

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1910]

Proposed Amendment of Pa.R.Civ.P. 1910.29

The Domestic Relations Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.Civ.P. 1910.29 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

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

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All communications in reference to the proposal should be received by August 30, 2023. 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 Domestic Relations
Procedural Rules Committee*

DAVID S. POLLOCK, Esq.,
Chair

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1910. ACTIONS FOR SUPPORT

Rule 1910.29. Evidence in Support Matters.

[(a) *Record Hearing.* Except as provided in this rule, the Pennsylvania Rules of Evidence shall be followed in all record hearings conducted in an action for support. A verified petition, affidavit or document, and any document incorporated by reference therein which would not be excluded under the hearsay rule if given in person shall be admitted into evidence if (1) at least 20 days' written notice of the intention to offer them into evidence was given to the adverse party accompanied by a copy of each document to be offered; (2) the other party does not object to their admission into evidence; and (3) the evidence is offered under oath by the party or witness. An objection must be in writing and served on the proponent of the document within 10 days of the date of service of the notice of intention to offer the evidence. When an objection is properly made, the Pennsylvania Rules of Evidence shall apply to determine the admissibility of the document into evidence.

(b) *Medical Evidence.*

(1) *Non-Record Proceeding.* In a non-record hearing, if a physician has determined that a medical condition affects a party's ability to earn income and that party obtains a Physician Verification Form from the domestic relations section, has it completed by the party's physician and submits it at the conference, it may be considered by the conference officer. If a party is receiving Social Security disability or workers' compensation benefits, the party shall submit copies of the disability or workers' compensation determination in lieu of the Physician Verification Form.

(2) *Record Proceeding.* If the matter proceeds to a record hearing and the party wishes to introduce the completed Physician Verification Form into evidence, he or she must serve the form on the other party not later than 20 days after the conference. The other party may file and serve an objection to the introduction of the form within 10 days of the date of service. If an objection is made and the physician testifies, the trier of fact shall have the discretion to allocate the costs of the physician's testimony between the parties. If there is no objection, the form may be admitted into evidence without the testimony of the physician. In the event that the record hearing is held sooner than 30 days after the conference, the trier of fact may provide appropriate relief, such as granting a continuance to the objecting party.

(3) The Physician Verification Form shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS
OF _____ COUNTY

Member Name:

Docket Number:

PACSES Case Number:

Other State ID Number:

PHYSICIAN VERIFICATION FORM TO BE COMPLETED BY THE TREATING PHYSICIAN

Physician's name: _____

Physician's license number: _____

Nature of patient's sickness or injury: _____

Date of first treatment: _____

Date of most recent treatment: _____

Frequency of treatments: _____

Medication: _____

The patient has had a medical condition that affects his or her ability to earn income from: _____ through _____

If the patient is unable to work, when should the patient be able to return to work? Will there be limitations? _____

Remarks: _____

Date: _____

Signature of Treating Physician: _____

Physician's address: _____

Physician's telephone number: _____

I authorize my physician to release the above information to the _____ County Domestic Relations Section.

Patient's signature: _____ Date: _____]

(This is entirely new text.)

(Editor's Note: The following text is proposed to be added and is printed in regular type to enhance readability.)

(a) *Record Hearing.* Except as provided in this rule, the court shall follow the Pennsylvania Rules of Evidence in a record hearing conducted in an action.

(b) *Documentary Evidence.*

(1) The court shall admit into evidence statements contained in a verified petition, affidavit, document, or a document incorporated by reference that would not be excluded under the hearsay rule if the declarant testified in person, when:

- (i) at least 20 days written notice of the intention to offer the document into evidence was given to the adverse party accompanied by the document to be offered;
- (ii) the other party does not object to the document's admission into evidence; and
- (iii) the party offers the evidence under oath.

(2) A party objecting under subdivision (b)(1)(ii) shall state the objection in writing and serve on the document's proponent within 10 days of the date of service of the notice of intention to offer the evidence.

(3) When a party properly objects, the Pennsylvania Rules of Evidence shall apply to determine the document's admissibility.

(c) *Medical Evidence.*

(1) *Definition.* For the purpose of this rule, an "advance practice provider" shall mean a licensed physician, physician's assistant, or nurse practitioner.

(2) *Non-Record Proceeding.*

- (i) A conference officer may consider a party's medical condition when:
 - (A) an advanced practice provider has determined the medical condition affects a party's ability to earn income;
 - (B) the party's advanced practice provider has completed an Advanced Practice Provider's Verification Form, which shall substantially be the same as subdivision (d); and
 - (C) the party submits the completed form at the conference.
- (ii) If a party is receiving Social Security disability or Workers' Compensation benefits, the party shall submit the disability or Workers' Compensation determination in lieu of the Advanced Practice Provider's Verification Form.

(3) *Record Proceeding.*

- (i) Prior to the record hearing, if a party plans to introduce a completed Advanced Practice Provider's Verification Form into evidence, the party shall serve the completed form on the other party not later than 20 days after the conference.
- (ii) The other party may file and serve a written objection to the completed form's introduction within 10 days of the date of service.

(A) If an objection is made and the advanced practice provider testifies, the trier-of-fact shall have the discretion to allocate the cost of the advanced practice provider’s testimony between the parties.

(B) If there is no objection, the trier-of-fact may admit the completed form into evidence without the advanced practice provider’s testimony.

(iii) If the record hearing is held sooner than 30 days after the conference, the trier-of-fact may provide appropriate relief, including granting a continuance to the objecting party.

(d) *Advanced Practice Provider’s Verification Form.* The Advanced Practice Provider’s Verification Form shall be substantially in the following form:

IN THE COURT OF COMMON PLEAS OF _____ COUNTY

Member Name:
Docket Number:
PACSES Case Number:
Other State ID Number:

TO BE COMPLETED BY AN ADVANCED PRACTICE PROVIDER

Provider’s name: _____

Provider’s license number: _____

Nature of patient’s sickness or injury: _____

Date of first treatment: _____

Date of most recent treatment: _____

Frequency of treatments: _____

Medication: _____

The patient has had a medical condition that affects his or her ability to earn income from: _____ through _____

- Fully Disabled
- Partially Disabled
- Able to Work Light Duty Full-Time
- Able to Work Part-Time (_____ hours/day)

If the patient is unable to work, when should the patient be able to return to work? Will there be limitations? _____

Describe limitations on employability: _____

Date: _____

Signature of Treating Provider: _____

Provider’s address: _____

Provider’s telephone number: _____

I authorize my provider to release the above information to the _____ County Domestic Relations Section.

