pursuant to 18 Pa.C.S. § 9122.1, an individual who satisfies the statutory requirements for obtaining an order for limited access may request an order that limits the dissemination of his or her criminal history record information by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas, magisterial district judge, or Philadelphia Municipal Court judge who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the court of common pleas docket number, magisterial district court docket number, or the Philadelphia Municipal Court docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be subject to limited access;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for the order for limited access;

(j) a statement that the case qualifies for a limited access order and none of the exceptions under 18 Pa.C.S. § 9122.1(b) are applicable; and

(k) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) Unless the attorney for the Commonwealth agrees to waive this requirement, a current copy of the petitioner's Pennsylvania State Police criminal history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. Absent a waiver by the attorney for the Commonwealth, the court shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney

for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge of the court of common pleas shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for limited access, the judge shall enter an order directing that the petitioner's criminal record history information that is subject to the limited access order shall not be disseminated to an individual, a noncriminal justice agency, or an internet website and that dissemination of the petitioner's criminal record history be limited only to a criminal justice agency or government agency as provided in 18 Pa.C.S. § 9122.1.

(a) The order shall contain the information required in paragraph (C).

(b) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the order for limited access is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for an order of limited access, the judge shall enter an order denying the petition and stating the reasons for the denial.

(6) If the judge grants the petition for an order of limited access, the petition and order are subject to limited access.

(C) ORDER

(1) Every order for limited access shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the judge of the court of common pleas, magisterial district judge, or Philadelphia Municipal Court judge who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint, if available;

(d) the court of common pleas docket number, magisterial district court docket number, or the Philadelphia Municipal Court docket number, whichever applies;

(e) the offense tracking number (OTN);

(f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be subject to limited access;

(h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(i) the reason(s) for the order for limited access;

(j) a statement that the case qualifies for a limited access order and none of the exceptions under 18 Pa.C.S. § 9122.1(b) are applicable; and

(k) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

Comment

Section 9122.1 of the Criminal Code provides for an order limiting dissemination of a record of a criminal conviction for a misdemeanor of the second degree, a misdemeanor of the third degree, or an ungraded misdemeanor which carries a maximum penalty of no more than two years only to a criminal justice agency or government agency. This rule, adopted in 2016, provides the procedures for requesting and ordering an order for limited access as provided in the statute.

This rule sets forth the only information that must be included in every petition and order for limited access.

The petition must be filed with the clerk of courts of the judicial district in which the charges that are the subject of the petition were disposed. The petition must be decided by a judge of the court of common pleas, even if the charges that are the subject of the petition were disposed by a magisterial district judge or Philadelphia Municipal Court judge.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal history report to the petition. The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition. The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition.

A form petition and form order for limited access has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

"Petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for the order for limited access" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, the defendant's freedom from arrest or prosecution for 10 years.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

When a summons instead of an arrest warrant is issued pursuant to Rule 519, the date of the summons constitutes the "date of arrest" for purposes of paragraph (A)(2)(f).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102. For the definition of "government agency," see 18 Pa.C.S. § 9121(b.1) and (b.2).

Nothing in this rule is intended to alter procedures regarding expungement. *See* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary case expungement procedures, Rule 790 for court case

expungement, and 35 P.S. § 780-119 for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

Official Note: Adopted November 9, 2016, effective November 14, 2016.

Committee Explanatory Reports:

Final Report explaining new Rule 791 providing the procedures for orders for limited access in court cases published with the Court's Order at 46 Pa.B. 7442 (November 26, 2016).

FINAL REPORT¹

Adoption of new Pa.R.Crim.P. 791 Amendments to Pa.Rs.Crim.P. 490 and 790

Contents of Expungement Petitions and Orders; Procedure for Limited Access Orders

On November 9, 2016, effective November 14, 2016, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule 791 (Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access) to provide procedures for the petition and order for limited access as provided in Act 5 of 2016, and amended Rules 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and 790 (Procedure For Obtaining Expungement In Court Cases; Expungement Order) to: (1) permit the Commonwealth to waive the requirement that a petitioner's Pennsylvania State Police criminal history record be attached to the petition; (2) eliminate the 30-day stay on the expungement order during which time the Commonwealth may appeal in a case in which the Commonwealth has consented to the expungement; and (3) add a cross-reference to the Comments of both rules to the webpage where the AOPC forms for expungement petitions and orders are found.

