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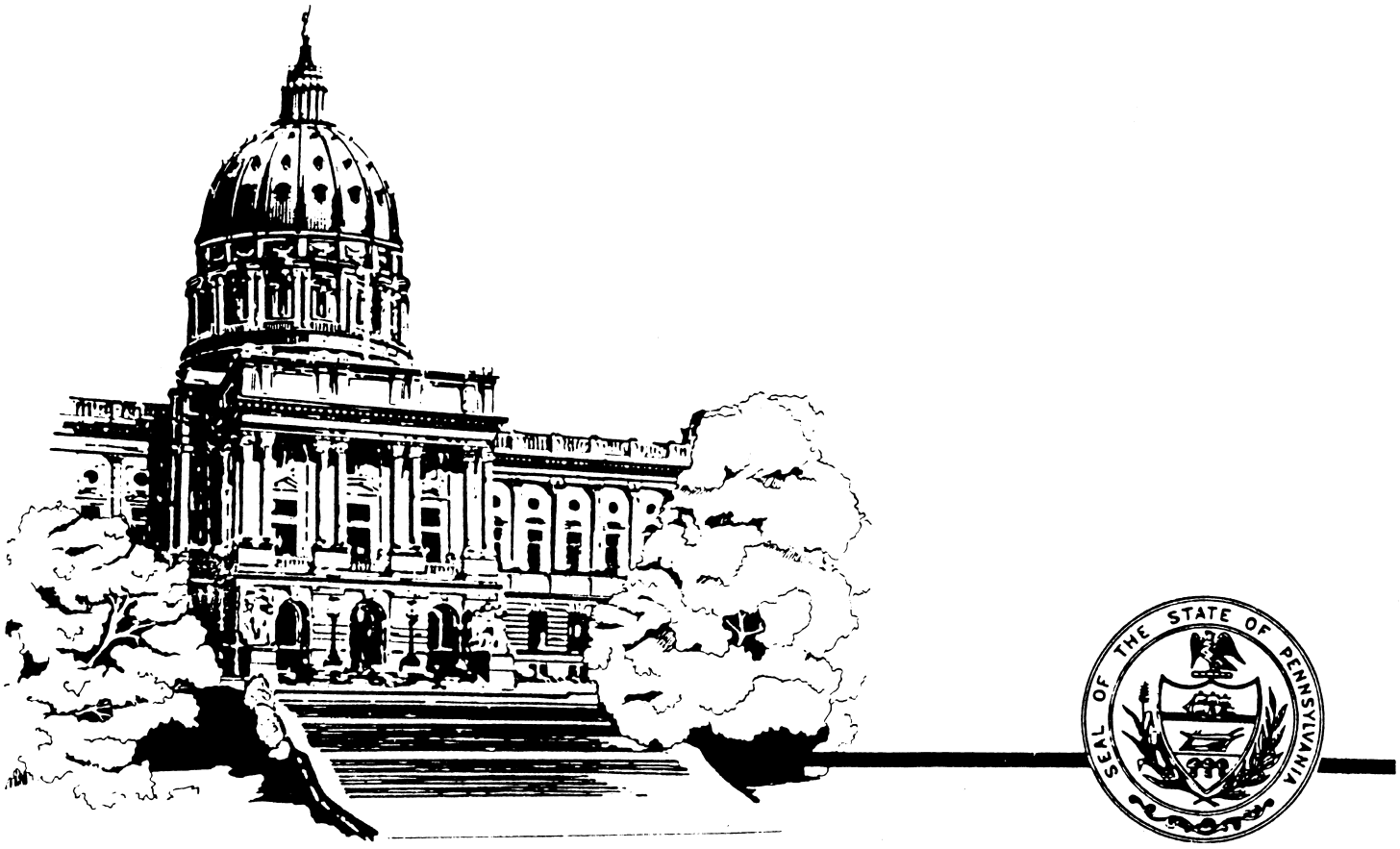
Part II

This part contains
The Courts, Rules and
Regulations and Proposed
Rulemakings



THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

Order Amending Rule 5.50 of the Pennsylvania Rules of Orphans' Court Procedure; No. 985 Supreme Court Rules Docket

Order

Per Curiam

And Now, this 2nd day of May, 2024, upon the recommendation of the Orphans' Court Procedural Rules Committee; the proposal having been published for public comment at 52 Pa.B. 3057 (May 28, 2022):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 5.50 of the Pennsylvania Rules of Orphans' Court Procedure is amended in the attached form.

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

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

Deletions from the rules are shown in bold and brackets.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART II. ORPHANS' COURT RULES

CHAPTER V. RULES GOVERNING SPECIFIC TYPES OF PETITIONS

Rule 5.50. Settlement of Small Estates by Petition.

(a) *Applicability.* This Rule applies to all petitions filed pursuant to 20 Pa.C.S. § 3102, pertaining to settlement of small estates by petition.

(b) *Contents.* In addition to the requirements provided by the Rules in Chapter III, a petition shall set forth the following:

(1) *Estate.*

(i) the name and address of each petitioner and the petitioner's relationship to the decedent;

(ii) the decedent's name, date of death, and domicile at the time of death;

(iii) a statement whether the decedent died testate or intestate and, if testate**[,]**:

(A) that the original will **[is attached,]** **has been lodged or probated with the Register;** or

(B) that the original will cannot be produced, the reason it cannot be produced**[, and that a photocopy of the original will is attached]** **and that the Register issued a decree accepting the photocopy as an original**;

(iv) the name and address of each testate or intestate beneficiary, and if any such beneficiary is a minor or otherwise incapacitated, the name and address of such beneficiary's legal representative, as applicable; and

(v) whether a claim for family exemption is included, and if the claimant is not the surviving spouse, the relationship of the claimant to the decedent, and a statement that the claimant resided with the decedent at the date of death and if the claimant is the surviving spouse, that he or she has not forfeited the right to claim the family exemption.

(2) *Assets.* All assets of decedent's estate, other than real estate and property distributable under 20 Pa.C.S. § 3101, and the value of each asset.

(3) *Liabilities.*

(i) **[the]** **The** names and addresses of all known creditors, total amounts claimed by each, whether the debts have been satisfied, and an itemized list of all debts, including whether or not admitted, a description of the property claimed and the gross value thereof, and whether there is any objection to the debt, and if so, by whom;

(ii) an itemized list of unpaid administrative expenses, unpaid taxes, all other unpaid debts, and, if insolvent, as prioritized under 20 Pa.C.S. § 3392; and

(iii) if the decedent was 55 years of age or older at the time of death, whether a request for a statement of claim was sent to the Department of Human Services in accordance with 62 P.S. § 1412, the date the request was made, and the response received from the Department.

(4) *Distribution.*

(i) **[the]** **The** name of any distributee paid prior to the filing of the petition, including the nature and amount of each payment;

(ii) the name of each proposed distributee and respective proposed distribution;

(iii) the name of each interested person who has consented to or joined in the petition; and

(iv) the names of each testate or intestate beneficiary, as applicable, who has not consented to or joined in the petition.

(5) *Taxes.* A statement that a Pennsylvania inheritance tax return has been filed, that all taxes due on the assets listed on the petition have been paid in full, and that proof of such payment is attached to the petition, or the reason why **the filing has not been made or** payment has not occurred.

(c) *Exhibits.* The following items shall be attached as exhibits to the petition in the following order:

(1) an original death certificate;

(2) **[the decedent's will, if any]** **a photocopy of the decedent's will along with either:**

(i) proof the original will was lodged or probated with the Register; or

(ii) a decree of the Register accepting a photocopy as the original.

(3) **[Pennsylvania Department of Revenue Notice of Appraisement and Assessment of Tax]** **documentation supporting the statement required by subdivision (b)(5), if any**;

(4) original consents, joinders, and statements of no objection signed by interested parties; and

(5) a copy of any correspondence received from the Department of Human Services in response to the statement of claim referenced in **[subparagraph]** **subdivision** (b)(3)(iii).

(d) *Notice.* The petitioner shall serve written notice on interested parties in compliance with **[Chapter III]** **Pa.R.O.C.P. 3.5(b)**.

[Explanatory] Comment**:**

If the petitioner does not have the original will, he or she must petition the Register for a decree accepting a photocopy of the will as the original. The decree by the Register establishes the validity of the copy of the will and is not intended to initiate probate.

20 Pa.C.S. § 3101, referenced in **[paragraph]** **subdivision** (b)(2), sets forth certain allowable payments to the decedent's family members, and to a licensed funeral director for the decedent's burial expenses. Property payable under 20 Pa.C.S. § 3101 shall not be included when determining whether the decedent's personal property exceeds a gross value **of** $50,000.

In **[paragraph]** **subdivision** (b)(3), the term "creditors" includes creditors of the decedent on the date of death, providers of funeral services, and providers of goods and services to the petitioner arising from settlement of the estate.

The Medical Assistance Estate Recovery Program, established by federal law, requires the Commonwealth to recover the Medical Assistance costs from decedents' estates. *See* 42 U.S.C. § 1396p; 62 P.S. § 1412.

Examples of documentation required by subdivision (c)(3) include, but are not limited to, a copy of the Pennsylvania Department of Revenue Notice of Appraisement and Assessment of Tax, the filed inheritance tax return together with proof of payment of the inheritance tax, or a statement from the Department of Revenue or its agent that no tax is due.

The filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania. See* **[Rule]** **Pa.R.O.C.P.** 1.99.

SUPREME COURT OF PENNSYLVANIA ORPHANS' COURT PROCEDURAL RULES COMMITTEE

ADOPTION REPORT

Amendment of Pa.R.O.C.P. 5.50

On May 2, 2024, the Supreme Court of Pennsylvania amended Pennsylvania Orphans' Court Rule of Procedure 5.50 governing small estate petitions. The Orphans' Court 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.

Background

Effective October 1, 2020, Pa.R.O.C.P. 5.50 established procedures for the filing of small estate petitions.[1] Subsequently, the Committee received correspondence expressing two concerns about certain provisions in the rule. The first issue related to the requirement that the petitioner attach the Department of Revenue Notice of Appraisement and Assessment of Tax ("Notice") to the petition as an exhibit.[2] Commenters reported issuing delays of the Notice by the Department of Revenue.[3] It was conveyed that, in some cases, the delay could outweigh the benefits of filing a small estate petition. Thus, the Committee reconsidered the need to require the Notice as an exhibit and contemplated other means that would demonstrate payment or waiver of tax.

Another issue related to service on interested persons in compliance with Chapter III, concerning petition practice and pleadings. The service rule provided that "[t]he petitioner shall serve written notice on interested parties in compliance with Chapter III." *See* Pa.R.O.C.P. 5.50(d). Commenters expressed concern that failure to designate the precise service procedure, *i.e.*, citation or notice, forced practitioners to elect the issuance of a preliminary decree and citation for all parties. While the Committee initially thought it preferable to leave the service determination to practitioners, it was sensitive to the cost burden reported by the commenters.

Finally, while reviewing the two issues raised by correspondents, the Committee identified a need to refine provisions relating to attachment of an original or a photocopy of the decedent's will, if the original will cannot be produced, as an exhibit to the petition. *See* Pa.R.O.C.P. 5.50(c)(2). The Committee observed that attaching a photocopy of a will to the petition could lead to an incorrect distribution if the decedent revoked the will. In the absence of the original will, the validity of the photocopy and the potential for revocation of an original will must be contemplated and determined. Thus, the Committee considered whether a petitioner not in possession of the original will should petition the Register of Wills to obtain a decree validating the photocopy.

Concurrently, the Committee reconsidered whether an original will should be filed with the petition. *See* Pa.R.O.C.P. 5.50(c)(2). The Register of Wills is the office for the lodging and probating of wills and maintains filing and cataloging systems for such responsibilities. In contrast, an original will filed as an exhibit to a petition may be difficult to locate in the future. Therefore, the Committee proposed that the original will be lodged or probated with the Register of Wills before the filing of the small estate petition. Rather than attaching the original will to the small estate petition, the petitioner would attach a photocopy demonstrating proof of lodging the will with the Register or a decree of the Register accepting a photocopy of the original.

The Committee approached these two new concepts with the goal of ensuring the intent of the will is carried out by adding procedures to ensure that the distribution is correct and the original will has not been revoked. The Committee published proposed amendments to Pa.R.O.C.P. 5.50 at 52 Pa.B. 3057 (May 28, 2022). All public comments received were reviewed and discussed by the Committee.

[1] A small estate is one with a gross value not exceeding $50,000 "exclusive of real estate and property payable under 20 Pa.C.S. § 3101 (relating to payments to family and funeral directors) but including property claimed as the family exemption." 20 Pa.C.S. § 3102.

[2] The Department of Revenue issues the Notice after an inheritance tax return is filed. The Notice sets forth the Department's valuation of the estate's assets, allowable deductions, and tax due. *See Pennsylvania Department of Revenue, Inheritance Tax General Information, Form REV-720(SU)02-23*, available at https://www.revenue.pa.gov/FormsandPublications/FormsforIndividuals/InheritanceTax/Documents/rev-720.pdf (last visited April 26, 2024).

[3] The Department of Revenue advises that it can take three to six months to complete processing from the date an inheritance tax return is filed with the Register of Wills, depending on the complexity of the return. *See supra* note 2.

Rule Changes

Notice of Appraisement and Assessment of Tax. The original intent of requiring the Notice as an exhibit to the petition was to ensure that taxes were satisfied prior to distribution. However, the Committee subsequently concluded there may be flaws with this approach, *e.g.*, there may be circumstances when the petitioner has not yet made a tax filing or cannot discern the exact value of decedent's assets if records are unavailable. Consideration was also given to the limited exposure of an underpayment, given the parameters for small estate eligibility and the ability to petition for revocation of the decree of distribution in the event of an improper distribution. 20 Pa.C.S. § 3102.

Subdivision (b)(5) was amended to require the reason a tax return has not been filed, if any. Subdivision (c)(3) was amended to replace the requirement to attach the Notice as an exhibit to the petition with the "documentation supporting the statement required by subdivision (b)(5), if any."

Service. The Committee also examined the service provision of Pa.R.O.C.P. 5.50(d), which required the petitioner to "serve written notice on interested parties in compliance with Chapter III." Pa.R.O.C.P. 3.5 provides two service methods—citation and notice. Pa.R.O.C.P. 3.5(a), pertaining to citation practice, is used to obtain personal jurisdiction when it has not previously been obtained or conferred by statute. When an orphans' court issues a citation, it is served on an interested party together with the petition in the same manner as original process in the Pennsylvania Rules of Civil Procedure. In contrast, when personal jurisdiction is not required, has been previously obtained, or conferred by statute, a petitioner proceeds by notice practice, *i.e.*, attaching a notice to plead to the petition and providing the documents to interested parties. Pa.R.O.C.P. 3.5(b).

The Committee extensively discussed service of the small estate petition prior to making Orphans' Recommendation 4 of 2019. While some commenters at the time suggested designating Pa.R.O.C.P. 3.5(b), permitting service by notice, as the sole method of service, the Committee at the time found it preferable to let practitioners decide what method of service was needed, consistent with practice in the other specific petitions set forth in Chapter V.

However, correspondence received after the adoption of Pa.R.O.C.P. 5.50 relayed that requiring service by citation creates a financial burden on an estate of limited means. The Committee discussed designating Pa.R.O.C.P. 3.5(b), notice practice, as the method of service for small estate petitions. The statute governing small estates gives discretion in the provision of notice regarding the petition filing and proposed distribution. "[U]pon petition of any party in interest . . . and with such notice as the court shall direct. . .". *See* 20 Pa.C.S. § 3102. The Committee further contemplated that the *in rem* nature of small estate proceedings was more compatible with notice practice. Therefore, Pa.R.O.C.P. 5.50(d) was amended to direct service in compliance with Pa.R.O.C.P. 3.5(b).

Photocopies of Will. In addition to the Notice and service issues, the Committee reviewed the advisability of accepting a photocopy of the will as an exhibit to the petition. Attaching a photocopy of the will to the petition could result in an incorrect distribution if the decedent had revoked the will, unknown to the petitioner. The Committee considered whether a petitioner not in possession of the original will should petition the Register of Wills to obtain a decree as to the validity of the photocopied will.

Having the Register of Wills decree accept a photocopy of a will establishes proof of its validity and will enable the court to order distribution in accordance with the will. A petition to accept the photocopy does not necessarily initiate probate, although a decree could be used to do so or to file a small estate petition. The Committee acknowledges that adding this practice to Pa.R.O.C.P. 5.50 could disincentivize petitioners who do not have an original will from electing a small estate petition over probate when a photocopy is of questionable validity. However, it seemed a necessary change to ensure the integrity and validity of the document in question.

Lodging and Probate. As part of the discussion relating to original and photocopied wills, the Committee considered whether an original will should be attached to a small estate petition as an exhibit. Specifically, the Committee was concerned that an original will filed as an exhibit to a petition may be difficult to locate in the future and not easily discoverable. Moreover, the Register of Wills is the office for the lodging and probating of wills and maintains filing and cataloging systems for such responsibilities. The Committee also considered that a petitioner could probate the will but subsequently elect to file a small estate petition once the assets of the estate are fully known. This change makes clearer that filing a small estate petitioner is still an option even if probate has been initiated.

The Committee also discussed electronic filing in the context of small estate petition filings. When electronic filing is authorized by local rule, a party may require the filing party to file an original of a legal paper or exhibit with the clerk. Pa.R.O.C.P. 4.7(b)(2). However, absent such a demand, the filing party is required to "maintain the original of all documents, . . ., together with any exhibits filed, for [five] years after the disposition of the case." *See* Pa.R.O.C.P. 4.7(c)(3). Because the original will is not necessarily filed in a small estate case, ensuring the location of the will becomes more important. The proposal was intended to ensure that all parties know the will exists and where it is located.

Therefore, the Committee proposed that a petitioner lodge or probate the original will with the Register of Wills before filing of the small estate petition. Rather than attach the original will as an exhibit, the petitioner would attach a photocopy demonstrating proof of lodging with the Register of Wills or the decree of the Register accepting a photocopy of the original.

The Committee believed there is a known distinction between lodging and probating a will with the Register. A person can be compelled to deposit a will with the Register of Wills. *See* 20 Pa.C.S. § 3137. The practice of lodging of a will with the Register of Wills is referenced in an unpublished Superior Court memorandum involving a premature estate dispute between siblings prior to the death of their mother, an incapacitated person. "[T]he guardian of the estate could lodge the will with the Register of Wills [to prevent sister from wrongfully gaining access to estate assets upon mother's death]." *See Matter of Bush*, 2019 WL 1283906, *2 (Pa. Super. filed March 19, 2019) (*citing Matter of Bush*, Court of Common Pleas of Chester County, Orphans' Court, No. 1509-1720). The *Register of Wills of Philadelphia County Manual* includes a chapter on lodging and compelling production

of a will. It provides "[a] person holding the original last Will of a decedent may lodge (*i.e.*, deposit) the Will with the Register for safekeeping pending further proceedings." *See Register of Wills of Philadelphia County Manual*, Chapter 9, 1977465.pdf (last visited April 26, 2024). Finally, a treatise instructs, without further citation, that "a will may be deposited with the Register for safe keeping without the will being probated." Cleaver Daniel C., *West's Pennsylvania Practice, Pennsylvania Probate and Estate Administration*, § 1.3 (5th ed. 2017). The Committee does not suggest a probate requirement with this provision, but merely a decree establishing the validity of a photocopy. The Committee acknowledges that this requirement will add a step to the small estate procedure, but balanced the inconvenience of an additional step with ensuring the validity of the document and, therefore, the accurate distribution of the estate.

* * * * *

The amendments become effective July 1, 2024.

[Pa.B. Doc. No. 24-704. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1, 4 AND 5]

Order Amending Rules 135, 460, and 547 of the Pennsylvania Rules of Criminal Procedure; No. 554 Criminal Procedural Rules Docket

Order

Per Curiam

And Now, this 2nd day of May, 2024, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published for public comment at 50 Pa.B. 5224 (September 26, 2020):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 135, 460, and 547 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, 2025.

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 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART C. Venue, Location, and Recording of Proceedings Before Issuing Authority

Rule 135. Transcript of Proceedings Before Issuing Authority.

[(A)] **(a)** The issuing authority shall prepare and forward to the court of common pleas a transcript of the proceedings in all summary cases when an appeal is taken and in all court cases when the defendant is held for court.

[(B)] **(b)** The transcript shall contain the following information, where applicable:

(1) the date and place of hearings;

(2) the names and addresses of the prosecutor, defendant, and witnesses;

(3) the names and office addresses of counsel in the proceeding;

(4) the charge against the defendant as set forth in the prosecutor's complaint;

(5) the date of issuance of any citation, summons, or warrant of arrest and the return of service thereon;

(6) a statement whether the parties and witnesses were sworn and which of these persons testified;

(7) when the defendant was held for court the amount of bail set;

(8) the nature of the bail posted and the name and address of the corporate surety or individual surety;

(9) a notation that the defendant has or has not been fingerprinted;

(10) a specific description of any defect properly raised in accordance with Rule 109;

(11) a notation that the defendant was advised of the right to apply for the assignment of counsel;

(12) the defendant's plea of guilty or not guilty, the decision that was rendered in the case and the date thereof, and the judgment of sentence and place of confinement, if any; **and**

(13) any other information required by the rules to be in the issuing authority's transcript.

(c) *Electronic Transmission.*

(1) The president judge by local rule may require the transcript and any associated documents to be electronically scanned and transmitted to the clerk of courts in digital format in lieu of transmitting the physical paper transcript and associated documents.

(2) The electronically scanned transcript and associated documents shall constitute the original documents for purposes of these rules.

(3) The issuing authority shall retain the physical paper transcript and associated documents as may be required by rule of court or records retention policies.

Comment:

The requirement of a docket was deleted from this rule in 1985 because dockets are now routinely maintained under the supervision of the Administrative Office of Pennsylvania Courts. It is expected that issuing authorities will continue to keep dockets of criminal proceedings. The transcript requirements presuppose an accurate docket to supply the information necessary to prepare a transcript.

The procedures regarding the filing of a transcript after appeal in summary cases are set forth in Rule **[460(C) and (D)]** **460(c) and (d)**. For such procedures after the defendant is held for court in a court case, see Rule 547. With regard to other information required by the rules to be in the transcript, see, *e.g.*, Rule 542**(G)(1)**.

The requirement that there be a notation indicating whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is to alert the district attorney and the court whether it is necessary to have the defendant fingerprinted after the case is held for court.

[*Official Note*: Formerly Rule 125 adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970, revised January 31, 1970, effective May 1, 1970; renumbered Rule 26 and subparagraphs (b)(5) and (b)(10) amended September 18, 1973, effective January 1, 1974; subparagraph (b)(10) amended April 8, 1982, effective July 1, 1982; previous subparagraph (b)(7) deleted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 135 and amended March 1, 2000, effective April 1, 2001; amended July 10, 2008, effective February 1, 2009.

***Committee Explanatory Reports*:**

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

Final Report explaining the July 10, 2008 amendment adding new paragraph (9) requiring a notation of fingerprinting published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).]

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART F. Procedures in Summary Cases for Appealing to Court of Common Pleas for Trial *De Novo*

Rule 460. Notice of Appeal**; Transmittal of Transcript and Associated Documents**.

[(A)] **(a)** When an appeal is authorized by law in a summary proceeding, including an appeal following a prosecution for violation of a municipal ordinance that provides for imprisonment upon conviction or upon failure to pay a fine, an appeal shall be perfected by filing a notice of appeal within 30 days after the entry of the guilty plea, the conviction, or other final order from which the appeal is taken. The notice of appeal shall be filed with the clerk of courts.

[(B)] **(b)** The notice of appeal shall contain the following information:

(1) the name and address of the appellant;

(2) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(3) the magisterial district number in which the case was heard;

(4) the name and mailing address of the affiant as shown on the complaint or citation;

(5) the date of the entry of the guilty plea, the conviction, or other final order from which the appeal is taken;

(6) the offense(s) of which convicted or to which a guilty plea was entered, if any;

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

(8) the type or amount of bail or collateral, if any, furnished to the issuing authority;

(9) the name and address of the attorney, if any, filing the notice of appeal; and

(10) except when the appeal is from a guilty plea or a conviction, the grounds relied upon for appeal.

[(C)] **(c)** Within **[5]** **five** days after filing the notice of appeal, a copy shall be served either personally or by mail by the clerk of courts upon the issuing authority, the affiant, and the appellee or appellee's attorney, if any.

[(D)] **(d)** The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

(1) the transcript of the proceedings;

(2) the original complaint or citation, **or a copy thereof if electronically transmitting the transcript and associated documents**, if any;

(3) the summons or warrant of arrest, if any; and

(4) the bail bond, if any.

(e) *Electronic Transmission.*

(1) The president judge by local rule may require the transcript and any associated documents to be electronically scanned and transmitted to the clerk of courts in digital format in lieu of transmitting the physical paper transcript and associated documents.

(2) The electronically scanned transcript and associated documents shall constitute the original documents for purposes of these rules.

(3) The issuing authority shall retain the physical paper transcript and associated documents as may be required by rule of court or records retention policies.

[(E)] **(f)** This rule shall provide the exclusive means of appealing from a summary guilty plea or conviction. Courts of common pleas shall not issue writs of *certiorari* in such cases.

[(F)] **(g)** This rule shall not apply to appeals from contempt adjudications.

Comment**:**

This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

This rule applies to appeals in all summary proceedings, including appeals from prosecutions for violations of municipal ordinances that provide for the possibility of imprisonment, and default hearings. **The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.**

[This rule was amended in 2000 to make it clear in] **Subdivision (a) makes clear that in** a summary criminal case **[that]** the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea.

Appeals from contempt adjudications are governed by Rule 141.

[The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

See] **See** Rule 461 for the procedures for executing a sentence of imprisonment when there is a stay.

"Entry," as used in this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 456, the matter must be heard *de novo* by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

[Paragraph (D) was amended in 2003 to align this rule with Rule 401(A), which permits the electronic transmission of parking violation information in lieu of filing a citation. Therefore, in] In electronically transmitted parking violation cases **[only]**, because there is no original citation, the issuing authority would file the summons with the clerk of courts pursuant to **[paragraph (D)(3)]** **subdivision (d)(3)**.

Rule 462(D) provides for the dismissal of an appeal when the defendant fails to appear for the trial *de novo*.

[*See*] **See** Rule 462(F) regarding the retention of a case at the court of common pleas when a petition to file an appeal *nunc pro tunc* has been denied.

Certiorari was abolished by the Criminal Rules in 1973 pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The abolition of *certiorari* continues with this rule.

For dismissal upon satisfaction or by agreement in summary cases, as defined in Rule 103, that have been appealed to the court of common pleas, see Rule 463.

[*Official Note*: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; amended March 3, 2000, effective July 1, 2000; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460 adopted March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003; *Comment* revised February 28, 2003, effective July 1, 2003; *Comment* revised December 29, 2017, effective April 1, 2018; Comment revised January 27, 2021, effective June 1, 2021.

***Committee Explanatory Reports*:**

Former Rule 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997.)

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order 30 Pa.B. 1509 (March 18, 2000).

New Rule 460:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 460 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 6, 2003 changes concerning electronically transmitted parking citations published at 33 Pa.B. 969 (February 22, 2003).

Final Report explaining the February 28, 2003 Comment revision cross-referencing Rule 461 published with the Court's Order at 33 Pa.B. 1324 (March 15, 2003).

Final Report explaining the December 29, 2017 Comment revision cross-referencing Rule 462(F) published with the Court's Order at 48 Pa.B. 226 (January 12, 2018).

Final Report explaining the January 27, 2021 Comment revisions regarding dismissal by agreement of summary cases in the common pleas court pursuant to Rule 458 published with the Court's Order at 51 Pa.B. 688 (February 6, 2021).]

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 547. **[Return]** **Transmittal** of Transcript and **[Original Papers]** **Associated Documents**.

[(A)] **(a)** When a defendant is held for court, or after the issuing authority receives notice that the case will be presented to the indicting grand jury and closes out the case, the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required by these rules to be recorded on the transcript. It shall be signed by the issuing authority, and have affixed to it the issuing authority's seal of office.

