

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Proposed New Pa.R.Crim.P. 490.1

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the adoption of new Rule 490.1 (Procedures for Obtaining Expungement of Truancy Cases; Expungement Order) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us

All communications in reference to the proposal should be received by no later than Friday, May 5, 2017. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*By the Criminal Procedural
Rules Committee*

CHARLES A. EHRLICH,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES PART H. Summary Case Expungement Procedures Rule 490.1. Procedure for Obtaining Expungement of Truancy Cases; Expungement Order.

(A) PETITION FOR EXPUNGEMENT

(1) An individual who satisfies the requirements of 24 P.S. § 13-1333.3(h) for expungement of a summary truancy case may request expungement by filing a petition with the issuing authority by whom 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 issuing authority who accepted the guilty plea or heard the case;

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

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or 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 expunged;

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

(i) that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(j) 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) A copy of the petitioner's high school diploma, a Commonwealth secondary school diploma or another department of education-approved equivalent, or documentation that the petitioner is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 shall be attached to the petition.

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

(B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the affiant or 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 issuing authority, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the affiant or 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 issuing authority 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 issuing authority promptly shall enter an order granting or denying the petition.

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

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

(b) Except when the affiant or 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.

(5) If the issuing authority denies the petition for expungement, the issuing authority shall enter an order denying the petition and stating the reasons for the denial.

(C) ORDER

(1) Every order for expungement 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 issuing authority who accepted the guilty plea or heard the case;

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

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or 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 expunged;

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

(i) a statement that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(j) 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 issuing authority shall serve a certified copy of the Order to each criminal justice agency identified in the Order.

Comment

This rule, adopted in 2017, provides the procedures for requesting and ordering expungement in summary truancy cases as provided in 24 P.S. § 13-1333.3(h). If the issuing authority finds the petitioner has satisfied the statutory conditions, the issuing authority shall grant the petition.

See Rule 490 for the procedures for expungement of summary cases other than truancy. 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.

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.

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*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

Official Note: Adopted , 2017, effective , 2017.

Committee Explanatory Reports:

Report explaining proposed new Rule 490.1 regarding procedures for expungement in truancy cases published for comment at 47 Pa.B. 1851 (April 1, 2017).

REPORT

Proposed New Pa.R.Crim.P. 490.1

Expungement of Summary Truancy Cases

The Committee recently considered a suggestion to make changes to the summary expungement rule, Rule 490, to accommodate the provisions of Act 138 of 2016. Act 138 of 2016 (hereafter "the Act") amends truancy protocols in Pennsylvania. The Act, in 24 P.S. § 13-1333.3, provides that a child convicted of the summary offense of truancy may request a court to expunge his/her record if certain conditions are met. These conditions are that the child has earned a high school diploma, a Commonwealth secondary school diploma or another Department of Education-approved equivalent, or is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 and has satisfied any sentence including payment of fines and costs. It should be noted that this expungement procedure applies only to a summary conviction of a truant child not a summary conviction of a parent or guardian.

The intent of the Act is to provide a relatively easy method of expungement of a summary truancy conviction when a defendant has accomplished the requirements of the Act, primarily completion of high school or the equivalent. The Committee agreed that the Criminal Rules should be amended to incorporate the procedures that address this particular form of expungement. In addition, the Committee noted that some of the general summary expungement procedures in Rule 490 would be unnecessary for "streamlined" truancy expungement. The Committee concluded that, rather than incorporating the new procedures into the current rule, it would be clearer to place the procedures for truancy expungement in a separate rule that would be numbered Rule 490.1, immediately following the general summary expungement procedures in Rule 490.

The organization of new Rule 490.1 would mirror Rule 490. This would include provisions regarding the petition for expungement, provisions for review and objection by the Commonwealth, and provisions for the expungement order, if granted. Under the general summary expungement procedures of Rule 490, when a defendant is eligible for expungement, he or she must file a petition with the clerk of courts and the determination on expungement is made by a common pleas judge. Under the Act, the expungement petition may be filed and adjudicated by a "court," which is defined as "a magisterial district court, the Philadelphia Municipal Court or a Court of Common Pleas." The Committee concluded that, given the intended expedited nature of truancy expungement, the petitioner should be allowed to file in any of the courts provided in the Act. This is provided in paragraph (A)(1) of the proposed new rule that provides that the petition may be filed with "the issuing authority by whom the charges were disposed."

Paragraph (A)(2) would provide the contents of the petition. The contents are taken from requirements of

Rule 490. Most of the information in the Rule 490 petition is required to ensure that the proper case is identified and disposed. The same concern would be present in truancy cases and so the information required in the petition under Rule 490.1 is the same as in Rule 490. The one exception in contents is the requirement for a Pennsylvania State Police criminal history to be attached. Since the Act conditions expungement of truancy offenses only on completion of high school or equivalent and satisfaction of the conditions of the original case, criminal history did not appear to be as relevant here as in other summary cases. The Committee concluded that this requirement should not be carried over into proposed Rule 490.1.