Expungement Rules 490 and 790

Beginning in early 2015, the Committee had considered suggested amendments to the procedures contained in the expungement rules, Rules 490 and 790. Some of these suggestions related to complaints that it was taking lengthy amounts of time for the Pennsylvania State Police (PSP) to provide criminal history reports required for the expungement petition. It was suggested that this requirement be eliminated or modified so that the PSP criminal history could be replaced with an alternative such as the AOPC web docket sheets. The Committee concluded that the PSP report represents the best available criminal history record information and that alternatives were either incomplete or inapt for purposes of determining criminal history. Therefore, the Committee concluded that this requirement should be retained in the expungement rules.

However, the Committee determined that there are jurisdictions in which very large numbers of expungement petitions are being filed and, as a result, protocols have been developed between petitioners and district attorney's offices to speed the process of expungement in a large majority of cases. In these jurisdictions, the district attorney's office will agree to waive the requirement for a PSP report because those offices have the means of

¹ The Committee's Final Reports 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 Committee's explanatory Final Reports.

alternative confirmation of a petitioner's criminal history. The Committee agreed that practices such as these ensure speedy resolution of meritorious petitions and should not be impeded. Therefore, Rules 490 and 790 have been amended to provide that the requirement for the attachment of the PSP report may be waived by the attorney for the Commonwealth. The Comment has been revised to state that the waiver may be made orally, in writing, or averred in the petition in order to permit flexibility in this waiver practice.

During the discussion of this point, it was reported that some judges refuse to order the PSP report as part of the petition even in those cases where the attorney for the Commonwealth has not waived the requirement. To clarify that the general rules requires a PSP report, language has been added to paragraph (A)(3) of Rules 490 and 790 stating, "Absent a waiver by the Attorney for the Commonwealth, the court shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed."

Another suggestion received by the Committee was to eliminate, in those cases in which the Commonwealth has filed a consent to the expungement, the 30-day stay on the expungement order provided in Rules 490(B)(4)(b) and 790(B)(4)(b) during which time the Commonwealth may appeal. The consent provisions in Rules 490(B)(1) and 790(B)(1) recognize that the Commonwealth may join in the desire to expedite an expungement. The Committee concluded that it is logical that the stay provision be curtailed where the Commonwealth has consented and a provision has been added to both rules precluding the stay in cases in which the Commonwealth has consented to the expungement.

Another suggestion the Committee considered was to require a single standard form for expungement petitions and orders to enable courts and agencies more uniformly process these requests. Rules 490 and 790 require specific contents for the petitions and orders but do not mandate a specific form. The Committee ultimately rejected the idea of requiring one particular form. There was a concern that a petition could be rejected solely on the basis of not being the approved form while still containing the other information necessary for an expungement. The Committee noted that the AOPC already had developed form petitions and orders for expungements under Rules 490 and 790 that are publically available on the UJS website. The Comments to Rules 490 and 790 already mention the AOPC forms. The Committee concluded that adding a cross-reference to the webpage where the AOPC forms for expungement petitions and orders are found would be helpful to encourage use of the standard forms. This direct cross-reference has been added to the Comments of both Rules 490 and 790.

New Rule 791 Regarding Limited Access Orders

While the Committee was conducting its review of expungement procedures, the Legislature enacted Act 5 of 2016.² The Act originated from a proposal for an expansion of the current expungement statute to cover second and third degree misdemeanors but was subsequently modified to introduce a new concept, a petition for limited access. The Act added new Section 9122.1 to the Crimes Code, 18 Pa.C.S. § 9122.1, that provides that a qualified defendant may petition for an order that would allow only certain entities access to criminal history record information, primarily criminal justice or other government agencies. The offenses in question are, with certain exceptions,

misdemeanors of the second and third degree and ungraded offenses carrying a maximum penalty of no more than two years. The Act also includes an amendment to Section 9122 of the Crimes Code, 18 Pa.C.S. § 9122, that provides that a court or the Administrative Office of Pennsylvania Courts may not disseminate criminal case information that is subject to "a court order for limited access as provided in Section 9122.1 (relating to order for limited access)."