[(B)] **(b)** The issuing authority shall transmit the transcript to the clerk of the proper court within **[5]** **five** days after holding the defendant for court or after closing out the case upon receipt of the notice that the case will be presented to the indicting grand jury.

[(C)] **(c)** In addition to this transcript the issuing authority also shall transmit the following **[items]** **documents**:

(1) the original complaint **or a copy thereof if electronically transmitting the transcript and associated documents**;

(2) the summons or the warrant of arrest and its return;

(3) all affidavits filed in the proceeding;

(4) the appearance or bail bond for the defendant, if any, or a copy of the order committing the defendant to custody;

(5) a request for the court of common pleas to issue a bench warrant as required in Rule 543(D)(3)(b);

(6) notice informing the court of common pleas that the defendant has failed to comply with the fingerprint order as required in Rule 543(D)(3)(b)(ii); and

(7) a copy of the notice that the case will be presented to the indicting grand jury.

(d) *Electronic Transmission.*

(1) The president judge by local rule may require the transcript and any associated documents to be electronically scanned and transmitted to the clerk of courts in digital format in lieu of transmitting the physical paper transcript and associated documents.

(2) The electronically scanned transcript and associated documents shall constitute the original documents for purposes of these rules.

(3) The issuing authority shall retain the physical paper transcript and associated documents as may be required by rule of court or records retention policies.

Comment:

[*See*] See Rule 135 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. *See, e.g.*, Rules 542**(G)(1)** and 543.

When the case is held for court pursuant to Rule 543(D)(3), the issuing authority must include with the transcript transmittal a request for the court of common pleas to issue a bench warrant.

When the case is held for court pursuant to Rule 543(D)(3)(b)(ii), the issuing authority must include with the transcript transmittal a notice to the court of common pleas that the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2). *See* **[Rule] Pa.R.Crim.P.** 543(D)(3)(b)(ii). The court of common pleas **[must] shall** take whatever actions deemed appropriate to address this non-compliance.

[*See*] See Chapter 5 Part E for the procedures governing indicting grand juries. Pursuant to Rule 556.2(A)(3), the judge **[is required to] shall** notify the issuing authority that the case will be presented to the indicting grand jury. Pursuant to Rule **[556.11(A)] 556.2(A)(3)(a)**, upon receipt of the notice, the issuing authority **[is required to] shall** close out the case in his or her office, and forward it to the court of common pleas for all further proceedings. When the case is transmitted to the court of common pleas, the clerk of courts should associate the transcript and other documents transmitted by the issuing authority with the motion and order filed pursuant to Rule 556.2(A)(5).

When arrest warrant information has been sealed pursuant to Rule 513.1, the arrest warrant information already will have been filed with the clerk of courts. When the case is transmitted to the court of common pleas, the clerk of courts should associate the transcript and other documents transmitted by the issuing authority with the original file created for the sealing procedure.

For when the magisterial district court or the Philadelphia Municipal Court is required to transmit the contact information of the victim to the court of common pleas, see 18 P.S. § 11.201(2)(iii)(B).

[*Official Note*: Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended June 21, 2012, effective in 180 days; amended December 23, 2013, effective March 1, 2014.

***Committee Explanatory Reports*:**

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 24, 2004 changes published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments concerning the request for a bench warrant published with the Court's Order at 37 Pa.B. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraph (C)(6) concerning the fingerprint order published at 38 Pa.B. 3971 (July 26, 2008).

Final Report explaining June 21, 2012 amendments to paragraph (A) and adding paragraph (C)(7) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4140 (July 7, 2012).

Final Report explaining the December 23, 2013 Comment revisions concerning sealed arrest warrant documents published with the Court's Order at 44 Pa.B. 239 (January 11, 2014).]

SUPREME COURT OF PENNSYLVANIA CRIMINAL PROCEDURAL RULES COMMITTEE

ADOPTION REPORT

Amendment of Pa.R.Crim.P. 135, 460, and 547

On May 2, 2024, the Supreme Court amended Pennsylvania Rules of Criminal Procedure 135, 460, and 547. 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.

Background

Prior to the amendments discussed below, Pa.R.Crim.P. 460(D) required an issuing authority to file the transcript, original complaint or citation, the summons or warrant of arrest, and the bail bond with the clerk of courts if an appeal were taken. Similarly, Pa.R.Crim.P. 547(b)-(c) required an issuing authority to transmit to the clerk of courts a number of documents, including the original complaint, along with the transcript, if a defendant had been held for court or if the case was to be presented to the indicting grand jury. These rules required the transcript and documents to be physically transferred in their paper form.

With the introduction of the Electronic Records Management System (ERMS), magisterial district courts are now able to scan paper documents and convert them into an electronic format. Because of the availability of this technology, the Committee began considering amendments to the rules that would permit magisterial district courts to electronically transmit scanned transcripts and documents to the clerk of courts. Electronically transmitting these documents would eliminate delay and reduce costs.

To accomplish this modernization of the rules, the Committee favored rulemaking that would subject the electronic transmission of transcripts and documents to minimal requirements. First, the Committee chose to make the practice voluntary. By making the practice voluntary, the rules would not interfere with existing local procedures, or local procedures still being developed, by mandating statewide procedures. Additionally, the benefits of electronic transmission were viewed as sufficiently persuasive to render compulsion unnecessary. Second, rather than allowing electronic transmission to be at the discretion of each magisterial district court, the adoption of electronic transmission should be at the president judge's direction, ensuring uniformity across the judicial district. Third, any documents that were originally in paper form, including the transcript, would remain with the magisterial district court subject to the Court's Record Retention Policy. *See* 204 Pa. Code § 213.51.[1]

The Committee published a proposal consistent with the above requirements for comment. *See* 50 Pa.B. 5224 (September 26, 2020). One response was received from a clerk of courts who questioned whether the proposal would include miscellaneous cases such as fugitives from justice, *see* 42 Pa.C.S. § 9134, and indirect criminal contempt, *see* 23 Pa.C.S. § 6114. The Committee concluded that these types of cases should not be included because the rules do not currently provide for the transfer of these miscellaneous dockets. Moreover, the scope of the proposal was limited to court cases and appeals from summary proceedings. *See* Pa.R.Crim.P. 135(a), 460(a), and 547(a).

Amendments

Rules 135, 460, and 547 have each been amended to include a new subdivision titled "Electronic Transmission," which is further subdivided into three additional subdivisions. The new subdivision provides for a president judge to require, via the adoption of a local rule, that "the transcript and any associated documents [ ] be electronically scanned and transmitted to the clerk of courts in digital format in lieu of transmitting the physical paper transcript and associated documents;" identifies the scanned transcript and associated documents as the original documents for purposes of these rules; and requires the magisterial district judge to "retain the physical paper transcript and associated documents as may be required by rule of court or records retention policies." Pa.R.Crim.P. 135(c); Pa.R.Crim.P. 460(e); Pa.R.Crim.P. 547(d).

Rules 460 and 547 have also been amended to permit a copy of the complaint or citation, which ever applies, to be transmitted electronically when electronically transmitting the transcript and associated documents. Pa.R.Crim.P. 460(d)(2); Pa.R.Crim.P. 547(c)(1). Prior to this amendment, the original complaint or citation was required to be transmitted with the transcript. If the physical file is mailed or couriered to the clerk of courts, the original is still required.

Finally, the title of Rule 460 has been amended to read, "Notice of Appeal; Transmittal of Transcript and Associated Documents," and the title to Rule 547 has been amended to read, "Transmittal of Transcript and Associated Documents."

* * *

The following commentary has been removed from Rule 135:

***Official Note*:** Formerly Rule 125 adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970, revised January 31, 1970, effective May 1, 1970; renumbered Rule 26 and subparagraphs (b)(5) and (b)(10) amended September 18, 1973, effective January 1, 1974; subparagraph (b)(10) amended April 8, 1982, effective July 1, 1982; previous subparagraph (b)(7) deleted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 135 and amended March 1, 2000, effective April 1, 2001; amended July 10, 2008, effective February 1, 2009.

Committee Explanatory Reports:

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

Final Report explaining the July 10, 2008 amendment adding new paragraph (9) requiring a notation of fingerprinting published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).

The following commentary has been removed from Rule 460:

Comment, ¶ 9: "Paragraph (D) was amended in 2003 to align this rule with Rule 401(A), which permits the electronic transmission of parking violation information in lieu of filing a citation."

***Official Note*:** Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; amended March 3, 2000, effective July 1, 2000; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460

[1] The paper version of the documents, including wet signatures, have no discernable administrative or evidentiary value in subsequent proceedings. *See also* Pa.R.Crim.P. 103 (defining "copy" and "signature"). The archival value is governed by the Record Retention Policy.

adopted March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003; *Comment* revised February 28, 2003, effective July 1, 2003; *Comment* revised December 29, 2017, effective April 1, 2018; Comment revised January 27, 2021, effective June 1, 2021.

Committee Explanatory Reports:

Former Rule 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997.)

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order 30 Pa.B. 1509 (March 18, 2000).

New Rule 460:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 460 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 6, 2003 changes concerning electronically transmitted parking citations published at 33 Pa.B. 969 (February 22, 2003).

Final Report explaining the February 28, 2003 Comment revision cross-referencing Rule 461 published with the Court's Order at 33 Pa.B. 1324 (March 15, 2003).

Final Report explaining the December 29, 2017 Comment revision cross-referencing Rule 462(F) published with the Court's Order at 48 Pa.B. 226 (January 12, 2018).

Final Report explaining the January 27, 2021 Comment revisions regarding dismissal by agreement of summary cases in the common pleas court pursuant to Rule 458 published with the Court's Order at 51 Pa.B. 688 (February 6, 2021).

The following commentary has been removed from Rule 547:

***Official Note*: Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; amended July 10, 2008, effective February 1, 2009; amended June 21, 2012, effective in 180 days; amended December 23, 2013, effective March 1, 2014.**

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 24, 2004 changes published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments concerning the request for a bench warrant published with the Court's Order at 37 Pa.B. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraph (C)(6) concerning the fingerprint order published at 38 Pa.B. 3971 (July 26, 2008).

Final Report explaining June 21, 2012 amendments to paragraph (A) and adding paragraph (C)(7) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4140 (July 7, 2012).

Final Report explaining the December 23, 2013 Comment revisions concerning sealed arrest warrant documents published with the Court's Order at 44 Pa.B. 239 (January 11, 2014).

* * *

These amendments are effective April 1, 2025.

[Pa.B. Doc. No. 24-705. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 2, 5 AND 10]

Order Amending Rules 201, 205, 206, 208, 209, 211, 540, and 1003 of the Pennsylvania Rules of Criminal Procedure; No. 553 Criminal Procedural Rules Docket

Order

Per Curiam

And Now, this 2nd day of May, 2024, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published for public comment at 49 Pa.B. 1357 (March 23, 2019):

It is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 201, 205, 206, 208, 209, 211, 540, and 1003 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 October 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 2. INVESTIGATIONS

PART A. Search Warrant

Rule 201. Purpose of Warrant.

A search warrant may be issued to search for and to seize:

[(1)] **(a)** contraband, the fruits of a crime, or things otherwise criminally possessed; **[or]**

[(2)] **(b)** property that is or has been used as the means of committing a criminal offense; **[or]**

[(3)] **(c)** property that constitutes evidence of the commission of a criminal offense**[.]**; **or**

(d) a person for whom a bench or arrest warrant has been issued.

Comment:

Concerning the provisions of **[paragraph (1)]** **subdivision (a)** see *United States v. Rabinowitz*, 339 U.S. 56 (1950), overruled as to other points, *Chimel v. California*, 395 U.S. 752, 786 (1969). *Also compare, Cooper v. California*, 386 U.S. 58 (1967), with *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1964).

Warrants may not be issued unless the affidavit alleges a pre-existing crime. *See United States ex. rel. Campbell v. Rundle*, 327 F.2d 153, 161 (3rd Cir. 1964), followed *sub nom. Commonwealth ex rel. Ensor v. Cummings*, 207 A.2d 230 (Pa. 1965) and *Commonwealth ex rel. Campbell v. Russell*, 207 A.2d 232 (Pa. 1965). **[The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmeyer*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955).]**

Concerning the provisions of **[paragraph (3)]** **subdivision (c)**, see *Warden v. Hayden*, 387 U.S. 294 (1967).

Subdivision (d) clarifies that a person is a proper subject of a search warrant when the person is also the subject of a bench or arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the bench or arrest warrant. The search warrant does not take the place of the underlying bench or arrest warrant.

[*Official Note*: Rule 2002 adopted March 28, 1973, effective 60 days hence; renumbered Rule 201 and amended March 1, 2000, effective April 1, 2001.

***Committee Explanatory Reports*:**

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).]

Rule 205. Contents of Search Warrant.

[(A)] **(a)** Each search warrant shall be signed by the issuing authority and shall:

(1) specify the date and time of issuance;

(2) identify specifically the property **or person** to be seized;

(3) name or describe with particularity the person or place to be searched;

(4) direct that the search be executed either;

[(a)] **(i)** within a specified period of time, not to exceed 2 days from the time of issuance, or;

[(b)] **(ii)** when the warrant is issued for a prospective event, only after the specified event has occurred;

(5) direct that the warrant be served in the daytime unless otherwise authorized on the warrant, *provided that*, for purposes of the rules of Chapter 200, Part A, the term "daytime" shall be used to mean the hours of 6 a.m. to 10 p.m.;

(6) designate by title the judicial officer to whom the warrant shall be returned;

(7) certify that the issuing authority has found probable cause based upon the facts sworn to or affirmed before the issuing authority by written affidavit**[(s)]** attached to the warrant; and

(8) when applicable, certify on the face of the warrant that for good cause shown the affidavit**[(s)]** is sealed pursuant to Rule 211 and state the length of time the affidavit**[(s)]** will be sealed.

[(B)] **(b)** A warrant under **[paragraph (A)]** **subdivision (a)** may authorize the seizure of electronic storage media or of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in **[(A)(4)(a)]** **subdivision (a)(4)(i)** refers to the seizure of the media or information, and not to any later off-site copying or review.

Comment:

[Paragraphs (A)(2) and (A)(3)] **Subdivisions (a)(2) and (a)(3)** are intended to proscribe general or exploratory searches by requiring that searches be directed only towards the specific items, persons, or places set forth in the warrant. Such warrants should, however, be read in a common sense fashion and should not be invalidated by hypertechnical interpretations. This may mean, for instance, that when an exact description of a particular item is not possible, a generic description may suffice. *See Commonwealth v. Matthews*, 285 A.2d 510, 513-14 (Pa. 1971).

Subdivision (a)(2) reflects the provision of Rule 201(d) that provides that a person may be the subject of a search warrant when the person is also the subject of a bench or arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the bench or arrest warrant. The search warrant does not take the place of the underlying bench or arrest warrant.

[Paragraph (A)(4)] **Subdivision (a)(4)** is included pursuant to the Court's supervisory powers over judicial procedure to supplement *Commonwealth v. McCants*, 299 A.2d 283 (Pa. 1973), holding that an unreasonable delay between the issuance and service of a search warrant jeopardizes its validity. **[Paragraph (A)(4)]** **Subdivision (a)(4)** sets an outer limit on reasonableness. A warrant could, in a particular case, grow stale in less than two days. If the issuing authority believes that only a particular period which is less than two days is reasonable, he or she must specify such period in the warrant.

[Paragraph (A)(4)(b)] **Subdivision (a)(4)(ii)** provides for anticipatory search warrants. These types of warrants are defined in *Commonwealth v. Glass*, 754 A.2d 655 (Pa. 2000), as "a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place."

[Paragraph (A)(5)] **Subdivision (a)(5)** supplements the requirement of Rule 203(E) that special reasonable cause must be shown to justify a nighttime search. A warrant allowing a nighttime search may also be served in the daytime.

[Paragraph (A)(6)] **Subdivision (a)(6)** anticipates that the warrant will list the correct judicial officer to whom the warrant should be returned. There may be some instances in which the judicial officer who issues the warrant may not be the one to whom the warrant will be returned. For example, it is a common practice in many judicial districts to have an "on-call" magisterial district judge. This "on-call" judge would have the authority to issue search warrants anywhere in the judicial district but may not be assigned to the area in which the search warrant would be executed. There may be cases when the warrant is incorrectly returned to the judge who originally issued the warrant. In such cases, the issuing judge should forward the returned search warrant to the correct judicial officer. Thereafter, that judicial officer should administer the search warrant and supporting documents as provided for in these rules, including the Rule 210 requirement to file the search warrant and supporting documents with the clerk of courts.

[Paragraph (A)(8)] **Subdivision (a)(8)** implements the notice requirement in Rule 211(C). When the affidavit**[(s)]** is sealed pursuant to Rule 211, the justice or judge issuing the warrant must certify on the face of the warrant that there is good cause shown for sealing the affidavit**[(s)]** and must also state how long the affidavit will be sealed.

For purposes of this rule, the term "electronically stored information" includes writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained. This definition is intended to cover all current types of computer-based information and to encompass future changes and developments.

For purposes of this rule, the term "seizure" includes the copying of material or information that is subject to the search warrant. This includes the copying of electronically stored information for later analysis.

For the procedures for motions for return of property, see Rule 588.

[*Official Note*: Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; *Comment* revised October 22, 2013, effective January 1, 2014; amended July 31, 2017, effective October 1, 2017.

***Committee Explanatory Reports*:**

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the October 19, 2005 amendments to paragraph (4) and the Comment published with the Court's Order at 35 Pa.B. 6087 (November 5, 2005).

Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. 6649 (November 9, 2013).

Final Report explaining the July 31, 2017 amendment regarding search warrants for electronically stored information published with the Court's Order at 47 Pa.B. 4680 (August 12, 2017).]

Rule 206. Contents of Application for Search Warrant.

Each application for a search warrant shall be supported by **a** written affidavit**[(s)]** signed and sworn to or affirmed before an issuing authority, which affidavit**[(s)]** shall:

[(1)] **(a)** state the name and department, agency, or address of the affiant;

[(2)] **(b)** identify specifically the items**[or],** property**, or person** to be searched for and seized;

[(3)] **(c)** name or describe with particularity the person or place to be searched;

[(4)] **(d)** identify the owner, occupant, or possessor of the place to be searched;

[(5)] **(e)** specify or describe the crime which has been or is being committed;

[(6)] **(f)** set forth specifically the facts and circumstances which form the basis for the affiant's conclusion that there is probable cause to believe that the items**, [or]** property**, or person** identified are evidence or the fruit of a crime, or are contraband, or are expected to be otherwise unlawfully possessed or subject to seizure, and that these items or property are or are expected to be located on the particular person**,** or **that these items, property, or persons are or are expected to be located** at the particular place described;

[(7)] **(g)** if a "nighttime" search is requested (*i.e.*, 10 p.m. to 6 a.m.), state additional reasonable cause for seeking permission to search in nighttime;

[(8)] **(h)** when the attorney for the Commonwealth is requesting that the affidavit(s) be sealed pursuant to Rule 211, state the facts and circumstances which are alleged to establish good cause for the sealing of the affidavit(s); and

[(9)] **(i)** a certification that the application complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.

Comment**[s]:**

For the contents of the search warrant, see Rule 205.

[While this rule continues to require written affidavits, the form of affidavit was deleted in 1984 because it is no longer necessary to control the specific form of written affidavit by rule.]

Subdivisions (b) and (f) reflect the provision of Rule 201(d) that provides that a person may be the subject of a search warrant when the person is also the subject of a bench or arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the bench

or arrest warrant. The search warrant does not take the place of the underlying bench or arrest warrant.

[The 2005 amendments to paragraph (6) recognize] Subdivision (f) recognizes anticipatory search warrants. To satisfy the requirements of **[paragraph (6)] subdivision (f)** when the warrant being requested is for a prospective event, the application for the search warrant also must include a statement explaining how the affiant knows that the items to be seized on a later occasion will be at the place specified. *See Commonwealth v. Coleman*, 830 A.2d 554 (Pa. 2003)**[, and];** *Commonwealth v. Glass*, 754 A.2d 655 (Pa. 2000).

When the attorney for the Commonwealth is requesting that the search warrant affidavit**[(s)]** be sealed, the affidavit**[(s)]** in support of the search warrant must set forth the facts and circumstances the attorney for the Commonwealth alleges establish that there is good cause to seal the affidavit**[(s)]**. *See also* **[Rule] Pa.R.Crim.P.** 211(B)(2). Pursuant to Rule 211(B)(1), when the attorney for the Commonwealth requests that the search warrant affidavit be sealed, the application for the search warrant must be made to a judge of the court of common pleas or to an appellate court justice or judge, who would be the issuing authority for purposes of this rule. For the procedures for sealing search warrant affidavit**[(s)]**, see Rule 211.

See Rule 113.1 regarding the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and the requirements regarding filings and documents that contain confidential information.

[*Official Note*: Previous Rule 2006 adopted October 17, 1973, effective 60 days hence; rescinded November 9, 1984, effective January 2, 1985. Present Rule 2006 adopted November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 206 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; amended June 1, 2018, effective July 1, 2018.

***Committee Explanatory Reports*:**

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the October 19, 2005 amendments to paragraph (6) and the Comment published with the Court's Order at 35 Pa.B. 6087 (November 5, 2005).

Amendment regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).]

Rule 208. Copy of Warrant; Receipt for Seized Property.

[(A)] (a) A law enforcement officer, upon taking property **or person** pursuant to a search warrant, shall leave with the person from whom or from whose premises the property **or person** was taken a copy of the warrant and affidavit**[(s)]** in support thereof, and a receipt for the property seized. A copy of the warrant and affidavit**[(s)]** must be left whether or not any property **or person** is seized.

[(B)] (b) If no one is present on the premises when the warrant is executed, the officer shall leave the documents specified in **[paragraph (A)] subdivision (a)** at a conspicuous location in the said premises. A copy of the warrant and affidavit**[(s)]** must be left whether or not any property **or person** is seized.

[(C)] (c) Notwithstanding the requirements in **[paragraphs (A) and (B)] subdivisions (a) and (b)**, the officer shall not leave a copy of an affidavit that has been sealed pursuant to Rule 211.

Comment:

Subdivisions (a) and (b) include the provision of Rule 201(d) that provides that a person may be the subject of a search warrant when the person is also the subject of a bench or arrest warrant. In such circumstances, the search warrant is to effectuate the arrest by permitting the search of a premises other than the residence of the subject of the bench or arrest warrant. The search warrant does not take the place of the underlying bench or arrest warrant.

[*Official Note*: Rule 2008 adopted October 17, 1973, effective 60 days hence; amended September 3, 1993, effective January 1, 1994; renumbered Rule 208 and amended March 1, 2000, effective April 1, 2001.

***Committee Explanatory Reports*:**

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).]

Rule 209. Return With Inventory.

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Comment:

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[*See*] See Rule **[205(A)(6)] 205(a)(6)** regarding the circumstances under which the issuing authority to whom the warrant is returned may differ from the one that issued the warrant.

As provided in Rule **[205(A)(4)] 205(a)(4)**, search warrants generally authorize execution within a period not to exceed two days. Paragraph (B) requires that an unexecuted warrant be returned to the issuing authority upon expiration of this period.

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Rule 211. Sealing Search Warrant Affidavits.

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Comment:

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District justices, **[bail commissioners] arraignment court magistrates**, and municipal court judges do not have authority to seal an affidavit(s). In cases in which it is believed that there is good cause to seal the affidavit(s), the application for the search warrant must be presented to a judge of the court of common pleas or a

justice or judge of an appellate court. *See also* **[Rule 206(8)]** **Pa.R.Crim.P. 206(h)**.

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CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART D. Proceedings in Court Cases Before Issuing Authorities

Rule 540. Preliminary Arraignment.

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Comment:

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Paragraph (D) requires that the defendant receive copies of the arrest warrant and the supporting affidavit(s) at the time of the preliminary arraignment. See also Rules 513(A), **[208(A)]** **208(a)**, and 1003. See Rule 513.1(F) concerning a defendant's access to arrest warrant information that has been sealed.

* * * * *

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

PART A. Philadelphia Municipal Court Procedures

Rule 1003. Procedure in Non-Summary Municipal Court Cases.

* * * * *

Comment:

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Paragraph (D)(3)(c) requires that the defendant's attorney, or if unrepresented the defendant, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 540(C). *See also* **[Rules 208(A)]** **Pa.R.Crim.P. 208(a)** and 513(A).

* * * * *

SUPREME COURT OF PENNSYLVANIA CRIMINAL PROCEDURAL RULES COMMITTEE

ADOPTION REPORT

Amendment of Pa.R.Crim.P. 201, 205, 206, 208, 209, 211, 540, and 1003

On May 2, 2024, the Supreme Court amended Pennsylvania Rules of Criminal Procedure 201, 205, 206, 208, 209, 211, 540, and 1003.[1] 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.

Background

Prompted by the Court's opinion in the companion cases of *Commonwealth v. Romero* and *Commonwealth v. Castro*, 183 A.3d 364 (Pa. 2018) (hereinafter "*Romero* and *Castro*"), the Committee began examining the manner in which an arrest warrant is used to gain access to a residence or other premises in an attempt to apprehend the subject of the warrant. The Committee concluded that the extent to which the police may search a residence pursuant to an arrest warrant and the manner in which such a search is adjudicated is primarily a substantive issue and, as demonstrated in *Romero* and *Castro*, this substantive law is still being developed.

However, in considering these issues, the Committee became concerned that Rule 201 (Purpose of Warrant) could cause confusion as "persons" are not identified in the rule as proper subjects of a search warrant. As a result, law enforcement, reading Rule 201 as not governing the issuance of a search warrant for a person, might conclude that an arrest warrant is sufficient regardless of where the subject of the warrant is to be located, even when intending to search a premises that is not the residence of the subject of the arrest warrant. Under such circumstances, the search would be conducted without a judge having first determined that there was probable cause for the search. Additionally, because the rule provides for the issuance of a warrant that permits law enforcement "to search" and "to seize," the Committee was concerned that the term "seize" would suggest that a search warrant could replace the need for an arrest warrant. To address these concerns, the following amendments have been adopted.

Amendments

Rule 201 has been amended to add a subdivision (d). This subdivision states that the search for and seizure of a person can be authorized by a search warrant if that person is also the subject of either a bench or arrest warrant. The Comment to Rule 201 has been revised to state specifically that a search warrant alone is insufficient; a bench or arrest warrant must also be issued.

The proposed amendment of Rule 201 was published for comment in March of 2019. *See* 49 Pa.B. 1357 (March 23, 2019). Two responses to the publication were received. One response questioned the description of the holding in the *Romero* and *Castro* cases contained in the Publication Report. As this did not implicate the proposed rule change itself, the Committee made no change to the proposal.

The other comment suggested that other rules might need to be amended in light of the proposed provision that would permit a person to be the subject of a search warrant. The Committee concurred that the terminology of several rules should be broadened to incorporate this concept. The Committee identified Rules 205 (Contents of Search Warrant), 206 (Contents of Application for Search Warrant), and 208 (Copy of Warrant; Receipt for Seized Property) as warranting amendment. Those rules have been amended to specifically incorporate a person as a proper subject of a search warrant. Additionally, corollary amendments have been made to Rules 209, 211, 540, and 1003.

Additionally, the proposed subdivision published for comment would have also provided for the issuance of a search warrant to search for "a person for whom there is probable cause to believe is a victim of a crime and for whom there is no other means of access." However, concerns were raised post-publication that this proposed subdivision might permit the issuance of a search warrant to gain access to a victim of any crime, even a lesser one, or result in the issuance of a warrant to gain access to a victim who is merely declining to participate in a prosecution or investigation rather than being prevented from such participation. The Committee concluded that other, less intrusive methods, such as subpoenas, were more appropriate for gaining access to these individuals. Consequently, this subdivision and related commentary were not adopted.

[1] Stylistic amendments have also been made to conform to the Supreme Court of Pennsylvania Style and Rulemaking Guide for Procedural and Evidentiary Rules.