The proposed new rule would also provide for notice to the Commonwealth with the opportunity to respond. The Committee discussed, given the intended expedited nature of truancy expungement, whether this should be included at all. The Committee concluded that the truancy conviction still remains a summary conviction and it would be inappropriate to deny the Commonwealth the opportunity to review and object prior to expungement of this criminal record. Therefore, paragraph (B) would provide notice and response procedures identical to those in Rule 490.

Paragraph (C) would contain the provisions related to the order granting the expungement. The contents of the order also are identical to those of Rule 490 for other summary expungement orders. As with the contents of the petition, the same concept, *i.e.* correct identification of the case, are at work here.

The Committee also concluded that the Act did not intend that the adjudicating court have unlimited discretion in denying the petition. Rather, the Committee concluded that if the petitioner provides confirmation of having completed the educational and other requirements stated in the act, the court must grant the petition. Therefore, the Comment would state that, "If the judge finds the petitioner has satisfied the statutory conditions, the judge shall grant the petition."

[Pa.B. Doc. No. 17-527. Filed for public inspection March 31, 2017, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BUCKS COUNTY

Youth Center Supervisors, RSU Supervisors, SSU Supervisor, Treatment Supervisor Clothing Maintenance Allowance Shift Differential; Administrative Order No. 76

Order

And Now, this 7th day of March, 2017, in order to permit the execution of the Clothing Maintenance Allowance and Shift Differential for Supervisors, RSU Supervisors, SSU Supervisor and Treatment Supervisor in the Youth Center, it is hereby *Ordered* and *Decreed* that:

The County shall furnish a Four Hundred and Fifty dollar (\$450.00) clothing maintenance allowance for each employee. Employees hired after January 1st in any

contract year will receive a prorated amount based upon the number of full months of employment. The clothing maintenance allowance will be paid in two (2) equal amounts during the months of June and December.

Shift Differential shall be as follows: one dollar and twenty five cents (\$1.25) per hour.

This Order shall replace the Memorandum of Understanding between the Commissioners and Youth Center Supervisors, identified as Unit 71, and will take effect January 1, 2017.

By the Court

JEFFREY L. FINLEY,
President Judge

[Pa.B. Doc. No. 17-528. Filed for public inspection March 31, 2017, 9:00 a.m.]

SCHUYLKILL COUNTY

Local Rule of Judicial Administration 1907.2 Constable Review Board; AD 23-2017

Order of Court

And Now, this 16th day of March, 2017, at 9:45 a.m., the Court hereby adopts the following Local Rule of Judicial Administration 1907.2 for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective 30 days after publication in the *Pennsylvania Bulletin*.

The Schuylkill County District Court Administrator is Ordered and Directed to do the following:

1) File one (1) copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts via email to adminrules@pacourts.us.

2) File two (2) paper copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3) Publish a copy of the local rule on the Schuylkill County Court website at www.co.schuylkill.pa.us.

4) Incorporate the local rule into the set of local rules on www.co.schuylkill.pa.us within thirty (30) days after publication in the *Pennsylvania Bulletin*.

5) File one (1) copy of the local rule in the Office of the Schuylkill County Clerk of Courts for public inspection and copying.

6) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Rule of Judicial Administration 1907.2

Rule 1907.2. Constable Review Board.

A. Board Established

(1) A Constable Review Board is hereby established to assist in resolving any disputes related to a constable's performance of judicial duties.

(2) The Constable Review Board shall be appointed by the President Judge and shall include:

- (a) A Judge of the Court of Common Pleas,
- (b) A Magisterial District Judge,
- (c) The Criminal Court Administrator,
- (d) A certified constable and an alternate to be used in case of conflict, and
- (e) The County Controller or his/her designee.

B. Definitions

(1) *Constable*. Any elected or appointed constable or deputy constable engaged to perform judicial duties for the Court of Common Pleas or any magisterial district within the Twenty-First Judicial District.

(2) *Judicial Duties*. Services performed pursuant to 44 Pa.C.S.A. §§ 7161—7161.1 and further defined by the Pennsylvania Unified Judicial System's Constable Policies, Procedures and Standards of Conduct published by the Administrative Office of the Pennsylvania Courts.

C. Jurisdiction

(1) Nothing in this rule shall be interpreted to preclude any person or surety of a constable from filing a verified petition with the Court of Common Pleas in accordance with 44 Pa.C.S. § 7172 alleging that a constable is incompetent to discharge official duties.