Because the Act requires a petition to be filed with the court and subsequent order to be produced, there was a need for procedural rules implementing the Act. Given the history of the Act, the Committee concluded that the concept of limiting access to a conviction record is closely related to expungement and that the procedures should be similar. The procedures for obtaining a limited access order contained in new Rule 791 are derived from the court case expungement procedures in Rule 790. These new procedures are in a separate rule rather than an addition to the expungement rule since the nature and purpose of this procedure is different from expungement and placing it in the same rule as expungement procedures might have led to confusion. The new rule immediately follows the court case expungement procedures.

In terms of information required in the petition and order, the same concern, that of correctly identifying the criminal record, is applicable to limited access procedures as it is for expungement. Therefore, the required contents of the petition, contained in paragraph (A), and the contents of the order, contained in paragraph (C), are virtually identical to those required in Rule 790 for expungement petitions and orders.

Paragraph (A)(3) of Rule 791 contains the requirement that the Pennsylvania State Police criminal history report shall be attached to the petition. As discussed above, this is currently required by the expungement rules and the Committee concluded that, as in expungement procedures, the PSP report is the best means of verifying the defendant's criminal history. The Committee also concluded that the practice of waiving this requirement as is done in certain jurisdictions for expungements should be applied to limited access petitions as well. The provision regarding waiver of the PSP report have been incorporated into Rule 791(A)(3).

Paragraph (B) describes the procedures to be followed once the petition is filed. Section 9122.1(c) provides that the court notify the district attorney of the petition within 10 days of filing and the district attorney then has 30 days to respond. The current procedure for court case expungement in Rule 790 requires that the petition be served on the prosecution concurrent with filing. The Committee believes that simultaneous service is a more efficient procedure and one that would help in the prosecution reaching a quicker decision on whether to oppose the petition or not. This does not constitute a conflict between the Act and the rules, but rather is an additional procedural step being added to make the process more efficient and ensure proper and timely notice to the prosecution.

The Act allows 30 days for the prosecution to respond to a petition for limited access. Paragraph (B)(1) incorporates this time-limit for the prosecution's response and requires any response to be filed no later than 30 days following service of the petition.

The Act requires a petition to be filed requesting the issuance of the order, similar to expungement procedures. Section 9122.1 describes the effect of the order as permit-

² Act 5 of 2016 (originally SB 166 of 2015) was signed into law by the Governor on February 16, 2016. Act 5 will become effective on November 14, 2016.

ting the criminal record to be disseminated “only to a criminal justice agency or a governmental agency. . . .” However, the language that is added to Section 9121, which directly states the applicability of the statute to the courts and AOPC, uses the terminology that they “may not disseminate to an individual, a noncriminal justice agency or an internet website any information” relating to information that is subject to a limited access order. In the paragraph (B)(4), the terminology in both statutory selections is used to describe the order granting the petition so that there is no confusion concerning the order’s effects.

Rule 790 provides for a 30-day stay on any granted petition to provide time for the prosecution to appeal. A similar provision is included in Rule 791(B)(4)(b) when the petition for limited access is granted. However, this stay would be waived when the prosecution agrees to the petition. This is similar to the above provision for the expungement rules.

[Pa.B. Doc. No. 16-2032. Filed for public inspection November 23, 2016, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BEDFORD COUNTY

Local Rule 4007.1 and Local Rule 4008.1 of Judicial Administration; AD No. 4 for 2016

Order of Court

And now, November 2, 2016, the Court hereby adopts the following new Local Rules of Judicial Administration:

Rule 4007.1. Requests for Transcripts.

(A) All requests for transcripts shall be submitted on a form provided by the district court administrator which will include the current rates charged for transcripts.

(B) The request for transcript can be downloaded from the Bedford County website at bedfordcountypa.org or a copy can be obtained at the district court administrator’s office. For an ordinary transcript, the party requesting a full or partial transcript of a trial or other proceeding shall file the original request with the district court administrator. The requesting party shall also serve copies of the formal request to:

- (1) the judge presiding over the matter;
- (2) the court reporter or transcriptionist;
- (3) opposing counsel, but if not represented, the opposing party.

(C) Daily, expedited, same day or rough draft transcripts are not available except in extreme circumstances approved by the judge presiding over the matter.