Lastly, commentary has been removed from Rules 201 and 206. The following commentary has been removed from Rule 201: "The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmeyer*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955)." This sentence has been removed as superfluous. The cases cited in that sentence are discussed in *United States ex. Rel. Campbell v. Rundle*, 327 F.2d 153 (3rd Cir. 1964), which is cited earlier in the second paragraph of the Comment. The following commentary has been removed from Rule 206: "While this rule continues to require written affidavits, the form of affidavit was deleted in 1984 because it is no longer necessary to control the specific form of written affidavit by rule." This paragraph has been removed as unnecessary historical commentary.

* * * * *

The following commentary has been removed from Rule 201:

Comment, ¶ 2: "The Third Circuit's opinion cited with approval *Commonwealth v. Patrone*, 27 D&C 2d 343 (Philadelphia Co. 1962); *Commonwealth v. Rehmeyer*, 29 D&C 2d 635 (York Co. 1962); and *Simmons v. Oklahoma*, 286 P.2d 296, 298 (Okla. Cr. 1955)."

***Official Note*:** Rule 2002 adopted March 28, 1973, effective 60 days hence; renumbered Rule 201 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

The following commentary has been removed from Rule 205:

***Official Note*:** Rule 2005 adopted October 17, 1973, effective 60 days hence; amended November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 205 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; *Comment* revised October 22, 2013, effective January 1, 2014; amended July 31, 2017, effective October 1, 2017.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the October 19, 2005 amendments to paragraph (4) and the Comment published with the Court's Order at 35 Pa.B. 6087 (November 5, 2005).

Final Report explaining the October 22, 2013 revisions to the Comment regarding the return of the search warrant published at 43 Pa.B. 6649 (November 9, 2013).

Final Report explaining the July 31, 2017 amendment regarding search warrants for electronically stored information published with the Court's Order at 47 Pa.B. 4680 (August 12, 2017).

The following commentary has been removed from Rule 206:

Comment, ¶ 2: "While this rule continues to require written affidavits, the form of affidavit was deleted in 1984 because it is no longer necessary to control the specific form of written affidavit by rule."

***Official Note*:** Previous Rule 2006 adopted October 17, 1973, effective 60 days hence; rescinded November 9, 1984, effective January 2, 1985. Present Rule 2006 adopted November 9, 1984, effective January 2, 1985; amended September 3, 1993, effective January 1, 1994; renumbered Rule 206 and amended March 1, 2000, effective April 1, 2001; amended October 19, 2005, effective February 1, 2006; amended June 1, 2018, effective July 1, 2018.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the October 19, 2005 amendments to paragraph (6) and the Comment published with the Court's Order at 35 Pa.B. 6087 (November 5, 2005).

Amendment regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).

The following commentary has been removed from Rule 208:

***Official Note*:** Rule 2008 adopted October 17, 1973, effective 60 days hence; amended September 3, 1993, effective January 1, 1994; renumbered Rule 208 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

* * * * *

These amendments are effective October 1, 2024.

[Pa.B. Doc. No. 24-706. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 252—ALLEGHENY COUNTY RULES

ALLEGHENY COUNTY

Rule of Judicial Administration of the Court of Common Pleas; No. AD-2024-148-PJ

Order of Court

And Now, this 6th day of May, 2024, it is hereby *Ordered* that the following proposed Local Rules of Judicial Administration of the Court of Common Pleas of Allegheny County, Pennsylvania, shall be effective thirty (30) days after publication in the *Pennsylvania Bulletin*:

ALLEGHENY COUNTY RULES OF JUDICIAL ADMINISTRATION 5101.4—5103.4.
FAMILY DIVISION: CUSTODY OF EXHIBITS IN COURT PROCEEDINGS

By the Court

SUSAN EVASHAVIK DiLUCENTE,
President Judge

Allegheny County Rules of Judicial Administration. Family Division: Custody of Exhibits in Court Proceedings.

Rule 5101.4. Family Division Custody of Exhibits. Definitions.

(a) The following words and phrases when used in these rules shall have the following meanings, unless the context clearly indicates otherwise, or the particular word or phrase is expressly defined in this chapter:

(1) *"Court proceeding."* Any trial, hearing, argument, or similar event before a judge, panel, or hearing officer where evidence, if entered, is on the record; however, this rule shall not apply to, and thus this definition does not encompass, record hearings that may be appealed de novo to a court of common pleas or upon which exceptions or objections can be filed to a court of common pleas. A court proceeding also does not include a proceeding before a magisterial district court, a judicial arbitration matter pursuant to Pa.R.C.P. 1301 et seq., a hearing before a register of wills pursuant to Pa.R.O.C.P. 10.3, or any matter that is not a record proceeding. A court proceeding may occur over more than one day, including nonconsecutive days;

(2) *"Custodian."* The person or persons designated by these rules to safeguard and maintain exhibits offered into evidence in a court proceeding. The custodian shall be either the proponent of the exhibit or a member of court staff. A custodian shall also include that custodian's designee;

(3) *"Exhibit."* A document, record, object, photograph, model, or similar item offered into evidence, whether or not admitted, in a court proceeding;

(4) *"Proponent."* A party seeking the admission of an exhibit into the record in a court proceeding; and

(5) *"Records office."* The Allegheny County Department of Court Records, Civil/Family Division ("Department of Court Records") will serve as the records office for purposes of this rule and shall have the responsibility and function to maintain and retain the official case file and list of docket entries as required by rule or law. The records office for purposes of filing under this rule shall not include the automated systems of the Unified Judicial System such as the Common Pleas Case Management System or the Pennsylvania Appellate Case Court Management System, or PACFile.

(b) For any words and phrases not defined by these rules, a meaning may be discerned through examination of its dictionary definition, and its legal meaning may be gleaned from its use in an applicable body of law.

Comment: This rule as defined in (a)(1) would not apply, for example, to record hearings before hearing officers in divorce, enforcement/contempt, custody, support, delinquency, and dependency matters. Nonetheless, litigants or court personnel who believe that this rule does not apply to a proceeding should independently verify that the proceeding fits the above exception.

Rule 5102.4. Family Division Custody of Exhibits. General Provisions.

(a) *During Court Proceedings.* In all Family Division proceedings, the court may designate a member of the court staff or the proponent of evidence to serve as custodian during and throughout court proceedings, and the custodian's name shall be placed on the record. When a custodian names a designee, the court shall place the name of the designee on the record. In naming a custodian or accepting a custodian's designee, the court shall consider the proponent's capabilities and circumstances as set forth below in (b) of this Subsection. Where these rules would apply in a proceeding before a hearing officer as set forth herein in Subsection 5101.4(a)(1), the hearing officer shall serve as custodian during proceedings.

(1) The custodian shall secure and maintain all exhibits during court proceedings, including during breaks and recesses, unless otherwise provided herein at 5103.4(c)(3) regarding bulky exhibits and 5103.4(d) regarding hazardous exhibits; and

(2) The custodian shall secure all exhibits at the end of each day during the proceeding, unless otherwise provided herein in Subsection 5103.4(c)(3) or 5103.4(d). However, subject to the considerations immediately below at Subsection 5102.4(b), if a proceeding is conducted over nonconsecutive days, the court may designate the proponent of the evidence to serve as custodian on days when court proceedings are not taking place.

(b) *After Court Proceedings.* Unless the court directs otherwise by naming a member of court staff as custodian, at the conclusion of a court proceeding, the custodian shall become the proponent of the evidence that the proponent proffered. The name of all custodians shall be placed on the record. If the court determines that through the exhaustion of post-trial actions and appeals, a pro se party is unable to perform the duties of a custodian or that any other party or proponent is unable to maintain and secure an exhibit or that a particular proponent or proponents may tamper with or permit the degradation of any exhibits, the court may designate a court custodian in each such proponent's stead to perform all duties identified in this rule. Where these rules apply in a proceeding before a hearing officer as set forth herein in Subsection 5101.4(a)(1), after proceedings before that hearing officer, the hearing officer may serve as custodian or may designate the hearing officer's staff (such as the hearing officer's clerk) to serve as custodian.

(1) *Custodian.* The custodian shall:

(i) take custody of and secure all documentary exhibits, photographs, and photographs of non-documentary exhibits accepted or rejected into evidence during the court proceeding;

(ii) file all documentary exhibits, photographs, and photographs of non-documentary exhibits with the Department of Court Records within five business days of the conclusion of the court proceeding unless directed otherwise by the court; and

(iii) secure and maintain all other non-documentary exhibits as directed by the court or as agreed to by the parties.

(2) *Index of Exhibits.* A custodian filing exhibits with the Department of Court Records shall include a list of exhibits using the same numbers used by the proponent during the court proceeding to refer to each exhibit. For each exhibit, the custodian filing the exhibits shall also: identify the proponent; indicate whether the exhibit was admitted into or rejected from evidence; and provide a textual description or identification of the exhibit. Court staff, as designated by the presiding judge and whether serving as custodian or not, shall keep an index of exhibits utilizing substantially the same form set forth at

the conclusion of these rules. In proceedings before a hearing officer, the hearing officer shall create and keep the index. A proponent custodian filing exhibits may utilize a copy of the court's completed form for filing.

(3) *Method of Filing.* For matters on the adult docket, exhibits must be filed electronically utilizing the eFiling and Retrieval System at the Department of Court Records. Pro se litigants are encouraged to file electronically as well but the Department of Court Records accepts filing of court documents in person or by other means which may be posted on the Department of Court Records website. Matters on the juvenile docket shall be filed with the Department of Court Records Juvenile Section, which is located at 414 Grant Street, Second Floor City-County Building, Room 229, Pittsburgh, Pennsylvania 15219; unless the court permits otherwise, proponents of exhibits in such matters other than those proceeding in forma pauperis shall be responsible for printing exhibits for filing when those exhibits are not contained on a Universal Serial Bus ("USB") flash drive under Subsection 5103.4(a)(3) or other format as the court might allow for digital media under Subsection 5103.4(e).

(4) *Confirmation.* If exhibits are transferred from a member of the court staff serving as custodian to a proponent custodian, the court custodian shall confirm that the proponent custodian has complied with the filing requirements set forth herein in Subsection (b)(1)(ii). Otherwise, the court custodian shall be responsible for the filing of exhibits in keeping with the requirements of this rule.

(5) *Relief.* If a custodian does not file the exhibits as required in this Subsection, then a party or proponent not designated as the custodian or in possession of the exhibits may seek appropriate relief from the court.

Comment: The parties are encouraged to work collaboratively prior to trial to stipulate to trial exhibits that they find unobjectionable and file the stipulations and exhibits covered by the stipulations along with an index in substantially the form provided at the end of these rules with the Department of Court Records. In the event of a stipulation, the parties shall notify the court and provide the court with a copy of the exhibits and index of the exhibits filed as soon as such stipulation is reached and the index is completed.

In a court proceeding, there could be multiple parties and multiple proponent custodians each of whom is responsible for the exhibits they proffered. Proponent custodians and/or court custodians should label their exhibits with reference to the party proffering the exhibit and using sequential numbers (for example, "CYF Exhibit 1" and "CYF Exhibit 2" or "Defendant Smith Exhibit 1" and "Defendant Smith Exhibit 2"). If a listed exhibit is withdrawn, the withdrawal may be noted on the index of exhibits. Where an exhibit is withdrawn, the custodian preparing the index and the proffering party should maintain the numbering system in place before withdrawal to avoid confusion from renumbering. This could result in a gap in the numbering of exhibits. A hearing officer who serves as custodian during court proceedings will prepare the index of exhibits.

Under (a)(3), courts and custodians should bear in mind that as of this rules enactment, the eFiling and Retrieval System allows individuals to file documents in a case and see the docket, the official list of documents filed in a case as well as scanned images of the documents filed unless the case or specific item is sealed by order of court or if an applicable statute, local rule, or other source of law prohibits public access. Pertinent information can often be found on the Department of Court Records website as well as the Allegheny County website.

Under (a)(4), proponent custodians should notify the court staff on the same day on which they have filed exhibits to aid the court staff in confirming the proponent custodians' compliance.

The custodian, if a member of the court staff, may direct the proponent to secure and maintain exhibits that are bulky, oversized, or otherwise physically impractical for the custodian to maintain during the court proceedings. See Subsection 5103.4(c)(3). Typically, non-documentary exhibits will be returned to their respective proponent at the conclusion of a court proceeding.

If a court finds that there is a need to review the exhibits as filed, for example in preparing an opinion for appeal, the court may requisition the file from the department of court records, using any forms or procedures established for such review.

Rule 5103.4. Family Division Custody of Exhibits. Special Provisions.

(a) *Documentary Exhibits.*

(1) If a proponent offers into evidence an exhibit such as a letter, report, drawing, map, or other document that exceeds 8 1/2 × 11 inches, the proponent shall ensure in advance of the proceeding that a copy of the document is reduced to 8 1/2 × 11-inches and is entered into the record.

(2) A proponent who provides a reduced copy of an oversized exhibit shall ensure that the reproduced document or copy of a photograph, where submitted, is clear and can be further reproduced or transferred to digital media.

(3) Voluminous documentary exhibits are those where the intended original documentary exhibit exceeds 150 physical pages (whether single- or double-sided). Each proponent of a voluminous documentary exhibit in advance of a proceeding shall have that exhibit placed onto USB flash drive or other format that the court may deem acceptable for entry into the record.

(b) *Photographs.*

(1) If a proponent offers into evidence a photograph, the proponent shall ensure in advance of the proceeding that the original or a copy of the photograph instead of the original is no larger than 8 1/2 × 11 inches when entered into the record. If the original photograph is in color, any copy placed in the record shall also be in color.

(2) A proponent who provides a copy of a photograph shall ensure that the reproduced document is clear and can be further reproduced or transferred to digital media.

(c) *Non-Documentary Exhibits Generally.*

(1) If a proponent offers into evidence a non-documentary exhibit, the proponent shall ensure in advance of the proceeding that a photograph no larger than 8 1/2 × 11 inches of the exhibit is entered into the record instead of the non-documentary exhibit. If the non-documentary exhibit displays color, the copy shall also be in color.

(2) A proponent who provides a photograph of a non-documentary exhibit shall ensure that the photograph is clear and can be further reproduced or transferred to digital media. If more than one photograph is required to convey a full image of an exhibit (for example, from more than one angle), the proponent shall take as many such additional photographs as are necessary; in this case, the exhibit shall be labeled with subparts under one number (such as Exhibit 1(a), 1(b), etc.).

(3) If the exhibit is bulky, oversized, or otherwise physically impractical for a court staff custodian to maintain, the court may direct the proponent offering the exhibit to maintain custody of it and secure it during the court proceeding.

(d) *Non-Documentary Exhibits: Weapons, Contraband, Hazardous Materials.*

(1) In any court proceeding in which weapons, cash, other items of value, drugs, or other dangerous materials are offered into evidence, the proponent shall secure the exhibits while the court proceeding is in session as well as during all breaks and recesses.

(2) During the proceeding, the proponent shall exercise all appropriate safeguards necessary to protect the public based on the nature of the exhibit including compliance with any court orders relating to the exhibit.

(e) *Use of Digital Media.* Any media or videos presented at a court proceeding shall be retained by the proponent, but the proponent shall ensure in advance of the court proceeding that an exhibit of this type is placed onto a USB flash drive or other format acceptable to the court for entry into the record. If the court determines that a party lacks the ability to comply with this Subsection, such as those who are pro se and/or do not understand the requirement or those who are proceeding in forma pauperis, the court shall have court staff assist the proponent in attempting to comply with this rule, including but not limited to supplying a USB flash drive unless another format has been deemed acceptable to the court.

(f) *Duplicates.* The court may direct that the original item, and not a duplicate, be entered into the record.

(g) *Exhibits Under Seal.* If an exhibit offered into evidence contains confidential information or confidential documents as defined by the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania ("Policy"), the proponent shall give a copy of the exhibit and a certification prepared in compliance with the Policy and any related local rules to the records office no later than five days after the conclusion of the court proceeding. Any exhibit sealed by the court during the court proceeding shall not be accessible to the public.

(h) *Copies to the Court*: In accordance with each judge's operating procedures, parties shall provide copies of all exhibits proffered to the trial judge before or at the time of the court proceedings and no later than at the time of the proceedings. The Court is not required to maintain the exhibits after court proceedings conclude except for circumstances in which a court custodian is named and must retain the exhibits until filed in compliance with Subsection (g) directly above.

Comment: Subsection (b) recognizes that a proponent may have a sentimental attachment to a photograph and might not want to relinquish it for inclusion in the record if it can be submitted in compliance with this rule.

Regarding the use of media in the courtroom, technology is constantly evolving, and judicial districts have access to varying levels of technology. Accordingly, the rule requires a proponent to provide evidence using USB flash drives but also gives the court discretion to approve alternatives. As set forth in Subsection (e), a proponent offering an audio, visual, or computer file into evidence is solely responsible for ensuring that the court has the means to access it during a court proceeding. This situation may occur in many settings; for example, on occasion, a proponent desires to play a video from a cell phone as evidence. That proponent must first ensure that the media or video can be provided to the court by an acceptable method. Whenever possible, a proponent should provide such evidence to the court prior to the hearing so as not to slow proceedings.

In Subsection (d), the phrase "weapons, cash, other items of value, drugs, or other dangerous materials" includes, but is not limited to, guns, knives, explosives, controlled substances, narcotics, intoxicants, currency, money, negotiable instruments, toxic materials, and biohazards. For purposes of this rule, "secured" means inaccessible by unauthorized persons. See UJS Pennsylvania Court Safety Manual for best practices on firearms handling. The court may consider additional safety measures if substances likely to cause bodily harm are present in the courtroom, such as fentanyl and its derivatives or other substances known to be especially lethal or toxic.

Neither documentary exhibits of unusual bulk or weight nor non-documentary exhibits should be transmitted unless authorized by a party or by the prothonotary of the appellate court. See Pa.R.A.P. 1931(c). In the case of exhibits under Subsection (d) of this rule, such exhibits should only be transmitted by law enforcement personnel who are authorized to transport such items to the appellate court.

With regard to other limitations on the use of duplicates, see Pa.R.E. 1003.

Subsection (g) relates to the confidentiality of information contained in exhibits. Although the Policy does not apply directly to exhibits, important policy considerations are set forth therein, particularly as it relates to personal identification information and highly sensitive financial, medical, and psychological information. While the Policy does not address the handling of non-documentary exhibits, it is expected that parties will adhere to the policy considerations set forth therein and ensure that otherwise confidential information and documents are not made available through the record. Adhering to the guidance of the Policy will ensure that a protected version of the exhibit is maintained in the record for public viewing. Moreover, this Subsection recognizes that some exhibits contain such highly sensitive information or images that they are sealed by the court during the court proceeding.

5102(b)(2) Index of Exhibits—Form Example

INDEX OF EXHIBITS

Case Caption/In Re: _____ Case No.: _____

Party Name: _____ (Plaintiff/Petitioner [ ] Defendant/Respondent [ ] GAL [ ])

Date/Type of Proceeding: _____ Judge/Hearing Officer: _____

**NOTE*: Any proposed exhibit of video/audio recordings must be provided to court staff prior to hearing in a physical format acceptable for filing in compliance with the above rules.

Exhibit #	*Description*	*Admitted / Rejected / Not Offered / Withdrawn*	*Confidential Certification Yes / No / N / A*
	1. Evaluation Report of Dr. Jones of January 1, 2024		
	2. Letter from Dr. J. Smith		
	3. Report Card of J.D.		
	4. Police Report of January 1, 2024		
	5. Forensic Report from [Name Source]		
	6. Photo of house		
	7. Photo of living room		
	8. Order of Court dated Jan. 1, 2024		
	9. Flash drive with video recording of incident [description]		

Page ____ of ____ In Re: _____ Case No. _____ ___/___/___

[Pa.B. Doc. No. 24-707. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Administrative Procedures for Clerk of Courts; No. 0014-12-MD-2024; AO. 15-2024

Administrative Order

And Now, this 1st day of May, 2024, the Court having determined that action is necessary to safeguard the filing of legal papers and other critical functions related to the administration of justice and due process and noting the current deficiencies and unacceptable backlog in filing, docketing, scanning, and processing of Orders and documents within the Clerk of Courts Office, and also based upon the information gathered at an evidentiary hearing held on April 1, 2024, including the assurances of the Clerk of Courts that the factors causing the aforementioned deficiencies and backlog were substantially rectified and that the office had cleared those backlogs and was up to date with its filing obligations, it is hereby *Ordered, Adjudged,* and *Decreed* that the filing office of the Clerk of Courts shall follow the procedures set forth as follows:

Hours of Operation

All filing offices shall be open to the public and judiciary staff from 8:00 a.m. to 4:30 p.m., daily Monday through Friday, excepting holidays and other judicially sanctioned closures. Filing offices may be open longer than the established hours of operation. The Court is "always open for the transaction of judicial business," and a filing office may be requested to stay open outside of the established hours of operation if the Court remains in session or requires the processing of judicial business. See 42. Pa.Con.Stat.Ann § 324. This includes the answering of all telephone inquiries throughout the times of public operation.

Bench Warrant Orders

All Orders directing the issuance of a Bench Warrant, including the issuance of the Bench Warrant or the lifting of a Bench Warrant, shall be filed, docketed, scanned, and fully processed and distributed on the same business day if received by 4:00 p.m. by the Clerk of Courts. If the Bench Warrant is filed after 4:00 p.m., it shall be processed by noon for the next business. Excluded from said calculation shall be all weekends and holidays.

Accelerated Rehabilitative Disposition (ARD) Orders and Dispositions

All ARD orders or other dispositions of ARD cases shall be filed, docketed, scanned, and fully processed and distributed within seventy-two (72) hours of the date of the issuance of the Order or disposition.

Driving Under the Influence (DUI) Orders and Dispositions

All DUI orders or other dispositions of Driving Under the Influence cases shall be filed, docketed, scanned, and fully processed and distributed within twenty-four (24) hours of the date of the issuance of the Order or disposition. Forms required for submission to the Pennsylvania Department of Transportation are to be processed in a timely fashion.

Verdicts

All verdicts, whether entered following a bench or jury trial, shall be filed, docketed, scanned, and fully processed within twenty-four (24) hours from the time of receipt by the Prothonotary.

State Sentencing Orders

All orders or dispositions that result in a defendant being sentenced to a period of state incarceration shall be filed immediately upon presentation to the Clerk of Courts with three certified copies being immediately sent to the Sheriff's Department. Within forty-eight (48) hours from the time of delivery to the Clerk of Courts of the Order or other disposition, said document shall be docketed, scanned, and fully processed and distributed including but not limited to the entry of all information necessary for the printing of a complete DC-300B such that the individual State packets necessary for transport of the Defendant may be completed in a timely manner.

Sentencing Orders and Dispositions

All sentencing orders and dispositions, other than state sentencing orders noted above, shall be filed, docketed, scanned, and fully processed and distributed within twenty-four (24) hours from the time of receipt by the Clerk of Courts.

Juvenile Orders and Dispositions

All juvenile orders and dispositions shall be filed, docketed, scanned, and fully processed and distributed within twenty-four (24) hours from the time of receipt by the Clerk of Courts. All juvenile orders, including orders executed electronically (CPCMS), shall be properly filed in the appropriate physical file within five (5) business days.

Dependency Orders and Dispositions

All dependency orders and disposition shall be filed, docketed, scanned, and fully processed and distributed within twenty-four (24) hours from the time of receipt by the Clerk of Courts. All dependency orders, including orders executed electronically (CPCMS), shall be properly filed in the appropriate physical file within five (5) business days.

General Court Orders, Inmate Mail, and Indirect Criminal Contempt (ICC) Orders

All general court orders and dispositions, including ICC orders, shall be filed, docketed, scanned, and fully processed and distributed within twenty-four (24) hours from the time of receipt by the Clerk of Courts. Inmate mail shall be appropriately processed, including docketing and/or distribution to the Court and Counsel, within twenty-four (24) hours from the time of receipt.

Summary Appeal Orders and Dispositions

All Notices of Appeal from summary convictions shall be filed, docketed, scanned, fully processed, and distributed within forty-eight (48) hours of receipt by the Clerk of Courts. All summary appeal Orders and dispositions shall be filed docketed, scanned, and fully processed and distributed within forty-eight (48) hours from the time of receipt by the Clerk of Courts. Forms required for submission to the Pennsylvania Department of Transportation are to be processed in a timely fashion.

Bail and Pretrial Services Order

Bail Orders shall be filed, docketed, scanned, fully processed and distributed on the same day as received by the Clerk of Courts unless received after 4:00 p.m. In that event, bail Orders shall be processed and distributed by noon the following business day. If applicable, distribution of such Orders shall include the Dauphin County Prison and/or the Magisterial District Court by facsimile or email.

Notices of Appeal from Court of Common Pleas and Related Documents

All Notices of Appeal and any appeal-related documents shall be filed, docketed, scanned, fully processed and distributed to the appropriate appellate court within twenty-four (24) hours. The Clerk of Courts shall advise the appropriate Judge of the filing of a Notice of Appeal. The Clerk of Courts shall provide to the appropriate judge a copy of all communications and Orders received by the Clerk of Courts from any appellate court. The Clerk of Courts shall coordinate the preparation of the record for appeal with the appropriate judge.

Further, when directed by either a Pennsylvania appellate court, or a federal court, the Clerk of Courts shall prepare, copy, and transmit the requested record of any Dauphin County Court of Common Pleas case to the appropriate appellate court or federal court.

Probation and Parole Orders and Other Probation Office Documents

All probation and parole Orders and other probation office documents shall be filed, docketed, scanned, and fully processed and distributed within forty-eight (48) hours from the time of receipt by the Clerk of Courts.

Distribution of Filings

All filings accepted by the Clerk of Courts shall be distributed to parties and any interested entities or persons as noted by the filing party or entity. Those filings include, but are not limited to, transport Orders, transcript requests forms, Omnibus Pretrial Motions, motions in limine, discovery requests, reciprocal discovery requests, and discovery inventories.

Commitments to Dauphin County Prison or Other Correctional Facility

All Orders providing for a commitment to Dauphin County Prison, or another correctional facility, must be filed, docketed, scanned, and distributed to the appropriate facility within forty-eight (48) hours.

However, any Order for immediate release from incarceration, or Orders imposing a sentence of probation, setting or modifying bail, entering a nolle prosequi, or waiving extradition for an incarcerated individual must be docketed, scanned, and distributed on the same day it is received unless received after 4:00 p.m. In that event, all processing must be completed by noon on the following business day.

Statistical Reporting

All AOPC statistical docket corrections or reporting shall be fully processed and completed by all filing offices as requested by Court Administration. The compilation of statistical information for reporting to the AOPC is the responsibility of Court Administration.

Enforcement

The elected Clerk of Courts and their staff shall comply with the provisions of this Administrative Order. The Court may initiate contempt proceedings if there is a failure to adhere to the requirements set forth in this Administrative Order. Questions concerning a provision of the Administrative Order shall be directed to the Court Administrator, who is responsible for bringing those matters needing clarification or other action to the attention of the President Judge and other appropriate judges. Any other Order that conflicts or is otherwise inconsistent with this Administrative Order is hereby *Rescinded*, except those issued pursuant to a locally declared judicial emergency.

It is further *Ordered* that the Court Administrator shall cause a copy of this Order to be published in the *Dauphin County Reporter*, the official legal publication of Dauphin County, at the expense of the County of Dauphin, and in the *Pennsylvania Bulletin*.

By the Court

SCOTT ARTHUR EVANS,
President Judge

[Pa.B. Doc. No. 24-708. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

FAYETTE COUNTY

Custody of Exhibits in Court Proceedings; F.C.R.J.A. 5104; No. 930 of 2024 G.D.

Order

And Now, this 8th day of May 2024, it is hereby Ordered that the local rule of judicial administration of Custody of Exhibits in Court Proceedings is adopted as follows. Further, it is hereby Ordered that the Fayette County Administrative Order of Custody of Evidence Admitted in Court adopted September 9, 2014, is hereby rescinded.

The Prothonotary is directed as follows:

(1) A copy of the order and rule shall be filed with the Administrative Office of Pennsylvania Courts via e-mail to adminrules@pacourts.us.

(2) Two copies of the order and rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The local rule shall be e-mailed in Microsoft Word format to bulletin@palrb.us.

(3) One copy of the order and rule shall be sent to the Fayette County Law Library and the Editor of the *Fayette Legal Journal*.