Patient’s signature: _____ Date: _____

[EXPLANATORY COMMENT—2000]

Comment: This rule is based on 23 Pa.C.S. § 4342(f). [creates a hearsay exception in support actions to permit a verified petition, affidavit or document and a document incorporated by reference in any of them to be admitted into evidence if it would not otherwise be excluded as hearsay if given in person and it is admitted under oath by a party or witness to the support action. Rule 1910.29 requires that notice of the documents to be admitted be given to the other party prior to the hearing. It also sets forth the procedures for raising an objection to the admission of those documents.

If the requisite 20-day notice is given and there is no objection, the document must be admitted into evidence under this rule and 23 Pa.C.S. § 4342(f). In the event an objection is timely made, the rules of evidence apply to determine the document’s ultimate admissibility.

Rule 1910.29] This rule is not intended to affect 23 Pa.C.S. § 4342(g) and (h) relating to **the** admissibility of payment records, billing statements, and bills for genetic testing and prenatal and postnatal health care of the mother and child. Those documents are admissible into evidence without advance notice for the limited purposes [**which are expressly**] set forth in those statutory provisions.

SUPREME COURT OF PENNSYLVANIA
DOMESTIC RELATIONS PROCEDURAL RULES
COMMITTEE

PUBLICATION REPORT

The Domestic Relations Procedural Rules Committee (Committee) is proposing the amendment of the Pennsylvania Rule of Civil Procedure 1910.29. This rule pertains to evidence in support matters and provides a Physician Verification Form for use in providing information to the court on a party's medical condition.

23 Pa.C.S. § 4342 provides for expedited procedures for the determination and enforcement of support. 23 Pa.C.S. § 4342(f) creates a hearsay exception in support actions to permit statements contained in a verified petition, affidavit, document, or a document incorporated by reference in any of them, to be admitted into evidence, provided it would not otherwise be excluded as hearsay if the declarant testified in person, i.e., hearsay within hearsay. Rule 1910.29 expands this exception to permit a Physician's Verification Form to be used for reporting a party's medical condition in lieu of the physician appearing as a witness and testifying. The rule requires that notice of the documents to be admitted be given to the other party prior to the hearing and it sets forth the procedures for raising an objection to the admission of those documents and any statements contained therein.

Initially, the Committee received correspondence requesting revisions to the Physician Verification Form. Concerns related to the current form include its failure to request a description of the limitations on employability and whether the condition affects a party's ability to work light duty, full-time, or part-time. Parties use the form in cases where an appropriate order is being established, as well as to defend against a contempt charge. Without the ability to assess the extent of the disability, the form may act as a shield to one party to be held to a reasonable earning capacity or found to have the ability to pay support.

To address these concerns, the Committee proposes that the form be revised to include the option to select "Fully Disabled," "Partially Disabled," "Able to Work Light Duty Full-Time," or "Able to Work Part-time," as well as the ability to indicate the number of hours per day the individual can work.

Concerns were also expressed about the requirement that the form be completed only by a physician. This concern is related to cost and limited access to physicians in some areas, particularly in rural areas. Accordingly, the Committee proposes that, in lieu of only allowing physicians to complete the form, "advanced practice providers," including nurse practitioners and physician assistants, should be permitted to complete the form. As a result, it is proposed that the term "physician" be replaced by the name "provider" and the name of the form be revised to "Advanced Practice Provider Verification Form." It is also proposed that "advanced practice provider" be defined in subdivision (c)(1).

Additional revisions were requested to make the form more "user-friendly" for practitioners and self-represented parties. The Committee proposes that the structure of the rule be revised stylistically to a bullet point format, for ease of reading. It is also proposed that the Explanatory Comment be renamed as a Comment and commentary reiterative of the rule text and statute be removed.

The Committee invites comments, concerns, and suggestions regarding this rulemaking proposal.

[Pa.B. Doc. No. 23-841. Filed for public inspection June 30, 2023, 9:00 a.m.]

Title 234—RULES OF
CRIMINAL PROCEDURE

[234 PA. CODE CHS. 3, 4 AND 7]

Order Adopting Rules 490.2 and 790.2 and Amending Rules 320, 490, 790, and 791 of the Pennsylvania Rules of Criminal Procedure, No. 547 Criminal Procedural Rules Docket

Order

Per Curiam

And Now, this 14th day of June, 2023, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published for public comment at 51 Pa.B. 5587 (September 4, 2021):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 490.2 and 790.2 of the Pennsylvania Rules of Criminal Procedure are adopted in the attached form and Rules 320, 490, 790, and 791 of the Pennsylvania Rules of Criminal Procedure are amended in the attached form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective April 1, 2024.

Additions to the rule are shown in bold and are underlined.

Deletions from the rule are shown in bold and brackets.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 3. ACCELERATED REHABILITATIVE DISPOSITION (ARD)

PART B. Court Cases

Rule 320. **Procedure for** Expungement Upon Successful Completion of ARD Program.

* * * * *

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART H. Summary Case Expungement Procedures

(Editor's Note: Rule 490 as printed in 234 Pa. Code reads "Official Note" rather than "Note.")

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

[A]a [PETITION FOR EXPUNGEMENT] *Petition for Expungement.*

(1) Except as provided in Rule 320 (**Procedure for Expungement Upon Successful Completion of ARD Program**) and Rule 490.2 (**Procedure for Expungement of Acquittals in Summary Cases; Expungement Order**), an individual who satisfies the requirements of 18 Pa.C.S. § 9122 and 18 Pa.C.S. § 9123(a) for expungement of a summary case may request expungement 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]i) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

([b]ii) the name and address of the issuing authority who accepted the guilty plea or heard the case;

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

([d]iv) the magisterial district court number;

([e]v) the docket number;

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

([g]vii) the specific charges, as they appear on the charging document, to be expunged;

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

([i]ix) the reason(s) for expungement; and

([j]x) 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 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]b) [OBJECTIONS; HEARING] 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] **subdivision [(B)(1)] (b)(1)**, the judge 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 expungement, the judge shall enter an order directing expungement.