(D) When a litigant requests a transcript,

(1) the litigant ordering a transcript shall make partial payment of 50% of the estimated transcript cost. Deposit payments are to be made payable to Bedford County and shall be delivered to the district court administrator. Payment by private parties shall be made by money order. Cash shall NOT be accepted by the district court administrator’s office.

(2) the court reporter or transcriptionist shall prepare the transcript upon direction of the district court administrator after approval by the judge presiding over the matter.

(3) the court reporter or transcriptionist shall notify the ordering party and the district court administrator of the completion of the transcript and deliver the original to the judge presiding over the matter for approval of the transcript.

(4) upon payment of any balance owed, the court reporter or transcriptionist shall deliver the original transcript to the district court administrator for filing with copies for distribution to the requesting party and any other parties who may have requested copies. Payment for the final balance shall be made payable to Bedford County and shall be delivered to the district court administrator who will forward it to the Finance Department. Copies of the transcript and filing of the original will be made upon payment in full.

(E) When a litigant requests a transcript, but cannot pay for the transcript because of alleged economic hardship, the court shall determine economic hardship pursuant to the procedure set forth in Rule 4008(B). In cases of economic hardship, where the matter is under appeal or a transcript is necessary to advance the litigation, the costs of procuring the transcript shall be waived or otherwise adjusted by the court. In cases of economic hardship where there is no appeal pending or there exists no obvious need for the transcript to advance the litigation, the requesting party must demonstrate reasonable need before the court shall waive or adjust the cost of obtaining the transcript.

(F) When a transcript is requested for which the court or county is responsible for the cost, the court reporter or transcriptionist shall prepare the transcript at the direction of the district court administrator after approval by the judge presiding over the matter who will determine the priority of the request.

Rule 4008.1. Transcript Costs Payable by a Requesting Party Other Than the Commonwealth or a Subdivision Thereof.

(A) Costs

(1) The costs payable by a requesting party, other than the Commonwealth or a subdivision thereof, for a transcript in an electronic format shall be:

- (a) for an ordinary transcript, \$2.50 per page;
- (b) for an expedited transcript, \$3.50 per page, if the court reporter is able to accommodate;
- (c) for a daily transcript, \$4.50 per page, if the court reporter is able to accommodate; and
- (d) for same day delivery, \$6.50 per page, if the court reporter is able to accommodate.

(2) When the transcript is prepared in bound paper format, the costs shall be in accordance with paragraph (1) relating to electronic format plus a surcharge of \$0.25 per page.

(B) Economic hardship—minimum standards

(1) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be waived for a litigant who

has been permitted by the court to proceed in forma pauperis or whose income is less than 125 percent of the poverty line as defined by the U.S. Department of Health and Human Services (HHS) poverty guidelines for the current year.

(2) Transcript costs for ordinary transcripts in matters under appeal or where the transcript is necessary to advance the litigation shall be reduced by one-half for a litigant whose income is less than 200 percent of the poverty line as defined by the HHS poverty guidelines for the current year.

(3) Transcript costs for ordinary transcripts in matters that are not subject to an appeal, where the transcript is not necessary to advance the litigation, may be waived at the court's discretion for parties who qualify for economic hardship under subdivision (B)(1) or (B)(2) and upon good cause shown.

(4) The application to waive all or a portion of costs for ordinary transcripts shall be supported by an affidavit substantially in the form required by Rule 240(h) of the Pennsylvania Rules of Civil Procedure. Such application should be prepared in the form of a Petition to Waive All or a Portion of the Transcript Costs and submitted with the request for transcript.

(C) *Assignment and allocation of transcripts costs*

(1) *Assignment of costs.* The requesting party, or party required by general rule to file a transcript, shall be responsible for the cost of the transcript. Costs shall not be assessed against any party for transcripts prepared at the initiation of the court.

(2) *Allocation of costs.* When more than one party requests the transcript, or are required by general rule to file the transcript, the cost shall be divided equally among the parties.

(D) *Copies of transcript*

A request for a copy of any transcript previously ordered, transcribed and filed of record shall be provided according to the following schedule:

- (1) \$0.75 per page bound, paper format; and,
- (2) \$0.50 per page electronic copy.