The Administrative Office of Fayette County Courts is directed as follows:

(1) Publish a copy of this rule on the website of Administrative Office of Fayette County Courts at www.fayettecountypa.org.

(2) Compile the rule within the complete set of local rules no later than 30 days following publication in the *Pennsylvania Bulletin*.

The local rule of Custody of Exhibits in Court Proceedings shall become effective 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

STEVE P. LESKINEN,
President Judge

Rule 5104. Custody of Exhibits in Court Proceedings.

(a) *Designation of Custodian.*

1. In court proceedings before a Judge, the Court Reporter is designated as the custodian to safeguard and maintain exhibits introduced in a court proceeding.

2. In court proceedings before a Hearing Officer, the Hearing Officer is designated as the custodian to safeguard and maintain exhibits introduced in the court proceeding.

(b) *During Court Proceedings.*

1. Throughout court proceedings, all documentary and non-documentary exhibits shall remain in the custody of the proponent until the exhibit is offered for admission into the record.

2. Non-documentary exhibits, including, but not limited to, weapons, cash, other items of value, drugs, and other dangerous contraband or materials, and bulky, oversized, or otherwise physically impractical exhibits for the custodian to maintain shall remain in the custody of the proponent during court proceedings.

3. Non-documentary exhibits shall be photographed by the proponent and the photograph shall be appropriately marked and produced during the court proceedings for inclusion in the official case record.

4. After being offered into evidence, whether accepted or rejected by the presiding Judge or Hearing Officer, documentary and photograph exhibits shall then be placed in the custody of the custodian.

5. The proponent may reduce oversized documentary exhibits to 8.5 × 11 inches paper, so long as the quality is not compromised, or may submit the exhibits digitally via a CD or USB flash drive as a PDF with a file name identifying the exhibit.

6. The proponent may submit voluminous documentary exhibits digitally via a CD or USB flash drive as a PDF with a file name identifying the exhibit.

(c) *After Court Proceedings.*

1. *Proponent Responsibilities.*

i. The proponent of non-documentary exhibits shall safeguard and maintain such exhibits and may only dispose of or destroy non-documentary exhibits as required by any applicable records retention periods or by Order of Court.

ii. If not submitted during the court proceedings, the proponent shall provide to the custodian a photograph (no larger in size than 8.5 × 11 inches) of the non-documentary exhibits in lieu of the non-documentary exhibit, within five business days of the conclusion of the court proceeding.

2. *Custodian Responsibilities.*

i. The custodian shall retain or take custody of all documentary exhibits, photographs, and photographs of non-documentary exhibits accepted or rejected during the court proceeding.

ii. The custodian shall prepare and file a numbered list of exhibits, and for each exhibit identify the proponent, whether the exhibit was admitted or rejected from evidence, and a textual description or identification of the exhibit.

iii. The custodian shall file all documentary exhibits, photographs, and photographs of non-documentary exhibits with the records office within five business days of the conclusion of the court proceeding unless otherwise directed by the court.

(d) All other issues regarding custody of exhibits in court proceedings shall be governed by Pennsylvania Rule of Judicial Administration 5101—5104.

[Pa.B. Doc. No. 24-709. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MERCER COUNTY

Amendment to Local Rule of Civil Procedure L309; No. 1060 CIVIL 2024

And Now, this 18th day of April, 2024, the Court hereby *Approves, Adopts and Promulgates* the following Amendment to Mercer County Local Rule L309 regarding Praecipe for Trial List.

It Is Further Ordered and Directed that the Court Administrator of Mercer County shall file one (1) certified copy of the Amendment with the Administrative Office of the Pennsylvania Court and furnish two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

It Is Further Ordered and Directed that this Amendment shall be kept continuously available for public inspection and copying in the Office of the Clerk of Courts of Mercer County and the Office of the Prothonotary of Mercer County.

By the Court

DANIEL P. WALLACE,
President Judge

AMENDMENT TO LOCAL RULE OF CIVIL PROCEDURE L309 PRAECIPE FOR TRIAL

A. LOCAL RULE L309 shall be deleted and replaced with the following:

1. Pursuant to Local Rules L317(c)(3) and L317(c)(4), regarding case management orders for regular and complex cases, all matters shall be placed on the trial list utilizing a Praecipe for Trial.

[Pa.B. Doc. No. 24-710. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

NORTHAMPTON COUNTY

Administrative Order 2024-07 Increasing Fee of Alcohol Highway Safety Program and Wages for Alcohol Highway Safety Instructors; No.: C-48-AD-75-2024

Administrative Order

And Now, this 6th day of May, 2024, it is hereby *Ordered* and *Decreed* that the fee for the Northampton County Alcohol Highway Safety Program is hereby increased to $300.00 per class and the wages for each Alcohol Highway Safety Instructor shall also be increased to $450.00 per 12.5 hours of sessions.

It is further *Directed* that the Northampton County Court of Common Pleas' Court Administrator shall comply with all requirements set forth in Pa.R.J.A. 103(c), such as: distributing two (2) certified copies of this Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; filing one (1) certified copy of the Order with the Administrative Office of Pennsylvania Courts; publishing a copy of this Order on the Court's website; and incorporating these procedures into the complete set of Northampton County Local Rules no later than thirty (30) days following publication in the *Pennsylvania Bulletin*.

This Administrative Order shall become effective Monday, June 17, 2024 or thirty (30) days from when publication in the *Pennsylvania Bulletin* occurs.

By the Court

CRAIG A. DALLY,
President Judge

[Pa.B. Doc. No. 24-711. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Administrative Order; No. AD-41-24

Administrative Order

And Now, this 1st day of May, 2024, it is *Ordered* and *Decreed* that this Court adopts the following Rules of Civil Procedure For Magisterial District Judges: Rule 201 (Citation of Civil Procedural Rules), Rule 1203 (Jurisdiction for Emergency Protective Relief) and Rule 1206 (Commencement of Abuse and Sexual Violence or Intimidation Proceedings):

The Schuylkill County Court Administrator is *Hereby Ordered* to:

1. Distribute one copy of each Rule to the Administrative Office of Pennsylvania Courts via email at adminrules@pacourts.us.

2. Distribute two paper copies of each Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Distribute one copy of each Rule to the Legislative Reference Bureau via email at bulletin@palrb.us in a Microsoft Word format.

4. Publish the local Rules on the Schuylkill County Court's website.

5. Incorporate the local Rules into the set of local Rules on this Court's website within 30 days after the publication of the Rule in the *Pennsylvania Bulletin*.

6. File one copy of each local Rule in the Office of the Clerk of Courts of Schuylkill County.

By the Court

JACQUELINE L. RUSSELL,
President Judge

Sch.R.Civ.P.M.D.J. 201. Citation of Civil Procedural Rules for Magisterial District Judges.

These rules shall be known as Schuylkill County Rules of Civil Procedure Governing Actions and Proceedings Before Magisterial District Judges. They shall be cited as "Sch.R.Civ.P.M.D.J. _____ ."

Effective Date.

This Rule is effective 60 days after publication in the *Pennsylvania Bulletin*.

Sch.R.Civ.P.M.D.J. 1203. Jurisdiction for Emergency Protective Relief.

A. Magisterial District Judges serving on-call duty on holidays and outside of regular business hours, pursuant to a schedule prepared by the Schuylkill County Criminal Court Administrator, shall provide continuous coverage as required by the Protection from Abuse Act, the Protection of Victims of Sexual Violence or Intimidation Act, and the Older Adults Protective Services Act.

This Order is effective 60 days after publication in the *Pennsylvania Bulletin*.

Sch.R.Civ.P.M.D.J. 1206. Commencement of Abuse and Sexual Violence or Intimidation Proceedings.

A. Individuals seeking emergency protection orders under the Protection from Abuse Act or the Protection of Victims of Sexual Violence or Intimidation Act outside of normal business hours or on holidays shall go to the site of the Schuylkill Hope Center for Victims of Domestic Violence, or its successor, in Pottsville, Schuylkill County where, at a time agreed upon by the Magisterial District Judge and personnel of the Hope Center, or its successor, the Magisterial District Judge shall receive the petition for relief, conduct an ex parte hearing, and grant or deny requested relief.

This Order is effective 60 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 24-712. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Administrative Order; No. AD-43-24

Administrative Order

And Now, this 1st day of May, 2024, it is *Ordered* and *Decreed* that this Court adopts the following Rules of Juvenile Civil Procedure: Rule 102 (Citing the Juvenile Court Procedural Rules) and Rule 210 (Arrest Warrants):

The Schuylkill County Court Administrator is *Hereby Ordered* to:

1. Distribute one copy of each Rule to the Administrative Office of Pennsylvania Courts via email at adminrules@pacourts.us.

2. Distribute two paper copies of each Rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Distribute one copy of each Rule to the Legislative Reference Bureau via email at bulletin@palrb.us in a Microsoft Word format.

4. Publish the local Rules on the Schuylkill County Court's website.

5. Incorporate the local Rules into the set of local Rules on this Court's website within 30 days after the publication of the Rule in the *Pennsylvania Bulletin*.

6. File one copy of each local Rule in the Office of the Clerk of Courts of Schuylkill County.

By the Court

JACQUELINE L. RUSSELL,
President Judge

Sch.R.J.C.P. 102. Citing the Schuylkill County Juvenile Court Procedural Rules.

Juvenile court procedural rules adopted by this Court shall be known as Schuylkill County Rules of Juvenile Court Procedure, and shall be cited as "Sch.R.J.C.P. _____."

Effective Date.

This Rule is effective 60 days after publication in the *Pennsylvania Bulletin*.

Sch.R.J.C.P. 210. Arrest Warrants.

A. The Magisterial District Judge serving on-call duty outside of regular business hours, including on holidays, shall be the designated issuing authority for purposes of Pa.R.J.C.P. 210(a).

Effective Date.

This Rule is effective 60 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 24-713. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

SCHUYLKILL COUNTY

Administrative Order; No. AD-44-24

Administrative Order

And Now, this 1st day of May, 2024, it is *Ordered* and *Decreed* that this Court adopts the following Rule of Criminal Procedure 117 regarding Magisterial District Court Coverage and *Rescinds* Administrative Order No. AD-102-2006:

The Schuylkill County Court Administrator is *Hereby Ordered* to:

1. Distribute one copy of the Rule and Order to the Administrative Office of Pennsylvania Courts via email at adminrules@pacourts.us.

2. Distribute two paper copies of the Rule and Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. Distribute one copy of the Rule and Order to the Legislative Reference Bureau via email at bulletin@palrb.us in a Microsoft Word format.

4. Publish the local Rule on the Schuylkill County Court's website.

5. Incorporate the local Rule into the set of local Rules on this Court's website within 30 days after the publication of the Rule in the *Pennsylvania Bulletin*.

6. File one copy of the local Rule and Order in the Office of the Clerk of Courts of Schuylkill County.

By the Court

JACQUELINE L. RUSSELL,
President Judge

Sch.R.Crim.P. 117. Magisterial District Court Coverage.

Regular Business Hours

A. Each Magisterial District Court Office shall be open for regular business on Mondays through Fridays, excluding holidays, from 8:30 a.m. to 4:30 p.m. The times may be modified upon approval of the President Judge to meet the needs of the public and the Court.

B. All court proceedings normally conducted before a Magisterial District Court Judge shall be handled by the appropriate Magisterial District Judge as determined by the Rules regarding venue. The Magisterial District Judge shall be available for all court proceedings without unreasonable delay during normal business hours for the purposes of accepting the posting of bail, performing preliminary arraignments, accepting complaints, issuing search and arrest warrants, conducting summary trials or setting collateral in summary cases following arrests with or without a warrant.

C. In the event a Magisterial District Judge with jurisdiction over a matter is unavailable during regular business hours, the President Judge will transfer the matter to another Magisterial District Judge in the 21st Judicial District.

On-Call Magisterial District Judge

A. The President Judge shall assign, on a rotating basis, Magisterial District Judges to serve on-call duty outside of regular business hours, including on holidays, to fulfill the duties of a Magisterial District Judge within the 21st Judicial District by providing continuous coverage as required by the Pennsylvania Rules of Criminal Procedure, pursuant to a schedule prepared by the Schuylkill County Court Administrator.

B. On days that the Court is open for business, the On-Call Magisterial District Judge shall commence duty at 4:30 p.m. and remain on duty until 8:30 a.m. the following morning. On weekends and holidays the On-Call Magisterial District Judge shall be on duty from 8:30 a.m. on the day that their duty starts until 8:30 a.m. when the Court is next open for regular business.

C. The On-Call Magisterial District Judge shall be available, without unreasonable delay, to issue search warrants pursuant to Pa.R.Crim.P. 203 and arrest warrants pursuant to Pa.R.Crim.P. 513, to conduct summary trials or set collateral in summary cases following arrests with a warrant issued pursuant to Pa.R.Crim.P. 430(A) as provided in Pa.R.Crim.P. 431(B)(3) and following arrests without a warrant as provided in Pa.R.Crim.P. 441(C), to conduct preliminary arraignments whenever a warrant of arrest is executed within the judicial district pursuant to Pa.R.Crim.P. 516, to set bail whenever an out-of-county warrant of arrest is executed within the judicial district pursuant to Pa.R.Crim.P. 517(A), and to accept complaints and conduct preliminary arraignments whenever a case is initiated by arrest without warrant pursuant to Pa.R.Crim.P. 519(A)(1). The foregoing shall be conducted at the On-Call Magisterial District Judge's established office or, in the Judge's discretion, via advanced communication technology. In the event of a technological failure, the proceedings shall be conducted at the Judge's established office.

D. The Magisterial District Judge may, in the Judge's sole discretion, accept bail deposits outside of normal business hours. However, the posting of bail shall be accepted outside of normal business hours and on holidays at the Schuylkill County Prison. The Warden, or in his absence the Warden's designee in charge, shall be authorized to accept bail deposits, as provided in Pa.R.Crim.P. 117, have the defendant sign the bail bond, release the defendant upon execution of the bail bond, and deliver the bail deposit and bail bond to the Clerk of Courts promptly upon the opening of the courthouse the next business day. Bail deposits after normal business hours and on holidays must be by cash, money order, or by bail bond posted by a professional bail bondsman registered with Schuylkill County. Persons desiring to post bail after normal business hours or on holidays shall contact the Schuylkill County Prison at 570-628-1450 to make arrangements to do so. All parties authorized to accept bail shall comply with the provisions of and be subject to the limitations specified in the Pennsylvania Rules of Criminal Procedure.

Effective Date.

This Rule is effective 60 days after publication in the *Pennsylvania Bulletin*.

[Pa.B. Doc. No. 24-714. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WASHINGTON COUNTY

Approval and Adoption of Amendments to Local Rules of Civil Procedure; No. 2024-1

Administrative Order

And Now, this 3rd day of May, 2024, having received approval from the appropriate statewide rules committeein accordance with Pennsylvania Rule of Judicial Administration 103(d)(4), it is hereby *Ordered, Adjudged,* and *Decreed* that the amendments to the following Local Rules of Civil Procedure:

1. Rule L-205.2(a);
2. Rule L-205.2(b);
3. Rule L-208;
4. Rule L-210;
5. Rule L-212.7;
6. Rule L-212.8;
7. Rule L-227.1;
8. Rule L-240;
9. Rule L-440;
10. Rule L-1028(c);
11. Rule L-1034;
12. Rule L-1035.2(a),
13. Rule L-1041.1;
14. Rule L-1303.1;

15. Rule L-1308; and

16. Rule L-5000.1,

as set forth following this Order, are *Approved* and *Adopted*.

The amendments of the above-identified local rule of civil procedure shall be effective June 20, 2024, and following publication in the *Pennsylvania Bulletin* pursuant to Pa.R.J.A. 103(c)(5). The District Court Administrator is directed to:

1. File copies of this Administrative Order and the adopted local rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

2. File one (1) electronic copy of this Administrative Order and the adopted local rules with the Administrative Office of Pennsylvania Courts;

3. Arrange for the publication of the local rules on the website for the Twenty-seventh Judicial District, www.washingtoncourts.us, within thirty (30) days of the effective date; and

4. Cause a copy hereof to be published in the *Washington County Reports* once a week for two (2) successive weeks at the expense of the County of Washington.

By the Court

GARY GILMAN,
President Judge

Rule L-205.2(a). Pleadings and Legal Papers. Physical Characteristics. Proposed Order.

(1) All pleadings and legal papers filed with the Prothonotary shall be on white, letter-sized (8.5 inch by 11 inch) paper of good quality, and otherwise conform to the requirements of Pa.R.C.P. 204.1.

(a) Footnotes shall be single-spaced and in 10-point font.

(b) Every paper filed shall be fastened only at the top left corner of the pages with one staple, or, if the document is too thick, a metal fastener. Cloth tape and "bluebacks" shall not be used.

(2) All attachments, supporting documents, and exhibits shall be on letter-sized (8.5 inch by 11 inch) paper at the time of filing with the Prothonotary. Documents that are sized differently in original form shall be re-sized and reproduced to comply with this rule.

(3) *Proposed Order.* Every motion, petition, or preliminary objection shall include a proposed order of court which shall be attached before the certificate of service. If a legal paper is filed electronically, there shall be a separately filed proposed order of court in a Microsoft Word format in accordance with Wash.L.R.C.P. 205.4(b)(2).

Rule L-205.2(b). Caption Sheet.

(1) The first page of any pleading, petition, motion or other legal paper shall be a cover sheet setting forth the items of information specified below, according to the format presented in Form of Caption Sheet below. If needed, a second page may be attached and numbered "Caption Sheet 2" at the bottom of the page.

(a) The lettering shall be in a font of no smaller than twelve-point size or an equivalent and shall substantially follow the format in Form of Caption Sheet below.

(b) The Caption Sheet on the document commencing the action (e.g., praecipe or complaint), shall have a margin at the top of three (3) inches for the stamp of the Prothonotary.

(2) The information required includes:

(a) (In capital letters from the left to right margins) "IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA"

(b) (In capital letters on left side of center) The complete names of all parties; if the party filing the attached pleading has made a previous filing, an appropriate and obvious shortened caption may be used.

(c) (In appropriate upper and lower case, except where otherwise indicated, on the right side of center on separate lines):

i. the specific DIVISION, e.g., CIVIL or DOMESTIC RELATIONS;

ii. the docket number;

iii. the name of the assigned judge, if applicable;

iv. the name of the pleading, in bold face and all capital letters;

v. if the action is filed as a class action, then "CLASS ACTION" shall be set forth following the title of the document;

vi. if the action involves real estate, then the address, municipality, ward if applicable, and a tax identification number shall be set forth;

vii. the completed statement: "Filed on behalf of (party's name, party's relationship to case)";

viii. the completed statement: "Counsel of Record: (attorney's name and Pennsylvania Identification Number, firm name, firm number, address, and telephone number)";

ix. the electronic mail address for service of the filing party; and

x. every motion, petition, or pleading must include a "Certificate of Service" which sets forth the manner of service upon each party including the name of an attorney of record for each party that is represented and the address at which service was made. The "Certificate of Service" shall be substantially in the following form:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing [Title of Document] has been served upon all other parties at the address(es) listed below via [manner of service], this _____ day of _____ , 20__ .

[Name and address of counsel]
[Signature]

(3) *Form of Caption Sheet.*

The Caption Sheet shall be formatted substantially in the following form:

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA

JOHN DOE, Plaintiff, vs BIG CORPORATION, INC., and JANE DOE, Defendants.	CIVIL DIVISION Docket No. _____ JUDGE _____ [TITLE OF DOCUMENT] CLASS ACTION (if applicable) Real Estate Involved (if applicable): (Address, municipality, ward if applicable; a tax identification number is required in all cases involving real estate.) Filed on behalf of Plaintiff, JOHN DOE Counsel of Record for this Party: Henry Smith, Esquire Pennsylvania I.D. #12345 Eeny, Meeny, Miny & Mo Firm I.D #6789 123 South Main Street, Suite 100 Washington, PA 15301-0000 724-867-5309 724-987-6543 (fax) emmm@domain.com

Rule L-208.4. Court Order.

In all cases in which the Court enters an order after initial consideration of a petition or motion, the Court may:

(1) file and docket the order directly into the case management system and require the Prothonotary to perform service; or

(2) require counsel, or the moving party if unrepresented, to retrieve and file the order immediately with the Prothonotary. Upon receipt of the order, the moving party shall serve a copy on all other parties within three (3) business days.

Rule L-210. Briefs.

(1) Absent a court order for cause shown, the body of a brief shall not exceed 3,000 words. Non-conforming or illegible briefs may not be considered in the discretion of the Court. All briefs shall use a proportionally spaced typeface in fourteen (14) point font; the proportionally spaced typeface must include serifs, but sans-serif type may be used in headings and captions. All other physical characteristics of a brief shall comply with Wash.L.R.C.P. 204.1.

(2) Every brief shall contain the following:

(a) a brief history of the case;

(b) a statement of the issue(s) involved;

(c) a copy of, or reference to, the pertinent parts of any relevant document, report, recommendation, order, and/or transcript;

(d) an argument with citations of the authority relied upon;

(e) a citation or copy to any opinion of the Court or an agency involved in the case; and

(f) a conclusion.

(3) No supplemental brief(s) shall be filed, absent an order of court.

(4) Unless otherwise ordered by the Court, the brief of a moving party shall be filed contemporaneously with the motion. The brief of the responsive party shall be filed at least ten (10) days prior to the argument.

(5) This rule shall not apply to any brief filed in support of, or in opposition to, a motion for post-trial relief pursuant to Pa.R.C.P. 227.1.

Rule L-212.7. Washington County Civil Litigation Mediation Program.

(1) In the discretion of the assigned Judge, a case may be ordered to the Washington County Civil Litigation Mediation Program. This rule shall not apply to asbestos

cases, cases ordered to private mediation under this rule, or professional liability cases. The selection of a case for mediation shall not delay any scheduled trial of the matter.

(2) The mediators shall be practicing attorneys that are members of the Washington County Bar Association, with an emphasis in their practice on civil litigation. An approved list of mediators shall be maintained by the District Court Administrator. The parties may agree to a particular mediator from the list if permitted by the Court.

(3) Upon appointment, the mediator shall schedule the mediation within sixty (60) days of the order of court. The attendance, in person, of trial counsel, the parties, and the representative of the defendant's insurance carrier, with authority to enter into a full and complete compromise and settlement, is mandatory. If trial counsel, the parties, or a representative fail to appear, absent good cause, the mediation will not be held and sanctions, upon request of the mediator, shall be entered against the non-appearing individual(s) by the Court. Sanctions may include an award of reasonable mediator and attorney's fees and other costs associated with the failure to appear.

(4) At least seven (7) days prior to the mediation, each party shall file, with the mediator, a mediation statement which must include the following: (1) a succinct explanation of liability and damages; (2) significant legal issues that remain unresolved; (3) a summary of medical and expert reports (if applicable); (4) an itemized list of damages; and (5) settlement posture and rationale.

(a) This requirement shall be deemed satisfied if a party has previously filed a pre-trial statement pursuant to rule of court, in which case the mediation statement shall only provide updated or additional information.

(b) Failure to file a mediation statement may result in sanctions, if requested by the mediator.

(5) Each party to a case selected for mediation shall pay a mediation fee to be made payable to the County of Washington and submitted to the Office of the Court Administrator. The mediation fee shall be set by administrative order, and information regarding the fee shall be available in the Office of the Court Administrator.

(6) If the case has not been resolved, within ten (10) days from the date of the mediation, the mediator shall send the Court a report setting forth the following information:

(a) the mediator's assessment of liability;

(b) the mediator's assessment of damages;

(c) the mediator's opinion regarding the potential range of a verdict and the settlement value of the case;

(d) the Plaintiff's final settlement demand;

(e) the Defendant's final settlement offer; and

(f) the mediator's recommendation regarding settlement of the case. A copy of the report shall be provided to and maintained by the Court Administrator until the case is closed.

(7) If the case is resolved and a settlement agreed upon, the mediator shall send a letter to the Judge, with copies to counsel and the Court Administrator.

(8) The mediator shall not be subpoenaed or requested to testify or produce documents by any party in any pending or subsequent litigation arising out of the same or similar matter. Any party, person, or entity that attempts to compel such testimony or production shall be liable to and indemnify the mediator and other protected participants for all reasonable costs, fees and expenses. The mediator shall have the same limited immunity as judges pursuant to the applicable law as it relates to common pleas judges.

Comment: Confidentiality of mediation communications and mediation documents are subject to the protections and exceptions prescribed in 42 Pa.Con.Stat. § 5949.

(9) Notwithstanding the preceding subsections and Wash.L.R.C.P. 1042.1—1042.20, the Court may in its discretion submit a civil case for an alternative dispute resolution ("ADR") before a private mediator/arbitrator. The method of selection of the private mediator shall be in the discretion of the Court. All parties shall bear equally the costs of any Court-ordered ADR, unless otherwise agreed upon; provided, however, that the Court will take appropriate steps to assure that no referral to ADR results in an unfair or unreasonable economic burden on any party.

(a) The method of ADR shall be in the discretion of the private mediator/arbitrator.

(b) The fact that a case is selected for ADR shall not delay the scheduled trial of a case.

(c) Nothing in this rule shall prevent the parties from voluntarily engaging in ADR before a private mediator/arbitrator on their own initiative.

Note: When selecting a case for ADR before a private mediator, the Court shall consider various criteria, including the nature of the claims involved and their complexity, whether any of the litigants is pro se, the potential for a successful resolution, and the interests of justice.

Rule L-212.8. Mini-Jury Trials.

(1) *Purposes.* The purpose of mini-jury trials is to establish a less formal procedure for the resolution of civil actions for money damages while preserving the right to a jury trial de novo. As a part of the Court's pre-trial procedure, the Court may refer cases for a mini-jury trial upon motion of a party or sua sponte.

(2) *Preliminary considerations.* The following shall be considered, but shall not be controlling, in determining if civil cases are amenable for a mini-jury trial.

(a) *Time necessary for regular trial.* The Court will determine if the regular trial time would be three (3) days or more.

(b) *Consent of attorneys.* While the Court will attempt to obtain the consent of the attorneys to a mini-jury trial, the Court shall have the authority to direct a mini-jury trial as an extension of the settlement conference.

(c) *Existing offer and demand.* The Court will attempt to obtain the agreement of counsel to keep any current offer or demand open for forty-eight hours after the mini-jury trial verdict.

(d) *Credibility.* The Court will determine if the major issues will be resolved on the basis of credibility.

(e) *Appeals from arbitration.* Cases appealed from arbitration will be presumptive candidates for mini-jury trials.

(3) The following procedures shall apply to all mini-jury trials:

(a) *Attendance of parties.* Individual parties shall attend the mini-jury trial in person. An officer or other

responsible lay representative of a corporate party or a claims adjuster for an insurance carrier shall attend the mini-jury trial.

(b) *Non-binding effect.* Mini-jury trials are for settlement purposes only and are non-binding. Nothing done by counsel with reference to the mini-jury trial shall be binding on counsel, the parties, nor shall anything constitute a waiver, unless specifically stipulated to or agreed upon by the parties.

(c) *Special verdict questions.* Cases will be submitted to the jurors by way of special verdict questions. Counsel shall submit to the Special Master, forty-eight (48) hours prior to the selection of the jury, a joint statement or proposed special verdict questions, for use at trial. If counsel cannot agree on a joint statement, the Special Master will select the special verdict questions to be used. Special verdict questions for the mini-jury trial need not be the same as those for a regular jury trial. The jury will determine the amount of damages in all cases, regardless of whether a defendant is found to be liable or not liable. The Special Master will determine the format to be used and make rulings on disputed questions.

(d) *Size of Jury.* The number of jurors shall be six (6) and the agreement of five-sixths of the jury shall be necessary to reach a verdict. There shall be no preemptory challenges to jurors, but jurors may be excused for cause.

(e) *Presentation of the case by counsel.* Each side shall be entitled to one hour for presentation of its case unless counsel presents a compelling reason at a pre-trial conference why more time for each side should be allocated. Presentation of the case by counsel may involve a combination of argument, summarization of evidence to be presented at the regular trial, and a statement of the applicable law but only to the extent it is needed to be known by the jury in answering the special verdict questions. Counsel may call witnesses, but cross-examination shall only be done as part of a party's presentation of its case. Counsel may quote from depositions and/or reports to the extent that such evidence can reasonably be anticipated to be admissible at the time of trial. Counsel should not refer to evidence which would not be admissible at trial. The Plaintiff shall proceed first and shall have a five (5) minute rebuttal following the presentation of the defendant's case.