([a]i) The order shall contain the information required in [paragraph] **subdivision [(C)] (c)**.

([b]ii) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to [paragraph] **subdivision [(B)(1)] (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 judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

([C]c) [ORDER] Order.

(1) Every order for expungement shall include:

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

([b]ii) the name and address of the issuing authority who accepted the guilty plea or heard the case;

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

([d]iv) the magisterial district court number;

([e]v) the docket number;

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

([g]vii) the specific charges, as they appear on the charging document, to be expunged;

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

([i]ix) the reason(s) for expungement; and

([j]x) 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 [O]order to each criminal justice agency identified in the court's [O]order **and to all other entities required to be notified by statute.**

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.

This rule was amended in 2019 to clarify that the procedures under this rule are to be used for summary convictions for offenses committed when the defendant is under 18 years of age. This would include any summary

conviction that also has been certified to juvenile court pursuant to Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1. In such cases, two expungement petitions would need to be filed: one would be filed pursuant to Pa.R.J.C.P. 170 to expunge the record of the juvenile proceeding and the second would be filed pursuant to Pa.R.Crim.P. 490 to expunge the underlying summary conviction.

See also Rule 320 [**for the procedures for expungement following the successful completion of an ARD program in a summary case and**] (**Procedure for Expungement Upon Successful Completion of ARD Program**); Rule 790 [**for court case expungement procedures.**] (**Procedure for Obtaining Expungement in Court Cases; Expungement Order**); Rule 791 (**Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access**); 35 P.S. § 780-119 **for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act; and for expungement procedures in cases satisfying the requirements of 18 Pa.C.S. § 9122(a)(4) regarding complete acquittals, see Rule 490.2 (Procedure for Expungement of Acquittals in Summary Cases; Expungement Order) and Rule 790.2 (Procedure for Expungement of Acquittals in Court Cases; Expungement Order).**

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

[**Paragraph**] **Subdivision [(A)(3)] (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 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**] **subdivisions [(A)(2)(i)] (a)(2)(ix)** and [**(C)(1)(i)] (c)(1)(ix)** 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.

Subdivision (c)(2) requires the clerk of courts to serve each criminal justice agency identified in the court's order as well as all other entities required to be notified by statute. See, e.g., 18 Pa.C.S. § 9122(a)(3) (requiring the court to order the expungement of all administrative records of the Department of Transportation relating to a conviction pursuant to 18 Pa.C.S. § 6308 when that conviction is ordered to be expunged).

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).

[*Note: Adopted September 22, 2010 effective in 90 days; amended November 1, 2016, effective November 14, 2016 amended March 1, 2019, effective July 1, 2019.*]

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. 5737 (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. 7439 (November 26, 2016).

Final Report explaining the March 1, 2019 amendment regarding expungement of summary offenses when the defendant is under 18 years of age published with the Court's Order at 49 Pa.B. 1121 (March 16, 2019).]

The following text is entirely new.

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

Rule 490.2. Procedure for Expungement of Acquittals in Summary Cases; Expungement Order.

(a) *Notice of Acquittal.*

(1) In any summary case in which the defendant has been acquitted of all charges as provided in 18 Pa.C.S. § 9122(a)(4), the issuing authority shall promptly, but no later than 20 days after acquittal, notify either the clerk of courts of the judicial district in which the charges were disposed or, if the charges were disposed of in the Philadelphia Municipal Court, the clerk of Municipal Court.

(2) Within 10 days of receipt of the notification from the issuing authority, the clerk of courts or the clerk of Municipal Court, whichever applies, shall notify the defendant, defense counsel, if any, and the attorney for the Commonwealth that the case shall be ordered expunged, unless an objection is filed by the attorney for the Commonwealth.

(3) Thereafter, the case shall proceed as provided in subdivisions (b) and (c) of this rule.

(4) The notice issued by the clerk of courts or by the clerk of Municipal Court under subdivision (a)(2) shall set forth:

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

(ii) the name and address of the issuing authority who heard the case;

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

(iv) the magisterial district court number, if applicable;

(v) the docket number;

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

(vii) the specific charges, as they appear on the charging document, to be expunged; and

(viii) a statement that all the charges resulted in a not guilty finding.

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

(b) *Objections; Hearing.*

(1) Within 60 days after service of the notice, the attorney for the Commonwealth shall file a consent or objection to the expungement or take no action. The attorney for the Commonwealth's consent or objection shall be filed in the court of common pleas or the Philadelphia Municipal Court, whichever applies, and copies shall be served on the defendant and defense counsel, if any.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 60-day period in subdivision (b)(1), the court of common pleas or the Philadelphia Municipal Court, whichever applies, shall grant the expungement or, when an objection is filed, shall schedule a hearing unless waived by the parties and the court.

(3) At the hearing, if any, the defendant and the attorney for the Commonwealth shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the expungement.

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

(i) The order shall contain the information required in subdivision (c).

(ii) Except when the attorney for the Commonwealth has filed a consent pursuant to subdivision (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 judge denies the expungement, the judge shall enter an order denying the expungement and stating the reasons for the denial.

(6) The judge shall issue the order granting or denying the expungement in writing, with copies to the defendant, defense counsel, if any, and the attorney for the Commonwealth, and shall make the order a part of the docket.

(c) *Order.*

(1) Every order for expungement shall include:

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

(ii) the name and address of the issuing authority who heard the case;

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

(iv) the magisterial district court number, if applicable;

(v) the docket number;

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

(vii) the specific charges, as they appear on the charging document, to be expunged;

(viii) a statement that all the charges resulted in a not guilty finding; and

(ix) 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 and to all other entities required to be notified by statute.

Comment:

This rule was adopted in 2023 to provide procedures for the expungement of summary cases that resulted in acquittals as provided in 18 Pa.C.S. § 9122(a)(4).

For the ability of the parties, with the consent of the court, to waive a hearing pursuant to subdivision (b)(2), see 18 Pa.C.S. § 9122(a)(4)(iii).