(2) The Constable Review Board's jurisdiction extends only to complaints regarding constables in the performance of judicial duties.

(3) Consistent with the Pennsylvania Unified Judicial System's Constable Policies, Procedures and Standards of Conduct published by the Administrative Office of Pennsylvania Courts, the Constable Review Board may receive complaints by or against constables regarding:

- (a) The performance of judicial duties;
- (b) Financial/payment disputes; or
- (c) Other matters relating to a constable's judicial duties.

D. Authority

(1) The Constable Review Board may make recommendations to the President Judge regarding the judiciary's continued use of a constable's services.

(2) If a complaint involves a financial dispute or other matter within the control of the Schuylkill County Commissioners, the Constable Review Board may make recommendations to the Commissioners regarding payment for services.

(3) The Constable Review Board shall forward any findings of suspected criminal activity to the Schuylkill County District Attorney.

(4) The President Judge remains the ultimate authority with regard to a constable's performance of judicial duties within the Twenty-First Judicial District. The President Judge may, at any time, place a temporary moratorium on the use of a particular constable within the Judicial District pending review and recommendation of the Constable Review Board on a pending complaint.

E. Filing a Complaint

(1) A complaint shall be in writing, signed by the complainant, and contain a statement of the alleged misconduct, financial dispute, or other matter related to the performance of judicial duties.

(2) The complaint may be submitted by mail or fax to:

Criminal Court Administrator
Schuylkill County Courthouse
401 North Second Street
Pottsville PA 17901
Phone: 570-628-1334
Fax: 570-628-1108

(3) The written complaint shall substantially conform to the form set forth in Section H hereof. Upon request, the Criminal Court Administrator shall provide a complaint form to the prospective complainant.

(4) Upon receipt of a complaint, the Criminal Court Administrator shall:

- (a) Note the date of receipt of the complaint;
- (b) Provide the President Judge a copy of the complaint; and
- (c) Create a file to contain the complaint, any written response, documents, statements, or other written communications related to the complaint.

(5) Within three (3) business days, the Criminal Court Administrator shall forward a copy of the complaint to the respondent constable, if the complaint is against a constable, or to any other respondent, if the complaint is by a constable. Along with the complaint, the Criminal Court Administrator shall provide the constable/respondent with written notice that he or she must provide the Criminal Court Administrator a written response to the complaint within twenty (20) days from the date of such notice, unless the President Judge orders that the response be filed sooner. The notice shall further provide that should the constable/respondent fail to timely respond, the recommendation of the Board and decision of the President Judge may be based on the available information.

F. Constable Review Board Action

(1) Upon receipt of a written response, or the expiration of the time for responding, whichever is sooner, the Criminal Court Administrator shall forthwith forward a copy of the file, including the complaint, the response, and all file documentation, to each member of the Constable Review Board for review.

(2) Within thirty (30) days of receipt of the file material:

(a) If the Board finds that the issues raised by the complaint fall outside the jurisdiction or authority of the Board, it shall forward the file to the President Judge and provide the President Judge and the complainant with a written statement of the reasons for its findings;

(b) With complaints involving payment disputes or complaints regarding constables in the performance of judicial duties, the Board shall interview the complainant, the constable, and all other relevant witnesses. Should the Board as a whole find it impractical to timely complete the interviews and its recommendation, it may request the President Judge to extend the time for doing so or to permit the interviews to be conducted by three members of the Board to be selected by the President Judge, or both.

(c) In all other matters, the Board may conduct interviews or make a recommendation to the President Judge based exclusively upon the complaint, response, and all other written documentation submitted.

G. *President Judge Action*

(1) Within thirty (30) days of receipt of the Constable Review Board's recommendation, the President Judge

shall provide written notice to the complainant and respondent of the Court's decision.

H. *Form of Complaint*

CONSTABLE REVIEW BOARD FOR THE 21ST JUDICIAL DISTRICT COMPLAINT

A. COMPLAINANT:

Your Name: _____

Address: _____

Telephone #: _____

B. CONSTABLE COMPLAINED OF:

Name: _____

Contact Info: _____

(if known) _____

C. STATEMENT OF COMPLAINT: PLEASE BE SPECIFIC, relevant dates, names of witnesses and any relevant documents. Explain the conduct or practice complained of, the date(s), names of witnesses, and attach copies of relevant documents. You may attach as many additional pages as necessary to fully set forth your complaint.

Date

Signature

The Complaint may be faxed or mailed to the following:

Criminal Court Administrator
Schuylkill County Courthouse
401 North Second Street
Pottsville PA 17901
Fax: 570-628-1108

[Pa.B. Doc. No. 17-529. Filed for public inspection March 31, 2017, 9:00 a.m.]