(f) *Applicable law.* The Special Master will charge the jury on the applicable law to the extent it is appropriate and needed to be known by the jury in answering the special verdict questions. The points for charge shall be submitted jointly by the parties to the Special Master forty-eight (48) hours prior to the selection of the mini-jury. The Special Master shall decide on any disputes on a point for charge.

(g) *Jury verdict.* The jury will be asked to return a verdict if five-sixth of them agree to it. (The same five-sixth majority need not answer each special verdict question.)

(h) *Length of Deliberations.* If the jury does not reach a five-sixth majority verdict within a reasonable time, the Special Master will consider polling the jurors individually.

(i) *Oral Questions to Mini-Jury.* After the verdict, counsel may address questions in open court to the foreperson of the jury. Only questions that can be answered "yes" or "no" or by a dollar figure may be asked. The attorneys shall be limited to ten questions each unless a greater number is allowed by the Special Master. No questions shall be asked such that the answers will disclose the personal view of any particular member of the jury.

(j) *Scheduling Regular Trial.* Should the mini-jury trial not result in a settlement, the regular trial shall not be held the same calendar week unless the jury is dismissed and will not come into contact with the balance of the venire.

(k) *Release of verdict.* The mini-jury trial is an extension of the settlement conference, and the verdict shall not be filed or otherwise made public.

(4) *Selection of Special Masters.* The Court Administrator shall maintain a roster of approved Special Masters, who shall be attorneys admitted to practice for not less than ten (10) years. The parties may agree upon a Special Master who is not on the roster maintained by the Court Administrator, provided that the name of such person is submitted to, and approved by, the President Judge or the judge to whom the case is assigned.

(5) Each party to a case selected for mini-jury trial shall pay a fee made payable to the County of Washington and submitted to the Office of the Court Administrator for processing. The mini-jury trial fee shall be set by administrative order, and information regarding the fee shall be available in the Office of the Court Administrator. The special master shall be compensated at a commensurable rate to their service, as established by the Court Administrator and approved by the Court.

(a) *Application Process.* Any lawyer possessing the qualifications may submit a written request to serve as a Special Master to the Court Administrator. The President Judge shall certify as many Special Masters as determined to be necessary for the program.

(b) *Withdrawal by Special Master.* Any person whose name appears on the roster maintained by the Court Administrator may ask to have his/her name removed or, if selected to serve, decline to serve but remain on the roster.

(c) *Disqualification.* Persons selected to be Special Masters shall be disqualified for bias or prejudice and shall disqualify themselves in any action in which they would be required to disqualify themselves if they were a judge.

(6) *Sanctions.* If a party, or their counsel, fails to comply with this rule, the Special Master may continue the mini-jury trial to another date as selected by the Court Administrator. If the mini-jury trial is continued, the Court may enter sanctions against the offending party or counsel, including the imposition of counsel fees, juror costs, and any other appropriate relief.

Rule L-227.1. Motion for Post-Trial Relief.

(1) Any post-trial motions shall be filed with the Prothonotary in accordance with Pa.R.C.P. 227.1, together with a transcript request form designating that portion of the record to be transcribed.

(2) All post-trial motions must specify the grounds relied upon as provided by Pa.R.C.P. 227.1(b)(2).

(3) Unless otherwise ordered by the Court, a brief in support of post-trial motions shall be filed within thirty (30) days following receipt of the transcript or, if no request for transcript has been made by either party, within thirty (30) days of the date of the filing of the post-trial motion.

(4) Unless otherwise provided by the Court, briefs in opposition to post-trial motions shall be filed within twenty (20) days from the date of the filing of the brief of the moving party.

(5) A certificate of service shall accompany all briefs filed hereunder.

Rule L-240. In Forma Pauperis.

(1) A party seeking leave to proceed in forma pauperis shall apply to the Court for such status. The application shall include as an attachment the affidavit of the party demonstrating an inability to pay the costs of litigation.

Note: The affidavit form is set forth in Pa.R.C.P. 240; application forms are available in the County Law Library. Presentation of the application to the Court must comply with the requirements of Local Rule 208.3(a).

(2) Legal counsel employed by or affiliated with Summit Legal Aid are authorized to file a praecipe for in forma pauperis status on behalf of their client.

(3) The Prothonotary shall accept for filing by a party a praecipe as provided by Pa.R.C.P. 240(d), or an application under this rule, without charge to the party.

(a) Except as provided in Wash.L.R.C.P. 1915.37, upon withdrawal of an attorney who has filed a praecipe on behalf of a client pursuant to Pa.R.C.P. 240(d), the party must file a petition to for leave to proceed in forma pauperis to continue to have the costs of litigation waived as set forth in Pa.R.C.P. 240(f).

(4) If there is an improvement in the financial circumstances of a party which will enable the party to pay costs, the party must immediately file a praecipe to decertify in forma pauperis status. The Prothonotary shall not be permitted to retroactively charge previously waived costs to a party because of a change in economic status or if a party is no longer receiving free legal service from an attorney.

Rule L-440. Service of Copies of Legal Papers.

(1) Copies of all legal papers other than original process that are filed in an action may be served upon an attorney for a party by:

(a) the procedures for electronic service set forth in Pa.R.C.P. 205.4 and Wash.L.R.C.P. 205.4; or

(b) facsimile transmission if the requirements of Pa.R.C.P. 440(d)(1)—(3) are satisfied.

(2) It is the responsibility of the attorney, or a party if unrepresented, to maintain valid physical and electronic mail addresses with the Prothonotary and the C-Track E-Filing portal.

Rule L-1028(c). Procedures for Disposition of Preliminary Objections.

(1) All preliminary objections shall be filed with the Prothonotary.

(2) The issues raised in all preliminary objections shall be disposed of at regular sessions of Argument Court, which shall be scheduled as part of the annual court calendar, and shall follow the procedures set forth below.

Comment: See Wash.L.R.C.P. 302, entitled "Argument Court. Argument List."

(3) The Court Administrator shall maintain the Argument Court list.

(4) The schedule for briefs shall be in accordance with these local rules, unless otherwise ordered by the Court.

(5) The argument list shall be closed thirty (30) days prior to the date for argument. The list shall then be prepared by the Court Administrator and the cases shall be set out in order of their listing. Upon the closing of the argument list, the Prothonotary shall furnish notification to all attorneys and unrepresented parties who have cases listed for argument of the listing by regular mail.

(6) Briefs shall be filed of record and conform to the requirements of Wash.L.R.C.P. 210.

(7) Issues raised, but not briefed, shall be deemed abandoned.

(8) References in any brief to parts of the record appearing in a reproduced record shall be to the pages and the lines in the reproduced record where said parts appear; e.g., "(R. pg. 30 L. 15)." If references are made in the briefs to parts of the original record not reproduced, the references shall be to the parts of the record involved, e.g., ("Answer p. 7)," "(Motion for Summary Judgment p. 2)."

(9) Counsel or any party presenting oral argument shall be limited to fifteen (15) minutes total, unless prior permission is granted to extend argument for cause shown.

(10) The Court may decide a case on briefs only sua sponte, or upon motion of a party.

(11) All agreements for continuances and/or withdrawals shall be communicated to the Court Administrator no less than seven (7) days prior to Argument Court. The Court shall continue an argument only upon good cause shown.

Rule L-1034(a). Procedures for Disposition of a Motion for Judgment on the Pleadings.

All motions for judgment on the pleadings shall be filed with the Prothonotary. The procedures for the disposition of a motion for judgment on the pleadings shall be identical to those described in Wash.L.R.C.P. 1028(c).

Rule L-1035.2(a). Procedures for Disposition of a Motion for Summary Judgment.

All motions for summary judgment shall be filed with the Prothonotary. The procedures for the disposition of a motion for summary judgment shall be identical to those described in Wash.L.R.C.P. 1028(c).

Rule L-1041.1. Asbestos Litigation.

(1) Upon filing of a case in asbestos the case shall be assigned to a judge, who shall preside over all proceedings relating to the case.

(2) All pleadings and proposed orders shall include a caption substantively as follows:

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION—ASBESTOS

John Doe, Plaintiff, vs. Big Corporation, Inc. Defendant.	No. _____

(3) In all asbestos cases, the course of litigation shall be governed by the terms set forth in a case management order ("CMO").

a. Any party may present a CMO to the Court for approval within sixty (60) days of the filing of the complaint. The proposed CMO shall set forth the actual dates in which each stage of the litigation must be completed.

(4) In the absence of a CMO approved by the Court within sixty (60) days from the filing of the complaint, the Court shall enter the following CMO:

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL DIVISION—ASBESTOS

John Doe, Plaintiff, vs. Big Corporation, Inc. Defendant.	No. _____

CASE MANAGEMENT ORDER

AND NOW, this _____ day of _____ , 20 ___ , it is hereby ORDERED, ADJUDGED, and DECREED that:

1. This Case Management Order ("CMO") shall govern the litigation in the above-captioned matter.

2. Within sixty (60) days of the commencement of the action, defendants shall select an attorney from one of their number to act as lead defense counsel. Lead defense counsel shall promptly file a notice of his or her selection with the Prothonotary. In the event that lead defense counsel ceases to act in that capacity, the defendants shall select a replacement within thirty (30) days. Replacement lead counsel shall promptly file a notice of his or her selection with the Prothonotary.

3. Plaintiff's Answers to Standard Short Form Interrogatories shall be served on all defense counsel within six (6) months of the date of the filing of the complaint.

4. The parties shall disclose all known fact witnesses within eight (8) months of the date of the filing of the complaint.

5. Discovery shall be completed within fourteen (14) months of the date of the filing of the complaint.

6. All Motions for Summary Judgment shall be filed within sixteen (16) months of the filing of the complaint.

7. Responses to the Motions for Summary Judgment shall be filed within seventeen (17) months of the filing of the complaint.

8. After the responses to the Motions for Summary Judgment have been filed, any party may present a motion for argument date. Arguments for all Motions for Summary Judgment shall be heard on the same day.

9. Plaintiff shall file a pre-trial statement within twenty-one (21) months of the date of the filing of the complaint.

10. Defendant(s) shall file a pre-trial statement within thirty (30) days of the filing of Plaintiff's pre-trial statement.

11. The pre-trial statements shall contain a narrative statement, a list of any expert witnesses intended to be called at trial, all expert reports, and an assessment of damages. The pre-trial statement shall also include any presently known

motions in limine and any legal research, memorandum, or brief in support thereof. Failure to file a motion in limine shall bar a future filing, unless said motion could not be anticipated prior to the filing of the pre-trial statement.

12. Upon the filing of pre-trial statements by all active parties, the Court Administrator shall place the case on the trial list of the assigned judge.

13. This CMO may be modified by agreement of all parties, subject to Court approval, or upon motion of any party for good cause shown.

BY THE COURT

_____ , J.
ASSIGNED JUDGE

(5) It is the responsibility of the moving party to file all original Orders with the Prothonotary. Further, the moving party shall serve copies of all Orders upon all counsel of record and any pro se litigant. If the Court serves copies of any Order, such service shall be made to counsel for the plaintiff and lead counsel for the defendants, who shall be responsible for providing service upon all counsel of record and any pro se litigant.

Rule L-1303.1. Scheduling of Arbitration Hearing. Discovery Time Limits.

(1) A matter subject to compulsory arbitration shall be scheduled for a hearing as set forth below.

(a) An appeal of a decision of a magisterial district judge pursuant to Pa.R.M.D.J. 1002 shall be scheduled for arbitration within one hundred twenty (120) days of the filing of the appeal in the Court of Common Pleas.

(b) All other matters subject to compulsory arbitration shall be scheduled at the direction of the Court Administrator.

(c) The parties may seek to schedule an arbitration hearing earlier than the limits listed above in subsection (b) upon the filing of a joint praecipe with the Prothonotary.

i. There shall be no discovery permitted after the filing of a joint praecipe.

(2) Discovery in all matters subject to compulsory arbitration other than appeals pursuant to Pa.M.D.J. 1002 shall be limited to one hundred fifty (150) days from the commencement of the action, unless otherwise ordered by the Court for good cause shown. In no case shall discovery be permitted to exceed two hundred forty (240) days.

(3) If a party fails to appear for a scheduled arbitration hearing, the Court may act as follows:

(a) immediately hear the matter as an ex parte, non-jury trial and enter a verdict; or

(b) order the matter to proceed to arbitration for a hearing and the entry of an award by the arbitration panel.

(4) A non-jury verdict entered by the Court shall not exceed $50,000.00 to any party, exclusive of costs and interest.

Comment: When the Court "hears the matter," it accelerates the time for conducting a de novo trial. However, the proceeding is still a "trial" and the rules otherwise applicable to a trial in the Court of Common Pleas are not suspended. Therefore, counsel, or a party if unrepresented, should be prepared to present testimony and introduce evidence at the trial, and the Court should make findings of fact and conclusions of law. See *Hayes v. Donohue Designer Kitchen, Inc.*, 818 A.2d 1287 (Pa.Super.Ct. 2003).

Rule L-1308. Appeals from Arbitration.

All appeals from arbitration must be timely filed with the Prothonotary accompanied by payment in the amount of $500.00 or 50% of the amount in controversy, whichever is less.

Rule L-5000.1. Real Estate Tax Assessment Appeal.

(1) Real Estate Tax Assessment Appeal from a decision of the Board as to the amount of the assessment for real estate tax purposes, or as to exemption of real estate from payment of real estate taxes, shall be captioned "Petition for Real Estate Tax Assessment Appeal" or "Petition for Real Estate Tax Exemption Appeal" and filed with the Prothonotary within the time prescribed by statute.

(2) The appeal shall contain the following:

(a) Caption designating the named party taking the appeal as Appellant, the Board as Appellee, and if Appellant is a taxing authority it shall join the owner of the real estate involved as a matter of course as a party in the assessment appeal by designating such named owner in the caption as an Appellee. All taxing authorities shall be named as parties in the appeal. The tax parcel identification number for the real estate in question shall appear in the caption.

(b) Identification of the subject real estate, including the street address and tax parcel identification number, and a designation of the municipality and school district wherein the real estate is located. A copy of the property card from the tax records shall be attached as an exhibit to the petition.

(c) Name and address of the taxpayer(s), and any other party to the appeal.

(d) Nature of and reasons for the appeal.

(e) Reference to the decision of Washington County Board of Assessment Appeals (Board) from which the appeal is taken. The date of notification shall be provided. A copy of the Board's notice of decision shall be attached as an exhibit to the petition.

(f) *Reason(s) for the appeal.* The petition shall identify whether the challenge is based on fair market value, base year value, or a constitutional challenge based on uniformity.

(g) A verification in accordance with Pa.R.C.P. 206.3, if the petition contains an allegation of fact which does not appear of record.

(3) Within ten (10) days after filing the appeal, appellant shall serve a copy of the appeal on the Board, on all affected taxing authorities at their business addresses,

and any other party, in the manner prescribed by Pa.R.C.P. 440. The property owner shall be served notice at the registered address designated on the tax records of Washington County.

(4) Within twenty (20) days of service of the appeal, the appellant shall file a verified proof of service of the petition.

(5) There shall be no requirement that the appellee, or any other party, file an answer or responsive pleading to the petition.

(6) All appeals shall be subject to Pa.R.C.P. 1012, 1023.1, and 1025.

(7) Cross-appeals shall not be permitted, and, if a cross-appeal is filed, the Court shall dismiss the cross-appeal, and proceed at the earlier filed appeal.

(8) No appeal may be withdrawn without the consent of all other parties, or leave of court.

Note: The Pennsylvania Rules of Civil Procedure do not apply to real estate tax assessment appeals, unless specifically adopted by local rule or order of court. *In re Mackey*, 687 A.2d 1186 (Pa.Commw.Ct. 1997).

[Pa.B. Doc. No. 24-715. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WASHINGTON COUNTY

Approval and Adoption of Local Rule of Civil Procedure L-205.4; No. 2024-1

Administrative Order

And Now, this 3rd day of May, 2024, having received approval from the appropriate statewide rules committee in accordance with Pennsylvania Rule of Judicial Administration 103(d)(4), it is hereby *Ordered, Adjudged,* and *Decreed* that Local Rule of Civil Procedure L-205.4, as set forth following this Order, is *Approved* and *Adopted*.

The above-identified local rule of civil procedure shall be effective June 20, 2024, and following publication in the *Pennsylvania Bulletin* pursuant to Pa.R.J.A. 103(c)(5). The District Court Administrator is directed to:

1. File copies of this Administrative Order and the adopted local rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

2. File one (1) electronic copy of this Administrative Order and the adopted local rules with the Administrative Office of Pennsylvania Courts;

3. Arrange for the publication of the local rules on the website for the Twenty-seventh Judicial District, www.washingtoncourts.us, within thirty (30) days of the effective date; and

4. Cause a copy hereof to be published in the *Washington County Reports* once a week for two (2) successive weeks at the expense of the County of Washington.

By the Court

GARY GILMAN,
President Judge

Rule L-205.4. Electronic Filing of Legal Papers.

For the purposes of this rule, the following words shall have the following meaning:

"case management system," means an electronic document repository maintained, administered, and managed by the Court to track information and manage cases;

"electronic filing," the electronic transmission of legal papers by means other than facsimile transmission;

"filing party," an attorney, party, or other person who files a legal paper by means of electronic filing; and

"legal paper," a pleading or other paper filed in an action, including exhibits and attachments.

(a) *Electronic filing.* Beginning January 1, 2025, the filing of legal papers with the Prothonotary of the Court of Common Pleas of Washington County, 27th Judicial District, is required to be done electronically unless otherwise excluded below. Prior to the date identified in the preceding sentence, the filing of legal papers electronically shall be permissive.

(1) Notwithstanding the previous section, the following legal papers shall not be filed electronically:

(i) a complaint for custody;

(ii) a complaint for divorce that includes a count for custody;

(iii) an appeal taken pursuant to Pa.M.D.J. 1002 through 1008;

(iv) a notice of appeal from a decision of the court of common pleas pursuant to Chapter 9 of the Rules of Appellate Procedure;

(v) an appeal from an award by a board of arbitration;

(vi) an appeal of a suspension of a driver's license or motor vehicle registration;

(vii) exemplification of records;

(viii) filings under seal;

(ix) a petition for a name change;

(x) praecipe to continue an arbitration hearing;

(xi) praecipe to reinstate a complaint;

(xii) praecipe to reissue a writ of summons;

(xiii) a request for special relief pursuant to Pa.R.C.P. 1531;

(xiv) a request for a second or subsequent continuance of an arbitration hearing;

(xv) filing of a bond, supersedeas, or any other monies into court; and

(xvi) oversized documents that cannot be reduced to an 8.5 by 11-inch paper format.

(2) The applicable general rules of court and court policies that implement the rules shall continue to apply to all filings regardless of the method of filing.

(3) Actions for child support or alimony are filed in the Domestic Relations Section and are not subject to this rule.

(b) *Document Format.*

(1) Electronically filed legal papers shall be presented in a portable document format (PDF).

(2) If a legal paper contains a proposed order of court, the filing party shall separately file only the proposed order in a Microsoft Word format.

(3) In the event any legal paper is presented in hard copy for filing, the Prothonotary shall convert and maintain the legal paper as a PDF. The physical legal paper

shall be returned to the filing party for retention in accordance with Pa.R.C.P. 205.4(b)(4).

(c) *Electronic Access.*

(1) The Prothonotary shall provide sufficient terminals for use by filing parties and to provide for public access to court records.

(a) The Prothonotary shall make the terminals available for use during business hours as established by the President Judge.

(b) The Prothonotary shall provide assistance to users of the public terminals in accordance with Pa.R.C.P. 205.4.

(2) The designated website for electronic filing is the C-Track E-Filing Portal, which can be accessed by clicking on the "e-File" link on the Court's website (www.washingtoncourts.us).

(3) All electronic filers must register with the C-Track E-Filing Portal by clicking on the "Register as an E-Filer" link of the designated website.

(4) Use of the C-Track E-Filing Portal shall be in accordance with the user manual (if applicable), this local rule, and all instructions contained on the designated website.

(5) Registered users that submit electronic filings shall be individuals, and not law firms, agencies, corporations, or other groups; provided, however, that the filer of a legal paper must be a party or counsel of record.

(d) *Fees.*

(1) The Prothonotary shall accept payment of all electronic filings fees through credit or debit card. The payment processor shall be approved by the Court through the President Judge, or his or her designee.

(a) A reasonable convenience fee may be charged for the use of a credit or debit card.

(b) The Prothonotary may not accept alternate payment or a deposit of funds in advance of filing; provided however, that a filing party who utilizes a public terminal may pay all fees associated with the filing by cash or money order in addition to those methods prescribed in paragraph (1).

(2) The Prothonotary shall collect a user fee for the filing of certain legal papers as established by the Court through the President Judge. The user fee and list of legal papers shall be delineated by Administrative Order.

(e) *Acceptance of Filing.*

(1) In the event that a legal paper is to be filed by a deadline, the filing shall be timely if filed by 11:59:59 P.M. EST/EDT on the day of the deadline.

Note: The electronic filing system is presumed to always be available. However, there will be times that the system is unavailable due to maintenance or other reasons. In such an event, the filing party shall make all reasonable attempts to file the legal paper as soon as the unavailability ends.

(2) The Court upon motion shall resolve any dispute arising under the preceding paragraph or Pa.R.C.P. 205.4(e). If a party makes a good faith effort to electronically file a legal paper but it is not received, accepted, or filed by the system or Prothonotary, the Court may order that the paper be accepted and filed nunc pro tunc upon a showing that the filing party made reasonable efforts to present and file the paper in a timely manner.

(3) If a legal paper is accepted by the Prothonotary, it shall be deemed to have been filed upon the date and time it was received by the C-Track E-Filing Portal; provided, however, that the Prothonotary is authorized to refuse for filing a legal paper that is submitted without the requisite fee being paid.

(4) Nothing shall prohibit the Court and/or District Court Administrator, or their respective designees, from directly filing an order, notice, or transcript into the C-Track case management system or E-Filing Portal. For purposes of this rule, an order may include an unfiled motion or petition that is attached to order once it has been signed by a common pleas judge.

(f) *Filing Status; Record; and Other Procedures.*

(1) Upon receipt of an electronic filing, the Prothonotary shall provide the filing party with an e-mail notification, or automated notification from the C-Track E-Filing Portal, which includes the date and time the document was received by the C-Track E-Filing Portal.

(2) After review of the electronic filing, the Prothonotary shall provide the filing party with a second e-mail notification, or automated notification from the C-Track E-Filing Portal, that the document has been accepted for filing ("filed") or refused and not accepted for filing and the reason.

(3) When a legal paper is accepted by the Prothonotary, the PDF is considered part of the official record. Proposed orders filed in Microsoft Word are to aid the Court and not part of the official record.

(4) The Prothonotary shall maintain hard copies of the following documents regardless of the method of filing:

(i) a final order in an Abuse Act case until five years after the date of the order;

(ii) a verdict;

(iii) a final order in a petition for a name change; and

(iv) a divorce decree.

For all other legal papers, notices, or orders filed or maintained electronically under this Rule, the Prothonotary is not required to maintain a hard copy.

(5) Hard copy case files in existence at the time this Rule is adopted must continue to be maintained by the Prothonotary. Except as otherwise authorized by the Court through the President Judge, the Prothonotary may only purge a case file upon closure of the case if the legal papers in the case file are scanned into the C-Track case management system in a PDF format. To purge a case file, the Prothonotary must file an attestation that the electronic documents represent a full and complete copy of the papers in the case file.

Note: This paragraph does not apply to cases that are expunged in accordance with statute, rule, or order of court.

(6) When an electronic filer files a document that should be marked "confidential" or otherwise secured, the filer shall indicate such required security at the time of their filing submission through the prompts on the C-Track E-Filing Portal.

Note: A docket entry, legal paper, or other information may only be sealed by the Court upon issuance of an order. A party may not seal a filing sua sponte; rather, the party should present a motion if requesting that a case or filing be sealed.

(7) All electronic filing fees and costs shall be submitted and collected according to subsection (d) of this Rule.

(8) Except as provided in Pa.R.C.P. 240, the Prothonotary is authorized to refuse for filing a legal paper submitted without the requisite payment. If a legal paper is accepted, it shall be deemed to have been filed as of the date and time it was received by the C-Track E-Filing Portal. If a legal paper is submitted without the requisite fee, the legal paper shall be deemed to have been accepted for filing as of the date payment was received. If the pleading or legal paper other than original process is accepted for filing, it will be electronically served as authorized by Pa.R.C.P. 205.4(g)(1)(ii) and service shall be effectuated as provided in Pa.R.C.P. 205.4(g)(2)(ii).

(9) Attachments, including exhibits, required to be part of any filing, shall be filed electronically at the same time as the legal paper. An attachment or exhibit that exceeds the technical standards for the C-Track E-Filing Portal or is unable to be electronically filed due to its physical characteristics must be filed in person within one business day of the filing of the legal paper.

(g) *Service.* The C-Track E-Filing Portal will automatically distribute a copy of any legal paper filed in a case to each registered C-Track user who has entered his or her appearance in that case and has been selected by the electronic filer to receive electronic service. Such automatic distribution by the C-Track E-Filing Portal of electronically filed legal papers other than original process constitutes service in accordance with the Pennsylvania Rules of Civil Procedure. The electronic filer must serve the electronically filed legal papers upon any opposing parties or attorneys who are not registered users of the C-Track E-Filing Portal in accordance with the Pennsylvania Rules of Civil Procedure.

(1) Service through the C-Track E-Filing Portal upon transmission on a Saturday, a Sunday, a holiday recognized by Court, or after 5:00 P.M. EST/EDT, shall be considered complete on the next business day.

(2) Establishment as a registered user of the C-Track E-Filing Portal constitutes consent to participate in electronic filing, including acceptance of service electronically of any document, other than original process, filed on the C-Track E-Filing Portal in any type of civil proceeding that permits electronic filing.

(3) Use of the C-Track E-Filing Portal does not relieve a party of service requirements for a notice of appeal pursuant to Pa.R.A.P. 906(a)(2)—(4).

(h) *Civil Cover Sheet.* The filing of a cover sheet pursuant to Pennsylvania Rule of Civil Procedure 205.5 is not required in the C-Track E-Filing Portal.

(i) *Termination Notices for Inactive Cases.* In addition to the procedures set forth in Pa.R.C.P. 230.2, notice of proposed termination for inactive cases may be accomplished electronically in cases where a party is a registered user of the C-Track E-Filing Portal.

(j) *Public Access Policy.* Counsel and unrepresented parties must adhere to the Public Access Policy of the Unified Judicial System of Pennsylvania. Use of electronic filing does not relieve any obligation regarding the filing of confidential information and/or documents.

(k) *Signature and Verification.* A legal paper filed electronically is deemed an original document.

(1) A legal paper filed electronically must include a signature block for the name of the authorized filer.

(2) A required signature shall be supplied either by filing a scanned image of the legal paper that bears the original signature of the filer, or, by affixing the digitalized signature, or the name of the filer preceded by /s/, and the printed name of the attorney, to the electronically filed legal paper.

[Pa.B. Doc. No. 24-716. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WASHINGTON COUNTY

Approval and Adoption of Local Rule of Orphans' Court Procedure L-O.C. 4.7; No. 2024-1

Administrative Order

And Now, this 3rd day of May, 2024, having received approval from the appropriate statewide rules committee in accordance with Pennsylvania Rule of Judicial Administration 103(d)(4), it is hereby *Ordered, Adjudged,* and *Decreed* that Local Rule of Orphans' Court Procedure L-OC 4.7, as set forth following this Order, is *Approved* and *Adopted*.