See also Rule 320 (Procedure for Expungement Upon Successful Completion of ARD Program); Rule 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order); Rule 790 (Procedure for Obtaining Expungement in Court Cases; Expungement Order); Rule 791 (Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access); 35 P.S. § 780-119 for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act; and for expungement procedures in court cases satisfying the requirements of 18 Pa.C.S. § 9122(a)(4) regarding complete acquittals, see Rule 790.2 (Procedure for Expungement of Acquittals in Court Cases; Expungement Order).

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART C. Court Case Expungement Procedures

(Editor's Note: Rule 790 as printed in 234 Pa. Code reads "Official Note" rather than "Note.")

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

[A]a [PETITION FOR EXPUNGEMENT] *Petition for Expungement.*

(1) Except as provided in Rule 320 (**Procedure for Expungement Upon Successful Completion of ARD Program**), **Rule 790.2 (Procedure for Expungement of Acquittals in Court Cases; Expungement Order)**, and 35 P.S. § 780-119, an individual who satisfies the requirements for expungement may request expungement 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]i the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

[b]ii the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case;

[c]iii the name and mailing address of the affiant as shown on the complaint, if available;

[d]iv the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;

[e]v the offense tracking number (OTN);

[f]vi the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

([g]vii) the specific charges, as they appear on the charging document, to be expunged;

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

([i]ix) the reason(s) for expungement; and

([j]x) 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 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]b [OBJECTIONS; HEARING] *Objections; Hearing.*

(1) Within 60 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 60-day period in [paragraph] **subdivision [(B)(1)] (b)(1)**, the judge 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 expungement, the judge shall enter an order directing expungement.

([a]i) The order shall contain the information required in [paragraph] **subdivision [(C)] (c)**.

([b]ii) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to [paragraph] **subdivision [(B)(1)] (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 judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

[C]c [ORDER] *Order.*

(1) Every order for expungement shall include:

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

([b]ii) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case;

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

([d]iv) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies;

([e]v) the offense tracking number (OTN);

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

([g]vii) the specific charges, as they appear on the charging document, to be expunged;

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

([i]ix) the reason(s) for expungement; and

([j]x) 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 [O]rder to each criminal justice agency identified in the court's [O]rder **and to all other entities required to be notified by statute.**

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,] (Procedure for Expungement Upon Successful Completion of ARD Program); Rule 490 [for summary case expungement procedures,] (Procedure for Obtaining Expungement in Summary Cases; Expungement Order); Rule 791 (Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access); [and] 35 P.S. § 780-119 for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act; and for expungement procedures in cases satisfying the requirements of 18 Pa.C.S. § 9122(a)(4) regarding complete acquittals, see Rule 490.2 (Procedure for Expungement of Acquittals in Summary Cases; Expungement Order) and Rule 790.2 (Procedure for Expungement of Acquittals in Court Cases; Expungement Order).**

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

[Paragraph] **Subdivision [(A)(3)] (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.

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

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] subdivisions [(A)(2)(i)] (a)(2)(ix)** and [**(C)(1)(i)] (c)(1)(ix)** 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] subdivision [(A)(2)(f)] (a)(2)(vi)**.

Subdivision (c)(2) requires the clerk of courts to serve each criminal justice agency identified in the court's order as well as all other entities required to be notified by statute. See, e.g., 18 Pa.C.S. § 9122(a)(3) (requiring the court to order the expungement of all administrative records of the Department of Transportation relating to a conviction pursuant to 18 Pa.C.S. § 6308 when that conviction is ordered to be expunged).

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).

[**Note: Adopted September 22, 2010 effective in 90 days; amended November 1, 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. 5737 (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. 7439 (November 26, 2016).]

The following text is entirely new.

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

Rule 790.2. Procedure for Expungement of Acquittals in Court Cases; Expungement Order.

(a) *Notice of Acquittal.*

(1) In any court case in which the defendant has been acquitted of all charges as provided in 18 Pa.C.S. § 9122(a)(4), within 10 days of the entry of the acquittal, the clerk of courts of the judicial district in which the charges were disposed or, if the charges were disposed of in the Philadelphia Municipal Court, the clerk of Municipal Court shall notify the defendant, defense counsel, if any, and the attorney for the Commonwealth that the case shall be ordered expunged, unless an objection is filed by the attorney for the Commonwealth.

(2) Thereafter, the case shall proceed as provided in subdivision (b) and (c) of this rule.

(3) The notice issued by the clerk of courts or by the clerk of Municipal Court under subdivision (a)(1) shall set forth:

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

(ii) the name and address of the judge of the court of common pleas or of the Philadelphia Municipal Court, whichever applies, who heard the case;

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

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

(v) the offense tracking number (OTN);

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

(vii) the specific charges, as they appear on the charging document, to be expunged; and

(viii) a statement that all the charges resulted in a not guilty finding.

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

(b) *Objections; Hearing.*

(1) Within 60 days after service of the notice, the attorney for the Commonwealth shall file a consent or objection to the expungement or take no action. The attorney for the Commonwealth's consent or objection shall be filed in the court of common pleas or the Philadelphia Municipal Court, whichever applies, and copies shall be served on the defendant and defense counsel, if any.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 60-day period in subdivision (b)(1), the court of common pleas or the Philadelphia Municipal Court, whichever applies, shall grant the expungement or, when an objection is filed, shall schedule a hearing unless waived by the parties and the court.

(3) At the hearing, if any, the defendant and the attorney for the Commonwealth shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the expungement.

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

(i) The order shall contain the information required in subdivision (c).

(ii) Except when the attorney for the Commonwealth has filed a consent pursuant to subdivision (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 judge denies the expungement, the judge shall enter an order denying the expungement and stating the reasons for the denial.

(6) The judge shall issue the order granting or denying the expungement in writing, with copies to the defendant, defense counsel, if any, and the attorney for the Commonwealth, and shall make the order a part of the docket.

(c) *Order.*

(1) Every order for expungement shall include:

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

(ii) the name and address of the judge of the court of common pleas or of the Philadelphia Municipal Court, whichever applies, who heard the case;

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

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

(v) the offense tracking number (OTN);

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

(vii) the specific charges, as they appear on the charging document, to be expunged;

(viii) a statement that all the charges resulted in a not guilty finding; and

(ix) 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 and to all other entities required to be notified by statute.