(E) *Additional Costs*

A trial judge may impose a reasonable surcharge in cases such as mass tort, medical malpractice or other unusually complex litigation, where there is a need for court reporters to significantly expand their dictionary. Such surcharges are at the discretion of the trial judge.

Said Local Rules of Judicial Administration shall be effective in the 57th Judicial District of the Commonwealth of Pennsylvania thirty (30) days after publication in the *Pennsylvania Bulletin* and upon publication on the Bedford County website.

By the Court

THOMAS S. LING,
President Judge

[Pa.B. Doc. No. 16-2033. Filed for public inspection November 23, 2016, 9:00 a.m.]

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 9th day of November 2016, Dauphin County Local Rule of Civil Procedure 1915.7 is amended as follows:

1915.7. Agreements and Consent Orders.

(a) Agreements and consent orders filed contemporaneously with the custody complaint:

1. When a custody agreement has been reached prior to the filing of the custody complaint, either party shall file with the Prothonotary the original signed custody agreement simultaneously with the original and one copy of the custody complaint.

2. The custody agreement shall be signed by all parties and the signatures shall be witnessed or notarized unless the agreement is reached before the Custody Conference Officer or the Court.

3. The custody agreement shall contain a proposed order of court with a distribution legend.

4. An administrative fee of \$150.00 shall be paid to the Prothonotary in accordance with Rule 1915.3(a) or (b).

5. The Prothonotary shall forward the original custody complaint and the signed and witnessed custody agreement to the Court Administrator's Office for review and assignment to the judge assigned to oversee custody matters.

6. Agreements shall contain a paragraph regarding the parties' responsibilities if one party seeks permission to relocate when such relocation will significantly impair the ability of a non-relocating party to exercise his or her custodial rights. The agreement shall contain the language and exhibit used by the Court posted at www.dauphincounty.org/government/Court-Departments/Self-Help-Center.

(b) Agreements and consent orders to modify existing custody orders:

1. When the parties agree to modify an existing custody order, the original agreement and consent order shall be filed with the Prothonotary. A petition for modification of a custody order should not be filed. There shall be no administrative fee paid to the Prothonotary for the modification of an existing custody order when no petition for modification of a custody order has been filed.

2. The custody agreement shall be signed by all parties and the signatures shall be witnessed or notarized.

3. The custody agreement shall contain a proposed order of court with a distribution legend.

4. The Prothonotary shall forward the original signed and witnessed custody agreement to the Court Administrator's Office for review and assignment to the judge assigned to oversee custody matters.

[5. Agreements shall not contain any provision relating to child support.

6.] 5. Agreements shall contain a paragraph regarding the parties' responsibilities if one party seeks permission to relocate when such relocation will significantly impair the ability of a non-relocating party to exercise his or her

custodial rights. The agreement shall contain the language and exhibit used by the Court [**and this may be obtained from the Court Administrator's Office**] posted at www.dauphincounty.org/government/Court-Departments/Self-Help-Center.

(c) Agreements reached after the complaint or petition for modification of a custody order is assigned to a Custody Conference Officer:

1. If at any time prior to the Custody Conference the parties are able to agree upon custody, the parties shall file with the Prothonotary the proposed custody agreement. The custody agreement shall be signed by all parties and the signatures shall be witnessed or notarized. The custody agreement shall contain a proposed order of court with a distribution legend.

2. The Prothonotary shall forward the original signed and witnessed custody agreement to the Court Administrator's Office for review and assignment to the judge assigned to oversee custody matters.

[3. Agreements shall not contain any provision relating to child support.

4.] 3. Agreements shall contain a paragraph regarding the parties' responsibilities if one party seeks permission to relocate when such relocation will significantly impair the ability of a non-relocating party to exercise his or her custodial rights. The agreement shall contain the language and exhibit used by the Court [**and this may be obtained from the Court Administrator's Office**] posted at www.dauphincounty.org/government/Court-Departments/Self-Help-Center.

(d) Agreements reached after a custody matter has been assigned to a judge:

1. If at any time prior to a conference or hearing before the assigned judge an agreement is reached regarding custody or visitation, the parties shall file with the Prothonotary the proposed agreement and consent order with a distribution legend. The agreement shall be signed by all parties and the signatures shall be witnessed or notarized. [**Agreements shall not contain any provision relating to child support.**] The Prothonotary shall forward the original signed and witnessed custody agreement to the Court Administrator's Office for delivery to the assigned judge. Upon presentation of the agreement and consent order, the Court may, in its discretion, enter an order without taking testimony.