The above-identified local rule of Orphans' Court procedure shall be effective June 20, 2024, and following publication in the *Pennsylvania Bulletin* pursuant to Pa.R.J.A. 103(c)(5). The District Court Administrator is directed to:

1. File copies of this Administrative Order and the adopted local rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

2. File one (1) electronic copy of this Administrative Order and the adopted local rules with the Administrative Office of Pennsylvania Courts;

3. File one (1) copy of this Administrative Order in the Orphans' Court at docket OC-2024-1;

4. Arrange for the publication of the local rules on the website for the Twenty-seventh Judicial District, www.washingtoncourts.us, within thirty (30) days of the effective date; and

5. Cause a copy hereof to be published in the *Washington County Reports* once a week for two (2) successive weeks at the expense of the County of Washington.

By the Court

GARY GILMAN,
President Judge

L-O.C. Rule 4.7. Electronic Filing.

For the purposes of this rule, the following words shall have the following meaning:

"case management system," means an electronic document repository maintained, administered, and managed by the Court to track information and manage cases;

"electronic filing," the electronic transmission of legal papers by means other than facsimile transmission;

"filing party," a party or counsel of record who files a legal paper by means of electronic filing; and

"legal paper," a pleading or other paper filed in an action, including exhibits and attachments.

(a) *Electronic Filing.* Beginning June 20, 2024, a filing party may electronically file legal papers with the Regis-

ter of Wills/Clerk of the Orphans' Court ("clerk") following the procedures set forth in this Rule and consistent with the procedures set forth in Pa.R.O.C.P. Rule 4.7.

(1) Notwithstanding the preceding paragraph, the following legal papers may not be filed electronically:

(i) Grant of letters;

(ii) Inheritance tax return; and

(iii) An original will or codicil.

Note: Filings made pursuant to Pa.R.O.C.P. 14.8 and Pa.R.J.A. 510 must be done in the Guardianship Tracking System, and not via C-Track.

(2) The applicable general rules of court and court policies that implement the rules shall continue to apply to all filings regardless of the method of filing.

(b) *Electronic Filing of Legal Paper.*

(1) Electronically filed legal papers shall be submitted in a portable document format ("PDF").

(2) If a legal paper contains a proposed order of court, the filing party shall separately file only the proposed order in a Microsoft Word format.

(3) In the event any legal paper is presented in hard copy for filing, the clerk shall convert and maintain the legal paper as a PDF. The physical legal paper shall be returned to the filing party for retention in accordance with Pa.R.O.C.P. Rule 4.7(b)(2), with the exception of an original will or codicil. If an original will or codicil is filed, the clerk shall scan and retain the testamentary writing for a minimum of ten (10) years after the closure of the case.

(c) *Signature and Verification.*

(1) A legal paper filed electronically is deemed an original document.

(2) A legal paper filed electronically must include a signature block for the name of the authorized filer.

(3) A required signature shall be supplied either by filing a scanned image of the legal paper that bears the original signature of the filer, or, by affixing the digitalized signature, or the name of the filer preceded by /s/, and the printed name of the attorney, to the electronically filed legal paper.

(d) *Website and Filing Date.*

(1) The clerk shall provide sufficient terminals for use by filing parties and to provide for public access to court records.

(i) The clerk shall make the terminals available for use during business hours as established by the President Judge.

(ii) The clerk shall provide assistance to users of the public terminals.

(2) The designated website for electronic filing is the C-Track E-Filing Portal, which can be accessed by clicking on the "e-File" link on the Court's website (www.washingtoncourts.us).

(3) All electronic filers must register with the C-Track E-Filing Portal by clicking on the "Register as an E-Filer" link of the designated website.

(4) Use of the C-Track E-Filing Portal shall be in accordance with the user manual (if applicable), this local rule, and all instructions contained on the designated website.

(5) Registered users that submit electronic filings shall be individuals, and not law firms, agencies, corporations, or other groups; provided, however, that the filer of a legal paper must be a party or counsel of record.

(6) In the event that a legal paper is to be filed by a deadline, the filing shall be timely if filed by 11:59:59 P.M. EST/EDT on the day of the deadline.

(7) If a legal paper is accepted by the clerk, it shall be deemed to have been filed upon the date and time it was received by the C-Track E-Filing Portal; provided, however, that the clerk is authorized to refuse for filing a legal paper that is submitted without the requisite fee being paid.

(8) Nothing shall prohibit the Court and/or District Court Administrator, or their respective designees, from directly filing an order or notice into the C-Track case management system or E-Filing Portal. For purposes of this rule, an order may include an unfiled motion or petition that is attached to an order once it has been signed by a common pleas judge.

(9) Upon receipt of an electronic filing, the clerk shall provide the filing party with an e-mail notification, or automated notification from the C-Track E-Filing Portal, which includes the date and time the document was received by the C-Track E-Filing Portal.

(10) After review of the electronic filing, the clerk shall provide the filing party with a second e-mail notification, or automated notification from the C-Track E-Filing Portal, that the document has been accepted for filing ("filed") or refused and not accepted for filing and the reason.

(11) When a legal paper is accepted by the clerk, the PDF is considered part of the official record. Proposed orders filed in Microsoft Word are to aid the Court and shall not be part of the official record.

(12) When an electronic filer files a document that should be marked "confidential" or otherwise secured, the filer shall indicate such required security at the time of their filing submission through the prompts on the C-Track E-Filing Portal.

(i) Counsel and unrepresented parties must adhere to the Public Access Policy of the Unified Judicial System of Pennsylvania. Use of electronic filing does not relieve any obligation regarding the filing of confidential information and/or documents.

(ii) Electronic filings that contain "Confidential Information" as defined by the Case Records Public Access Policy of the Administrative Office of Pennsylvania Courts shall be filed appropriately redacted, as required under the Public Access Policy. The electronic filer shall separately electronically file a Confidential Information Form and shall indicate that the form is a confidential filing at the time of their filing submission through the prompts on the C-Track E-Filing Portal.

(iii) Electronic filings that contain "Confidential Documents" as defined by the Case Records Public Access Policy of the Administrative Office of Pennsylvania Courts shall be marked confidential at the time of their filing submission through the prompts on the C-Track E-Filing Portal. The electronic filer shall separately file a publicly accessible Confidential Document Form indicating the confidential documents and the type of pleading.

Note: A docket entry, legal paper, or other information may only be sealed by the Court upon issuance of an order. A filing party may not seal a filing sua sponte;

rather, the filing party should present a motion if requesting that a case or filing be sealed.

(e) *Delay in Filing.* The Court upon motion shall resolve any dispute arising under Pa.R.O.C.P. Rule 4.7(e). If a party makes a good faith effort to electronically file a legal paper but it is not received, accepted, or docketed by the system or clerk, the Court may order that the paper be accepted and filed nunc pro tunc upon a showing that the filing party made reasonable efforts to present and file the paper in a timely manner.

(f) *Fees.*

(1) The clerk shall accept payment of all electronic filings fees through credit or debit card. The payment processor shall be approved by the Court through the President Judge, or his or her designee.

(i) A reasonable convenience fee may be charged for the use of a credit or debit card. The convenience fee shall be set by the Court through the President Judge, or his or her designee.

(ii) The clerk may not accept alternate payment or a deposit of funds in advance of filing; provided however, that a filing party who utilizes a public terminal may pay all fees associated with the filing by cash or money order in addition to those methods prescribed in paragraph (1).

(2) The clerk shall collect a user fee for the filing of certain legal papers as established by the Court through the President Judge. The user fee and list of legal papers shall be delineated by Administrative Order.

(3) The Court may require the payment of a one time or reoccurring user fee to access the public docket or legal papers through the C-Track E-Filing Portal. Such fees shall be delineated by Administrative Order and shall be published on the C-Track E-Filing Portal or on the Courts website (www.washingtoncourts.us).

(4) Payment of fees in person at the office of the clerk may be made in cash, check, money order, or by credit card/debit card. Payment of Inheritance Tax may only be made in person and shall not be accepted through the C-Track E-Filing Portal.

(g) *Service.* The C-Track E-Filing Portal will automatically distribute a copy of any legal paper filed in a case to each registered C-Track user who has entered his or her appearance in that case and has been selected by the electronic filer to receive electronic service. Such automatic distribution by the C-Track E-Filing Portal of electronically filed legal papers other than original process constitutes service in accordance with the Pennsylvania Orphans' Court Rules. The electronic filer must serve the electronically filed legal papers upon any opposing parties or attorneys who are not registered users of the C-Track E-Filing Portal in accordance with the Pennsylvania Orphans' Court Rules.

(1) Service through the C-Track E-Filing Portal upon transmission on a Saturday, a Sunday, a holiday recognized by Court, or after 5:00 P.M. EST/EDT, shall be considered complete on the next business day.

(2) Establishment as a registered user of the C-Track E-Filing Portal constitutes consent to participate in electronic filing, including acceptance of service electronically of any document, other than original process, filed on the C-Track E-Filing Portal in any type of proceeding that permits electronic filing.

(3) Use of the C-Track E-Filing Portal does not relieve a party of service requirements for a notice of appeal pursuant to Pa.R.A.P. 906(2)—(4).

(h) *Termination Notices for Inactive Cases.* In addition to the procedures set forth in Pa.R.J.A. 1901 and Local Rule of Judicial Administration 1901, notice of proposed termination for inactive cases may be accomplished electronically in cases where a party is a registered user of the C-Track E-Filing Portal.

(i) *Maintenance of Physical Files.* Hard copy case files in existence at the time this Rule is adopted must continue to be maintained by the clerk, as well as any physical case records created after the effective date of this rule.

(a) The clerk may only purge a case file upon closure of the case if the legal papers in the case record are scanned into the C-Track case management system in a PDF format. To purge a case record, the clerk must file an attestation that the electronic documents represent a full and complete copy of the papers in the case file, in addition to any requirements that may be required by Pa.R.J.A. 507 or the County Records Committee (16 P.S. § 13001, et seq.).

(b) Notwithstanding the previous subsection, the President Judge may require the clerk to create or maintain physical case records as necessary for the administration of justice and the business of the court.

[Pa.B. Doc. No. 24-717. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 255—LOCAL COURT RULES

WASHINGTON COUNTY

Rescission of Local Rule of Civil Procedure L-223A; No. 2024-1

Administrative Order

And Now, this 3rd day of May, 2024, it is hereby *Ordered, Adjudged,* and *Decreed* that Local Rule of Civil Procedure L-223A is *Rescinded*. In accordance with the applicable statewide rules of judicial administration, the custody of exhibits in civil cases shall be governed by Local Rules of Judicial Administration L-5101.1—L 5105.

This Order shall be effective following publication in the *Pennsylvania Bulletin* pursuant to Pa.R.J.A. 103(c)(5). The District Court Administrator is directed to:

1. File copies of this Administrative Order and the adopted local rules with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

2. File one (1) electronic copy of this Administrative Order and the adopted local rules with the Administrative Office of Pennsylvania Courts;

3. Arrange for the publication of the local rules on the website for the Twenty-seventh Judicial District, www.washingtoncourts.us, within thirty (30) days of the effective date; and

4. Cause a copy hereof to be published in the *Washington County Reports* once a week for two (2) successive weeks at the expense of the County of Washington.

By the Court

GARY GILMAN,
President Judge

[Pa.B. Doc. No. 24-718. Filed for public inspection May 17, 2024, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

List of Financial Institutions

Notice is hereby given that pursuant to Rule 221(b), Pa.R.D.E., the following List of Financial Institutions have been approved by the Supreme Court of Pennsylvania for the maintenance of fiduciary accounts of attorneys. Each financial institution has agreed to comply with the requirements of Rule 221, Pa.R.D.E., which provides for trust account overdraft notification.

SUZANNE E. PRICE,
Attorney Registrar

FINANCIAL INSTITUTIONS APPROVED AS DEPOSITORIES OF TRUST ACCOUNTS OF ATTORNEYS

Bank Code A.

595 Abacus Federal Savings Bank
2 ACNB Bank
613 Allegent Community Federal Credit Union
375 Altoona First Savings Bank
376 Ambler Savings Bank
532 AMERICAN BANK (PA)
615 Americhoice Federal Credit Union
116 AMERISERV FINANCIAL
648 Andover Bank (The)
377 Apollo Trust Company

Bank Code B.

558 Bancorp Bank (The)
485 Bank of America, NA
662 BANK OF BIRD-IN-HAND
415 Bank of Landisburg (The)
596 Bank of Princeton (The)
664 BankUnited, NA
501 BELCO Community Credit Union
673 BENCHMARK FEDERAL CREDIT UNION
652 Berkshire Bank
663 BHCU
5 BNY Mellon, NA
392 Brentwood Bank
495 Brown Brothers Harriman Trust Co., NA

Bank Code C.

654 CACL Federal Credit Union
618 Capital Bank, NA
675 CENTRE 1ST BANK, A DIVISION OF OLD DOMINION NATIONAL BANK
394 CFS BANK
623 Chemung Canal Trust Company
599 Citibank, NA
238 Citizens & Northern Bank
561 Citizens Bank, NA
206 Citizens Savings Bank
576 Clarion County Community Bank
591 Clearview Federal Credit Union
23 CNB Bank
223 Commercial Bank & Trust of PA
21 Community Bank (PA)
371 Community Bank, NA (NY)
132 Community State Bank of Orbisonia
380 County Savings Bank
536 Customers Bank

Bank Code D.

339 Dime Bank (The)
27 Dollar Bank, FSB

Bank Code E.

500 Elderton State Bank
567 Embassy Bank for the Lehigh Valley
541 Enterprise Bank
28 Ephrata National Bank
601 Esquire Bank, NA
340 ESSA Bank & Trust

Bank Code F.

629 1st Colonial Community Bank
158 1st Summit Bank
31 F & M Trust Company—Chambersburg
658 Farmers National Bank of Canfield
34 Fidelity Deposit & Discount Bank (The)
583 Fifth Third Bank
661 First American Trust, FSB
643 First Bank
174 First Citizens Community Bank
539 First Commonwealth Bank
674 First Commonwealth Federal Credit Union
504 First Federal S & L Association of Greene County
525 First Heritage Federal Credit Union
42 First Keystone Community Bank
51 First National Bank & Trust Company of Newtown (The)
48 First National Bank of Pennsylvania
426 First Northern Bank & Trust Company
604 First Priority Bank, a division of Mid Penn Bank
592 FIRST RESOURCE BANK
657 First United Bank & Trust
408 First United National Bank
151 Firstrust Savings Bank
416 Fleetwood Bank
175 FNCB Bank
647 FORBRIGHT BANK
291 Fox Chase Bank
241 Franklin Mint Federal Credit Union
639 Freedom Credit Union
58 Fulton Bank, NA

Bank Code G.

499 Gratz Bank (The)
498 Greenville Savings Bank

Bank Code H.

244 Hamlin Bank & Trust Company
362 Harleysville Savings Bank
363 Hatboro Federal Savings
463 Haverford Trust Company (The)
606 Hometown Bank of Pennsylvania
68 Honesdale National Bank (The)
605 Huntington National Bank (The)
608 Hyperion Bank

Bank Code I.

669 Industrial Bank
365 InFirst Bank
668 Inspire FCU
557 Investment Savings Bank
526 Iron Workers Savings Bank

Bank Code J.

70 Jersey Shore State Bank
127 Jim Thorpe Neighborhood Bank
488 Jonestown Bank & Trust Company
191 Journey Bank
659 JPMorgan Chase Bank, NA

72 JUNIATA VALLEY BANK (THE)

Bank Code K.

651 KeyBank NA
414 Kish Bank

Bank Code L.

78 Luzerne Bank

Bank Code M.

361 M & T Bank
510 Marion Center Bank
387 Marquette Savings Bank
367 Mauch Chunk Trust Company
511 MCS (Mifflin County Savings) Bank
641 Members 1st Federal Credit Union
555 Mercer County State Bank
192 Merchants Bank of Bangor
671 Merchants Bank of Indiana
610 Meridian Bank
294 Mid Penn Bank
276 MIFFLINBURG BANK & TRUST COMPANY
457 Milton Savings Bank

Bank Code N.

433 National Bank of Malvern
168 NBT Bank, NA
347 Neffs National Bank (The)
434 NEW TRIPOLI BANK
15 NexTier Bank, NA
666 Northern Trust Co.
439 Northumberland National Bank (The)
93 Northwest Bank

Bank Code O.

653 OceanFirst Bank
489 OMEGA Federal Credit Union
94 Orrstown Bank

Bank Code P.

598 PARKE BANK
584 Parkview Community Federal Credit Union
40 Penn Community Bank
540 PennCrest Bank
419 Pennian Bank
447 Peoples Security Bank & Trust Company
99 PeoplesBank, a Codorus Valley Company
556 Philadelphia Federal Credit Union
448 Phoenixville Federal Bank & Trust
665 Pinnacle Bank
79 PNC Bank, NA
449 Port Richmond Savings
667 Premier Bank
354 Presence Bank
451 Progressive-Home Federal Savings & Loan Association
637 Provident Bank
491 PS Bank

Bank Code Q.

107 QNB Bank
560 Quaint Oak Bank

Bank Code R.

452 Reliance Savings Bank

Bank Code S.

153 S & T Bank
316 Santander Bank, NA
460 Second Federal S & L Association of Philadelphia
646 Service 1st Federal Credit Union
458 Sharon Bank
462 Slovenian Savings & Loan Association of Franklin-Conemaugh
486 SOMERSET TRUST COMPANY
633 SSB Bank
122 Susquehanna Community Bank

Bank Code T.

638 3Hill Credit Union
143 TD Bank, NA
656 TIOGA FRANKLIN SAVINGS BANK
182 Tompkins Community Bank
660 Top Tier FCU
577 Traditions Bank
609 Tristate Capital Bank
672 Truist Bank
640 TruMark Financial Credit Union
467 Turbotville National Bank (The)

Bank Code U.

483 UNB Bank
481 Union Building and Loan Savings Bank
634 United Bank, Inc.
472 United Bank of Philadelphia
475 United Savings Bank
600 Unity Bank
232 Univest Bank & Trust Co.

Bank Code V.

611 Victory Bank (The)

Bank Code W.

119 Washington Financial Bank
121 Wayne Bank
631 WELLS FARGO BANK, NA
553 WesBanco Bank, Inc.
494 West View Savings Bank
473 Westmoreland Federal S & L Association
476 William Penn Bank
272 Woodlands Bank
573 Woori America Bank
630 WSFS (Wilmington Savings Fund Society), FSB

Bank Code X.

Bank Code Y.

Bank Code Z.

PLATINUM LEADER BANKS

The **HIGHLIGHTED ELIGIBLE INSTITUTIONS** are Platinum Leader Banks—Institutions that go above and beyond eligibility requirements to foster the IOLTA Program. These Institutions pay a net yield at the higher of 1% or 75 percent of the Federal Funds Target Rate on all PA IOLTA accounts. They are committed to ensuring the success of the IOLTA Program and increased funding for legal aid.

IOLTA EXEMPTION

Exemptions are not automatic. If you believe you qualify, you must apply by sending a written request to the IOLTA Board's executive director: 601 Commonwealth Avenue, Suite 2400, P.O. Box 62445, Harrisburg, PA 17106-2445. If you have questions concerning IOLTA or exemptions from IOLTA, please visit their website at www.paiolta.org or call the IOLTA Board at (717) 238-2001 or (888) PAIOLTA.

FINANCIAL INSTITUTIONS WHO HAVE FILED AGREEMENTS TO BE APPROVED AS A DEPOSITORY OF TRUST ACCOUNTS AND TO PROVIDE DISHONORED CHECK REPORTS IN ACCORDANCE WITH RULE 221, Pa.R.D.E.

New

Name Change

81 Mars Bank—Change to 15 NexTier Bank, NA
182 Tompkins Vist Bank—Change to 182 Tompkins Community Bank
220 Republic First Bank, d/b/a Republic Bank—Change to 58 Fulton Bank, NA

Platinum Leader Change

596 Bank of Princeton (The)—Remove

Correction

Removal

[Pa.B. Doc. No. 24-719. Filed for public inspection May 17, 2024, 9:00 a.m.]

SUPREME COURT

Financial Institutions Approved as Depositories for Fiduciary Accounts; No. 244 Disciplinary Rules Docket

Order

Per Curiam

And Now, this 7th day of May, 2024, it is hereby Ordered that the financial institutions named on the attached list are approved as depositories for fiduciary accounts in accordance with Pa.R.D.E. 221.

Bank Code A.

595 Abacus Federal Savings Bank
2 ACNB Bank
613 Allegent Community Federal Credit Union
375 Altoona First Savings Bank
376 Ambler Savings Bank
532 AMERICAN BANK (PA)
615 Americhoice Federal Credit Union
116 AMERISERV FINANCIAL
648 Andover Bank (The)
377 Apollo Trust Company

Bank Code B.

558 Bancorp Bank (The)
485 Bank of America, NA
662 BANK OF BIRD-IN-HAND
415 Bank of Landisburg (The)
596 Bank of Princeton (The)
664 BankUnited, NA
501 BELCO Community Credit Union
673 BENCHMARK FEDERAL CREDIT UNION
652 Berkshire Bank
663 BHCU
5 BNY Mellon, NA
392 Brentwood Bank
495 Brown Brothers Harriman Trust Co., NA

Bank Code C.

654 CACL Federal Credit Union
618 Capital Bank, NA
675 CENTRE 1ST BANK, A DIVISION OF OLD DOMINION NATIONAL BANK
394 CFS BANK
623 Chemung Canal Trust Company
599 Citibank, NA
238 Citizens & Northern Bank
561 Citizens Bank, NA
206 Citizens Savings Bank
576 Clarion County Community Bank
591 Clearview Federal Credit Union
23 CNB Bank
223 Commercial Bank & Trust of PA
21 Community Bank (PA)
371 Community Bank, NA (NY)
132 Community State Bank of Orbisonia
380 County Savings Bank
536 Customers Bank

Bank Code D.

339 Dime Bank (The)
27 Dollar Bank, FSB

Bank Code E.

500 Elderton State Bank
567 Embassy Bank for the Lehigh Valley
541 Enterprise Bank
28 Ephrata National Bank
601 Esquire Bank, NA
340 ESSA Bank & Trust

Bank Code F.

629 1st Colonial Community Bank
158 1st Summit Bank
31 F & M Trust Company—Chambersburg
658 Farmers National Bank of Canfield
34 Fidelity Deposit & Discount Bank (The)
583 Fifth Third Bank
661 First American Trust, FSB
643 First Bank
174 First Citizens Community Bank
539 First Commonwealth Bank
674 First Commonwealth Federal Credit Union
504 First Federal S & L Association of Greene County
525 First Heritage Federal Credit Union
42 First Keystone Community Bank
51 First National Bank & Trust Company of Newtown (The)
48 First National Bank of Pennsylvania
426 First Northern Bank & Trust Company
604 First Priority Bank, a division of Mid Penn Bank
592 FIRST RESOURCE BANK
657 First United Bank & Trust
408 First United National Bank
151 Firstrust Savings Bank
416 Fleetwood Bank
175 FNCB Bank
647 FORBRIGHT BANK
291 Fox Chase Bank
241 Franklin Mint Federal Credit Union
639 Freedom Credit Union
58 Fulton Bank, NA

Bank Code G.

499 Gratz Bank (The)
498 Greenville Savings Bank

Bank Code H.

244 Hamlin Bank & Trust Company
362 Harleysville Savings Bank
363 Hatboro Federal Savings

463 Haverford Trust Company (The)
606 Hometown Bank of Pennsylvania
68 Honesdale National Bank (The)
605 Huntington National Bank (The)
608 Hyperion Bank

Bank Code I.

669 Industrial Bank
365 InFirst Bank
668 Inspire FCU
557 Investment Savings Bank
526 Iron Workers Savings Bank

Bank Code J.

70 Jersey Shore State Bank
127 Jim Thorpe Neighborhood Bank
488 Jonestown Bank & Trust Company
191 Journey Bank
659 JPMorgan Chase Bank, NA
72 JUNIATA VALLEY BANK (THE)

Bank Code K.

651 KeyBank NA
414 Kish Bank

Bank Code L.

78 Luzerne Bank

Bank Code M.

361 M & T Bank
510 Marion Center Bank
387 Marquette Savings Bank
367 Mauch Chunk Trust Company
511 MCS (Mifflin County Savings) Bank
641 Members 1st Federal Credit Union
555 Mercer County State Bank
192 Merchants Bank of Bangor
671 Merchants Bank of Indiana
610 Meridian Bank
294 Mid Penn Bank
276 MIFFLINBURG BANK & TRUST COMPANY
457 Milton Savings Bank

Bank Code N.

433 National Bank of Malvern
168 NBT Bank, NA
347 Neffs National Bank (The)
434 NEW TRIPOLI BANK
15 NexTier Bank, NA
666 Northern Trust Co.
439 Northumberland National Bank (The)
93 Northwest Bank

Bank Code O.

653 OceanFirst Bank
489 OMEGA Federal Credit Union
94 Orrstown Bank

Bank Code P.

598 PARKE BANK
584 Parkview Community Federal Credit Union
40 Penn Community Bank
540 PennCrest Bank
419 Pennian Bank
447 Peoples Security Bank & Trust Company
99 PeoplesBank, a Codorus Valley Company
556 Philadelphia Federal Credit Union
448 Phoenixville Federal Bank & Trust
665 Pinnacle Bank
79 PNC Bank, NA
449 Port Richmond Savings
667 Premier Bank
354 Presence Bank
451 Progressive-Home Federal Savings & Loan Association
637 Provident Bank
491 PS Bank

Bank Code Q.

107 QNB Bank
560 Quaint Oak Bank

Bank Code R.

452 Reliance Savings Bank

Bank Code S.

153 S & T Bank
316 Santander Bank, NA
460 Second Federal S & L Association of Philadelphia
646 Service 1st Federal Credit Union
458 Sharon Bank
462 Slovenian Savings & Loan Association of Franklin-Conemaugh
486 SOMERSET TRUST COMPANY
633 SSB Bank
122 Susquehanna Community Bank

Bank Code T.

638 3Hill Credit Union
143 TD Bank, NA
656 TIOGA FRANKLIN SAVINGS BANK
182 Tompkins Community Bank
660 Top Tier FCU
577 Traditions Bank
609 Tristate Capital Bank
672 Truist Bank
640 TruMark Financial Credit Union
467 Turbotville National Bank (The)

Bank Code U.

483 UNB Bank
481 Union Building and Loan Savings Bank
634 United Bank, Inc.
472 United Bank of Philadelphia
475 United Savings Bank
600 Unity Bank
232 Univest Bank & Trust Co.

Bank Code V.

611 Victory Bank (The)

Bank Code W.

119 Washington Financial Bank
121 Wayne Bank
631 WELLS FARGO BANK, NA
553 WesBanco Bank, Inc.
494 West View Savings Bank
473 Westmoreland Federal S & L Association
476 William Penn Bank
272 Woodlands Bank
573 Woori America Bank
630 WSFS (Wilmington Savings Fund Society), FSB

Bank Code X.

Bank Code Y.

Bank Code Z.

PLATINUM LEADER BANKS

The **HIGHLIGHTED ELIGIBLE INSTITUTIONS** are Platinum Leader Banks—Institutions that go above and beyond eligibility requirements to foster the IOLTA Program. These Institutions pay a net yield at the higher of 1% or 75 percent of the Federal Funds Target Rate on all PA IOLTA accounts. They are committed to ensuring the success of the IOLTA Program and increased funding for legal aid.

IOLTA EXEMPTION

Exemptions are not automatic. If you believe you qualify, you must apply by sending a written request to the IOLTA Board's executive director: 601 Commonwealth Avenue, Suite 2400, P.O. Box 62445, Harrisburg, PA 17106-2445. If you have questions concerning IOLTA or exemptions from IOLTA, please visit their website at www.paiolta.org or call the IOLTA Board at (717) 238-2001 or (888) PAIOLTA.

FINANCIAL INSTITUTIONS WHO HAVE FILED AGREEMENTS TO BE APPROVED AS A DEPOSITORY OF TRUST ACCOUNTS AND TO PROVIDE DISHONORED CHECK REPORTS IN ACCORDANCE WITH RULE 221, Pa.R.D.E.

New

Name Change

81 Mars Bank—Change to 15 NexTier Bank, NA
182 Tompkins Vist Bank—Change to 182 Tompkins Community Bank
220 Republic First Bank, d/b/a Republic Bank—Change to 58 Fulton Bank, NA

Platinum Leader Change

596 Bank of Princeton (The)—Remove

Correction

Removal

[Pa.B. Doc. No. 24-720. Filed for public inspection May 17, 2024, 9:00 a.m.]