Comment:

This rule was adopted in 2023 to provide procedures for the expungement of court cases that resulted in acquittals as provided in 18 Pa.C.S. § 9122(a)(4).

For the ability of the parties, with the consent of the court, to waive a hearing pursuant to subdivision (b)(2), see 18 Pa.C.S. § 9122(a)(4)(iii).

See also Rule 320 (Procedure for Expungement Upon Successful Completion of ARD Program); Rule 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order); Rule 790 (Procedure for Obtaining Expungement in Court Cases; Expungement Order); Rule 791 (Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access); 35 P.S. § 780-119 for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act; and for expungement procedures in summary cases satisfying the requirements of 18 Pa.C.S. § 9122(a)(4) regarding complete

acquittals, see Rule 490.2 (Procedure for Expungement of Acquittals in Summary Cases; Expungement Order).

(*Editor's Note:* Rule 791 as printed in 234 Pa. Code reads "Official Note" rather than "Note.")

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

[A]a [PETITION FOR ORDER FOR LIMITED ACCESS] *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]i the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

[b]ii 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]iii the name and mailing address of the affiant as shown on the complaint, if available;

[d]iv the court of common pleas docket number, magisterial district court docket number, or the Philadelphia Municipal Court docket number, whichever applies;

[e]v the offense tracking number (OTN);

[f]vi the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

[g]vii the specific charges, as they appear on the charging document, to be subject to limited access;

[h]viii the disposition, **whether the fee previously authorized to carry out the limited access and clean slate limited access provisions has been paid**, and, if the sentence includes [a fine, costs, or] restitution, whether the amount due **for restitution** has been paid;

[i]ix the reason(s) for the order for limited access;

[j]x 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]xi 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]b [OBJECTIONS; HEARING] 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] subdivision [(B)(1)] (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]i The order shall contain the information required in **[paragraph] subdivision [(C)] (c)**.

[b]ii Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to **[paragraph] subdivision [(B)(1)] (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]c [ORDER] Order.

(1) Every order for limited access shall include:

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

[b]ii 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]iii the name and mailing address of the affiant as shown on the complaint, if available;

[d]iv the court of common pleas docket number, magisterial district court docket number, or the Philadelphia Municipal Court docket number, whichever applies;

[e]v the offense tracking number (OTN);

[f]vi the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

[g]vii the specific charges, as they appear on the charging document, to be subject to limited access;

[h]viii the disposition, **whether the fee previously authorized to carry out the limited access and clean slate limited access provisions has been paid**, and, if the sentence includes **[a fine, costs, or] restitution**, whether the amount due **for restitution** has been paid;

[i]ix the reason(s) for the order for limited access;

[j]x 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]xi 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 **[O]order to each criminal justice agency identified in the court's [O]order and to all other entities required to be notified by statute.**

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] Subdivision [(A)(3)] (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**] **subdivisions** [(A)(2)(i)] **(a)(2)(ix)** and [(C)(1)(i)] **(c)(1)(ix)** 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**] **subdivision** [(A)(2)(f)] **(a)(2)(vi)**.

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, (Procedure for Expungement Upon Successful Completion of ARD Program);** Rule 490 [**for summary case expungement procedures, (Procedure for Obtaining Expungement in Summary Cases; Expungement Order);** Rule 790 [**for court case expungement, (Procedure for Obtaining Expungement in Court Cases; Expungement Order);** [and] 35 P.S. § 780-119 for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act; and for expungement procedures in cases satisfying the requirements of 18 Pa.C.S. § 9122(a)(4) regarding complete acquittals, *see* Rule 490.2 (Procedure for Expungement of Acquittals in Summary Cases; Expungement Order) and Rule 790.2 (Procedure for Expungement of Acquittals in Court Cases; Expungement Order).

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).

[**Note: Adopted November 1, 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. 7439 (November 26, 2016).]

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE**

ADOPTION REPORT

**Adoption of Pa.R.Crim.P. 490.2 and 790.2
Amendment of Pa.R.Crim.P. 320, 490, 790, and 791**

On June 14, 2023, the Supreme Court adopted Pennsylvania Rules of Criminal Procedure 490.2 and 790.2 (providing procedures for expungement of complete acquittals), and amended Pennsylvania Rules of Criminal Procedure 320, 490, 790, and 791. The Criminal Procedural Rules Committee has prepared this Adoption Report describing the rulemaking process. An Adoption Report should not be confused with Comments to the rules. *See* Pa.R.J.A. 103, cmt. The statements contained herein are those of the Committee, not the Court.

In October of 2020, 18 Pa.C.S. § 9122 was amended to provide for the “automatic” expungement of criminal history record information when a judicial determination has been made that a person has been acquitted of an offense. *See* Act of Oct. 29, 2020, P.L. 718, No. 83 (hereinafter “Act 83”). As amended, § 9122(a)(4) requires a court to notify the parties that the case will be automatically expunged. After being notified, the Commonwealth has 60 days to object to the automatic expungement. Such objection is limited to whether a full acquittal occurred in the case. If an objection is raised, a hearing must be held.

In addition to amending 18 Pa.C.S. § 9122, Act 83 amended 18 Pa.C.S. § 9122.1 to require an individual seeking a limited access order to pay both restitution and a previously authorized fee before a court is permitted to grant the petition for limited access. Section 9122.1 was also amended to remove the requirement that a petitioner must meet all financial obligations of a sentence prior to a court granting the petition.

Preliminarily, “automatic” and “automatically,” as used in 18 Pa.C.S. § 9122, indicate that expungement occurs without the need for a petition from the person acquitted when the requirements of the statute have been met. Automatic expungement does not, however, apply to a partial acquittal. Rather, it requires the person to have been “acquitted of all charges based on the same conduct or arising from the same criminal episode following a trial and a verdict of not guilty.” 18 Pa.C.S. § 9122(a)(4).