2. The parties or children need not be present at a scheduled conference or hearing before a judge when an agreement has been reached prior to the conference or hearing unless the Court so directs.

3. Agreements shall contain a paragraph regarding the parties' responsibilities if one party seeks permission to relocate when such relocation will significantly impair the ability of a non-relocating party to exercise his or her custodial rights. The agreement shall contain the language and exhibit used by the Court [**and this may be obtained from the Court Administrator's Office**] posted at www.dauphincounty.org/government/Court-Departments/Self-Help-Center.

The amendments shall be effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD A. LEWIS,
President Judge

[Pa.B. Doc. No. 16-2034. Filed for public inspection November 23, 2016, 9:00 a.m.]

MERCER COUNTY

Amendment to Local Rule of Civil Procedure L208.3(a)(4)(b)(1); No. 2016-3084

Order

And Now, this 3rd day of November, 2016, *It Is Hereby Ordered* that Mercer County Local Rules of Court L208.3(a)(4)(b)(1) is amended as follows:

(1) Matters for Argument Court and all other matters to be scheduled by praecipe shall be scheduled by praecipe filed at the same time as the pleading and/or matters to be heard with the Prothonotary and shall be signed by counsel of record or an unrepresented party.

This Order shall become effective the 1st day of January, 2017.

By the Court

THOMAS R. DOBSON,
President Judge

[Pa.B. Doc. No. 16-2035. Filed for public inspection November 23, 2016, 9:00 a.m.]

MERCER COUNTY

Local Rules; No. MD 2016-3084

And Now, this 3rd day of November 2016, the Court Hereby *Approves, Adopts and Promulgates* Mercer County Local Rule of Civil Procedure L208.3(a)(4)(b)(1), effective thirty (30) days after the date of publication of this Order in the *Pennsylvania Bulletin*, pursuant to Rule 103(c) of the Pennsylvania Rules of Judicial Procedure.

It is further *Ordered and Directed* that the Court Administrator of Mercer County shall file one (1) certified copy of this Order with the Administrative Office of Pennsylvania Courts, furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, and 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 Offices of the Clerk of Courts and the Prothonotary of Mercer County. Upon request and payment of reasonable costs of reproduction and mailing, these offices shall furnish to any person a copy of these Rules. This Order shall be published in the *Mercer County Law Journal*.

By the Court

THOMAS R. DOBSON,
President Judge

[Pa.B. Doc. No. 16-2036. Filed for public inspection November 23, 2016, 9:00 a.m.]

WESTMORELAND COUNTY
Adopting New Rule W1915.12; No. 3 of 2016

Administrative Order of Court

And Now, this 4th day of November, 2016, *It Is Hereby Ordered* that new rule Westmoreland County Rule of Civil Procedure W1915.12, "Enforcement. Contempt" is adopted. This change is effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

RICHARD E. McCORMICK, Jr.,
President Judge

Rule W1915.12. Enforcement. Contempt.

(a) Upon filing of any motion or petition alleging violation of a custody or partial custody order, and seeking enforcement of the order, whether or not sanctions are requested, the Court shall direct the parties to appear before the Court for a 15 minute conference to conciliate the disagreement. All parties and their counsel shall appear for this conference.

(b) If the enforcement request is not disposed of at the conciliation conference, the Court shall schedule an additional hearing before the Court to address the alleged violation.

New rule 1915.12 adopted November, 2016, effective _____, 2016.

[Pa.B. Doc. No. 16-2037. Filed for public inspection November 23, 2016, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Transfer to Disability Inactive Status

Notice is hereby given that Walter Ignatius Willard (# 60859), who resides in New Orleans, LA, having been transferred to disability inactive status by Order of the Supreme Court of Delaware dated June 16, 2016, by Order of the Supreme Court of Pennsylvania dated November 9, 2016, Walter Ignatius Willard was transferred to disability inactive status in Pennsylvania, for an indefinite period and until further Order of the Court, to take effect immediately. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

JULIA M. FRANKSTON-MORRIS, Esq.,
Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 16-2038. Filed for public inspection November 23, 2016, 9:00 a.m.]