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]

Practice and Procedure

The Environmental Hearing Board (Board) amends Chapter 1021 (relating to practice and procedure) to read as set forth in Annex A. The amendments to Chapter 1021 modify the rules of practice and procedure before the Board by implementing improvements in practice and procedure.

The Board approved the final regulations at its meeting on October 24, 2023.

Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

Contact Person

For further information, contact Maryanne Wesdock, Judge, Environmental Hearing Board at mwesdock@pa.gov, (412) 565-5245, or Suite 310, Piatt Place, 301 Fifth Avenue, Pittsburgh, PA 15222. If information concerning this notice is required in an alternative form, contact Christine Walker, Secretary to the Board, at christiwal@pa.gov or (814) 871-2573. TDD users may telephone the Board through the Pennsylvania Hamilton Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Statutory Authority

The Board has the authority under section 5(c) of the Environmental Hearing Board Act (act) (35 P.S. § 7515(c)) to adopt regulations pertaining to practice and procedure before the Board. Under section 5(c), regulations "shall be promulgated by the Board upon a majority affirmative vote on the recommended regulations."

Additionally, with regard to the amendments to §§ 1021.182—1021.184 and 1021.191, dealing with recovery of costs and attorney fees, certain statutes authorize the Board to award attorney fees and costs, including but not limited to section 307(b) of The Clean Streams Law (35 P.S. § 691.307(b)); and 27 Pa.C.S. § 7708 (relating to costs for mining proceedings).

Background and Purpose

The purpose of the amendments is to improve practice and procedure before the Board. The revisions are based on the recommendations of the Environmental Hearing Board Rules Committee (Rules Committee) which is a nine-member advisory committee created under section 5(a) and (c) of the act to make recommendations to the Board on its rules of practice and procedure.

Comments and Revisions to Proposed Rulemaking

The proposed rulemaking was published at 53 Pa.B. 3193 (June 17, 2023), with a 30-day public comment period. Two comments were submitted by the Independent Regulatory Review Commission (IRRC). The comments and the Board's response were discussed at a public meeting of the Rules Committee held by videoconference on September 14, 2023. In response to the comments received on the proposed rulemaking, the final rulemaking was prepared. A summary of the comments and Board's response follows:

§§ 1021.51(f)(1)(iv) and (2)(vi)(C). Commencement, form and content—Service of a notice of appeal on potentially adversely affected persons

IRRC noted that paragraphs (1)(iv) and (2)(vi)(C) include a general citation to the Pennsylvania Rules of Civil Procedure that is vague and does not provide clear guidance to an appellant. IRRC asked the Board to clarify these provisions. In response, the Board deletes the proposed reference to "Pennsylvania Rules of Civil Procedure" in paragraphs (1)(iv) and (2)(vi)(C) and replaces it with language allowing service of a notice of appeal "at any office or usual place of business of any potentially adversely affected persons."

This amendment is necessary because, in some instances, appellants would have difficulty determining what constitutes a person's "chief place of business" as currently required. The amendment in this final-form rulemaking achieves the ultimate goal of expanding the locations at which service can be made to potentially adversely affected persons.

In striking the proposed language and further amending this final-form rulemaking, the Rules Committee reviewed Pennsylvania Rules of Civil Procedure (Pa.R.C.P.) 402, 403 and 440 (relating to manner of service. acceptance of service; service by Mail; and service of Legal Papers Other than Original Process) and concluded that none of the rules specifically addressed what was contemplated by the proposed amendment to paragraphs (1)(iv) and (2)(vi)(C). For example, Pa.R.C.P. 402 provides for service by hand delivery or the filing of a specific form instead of hand delivery, whereas the Board allows service by mail. Pa.R.C.P. 403 allows service by mail but requires a receipt signed by the defendant or his authorized agent. In contrast, the Board does not require a signature for delivery of a notice of appeal by mail. Nor is the recipient of the notice of appeal a defendant. Finally, Pa.R.C.P. 440 addresses service of legal papers other than original process, whereas § 1021.51(f) (relating to commencement, form and content) addresses service of original process. After a great deal of discussion, the Rules Committee recommended deleting the reference to "Pennsylvania Rules of Civil Procedure" in paragraphs (1)(iv) and (2)(vi)(C) and, instead, allowing service of a notice of appeal "at any office or usual place of business of any potentially adversely affected persons."

§ 1021.51(j). Intervention in an appeal

IRRC asked whether an interested person identified under subsection (h)(4) is required to file a petition to intervene or whether the person may simply file an entry of appearance. In response, the Board amends the language in subsection (j) to make clear how an interested person identified under subsection (h)(4) may intervene. Namely, an interested person under subsection (h)(4) must file a petition to intervene unless the Board specifies otherwise.

IRRC also asked what intervention procedure is typically included in the order referenced in subsection (h)(4). While the Board does not retain specific data on this subject, the Board anticipates that most persons filing a petition under subsection (h)(4) will be allowed to intervene by filing an entry of appearance; however, the Board would like to preserve the right to require a petition to intervene where further information is needed.

Finally, IRRC asked the Board to consider clarifying subsection (j) so that it is consistent with the proposed comment to § 1021.81 (relating to intervention), which provides:

> Section 1021.51(j) (relating to commencement, form and content) allows certain potentially adversely affected persons, as that term is defined in § 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.

The Board believes that the final-form language is now consistent with the comment to § 1021.81, because § 1021.51 now allows certain potentially adversely affected persons, as that term is identified in § 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.

Miscellaneous changes and corrections

§ 1021.5(b). Citations to Board decisions

The Board makes one stylistic change in § 1021.5(b) (relating to citations to Board decisions) to avoid confusion among practitioners. Specifically, in the example provided by the Board to show the proper citation, the Board replaces the year "2022" with a generalized reference to "(Date and Year)."

This generalized reference is necessary because subsection (b) of the proposed rule sets forth the format for citing to a slip opinion. Prior to publication, the Board's decisions are available as slip opinions by means of an opinion search on the Board's web site. The docket number and date of issuance are listed in the caption of each decision and, therefore, this information is easily available to anyone citing the decision.

The Board's Opinions and Adjudications (decisions) are published in reporters each year, and so the opinions and adjudications for 2022 have since been published. The reporters are available in hard copy and on the Board's web site.

The Board believes the language set forth previously provides more clarification to practitioners than the use of an actual date and year in the example.

"Fees and Costs" language

Finally, this final-form rulemaking corrects §§ 1021.182—1021.184 and 1021.191 and the undesignated center headings that appear before those sections to replace the phrase "costs and fees" with "fees and costs." The language was inadvertently changed to "costs and fees" in the proposed rulemaking and is corrected to "fees and costs" in this final-form rulemaking.

Sunset Date

A sunset date has not been established for these regulations. The effectiveness of the regulations will be evaluated on an ongoing basis by the Board and the Rules Committee.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 6, 2023, the Board submitted a copy of the notice of proposed rulemaking, published at 53 Pa.B. 3193, to IRRC and the chairperson of the Environmental Resources and Energy Committees of the Senate and chairperson of the Environmental Resources and Energy Committees of the House of Representatives for review and comment.

Under section 5(c) of the Regulatory Review Act, the Board shall submit to IRRC and the House and Senate committees copies of comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC. No comments on the proposed regulations were received from either of the legislative committees or the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on March 21, 2024, the final-form rulemaking was deemed approved by the House and Senate committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2024, and approved the final-form rulemaking.

Findings of the Board

The Board finds that:

(1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law, and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 53 Pa.B. 3193.

(4) These regulations are necessary and appropriate for administration of the act.

Order

(1) The regulations of the Board, 25 Pa. Code Chapter 1021, are amended by amending §§ 1021.2, 1021.51, 1021.61, 1021.63, 1021.81, 1021.92, 1021.94a, 1021.133, 1021.182, 1021.183, 1021.184 and 1021.191 and adding § 1021.5 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Chairperson of the Board shall submit this final-form rulemaking and Annex A to the Office of Attorney General and Office of General Counsel for review and approval as to legality and form, as required by law.

(3) The Chairperson of the Board shall submit this final-form rulemaking and Annex A to the House and Senate committees, and IRRC, as required by law.

(4) The Chairperson of the Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

(5) This final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

STEVEN C. BECKMAN,
Chief Judge and Chairperson

(*Editor's Note*: See 54 Pa.B. 1907 (April 6, 2024) for IRRC's approval.)

Fiscal Note: Fiscal Note 106-14 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IX. ENVIRONMENTAL HEARING BOARD

CHAPTER 1021. PRACTICE AND PROCEDURE

PRELIMINARY PROVISIONS

GENERAL

§ 1021.2. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

* * * * *

Business day—A day that is not a Saturday, Sunday or a legal holiday.

Conventional filing—Presenting documents to the Board by hand, mail or other personal delivery services, for purposes of filing.

Department—The Department of Environmental Protection or other governmental entities whose decisions are appealable to the Board.

Dispositive motion—A motion that seeks to resolve the issues in an appeal without the need for hearing or further hearing. The term includes a motion to quash appeal, a motion to dismiss, a motion for summary judgment, and a motion for partial summary judgment, but not a motion in limine.

* * * * *

Pa.R.C.P.—Pennsylvania Rules of Civil Procedure, 42 Pa.C.S.; 231 Pa. Code.

Party—An appellant, appellee, plaintiff, defendant, permittee or intervenor.

Permittee—The recipient of a permit, license, approval or certification issued by the Department.

* * * * *

Registration statement—A completed application to use the electronic filing provider for electronic filing and electronic service in Board proceedings.

Supersedeas—A suspension of the effect of an action of the Department pending proceedings before the Board.

Third-party appeal—The appeal of an action by a person to whom the action is not directed or issued.

(b) Subsection (a) supplements 1 Pa. Code § 31.3 (relating to definitions) except for "pleading" which supersedes the definition of "pleading" in 1 Pa. Code § 31.3.

§ 1021.5. Citations to Board decisions.

(a) Citations to Board decisions in briefs, legal memoranda and other documents filed with the Board shall contain the names of the parties, and the year and page number of the Environmental Hearing Board Reporter (Opinion and Adjudication volumes) located on the Board's web site. The citation shall be provided using the following format: *Name of Appellant v. DEP*, 2021 EHB 43. Pinpoint citations shall be preceded with a comma and a space, in the following format: *Name of Appellant v. DEP*, 2021 EHB 43, 45.

(b) If the Environmental Hearing Board Reporter has not been published for a particular year, the citation shall be to the slip opinion which can be found on the Board's web site. The citation shall include the names of the parties, the docket number, the type of decision being issued (that is, Adjudication or Opinion) and the date of issuance, using the following format: *Name of Appellant v. DEP*, EHB Docket No. _____ (Opinion and Order on Motion to Dismiss issued (date and year)).

Comment:

Additional citations to legal research databases such as LexisNexis and Westlaw are permissible.

FORMAL PROCEEDINGS

APPEALS

§ 1021.51. Commencement, form and content.

* * * * *

(f) An original notice of appeal shall be filed electronically, conventionally or by facsimile.

(1) *Electronic filing.*

* * * * *

(iv) The appellant shall, concurrent with or prior to the filing of a notice of appeal, serve a copy on any potentially adversely affected persons as identified in subsection (h)(1)—(3). The service shall be made at the address in the document evidencing the action by the Department or at any office or usual place of business of any potentially adversely affected persons.

* * * * *

(2) *Conventional filing.*

* * * * *

(vi) The appellant shall, concurrent with or prior to the filing of a notice of appeal, serve a copy on each of the following in the same manner in which the notice of appeal is filed with the Board:

(A) The office of the Department issuing the Departmental action.

(B) The Office of Chief Counsel of the Department.

(C) A potentially adversely affected person as identified in subsection (h)(1)—(3). The service shall be made at the address in the document evidencing the action by the Department or at any office or usual place of business of any potentially adversely affected persons.

* * * * *

(h) For purposes of this section, a "potentially adversely affected person" includes the following:

(1) The recipient of a permit, license, approval, certification or order.

(2) In appeals involving a decision under section 5 or section 7 of the Pennsylvania Sewage Facilities Act (35 P.S. §§ 750.5 or 750.7), any affected municipality, its municipal authority, the proponent of the request, when applicable, and any municipality or municipal authority whose official plan may be affected by the decision or a decision of the Board in the appeal.

(3) A mining company, well operator, or owner or operator of a storage tank in appeals involving a claim of subsidence damage, water loss or contamination.

(4) Other interested persons as ordered by the Board.

(i) The service upon the recipient of a permit, license, approval, certification or order, as required under subsection (h)(1), shall subject the recipient to the jurisdiction of the Board, and the recipient shall be added as a party to the appeal without the necessity of filing a petition for leave to intervene under § 1021.81 (relating to intervention). The recipient of a permit, license, approval, certification or order who is added to an appeal under this section shall still comply with §§ 1021.21 and 1021.22 (relating to representation; and notice of appearance).

(j) Potentially adversely affected persons under subsection (h)(2) or (3) may intervene as of right in the appeal by filing an entry of appearance within 30 days of service of the notice of appeal in accordance with §§ 1021.21 and 1021.22, without the necessity of filing a petition for leave to intervene under § 1021.81. Potentially adversely affected persons under subsection (h)(4) may seek leave to intervene by filing a petition to intervene under § 1021.81, or may intervene as of right by filing an entry of appearance where permitted to do so by order of the Board.

* * * * *

Comment:

If a potentially adversely affected person under subsection (h)(2), (3) or (4) elects not to intervene following service of notice of an appeal or notice by the Board that the person's rights may be affected by an appeal, the person's right to appeal from the Board's adjudication in the matter may be adversely affected. This comment is added in response to the Commonwealth Court's ruling in *DEP v. Schneiderwind*, 867 A.2d 724 (Pa. Cmwlth. 2005).

SUPERSEDEAS

§ 1021.61. General.

* * * * *

(d) At the discretion of the Board, if necessary to ensure prompt disposition, supersedeas hearings may be limited in time and format, with parties given a fixed amount of time to present their entire case, and with restricted rights of discovery, cross-examination or reopening the record in accordance with § 1021.133 (relating to reopening of record prior to adjudication).

* * * * *

§ 1021.63. Circumstances affecting grant or denial.

(a) The Board, in granting or denying a supersedeas, will be guided by relevant judicial precedent and the Board's own precedent. Among the factors to be considered:

(1) Irreparable harm to the petitioner.

(2) The likelihood of the petitioner prevailing on the merits.

(3) The likelihood of injury to the public or other parties in the case.

* * * * *

CONSOLIDATION, INTERVENTION AND SUBSTITUTION OF PARTIES

§ 1021.81. Intervention.

* * * * *

Comment:

Section 1021.51(j) (relating to commencement, form and content) allows certain potentially adversely affected persons, as that term is defined in § 1021.51(h), to intervene in an appeal as of right by simply filing an entry of appearance.

MOTIONS

§ 1021.92. Procedural motions.

* * * * *

(e) Procedural requests, whether in letter or motion form, shall be accompanied by a proposed order.

* * * * *

§ 1021.94a. Summary judgment motions.

* * * * *

(g) *Opposition to motion for summary judgment.* Within 30 days of service of the motion or, if a supporting party files a memorandum of law alone, within 30 days of service of the memorandum of law, a party opposing the motion shall file the following:

(1) A response to the motion for summary judgment which includes a concise statement, not to exceed two pages in length, as to why the motion should not be granted.

(2) A response to the statement of undisputed material facts either admitting or denying or disputing each of the facts in the movant's statement. Any response must include a citation to the portion of the record controverting a material fact. The citation must identify the document and specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on demonstrating existence of a genuine issue as to the fact disputed. An opposing party may also include in the responding statement additional facts the party contends are material and as to which there exists a genuine issue. Each fact shall be stated in separately numbered paragraphs and contain citations to the motion record. The response to the statement of undisputed material facts may not exceed five pages in length unless leave of the Board is granted.

* * * * *

POSTHEARING PROCEDURES

§ 1021.133. Reopening of record.

(a) After the conclusion of the hearing on the merits of the matter pending before the Board and before the Board issues an adjudication, or after the conclusion of a hearing on a supersedeas and before the Board issues an order granting or denying a supersedeas, the Board, upon its own motion or upon a petition filed by a party, may reopen the record as provided in this section.

* * * * *

ATTORNEY FEES AND COSTS AUTHORIZED BY STATUTE

§ 1021.182. Application for fees and costs.

(a) If statutorily authorized, a party may initiate a request for fees and costs by filing a fee application with the Board. The fee application shall conform to any requirements set forth in the statute under which fees and costs are being sought and shall also conform to any requirements set forth in §§ 1021.181, 1021.183, 1021.184 and 1021.191.

(b) A fee application shall be verified by the applicant, and shall set forth sufficient grounds to justify the award, including the following:

(1) A copy of the order of the Board in the proceedings in which the applicant seeks attorney fees and costs.

(2) A statement of the basis upon which the applicant claims to be entitled to attorney fees and costs, setting forth in numbered paragraphs the facts in support of the fee application and the amount of fees and costs requested. The statement must identify all legal issues upon which the applicant contends it prevailed and the degree to which the relief sought in the appeal was granted. The fee application may not be accompanied by a supporting memorandum of law unless otherwise ordered by the Board.

(3) An affidavit, or affidavits, signed by each of the applicant's lawyers and each consultant or expert witness whose fees and costs the applicant seeks to recover,

setting forth in detail all reasonable fees and costs incurred for or in connection with issues in which the party prevailed.

(4) Where attorney fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area and the experience, reputation and ability of the individual or individuals performing the services.

(5) The name of each party from whom fees and costs are sought.

(c) An applicant shall file a fee application with the Board within 30 days of the date of a final order of the Board. An applicant shall serve a copy of the fee application upon the other parties to the proceeding.

(d) The Board may deny a fee application sua sponte or require an applicant to amend its fee application within a specified time frame if the applicant fails to provide all the information required by this section in sufficient detail to enable the Board to fully evaluate the request for relief.

Comment:

For the purpose of establishing the number of hours an attorney or consultant/expert witness worked under subsection (b)(4), the Board encourages the submission of records that avoid grouping multiple tasks into a single time entry.

§ 1021.183. Response to fee application.

A response to a fee application shall be filed within 30 days of service, unless a longer period of time is ordered by the Board following a fees conference under § 1021.184(c) (relating to disposition of fee application). The factual bases for the response shall be supported by affidavits signed by the parties from whom the fees and costs are sought or others with relevant knowledge. A response to a fee application shall set forth in correspondingly numbered paragraphs all factual disputes and the reason the opposing party objects to the fee application. Material facts set forth in a fee application that are not denied may be deemed admitted for the purposes of deciding the fee application.

§ 1021.184. Disposition of fee application.

(a) [Reserved].

(b) [Reserved].

(c) Within 7 days of the Board's receipt of a fee application, the Board will hold a fees conference with all parties to the appeal to determine the process and deadlines for responses, briefing, discovery and evidentiary hearings, if any. Following the fees conference, the Board will issue a fees conference order establishing case management procedures for these and any other issues that the Board may address.

(d) The applicant has the burden of proving its entitlement to the recovery of fees and costs.

(e) The fee application process will be stayed if one of the parties files an appeal from the Board's final order in the underlying appeal.

ATTORNEY FEES AND COSTS UNDER MORE THAN ONE STATUTE

§ 1021.191. Application for fees and costs under more than one statute.

An applicant seeking to recover fees and costs under more than one statute shall file a single fee application which sets forth, in separate counts, the basis upon which fees and costs are claimed under each statute. The fee application shall comport with the requirements in § 1021.182 (relating to application for fees and costs).

[Pa.B. Doc. No. 24-721. Filed for public inspection May 17, 2024, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

Registration of Naturopathic Doctors

The State Board of Medicine (Board) amends Chapters 16 and 18 (relating to State Board of Medicine—general provisions; and State Board of Medicine—practitioners other than medical doctors) to read as set forth in Annex A. Specifically, the Board amends §§ 16.1, 16.11—16.13, 18.13a, 18.15, 18.15a, and adds Subchapter M (relating to registration of naturopathic doctors), comprised of §§ 18.901—18.913, to Chapter 18.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The primary statutory authority to regulate the registration of naturopathic doctors is the Naturopathic Doctor Registration Act (NDRA) (63 P.S. §§ 272.101—272.301). Specifically, section 207 of the NDRA (63 P.S. § 272.207) provides that "[t]he board shall enforce and administer the provisions of this act and shall promulgate regulations that are consistent with the intent of this act." Further, section 203(b) of the NDRA (63 P.S. § 272.203(b)), provides the authority of the Board to require naturopathic doctor registrations to be renewed ". . .in a manner and at such intervals as the board shall determine by regulation. . . ." Sections 202(6) and 203(c) of the NDRA (63 P.S. § 272.202(6)) set forth the authority of the Board to set fees for initial registration and biennial renewal of registration. The Board sets all fees by regulation.

The Board is taking this opportunity to update its regulations and to delete outdated provisions in the Board's existing regulations relating to "drugless therapists" under the authority of section 8 of the Medical Practice Act of 1985 (act) (63 P.S. § 422.8), which provides, in part, that, "[t]he board, in the exercise of its duties under this act, shall have the power to adopt regulations as are reasonably necessary to carry out the purposes of this act." This authority necessarily includes the power to repeal provisions of the regulations that are no longer necessary.

Background, Need for and Description of Amendments

The Board amends § 16.1 (relating to definitions) to update the definitions of "act" and "Board-regulated practitioner." The definition of "act" is amended to update the citation to the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.1—422.53). The definition of "Board-regulated practitioner" is amended to delete references to "drugless therapists" and adds several license classifications which are currently missing from the definition. Specifically, the licensure classifications of respiratory therapist, genetic counselor, prosthetist, orthotist, pedorthist, orthotic fitter

and naturopathic doctor are added to the definition of "Board-regulated practitioner" in § 16.1. Persons applying for a registration issued by the Board are also included in the definition of "Board-regulated practitioner."

Additionally, this final-form rulemaking deletes all regulatory references to "drugless therapists." The Board last issued a new license to practice as a drugless therapist in 1951 (1 month after the State Board of Chiropractic began operations) and no longer has the authority to issue new drugless therapist licenses. See *Reisinger v. Com., State Bd. of Med. Ed. & Licensure*, 399 A.2d 1160 (Pa. Cmwlth. 1979). *Reisinger* involved an individual trained as a chiropractor and naturopathic doctor who petitioned for licensure as a "drugless therapist," but was denied because the Board determined that it no longer had the authority to license drugless therapists. On appeal, the Commonwealth Court agreed, holding that although the Board could continue to register and regulate persons engaged in the practice of drugless therapy, "the Board lacks the authority now to license Drugless Therapists." See id, 399 A.2d at 1163. Since 1951, the Board has continued to biennially register/renew existing drugless therapist licenses and has continued to regulate their practice but has not issued new licenses. No individual currently holds an active license as a drugless therapist from the Board. Therefore, it is no longer necessary to keep any references to drugless therapists in the Board's regulations. This is especially true now that the Board will be registering individuals as naturopathic doctors under this final-form rulemaking.

As such, the Board also amends § 16.11 (relating to licenses, certificates and registrations) to delete the reference to biennial registration of a drugless therapist license and add the initial registration as a naturopathic doctor and the biennial registration of a naturopathic doctor. Section 16.12 (relating to general qualifications for licenses and certificates) is amended to update its title and to extend its provisions to initial registrations issued by the Board. In addition, the fees associated with biennial renewal of the drugless therapist license are deleted from § 16.13 (relating to licensure, certification, examination and registration fees), and the fees associated with naturopathic doctor registration, including the initial registration fee of $100 and biennial registration renewal fee of $50, are added.

Next, the Board amends Chapter 18, Subchapter B (relating to registration and practice of acupuncturists and practitioners of Oriental medicine) to address the perceived overlap between the practice of a registered naturopathic doctor and a licensed acupuncturist or practitioner of Oriental medicine. Specifically, §§ 18.13a and 18.15a (relating to requirements for licensure as a practitioner of Oriental medicine; and scope of practice of acupuncturists and practitioners of Oriental medicine) are amended to point out that these regulations do not limit a registered naturopathic doctor when recommending herbs, minerals and other supplements according to traditions other than Oriental medicine traditions. Section 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician) is significantly amended and reorganized (see the final-form rulemaking published on September 16, 2023 (53 Pa.B. 5759)), necessitating amendments to subsections (a)(10) and (b.1)(3) with regard to identification tags/badges for licensed acupuncturists and practitioners of Oriental medicine who are also registered as naturopathic doctors.

The Board adds Subchapter M to Chapter 18 to implement the provisions of the NDRA. Section 18.901 (relating to purpose) notes that this subchapter implements the registration of naturopathic doctors as required under the NDRA. Section 18.902 (relating to definitions) defines necessary terms used in Subchapter M, including "authorization to practice," "CNME—Council on Naturopathic Medical Education," "marketing activity," "merchandise," "NABNE—North American Board of Naturopathic Examiners," "naturopathic doctor," "naturopathic medicine," "naturopathic physical medicine," "naturopathic service," "natural therapies," "NDRA," "NPLEX—Naturopathic Physicians Licensing Examinations" and "regionally accredited or pre-accredited college or university."

Next, the Board includes the process and requirements to apply for a registration as a naturopathic doctor in § 18.903 (relating to application for naturopathic doctor registration), including the qualifications for registration as a naturopathic doctor as set forth in section 202 of the NDRA. The Board is also including the requirement that an applicant for registration as a naturopathic doctor shall have completed at least 3 hours of approved education/training in child abuse recognition and reporting requirements, as required for all Board-regulated practitioners under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training) and in the Board's regulations in § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

The Board includes the requirements for the biennial renewal of the naturopathic doctor registration in § 18.904 (relating to biennial registration of naturopathic doctor) as required by section 203(b) of the NDRA. Section 203(b) of the NDRA provides for renewal ". . .in a manner and at such intervals as the board shall determine by regulation. . . ." As such, this final-form rulemaking requires that all registrations of naturopathic doctors will expire on December 31st of each even-numbered year, to correspond with the expiration of existing licenses issued by the Board. The manner of renewing a registration is found in subsection (b), which sets forth the requirements for renewal as informed by the existing practice of the Board. As a condition of biennial renewal, the Board requires the completion of at least 2 hours of approved continuing education in child abuse recognition and reporting, as required under 23 Pa.C.S. § 6383(b)(3)(ii) and the Board's regulations in § 16.108(b).

Similarly, the Board provides for reactivation of inactive and expired registrations in § 18.905 (relating to inactive status; reactivation of inactive and expired registration). Again, the manner in which expired and inactive registrations are reactivated is informed by the Board's existing practices and includes payment of applicable fees and the completion of the required continuing education in child abuse recognition and reporting. Section 18.906 (relating to display of registration) simply requires registered naturopathic doctors to prominently display their certificate of registration at the registrant's regular place of business and have evidence of current registration available for inspection when providing services at other locations.

In § 18.907 (relating to acceptable titles and professional designations by registrants; prohibited titles), the Board clarifies the acceptable titles that may be used by registered naturopathic doctors. Section 201 of the NDRA (63 P.S. § 272.201) provides that "[i]t shall be unlawful for an individual to use the title of "naturopathic doctor" or "doctor of naturopathic medicine" unless that person is

registered as a naturopathic doctor with the board." Further, § 18.907 makes it clear that a naturopathic doctor who uses the designation "Dr." shall further identify himself as a "naturopathic doctor," "registered naturopathic doctor" or "doctor of naturopathic medicine" and may not use a term or a designation that implies that the naturopathic doctor is authorized to practice medicine or other health care profession, unless the naturopathic doctor also holds a current and active authorization to practice the other profession issued by the appropriate licensing authority of this Commonwealth. The Board has chosen not to regulate the terms that may be used by individuals who are not registered naturopathic doctors as beyond the Board's statutory authority.

Next, the Board addresses informed consent and required disclosures in § 18.908 (relating to informed consent and disclosure of financial interests). In this section, the Board requires that the informed consent include notice that the naturopathic doctor is not a physician. Further, in subsection (b), the Board includes a requirement that a naturopathic doctor inform the patient if the naturopathic doctor will receive any financial incentive for marketing activities, as that term is now defined in this final-form rulemaking.