To implement Act 83, the Court has adopted Rules 490.2 and 790.2 and amended Rules 320, 490, 790, and 791 to accommodate the new rules. Rule 490.2 provides for expungement of a summary charge after acquittal, while Rule 790.2 provides for expungement in a court case after a complete acquittal. Together, Rules 490.2 and 790.2 provide the necessary procedures for expungement when “a judicial determination has been made that a person is acquitted of an offense.” 18 Pa.C.S. § 9122(a)(4).

For a rule providing for the automatic expungement of an acquittal in a summary case, the Committee first examined whether the expungement should be ordered by the magisterial district judge who decided the matter or by a common pleas judge. As Act 83 is silent on the question, the Committee reviewed prior policy in this area and noted that (1) there is no rule-governed motions practice in Chapter 4 (Procedures in Summary Cases) of the Rules of Criminal Procedure; and (2) the magisterial district courts are not courts of record. Additionally, common pleas judges have greater familiarity and experience with processing expungements—currently, all but truancy expungements are handled at the court of common pleas. Act 83 also requires that the Commonwealth be given an opportunity to object and that the court, upon the filing of an objection, conduct a hearing. *See* 18 Pa.C.S. § 9122(a)(4)(ii)—(a)(4)(iii). The closer proximity of district attorneys, courts of common pleas, and clerks of courts would increase the efficiency of this process. Consequently, the Committee concluded that expungements of summary acquittals should be entrusted to judges of the courts of common pleas. One exception is expungements of summary offenses in Philadelphia Municipal Court. Where an individual is acquitted of a summary offense in Municipal Court, the subsequent expungement would be processed by the Municipal Court as provided for by the new rule.

To implement the above, subdivision (a)(1) of Rule 490.2 requires the issuing authority to promptly “notify either the clerk of courts of the judicial district in which the

charges were disposed or, if the charges were disposed of in the Philadelphia Municipal Court, the clerk of Municipal Court” of the acquittal. The clerk of courts or the clerk of Municipal Court then has ten days to provide notice to the defendant, defense counsel, if any, and the attorney for the Commonwealth pursuant to subdivision (a)(2). The required contents of that notice are enumerated in subdivision (a)(4). Subdivision (b)(1) of the new rule then provides the Commonwealth with 60 days to file an objection in the court of common pleas or in Philadelphia Municipal Court, whichever applies. Upon receipt of the Commonwealth’s response, or no later than fourteen days after the 60 days has expired, the court shall either grant the expungement or schedule a hearing pursuant to subdivision (b)(2). If the Commonwealth does not object, the court must grant the expungement, and the order for expungement must contain the information enumerated in subdivision (c)(1). If the judge denies the expungement, subdivision (b)(5) requires the judge to enter an order stating the reasons for the denial. In either case, the judge shall issue the order granting or denying expungement in writing pursuant to subdivision (b)(6). Subdivision (c)(2) then directs the clerk of courts to serve a copy of the order on “each criminal justice agency identified in the court’s order and to all other entities required to be notified by statute.”

Rule 790.2 closely mirrors Rule 490.2 and implements procedures for the automatic expungement of criminal history record information when an individual is acquitted in a court case. *See* Pa.R.Crim.P. 103 (Definitions) (“Court Case is a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.”). However, unlike Rule 490.2, the judge who presided over the acquittal is not required to provide notice to the clerk of courts of the acquittal as the clerk enters the acquittal on the docket as a matter of course, making notification unnecessary. Like Rule 490.2, if the acquittal occurs in Philadelphia Municipal Court, the expungement would be processed by the Municipal Court. In all other respects, Rule 790.2 complements Rule 490.2.

The addition of Rules 490.2 and 790.2 to the Rules of Criminal Procedure require corollary amendments to Rules 490 and 790. Rule 490 (Procedure for Obtaining Expungement in Summary Cases; Expungement Order) and Rule 790 (Procedure for Obtaining Expungement in Court Cases; Expungement Order) provide for the filing of a petition for expungement. The procedures outlined in those rules are not applicable where there has been a complete acquittal. Thus, subdivision (a)(1) of Rule 490 has been amended to except from that rule all expungements that fall within the ambit of Rule 490.2, and Rule 790.2 has been amended to except from that rule all expungements that fall within the ambit of Rule 790.2. Additionally, subdivision (c)(2) of both Rule 490 and Rule 790 have been amended to require the clerk of courts to serve a copy of the order “to all other entities required to be notified by statute.” The Comments to those rules have been amended to explain:

Subdivision (c)(2) requires the clerk of courts to serve each criminal justice agency identified in the court’s order as well as all other entities required to be notified by statute. *See, e.g.*, 18 Pa.C.S. § 9122(a)(3) (requiring the expungement of all administrative records of the Department of Transportation relating to a conviction pursuant to 18 Pa.C.S. § 6308 when that conviction is ordered to be expunged).

The Comments to Rule 490 and Rule 790 have also been amended to provide references to all other expungement rules.

Finally, in light of the amendment of 18 Pa.C.S. § 9122.1, Rule 791 (Procedure for Obtaining Order for Limited Access in Court Cases; Order for Limited Access) has been amended to reflect the change in financial obligations that must be satisfied prior to a limited access order being granted by the court. As amended, § 9122.1 prohibits a court from entering an order “unless the person who filed the petition, upon payment of all court-ordered restitution, also paid the fee previously authorized to carry out the limited access and clean slate limited access provisions.” 18 Pa.C.S. § 9122.1(a). The requirement that a defendant complete “each court-ordered financial obligation of the sentence” was deleted from § 9122.1(a) by Act 83. Thus, pursuant to the amendment of § 9122.1(a), a defendant needs to pay restitution and the fee imposed to cover the costs of the limited access and clean slate provisions, but not any other court-ordered financial obligations of the sentence, such as a fine or court costs, prior to any petition for limited access being granted. These changes are reflected in the amendments to subdivisions (a)(2)(viii) and (c)(1)(viii) of Rule 791.

Two final amendments have been adopted to create uniformity among the expungement rules: subdivision (c)(2) of Rule 791 has been amended to require the clerk to serve a copy of the order “to all other entities required to be notified by statute”; and the title of Rule 320 has been amended from “Expungement Upon Successful Completion of ARD Program” to “Procedure for Expungement Upon Successful Completion of ARD Program.”

The Committee published this proposal for comment. *See* 51 Pa.B. 5587 (September 4, 2021). Several commenters asked that the notice provisions of Rules 490.2 and 790.2 be amended to protect immigrant defendants “who may need access to records of acquittals in the future for non-criminal matters.” According to these commenters, immigrant defendants applying for permanent residence, naturalization, or asylum may be required to provide proof of any criminal dispositions. To ensure immigrant defendants are provided the necessary proof, these commenters requested that a notice of expungement advising the defendant to get a certified copy of the case disposition as soon as possible for future immigration proceedings be sent to the defendant, defense counsel, and the attorney for the Commonwealth.

The Committee determined that this concern would best be addressed by requiring documentation of an acquittal to be provided to the acquitted defendant at the time of the acquittal rather than at the time of expungement. While requiring documentation to be provided at the time of an acquittal was beyond the scope of this proposal, such a requirement may be the subject of future rulemaking.

Another commenter requested that subdivision (a)(1) of Rule 490.2 provide a more specific timeframe within which an issuing authority must notify the clerk of courts or the clerk of Municipal Court. As published, subdivision (a)(1) of Rule 490.2 would require “the issuing authority [to] promptly . . . notify either the clerk of courts . . . or . . . the clerk of Municipal Court.” The commenter noted that all other agencies are required to act within a specified time. In response, the Committee revised subdivision (a)(1) of Rule 490.2 to require the notice to be given “promptly, but no later than 20 days after acquittal[.]” The Committee believed that 20 days provided adequate

time for the issuing authority to provide the required notice without introducing unnecessary delay.

The following commentary has been removed from Rule 490:

NOTE: Adopted September 22, 2010 effective in 90 days; amended November 1, 2016, effective November 14, 2016 amended March 1, 2019, effective July 1, 2019.

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. 5737 (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. 7439 (November 26, 2016).

Final Report explaining the March 1, 2019 amendment regarding expungement of summary offenses when the defendant is under 18 years of age published with the Court's Order at 49 Pa.B. 1121 (March 16, 2019).

The following commentary has been removed from Rule 790:

NOTE: Adopted September 22, 2010 effective in 90 days; amended November 1, 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. 5737 (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. 7439 (November 26, 2016).

The following commentary has been removed from Rule 791:

NOTE: Adopted November 1, 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. 7439 (November 26, 2016).

These new rules and amendments become effective April 1, 2024.

[Pa.B. Doc. No. 23-842. Filed for public inspection June 30, 2023, 9:00 a.m.]

Title 255—LOCAL COURT RULES

ADAMS COUNTY

Amendment of Rules of Criminal Procedure 705.1(D); Administrative Order Number 5B of 2022

Order of Court

And Now, this 13th day of June, 2023, after review of Administrative Order 5A of 2022 by the State Procedural Rules Committee, *It Is Ordered* that Administrative Or-

der 5A of 2022, issued on August 10, 2022, is *Herby Vacated* and the following new Order is issued. Rule 705.1(D) of the Adams County Rules of Criminal Procedure shall be amended as to the Sex Offender Rules of Supervision and Computer Use/Internet Capable Device and Internet Access Agreement sections only, as follows:

Rule 705.1. Conditions of Probation, Intermediate Punishment and Parole.

(D) Conditions:

Until changed by rule or administrative order, conditions of probation, parole and intermediate punishment are established in accordance with the following forms:

* * * * *

SEX OFFENDER RULES OF SUPERVISION

1. You shall obtain a sex offender evaluation from a certified sex offender treatment provider and follow through with [**the**] **all expectations and** recommendations resulting therefrom and shall assume all responsibility for the costs of any required program. You shall provide written authorization for release of confidential information between your **certified** sex offender treatment provider and the Adams County Department of Probation Services.

2. You shall submit to regular polygraph examinations as directed by the treatment provider. You are responsible for the cost of this service.

3. If your offense involved a minor, you shall not frequent places where children congregate including but not limited to, [**parks,**] playgrounds, swimming pools, schools, malls, arcades. You shall not engage in any activity **or employment** that will bring you in close contact with children [**(This rule may be waived by your probation officer for school attendance purposes if you are a juvenile.) unless you receive permission from your Probation Officer.**]

4. If your offense involved a minor, you are not permitted to reside with minor children without permission from the Court; **this includes children within your family. You will not have any contact with minor children without permission from your Probation Officer, or a Court Order. If supervised contact is permitted, the individual who provides the supervision must first be approved by your Probation Officer and the treatment provider.**

5. You will not possess pornographic materials of any kind, including photographs, movies, or computer generated images depicting or showing nudity. [**You may not possess images of your victim.**] You shall not enter adult book stores, adult entertainment clubs, massage parlors or any other establishment, that promote sexual material or objectifies males or females.

6. You may not possess images of your victim(s) in any format.

7. You will sign and agree to the conditions of the Sex Offender Internet Capable Device and Internet Access Agreement.

[**6.**] **8.** For monitoring purposes, you are subject to search of cell phone, camera/**video recorder**, computer, gaming device and their accessories[**that**], **and any other device capable of internet access. These items may be viewed and/or scanned at any time to detect pornographic or sexually explicit content. You will agree to have a technology monitoring device or program**

installed on any computer[s] or device you are authorized to possess or to which you have access [to and you will sign and agree to the conditions of Sex Offender Computer Use and Internet Access Agreement] if your certified sex offender treatment provider recommends or if there is a violation of any of these sex offender conditions or the Sex Offender Internet Capable Device and Internet Access Agreement.

[7.] **9.** You will comply with all sex offender registration and statutory requirements if applicable. **You must provide fingerprints, palm prints, DNA sample and photograph, pursuant to 42 Pa.C.S.A. 9799.23(a)(4).**

[8.] **10.** You shall obtain permission from a Probation Officer before leaving the [**County of Adams and you must secure travel permission before leaving the] Commonwealth of PA.**

[9.] **11.** You shall not receive mail at any other location than your home residence address without your Probation Officers approval.

12. You are required to sign "Release of Information" forms as directed.

SEX OFFENDER SUPERVISION PROGRAM

[**COMPUTER USE] INTERNET CAPABLE DEVICE AND INTERNET ACCESS AGREEMENT**

I understand I am permitted to have access to internet capable devices and internet unless my certified sex offender treatment provider recommends restricting access.

[**In being granted the privilege of using a computer while under Sex Offender Supervision and/or having access to the Internet,] I hereby agree to the following:**

1. I will [**provide a written justification for my possession and use of a computer, Internet access, and/or use of any e-mail systems] only use the internet capable devices and/or internet provider approved by my Probation Officer and my certified sex offender treatment provider.**

2. I [**agree to the installation of Court-authorized technology on my devices with Internet access to monitor nature and content of materials accessed or viewed, and any examination/search of my computer or electronic devices] will not enter or participate in any social media or chat rooms of any type unless I have been approved to do so by my certified sex offender treatment provider.**

3. I will [**only use the computer and/or Internet Service Provider approved by my Probation Officer] not access any site that contains sexually graphic material unless I have been approved to do so by my certified sex offender treatment provider.**

4. I will not [**enter or participate in any social media or chat rooms of any type] possess sexually graphic material on any internet capable device or mechanism that can hold such material for visual use unless I have been approved to do so by my certified sex offender treatment provider.**

5. I will not [**access any site that contains sexually explicit or pornographic material depicting**

nudity] use any encryption devices on my internet capable device. I will supply my Probation Officer with any and all passwords and/or e-mail addresses used on my internet capable device.

6. I [**will not possess sexually graphic material on any electronic device or mechanism that can hold such material for visual use] recognize I am responsible for all material and information on my internet capable device regardless if other individuals have access to or use my internet capable device.**

7. I [**will not use any encryption devices on my computer] agree to any search of the content of my internet capable device. I will supply my Probation Officer with any and all passwords and/or e-mail addresses used on my computer.**

8. I [**recognize I am responsible for all material and information on my computer regardless if other individuals have access to or use my computer] agree to supply documentation of telephone records, credit/debit card records, or invoices relating to the use of my internet capable device and/or internet access.**

9. I [**agree to supply documentation of telephone records, credit card records, or invoices relating to the use of my computer and/or Internet access] understand that any non-compliance with this agreement, deception on my part, lack of cooperation or resistance to providing requested information will be grounds for violation proceedings being initiated.**

10. I understand that [**any non-compliance with this agreement, deception on my part, lack of cooperation or resistance to providing requested information will be grounds for this privilege being revoked and/or violation proceedings being initiated] if my certified sex offender treatment provider recommends or if there is a violation of this agreement, I am subject to having a technology monitoring device/program installed on any internet capable device I am authorized to possess or to which I have access.**

These rule amendments shall become effective after all the provisions of the Pennsylvania Rules of Criminal Procedure are met, to include the following:

a. A certified copy of this order shall be submitted to the Criminal Procedural Rules Committee for review in accordance with Pa.R.Crim.P. No. 105(D);

b. Upon receipt of a statement from the Criminal Procedural Rules Committee that the local rules is not inconsistent with any general rule of the Supreme Court, two (2) certified copies of this Order together with a computer diskette that complies with the requirement of 1 Pa. Code § 13.11(b), or other compliant format, containing the text of the local rule(s) adopted hereby shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

c. One (1) certified copy of this Order shall be forwarded to the Administrative Office of the Pennsylvania Courts for distribution in accordance with the provisions of Pa.R.Crim.P. No. 105(F)(1);

d. A copy of the local rule shall be published on the Unified Judicial System's website;

e. This Order shall be filed in the Office of the Prothonotary of Adams County and a copy thereof shall be filed with the Adams County Clerk of Courts and the Adams County Law Library for inspection and copying;

f. The effective date of the local rule shall be 30 days after publication in the *Pennsylvania Bulletin*;

g. Upon the effective date of the local rule, these conditions shall be applicable to any person sentenced, adjudicated, resentenced, or paroled on or after that date.

h. Upon the effective date of the local rule, the Sex Offender Rules of Supervision and the Sex Offender Supervision Program Computer Use and Internet Access Agreement as described previously in Administrative Order 17 of 2015 shall be applicable only to those persons sentenced, resentenced, or paroled prior to the effective date of the local rule described herein.

i. In order to avoid a long-term, bifurcated approach to the Rules of Probation, the Department of Probation Services shall also execute the appropriate updated form(s) with all existing persons subject to sex offender conditions of probation or parole in any form established prior to the effective date of the local rule. Due to the number of persons involved, the Department of Probation Services will have two months from the effective date of the local rule to complete this provision. After two months from the effective date of the local rule, the Sex Offender Rules of Supervision and the Sex Offender Supervision Program Computer Use and Internet Access Agreement as described in Administrative Order 17 of 2015 shall be vacated.

j. In the event a person subject to the Rules of Probation as described in Administrative Order 17 of 2015 has not signed the updated conditions described herein before the time that said conditions described in Administrative Order 17 of 2015 is to be vacated, regardless of the reason, the Department of Probation Services will initiate revocation proceedings prior to said conditions within Administrative Order 17 of 2015 being vacated. If the person is subject to a bench warrant at the time this rule becomes effective, the Department of

Probation Services shall, prior to said conditions within Administrative Order 17 of 2015 being vacated, submit an Amended Violation Report to indicate that the person has not followed the directive of the Department of Probation Services to sign the updated form(s). If, for some reason, the Department of Probation Services had not initiated revocation proceedings in conjunction with the issuing of the bench warrant, the Department of Probation Services shall initiate revocation proceedings due to the failure of the person to sign the updated conditions.

By the Court

MICHAEL A. GEORGE,
President Judge

[Pa.B. Doc. No. 23-843. Filed for public inspection June 30, 2023, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that Daniel Goldsmith Ruggiero having been suspended from the practice of law in the Supreme Court of Massachusetts; the Supreme Court of Pennsylvania issued an Order dated June 14, 2023 suspending Daniel Goldsmith Ruggiero (# 312849) from the practice of law in this Commonwealth for a period of one year and one day, effective July 14, 2023.

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*.

MARCEE D. SLOAN,
Board Prothonotary

[Pa.B. Doc. No. 23-844. Filed for public inspection June 30, 2023, 9:00 a.m.]