In § 18.909 (relating to naturopathic records) the Board provides standards for the creation and retention of patient records and authorizes a naturopathic doctor to charge patients no more than the applicable costs for production of health records as annually adjusted by the Secretary of Health and published in the *Pennsylvania Bulletin*. It further prohibits a naturopathic doctor from requiring payment for naturopathic services rendered as a condition of releasing records to a patient or the patient's designee.

Section 18.910 (relating to advertising) sets forth information that must be included in all advertisements for naturopathic services by registered naturopathic doctors, as well as standards for what may not be included in advertisements. Items that must be included in all advertisements include the name of the naturopathic doctor as registered with the Board and the words "naturopathic doctor" or "doctor of naturopathic medicine." Prohibitions include misrepresentations and other statements that are likely to mislead or deceive, those that create false or unjustified expectations as to results and those that imply that a manifestly incurable condition can be cured or that guarantee a cure of any condition. The Board is prohibiting statements recommending any modality or service that is inconsistent with the health, safety and welfare of the public. In addition, a registered naturopathic doctor may not include the term "physician" unless also licensed as a physician or physician assistant by the Board or the State Board of Osteopathic Medicine.

Section 18.911 (relating to Code of Ethics) establishes the ethical principles for registered naturopathic doctors in this Commonwealth. These principles were informed by the ethical standards of other health care professions regulated by the Board and the ethical standards for licensed naturopathic doctors in other states and by National organizations such as the American Association of Naturopathic Physicians. These standards include items relating to competence, confidentiality and privacy, informed consent and maintenance of professional boundaries. Specific unethical conduct is prohibited such as making misrepresentations relating to credentials, qualifications or affiliations; engaging in fraudulent, dishonest or deceitful conduct; exploiting the professional relationship including a personal, sexual, romantic or financial relationship; and engaging in sexual misconduct.

Section 18.912 (relating to sexual misconduct) makes clear that sexual misconduct, to include sexual exploitation of a current or former patient or of an immediate family member of a patient, and sexual behavior with a current patient, constitute unprofessional conduct and subjects the registered naturopathic doctor to disciplinary action.

Finally, § 18.913 (relating to grounds for discipline) sets forth the grounds for discipline of a registered naturopathic doctor, including those reasons set forth in section 204 of the NDRA (63 P.S. § 272.204), and additional reasons such as engaging in fraud in obtaining a registration as a naturopathic doctor; false or deceptive advertising; aiding, assisting, employing or advising an unregistered individual to hold themselves out in a manner which states or implies that the individual is a naturopathic doctor; paying or receiving a commission, bonus, kickback or rebate or engaging in a fee splitting arrangement based on patient referrals; promoting the sale of services, drugs, devices, appliances or goods to a patient so as to exploit the patient for financial gain; failing to disclose the contents of substances or merchandise or the nature and description of naturopathic services recommended, provided or offered to a patient; failing to maintain records; and failing to cooperate with a lawful investigation of the Board. Subsection (b) summarizes the panoply of potential disciplinary and corrective actions that the Board may impose for violations as authorized by the NDRA, the act and 63 Pa.C.S. § 3108(b) (relating to civil penalties), including denying an application for registration, administering a public reprimand, imposing probation or other restrictions on a registration, requiring other corrective actions or assessing monetary civil penalties and costs of investigation.

Proposed Rulemaking

Notice of the proposed rulemaking was published at 51 Pa.B. 7877 (December 18, 2021). The Board did not receive any comments from the Consumer Protection and Professional Licensure Committee of the Senate (SCP/PLC) or from the Professional Licensure Committee of the House of Representatives (HPLC). The Independent Regulatory Review Committee (IRRC) reviewed this proposed rulemaking and provided comments and recommendations. The Board received a comment from the Honorable Senator Doug Mastriano as well as comments from multiple stakeholders and members of the public.

Advance Notice of Final Rulemaking

After reviewing the comments to the proposed rulemaking, the Board determined the amendments contemplated as a result of these comments were sufficiently significant to warrant the solicitation of additional comments. Thus, the Board published an "Advance Notice of Final Rulemaking" (ANFR). See 53 Pa.B. 2961 (June 3, 2023). In the ANFR, the Board proposed adding key terms and definitions to the definition section, rectifying ambiguity, providing clarity and replacing non-regulatory language with regulatory language, among other things. As a result of the publication of the ANFR, the Board received comments from the Honorable Senator Jay Costa and the Honorable Senator Doug Mastriano, stakeholders and members of the public.

Summary of Comments to the Proposed Rulemaking and Advance Notice of Final Rulemaking and the Board's Response

General letters of support received in response to proposed rulemaking

The Board received approximately 60 comments from members of the public expressing support for this final-form rulemaking. These comments were received in a form letter generally indicating an anticipated positive impact on public assurance of competency of naturopathic doctors, an increase in the number of practitioners in this Commonwealth and the potential for mainstream recognition of these services, including by insurance companies in the form of plan coverage. In addition, the Board received comments from three patients of naturopathic doctors expressing the importance of their naturopathic doctor's role to their health.

The Board received several individual comments expressing support for the regulations as a whole and indicating the belief that registration of naturopathic doctors will assist with access to business and practice resources and increase opportunities for integrative care and collaboration across the health care community. The Pennsylvania Association of Naturopathic Doctors submitted a comment that included general support for the registration of naturopathic doctors to increase the health care workforce.

The Council on Naturopathic Medical Education (CNME) offered that the registration of naturopathic doctors in this Commonwealth will benefit individuals seeking "integrative/natural healthcare approaches," naturopathic doctors currently practicing in this Commonwealth or those who may wish to relocate from other states, and the overall health and well-being of the citizens of this Commonwealth. The comment further described the function of the CNME in establishing standards for naturopathic doctor training programs and the acceptance of these standards by multiple states. The CNME offers that its standards provide public assurance of the safety and effectiveness of graduates of naturopathic doctor programs.

§ 16.1. Definitions

The American Association of Naturopathic Medical Colleges submitted a comment inquiring into the nature of the practice of a drugless therapist. The Board directs the commentor to the lengthy discussion previously set forth relating to drugless therapists, a licensure category which was eliminated decades ago. As such, the Board determined that another lengthy discussion about an outdated classification of licensee was unnecessary except to note that the "drugless therapist" was eliminated when the State Board of Chiropractic began issuing licenses to practice chiropractic.

§ 18.13a. Requirements for licensure as a practitioner of Oriental medicine

In response to the ANFR, the Board received 46 comments relating to § 18.13a(e) asserting that § 18.13a(e) stands for the proposition that a registration is required for "recommending herbs, minerals and other supplements, or combinations, according to traditions other than Oriental medicine traditions." With this interpretation, the commentors suggest that no individual other than a Board licensee/registrant would be able to recommend herbs, minerals or supplements to another individual in any context. The commentors' misinterpretation appears to be a result of the lack of context for the amendment. Reading § 18.13a in its entirety makes clear that § 18.13a(e) relates solely to registered naturopathic doctors who are also licensed acupuncturists. There is no explicit or implied restriction on "GNC clerks" or "mothers," as suggested by the commentors, when recommending herbs, minerals and other supplements according to traditions other than Oriental medicine traditions. Thus, the Board did not amend this final-form rulemaking as a result of these comments.

The Board also received a comment to the ANFR from the Association of Accredited Naturopathic Medical Colleges (AANMC) in response to all subsections using the term "Oriental medicine." AANMC asserts the term "Oriental" is inappropriate. The appropriateness of the term "Oriental medicine" was discussed at length in the proposed rulemaking relating to acupuncturists and practitioners of Oriental medicine published at 52 Pa.B. 985 (February 12, 2022). For the reasons set forth in that proposed rulemaking, the Board has not replaced the term used here.

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician

The Board did not receive any comments on the proposed rulemaking relating to this section. The Board did receive 46 form comments to this section in response to the ANFR. The group of commentors assert concerns about § 18.15(b) relating to the titles that may be used by an individual licensed as an acupuncturist. In addition, the Board received a comment from a self-identified naturopathic doctor and licensed acupuncturist, which comment further addresses the usage of the terms "doctor of naturopathy" or "N.D." by acupuncturists, as set forth in § 18.15. The Board received a comment which generally takes issue with the required name tag or badge indicating the title of the licensee.

The Board notes that § 18.15(b) was deleted by the final-form rulemaking published at 53 Pa.B. 5759 (September 16, 2023), and § 18.15 was significantly restructured, necessitating amendments to move the identification/badge requirements to § 18.15(a)(10), pertaining to acupuncturists, and to § 18.15(b.1)(3), pertaining to practitioners of Oriental medicine. The Board notes that section 201 of the NDRA (63 P.S. § 272.201) makes it unlawful for an individual to use the title of "naturopathic doctor" or "doctor of naturopathic medicine" unless registered by the Board. Therefore, the Board has determined that its statutory authority only extends to the use of those titles. The amendments to § 18.15 merely permit licensed acupuncturists and practitioners of Oriental medicine to incorporate either of these terms on their required identification if they are also registered with the Board as a naturopathic doctor under the NDRA.

§ 18.15a. Scope of practice of acupuncturists and practitioners of Oriental medicine

As indicated by IRRC in its comment to the proposed rulemaking, proposed § 18.15a(d) contained language appearing to reference a scope of practice. In this section, and throughout the rulemaking, the Board eliminates references to the "scope of practice" of a naturopathic doctor where necessary based on the legislative intent of the NDRA to create a registration for individuals that meet the qualifications set forth in the NDRA. The Board notes that the provision in § 18.15a(d) simply provides an exception for individuals registered as naturopathic doctors when recommending herbs, minerals and other supplements.

§ 18.902. Definitions

In a comment to the proposed rulemaking received from IRRC, a list of terms classified as essential to administer and enforce the act and provide the regulated community with a common understanding of key terms was provided. In response to this comment, the Board adds and defines the following key terms in the ANFR: "naturopathic medicine," "naturopathic physical medicine," "naturopathic service," and "natural therapies." The NDRA authorizes the Board to impose discipline when a naturopathic doctor provides a naturopathic service below the standard of care. Thus, the Board concludes that the NDRA contains the requisite statutory authority for the Board to define several key terms. Thus, as set forth in the ANFR, "naturopathic medicine," "naturopathic physical medicine," "naturopathic service," and "natural therapies" are defined in this final-form rulemaking. In addition, the Board determines the terms "commercial activity" and "purveyor of merchandise or services" could be replaced with the term "marketing activity" and defined, thereby providing clarity that may have been lacking. The Board finds that the remaining terms identified by IRRC ("naturopathic evaluation," "naturopathy," "natural substances," "naturopathic plan of service" and "service regimen") are either deleted from this final-form rulemaking or are clarified by the added definitions, and therefore do not need to be defined in this final-form rulemaking.

The Board received 46 form comments relating to the terms and definitions added in response to the comments from IRRC and as set forth in the ANFR. Specifically, the commentors opine that, by negative implication, "only board-registered doctors of naturopathic medicine" may perform naturopathic medicine, naturopathic services and naturopathic therapies. This group of commentors suggest that by defining these terms, the Board has devised a scope of practice unauthorized by the NDRA. To the contrary, the Board defines the terms in this final-form rulemaking to provide a regulatory scheme that is administrable and enforceable as to naturopathic doctors registered by the Board. By way of specific example, under section 204(8) of the NDRA, the Board is permitted to discipline a registrant for immoral or unprofessional conduct, which conduct includes "acting outside the scope of a registration." Without the additional definitions provided in this final-form rulemaking, this provision of the NDRA may be unenforceable because it would fail to place registrants on notice of their obligations and the consequences for failing to meet those obligations. Therefore, the Board declines to delete these additional terms as suggested by the commentors. However, the Board notes that there is no provision in the NDRA that makes it unlawful to provide these types of services without being registered. Indeed, the only prohibition provided for by the NDRA is found in section 201 of the NDRA, which makes it unlawful for an individual to use the title of "naturopathic doctor" or "doctor of naturopathic medicine" unless registered by the Board. It was not the Board's intention to regulate the activities of unregistered individuals who provide these types of services by negative implication as suggested by the commentors.

The Board received comments from CNME as well as a practicing naturopathic doctor suggesting the definition of CNME in § 18.902 should include language that would include CNME's existing role of program accreditor. Specifically, the CNME accredits naturopathic doctor programs, which are offered by institutions of higher education which have been accredited by an accrediting body recognized by the United States Department of Education. To clarify the role of CNME as a program accreditor, the Board amends the definition of CNME in this final-form rulemaking.

The Board received a comment from a practicing naturopath suggesting the addition of a definition for the key term identified by IRRC, "traditional naturopath." Given that the term "traditional naturopath" does not appear in this final-form rulemaking as a result of the deletion of § 18.907(b), this is no longer a key term and does not require a definition.

The Board received an additional comment suggesting that the Board specifically permit naturopathic physicians to perform multiple tasks, including medical and nutritional testing and granting prescriptive authority. The comment also suggests, and provides, definitions for natural substances and naturopath, and suggests amendments to the definition of natural therapies. The Board declines to amend or add definitions as suggested, particularly because many of the tasks listed by the commentor fall squarely within the scope of practice of other health care practitioners required to be licensed by other boards within the Bureau of Professional and Occupational Affairs, and would require an act of the General Assembly to provide this authority.

§ 18.903. Application for naturopathic doctor registration

IRRC asked whether, for consistency with the NDRA, should § 18.903(b)(3) read "An applicant who graduated prior to 1986 shall demonstrate a passing score on a state naturopathic licensure examination." The Board declines to use the term "licensure" examination because not all states that regulate naturopathic doctors use the term "license;" at least one state uses the term "registration." Therefore, to be inclusive of all state regulatory schemes relating to naturopathic doctors regardless of whether the categorization term is a license, registration or something else, the Board elected to simply refer to a state naturopathic examination.

The Board received a comment on the proposed rulemaking relating to the education requirements for registration as a naturopathic doctor as set forth in § 18.903(b). The Board identified these education requirements to ensure competency of naturopathic doctors and protect the public, which requirements are consistent with the NDRA. The Board is not authorized to modify the statutorily imposed education requirements and declines to do so.

Following publication of the ANFR, the Honorable Senator Jay Costa, the prime sponsor of the NDRA, provided valuable comments relating to the legislative intent of the NDRA. The Honorable Senator Jay Costa stated the requirements for registration as a naturopathic doctor are to provide "safe and regulated access to naturopathic medicine for Pennsylvanians." To that end, the Honorable Senator Jay Costa succinctly reiterated many of the qualifications for registration as set forth in section 202 of the NDRA: graduate of an accredited college, completion of a Federally recognized postgraduate education, competency-based licensure examinations and completion of advanced clinical training. The regulations mimic these requirements for registration.

A comment was received suggesting the North American Board of Naturopathic Examiners (NABNE) is not the singular examination provider capable of measuring the competency of a prospective naturopathic doctor. Instead, it is asserted by the commentor that the National Board of Naturopathic Examiners is likewise qualified to be an examiner provider. Notably the commentor

does acknowledge the NDRA provides only for the Naturopathic Physicians Licensing Examinations (NPLEX) examination to meet the registration requirements. In opposition, the comment received from NABNE sets forth its perception of the differences between traditional naturopaths and naturopathic doctors, and identification of the states and territories where naturopathic doctors are regulated and the associated identification of either or both the NABNE and NPLEX. As set forth by the Honorable Senator Jay Costa, the requirements for registration as a naturopathic doctor are to provide safe and regulated access to naturopathic medicine. Therefore, the Board declines to add an additional examination provider not contemplated or authorized by the NDRA.

IRRC commented that inconsistency exists between the disciplinary history disclosures on initial applications in § 18.903 and those for registration and renewal and reactivation registration applications in § 18.904(b)(3). Section 18.903 relates to the criteria for registration as a naturopathic doctor and is consistent with other regulatory provisions relating to criteria for a license, certificate, permit or registration. The disclosures required by all applicants for a license, certification or registration are set forth in the Board's regulations in § 16.16 (relating to reporting of disciplinary actions, criminal dispositions and other licenses, certificates or authorizations to practice). These disclosures include "[d]isciplinary action instituted against the applicant by a licensing authority of another state, territory or possession of the United States, another country or a branch of the Federal government." Because § 16.16 applies to applications for registrations as a naturopathic doctor, it would be duplicative and inconsistent to insert this same requirement in § 18.903. However, the Board adds a cross-reference to § 16.16 for the sake of clarity.

The CNME provided a comment which defines the role of CNME in the accreditation process as did two other commentors. The CNME accredits naturopathic doctor programs, which are offered by institutions of higher education which have been accredited by an accrediting body recognized by the United States Department of Education. To clarify the role of CNME as a program accreditor, the Board amends § 18.903(b)(2) in this final-form rulemaking. The Board notes CNME provided information relating to the difference between the training obtained through a CNME-accredited program and other programs teaching some level of naturopathy.

The Board received 18 form comments, a comment from The American Association of Naturopathic Physicians (AANP) and a comment from a practicing naturopathic doctor requesting consistency between the number of continuing education hours in child abuse recognition and reporting required for initial registration and renewal. The commentors suggest 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training), the statute from which the Board derives its authority to require this continuing education, requires only 2 hours of training at the time of initial application and as such, the language in § 18.903(b)(5) should be modified accordingly. The regulation, as written, reflects the differing requirements for the training hours in child abuse recognition and reporting for individuals seeking initial registration (at least 3 hours) set forth at 23 Pa.C.S. § 6383(b)(3)(i) and registrants seeking renewal or reactivation of a registration (at least 2 hours) set forth at 23 Pa.C.S. § 6383(b)(3)(ii). This language is also consistent with the training requirement and continuing education hours required by the Board for all other Board-regulated practitioners in Chapter 16 at § 16.108 (relating to child abuse recognition and reporting—mandatory training requirement). To aid clarity, the Board adds a cross-reference to § 16.108.

Finally, AANMC suggests deleting the word "licensure" in the parenthetical found at the end of § 18.903(a). The parenthetical represents the verbatim title of § 16.13. Therefore, the Board declines to make the requested amendment.

§ 18.904. Biennial registration of naturopathic doctor

The Board received 18 form comments, a comment from AANP as well as a comment from a naturopathic doctor requesting consistency between the number of continuing education hours in child abuse recognition and reporting required for initial registration and renewal. As previously set forth, the required hours are consistent with 23 Pa.C.S. § 6383 and the requirements for other Board-regulated practitioners. To aid clarity, the Board adds a cross-reference to the mandatory training requirements in § 16.108.

§ 18.905. Inactive status; reactivation of inactive or expired registration

The comments to the proposed rulemaking received from IRRC contain several suggestions for amendments to § 18.905. First, IRRC suggests revising § 18.905(a) to provide specificity of the effective date of inactive status. Section 18.905(a), as written, is consistent with the language in §§ 18.310, 18.526, 18.608, 18.707 and 18.863. It should be noted that the Board currently receives requests for inactive status through the online licensing system. Therefore, requests are processed and become effective within 24 hours, with notice thereof sent to the requestor within the same timeframe. Because an amendment would cause inconsistency with the regulations of other allied professions regulated by the Board and because inactive status is an automatic function of the online licensing system, the Board does not find inclusion of a specific date to be necessary.

Also relating to § 18.905(a), IRRC suggests including the title usage prohibition upon registrants with an expired registration. Because § 18.905(a) relates only to inactive status, the Board concludes that introducing expired status would cause confusion to the regulated community. The Board notes that the title usage prohibition for expired licenses is already set forth in § 18.904(a). In addition, § 18.907(a) and (c) require an individual to have a current, active and unsuspended registration to use the title of or hold oneself out as, a naturopathic doctor, registered naturopathic doctor, doctor of naturopathic medicine or any similar title implying that the individual holds a current registration. Thus, the Board did not make a change to § 18.905(a).

IRRC commented that a reactivation fee was not included in the proposed rulemaking, despite inclusion in RAF # 17. The Board will not charge a separate reactivation fee. The only fee that will be charged is the usual renewal fee. Therefore, reference to this fee does not need to be included in § 18.905(b). The RAF has been corrected.

After publication of the ANFR, the Board received 18 form comments, and comments from NABNE, AANP, AANMC and a practicing naturopathic physician relating to the clinical competency requirement. The commentors request that the clinical competency requirement set forth in § 18.905(b) be limited to NPLEX Part II—Core Clinical Science Examination. In response to these comments, and upon the determination of the Board that passage of the NPLEX Part II would provide the assurance of

clinical competency sought by the Board for reactivation, the suggested amendment is made in this final-form rulemaking.

In response to the ANFR, the Board received two comments relating to prohibitions and disclosures while a naturopathic doctor's registration is expired or inactive. Sections 18.904(a) and 18.905(a) prohibit the use of several titles by a naturopathic doctor while expired or on inactive status and § 18.905(b)(2) requires disclosure if one of these titles is used during a period of time registration is inactive or expired. One commentor suggests medical doctors and other healthcare professionals are permitted to use their titles while inactive or in expired status and as such, naturopathic doctors should be no different.

The Board notes that section 201 of the NDRA clearly states that "[i]t shall be unlawful for an individual to use the title of "naturopathic doctor" or "doctor of naturopathic medicine" unless that person is registered as a naturopathic doctor with the board." In addition, section 206(a)(3) of the NDRA (63 P.S. § 272.206), pertaining to violation of the act, provides the Board the authority to impose a civil penalty on "[a]n individual who holds himself out as a registrant without being properly registered as provided in this act." Thus, a naturopathic doctor may not use any of the three titles set forth in § 18.905 if their registration is expired or inactive.

The Board directs the commentors to the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.1—422.53), which prohibits medical doctors, as well as other Board-regulated practitioners, from utilizing certain titles without a valid, current license. See, for example, section 13.3(a) of the act (63 P.S. § 422.13c(a)) which makes it "unlawful for any person to hold himself out the public as a perfusionist. . .unless the person holds a valid, current license issued by the board. . ." Further, a medical doctor is defined in section 2 of the act (63 P.S. § 422.2) as "an individual who has acquired one of the following licenses to practice medicine and surgery issued by the board: (1) license without restriction; (2) interim limited license; (3) graduate license. . . ." Section 10 of the act (63 P.S. § 422.10) states "no person other than a medical doctor shall engage in any of the following conduct except as authorized or exempted in this act: . . . (3) hold forth as authorized to practice medicine and surgery through use of a title, including, but not necessarily limited to, medical doctor, doctor of medicine, doctor of medicine and surgery, doctor of a designated disease, physician, physician of a designated disease, or any abbreviation of the foregoing."

However, the Board acknowledges that the language in § 18.905 is somewhat different than the corresponding regulations for other Board-regulated practitioners. This is because the NDRA is not a true "practice" act. For all other professions, the act and regulations prohibit "practicing" or "holding oneself out as authorized to practice" when a license, certificate, permit or registration is expired or inactive. Further, Board-regulated practitioners are required to disclose whether they practiced while their license was expired or inactive. Because the NDRA contains no such prohibition, but rather prohibits the use of certain protected titles as previously noted. Therefore, this final-form rulemaking prohibits the use of these protected titles when a registration is expired or inactive to be consistent. For these reasons, the Board makes no changes to these provisions.

The additional comment received relating to § 18.905 takes issue with the prohibition on usage of terms implying current registration with the Board unless the individual is currently registered. Similar to other commentors, it is asserted that this subsection should not be used to prohibit the use of the post-nominal "N.D." by any person, whether registered or not, who has earned this degree. As with other professions containing similar prohibitions, the goal of the Board is the promotion of public safety through discernable methods for the public at large to easily distinguish between individuals who are licensed or registered with the Board, and those who are not. Because the Board finds § 18.905(a) and (d) of this final-form rulemaking to be consistent with the intent of the NDRA, the Board declines to amend the subsections as requested.

§ 18.907. Acceptable titles and professional designations by registrants; prohibited titles

IRRC provided comment to § 18.907 indicating it would await the Board response to comments on this section. In response to all comments received on the proposed rulemaking, the Board initially determined maintaining § 18.907 as written was appropriate and as such, declined to make suggested amendments in the ANFR. Upon review of the comments to the proposed rulemaking as well as comments to the ANFR, the Board determines deletion of § 18.907(b) is consistent with the legislative intent of the NDRA.

Response to Comments to § 18.907(b) as proposed

The Board received a comment from the Honorable Senator Doug Mastriano wherein concern was raised relating to the restriction of the use of the title Doctor of Naturopathy to those who are registered with the Board. The Honorable Senator Doug Mastriano suggests that the restriction will cause financial and professional hardship to established naturopathic doctors and traditional naturopathic doctors, some of whom may have been practicing for decades. The proposed amendment to this section offered by the Honorable Senator Doug Mastriano would allow an individual to use the title "doctor of naturopathy" or "N.D." so long as the title does not imply that the individual is a naturopathic doctor registered with the Board.

The Board received six additional comments in substantially similar form relating to § 18.907. Through this letter, these individuals set forth opposition to § 18.907(b) and assert that the NDRA does not specifically preclude individuals who identified themselves as a "Naturopathic Doctor" or used the abbreviation "N.D.," or both, prior to the enactment of the NDRA ("traditional naturopaths") from maintaining use of those designations. The commentors posit they should be able to retain the use of both the designation "Naturopathic Doctor" and "N.D." abbreviation without the necessity of registration as required by the NDRA and this regulation.

In support thereof, the Honorable Senator Doug Mastriano and the other commentors refer to the legislative history of the NDRA and the final enactment as standing for the proposition that the General Assembly did not intend for the Board to regulate the use of the abbreviation "N.D." or "naturopathic doctor." Additionally, the commentors opine traditional naturopaths will incur expenses to change signage and other forms to comply with § 18.907(b). Further concern was expressed that § 18.907(b) creates uncertainty among traditional naturopaths' continued use of the degree they earned, "doctor of naturopathy" or "N.D." Finally, it is asserted that members of the public are confused as to whether they can continue seeing traditional naturopaths. The

commentors' proposed solution to the previous comment is an amendment to § 18.907(b) that would allow a nonregistered person to use "doctor of naturopathy or N.D." as long as use thereof does not imply that the individual is a naturopathic doctor registered with the Board.

In response to the foregoing, the Board reiterates several provisions from the NDRA. First, section 102 of the NDRA (63 P.S. § 272.102) defines the term "naturopathic doctor" as "[a]n individual who holds an active registration under this act." Second, section 201 of the NDRA makes unlawful the use of the "title 'naturopathic doctor' or 'doctor of naturopathic medicine' unless that person is registered as a naturopathic doctor with the board." However, in response to the commentors' concerns, the Board determines that deletion of subsection (b), which seeks to regulate individuals who are not registered with the Board, is sufficient to address their concerns and is consistent with the NDRA.

The Pennsylvania Association of Naturopathic Doctors suggests the addition of the post-nominal "N.D." to § 18.907(a) to ensure that use of this designation is limited to individuals who have completed accredited naturopathic doctor programs. The Board received several additional comments from naturopathic doctors who possess the education requirements set forth in the regulations and their desire to restrict usage of the terms "naturopathic doctor" and use of "N.D." to those who have obtained that same education. The Board finds the language of § 18.907 is sufficient and does not necessitate a listing of post-nominals or more specific usage exclusions that are not contained in the NDRA.

Response to Comments to § 18.907(b) received after ANFR publication

In the comment submitted from the Honorable Senator Jay Costa, as it pertains to section § 18.907(b), the Honorable Senator Jay Costa indicates this subsection as written is contrary to the language and legislative intent of the NDRA. In support of the request to delete § 18.907(b), the Honorable Senator Jay Costa states it was not the intent of the General Assembly to "address unregistered lay or traditional providers under the NDRA or, as a consequence, its governing regulations." In keeping with the legislative intent as set forth by the Honorable Senator Jay Costa, § 18.907(b) is deleted in this final-form rulemaking.

The Board also received a comment from the Honorable Senator Doug Mastriano, with the Honorable Representatives Dawn Keefer, David Zimmerman, Wendy Fink, Rob Kauffman, Barbara Gleim and Stephanie Borowicz additional signatories to this letter. The Board thanks the Honorable Senator Doug Mastriano as well as the Honorable Representatives for the in-depth and careful consideration given to the text of the ANFR. The Honorable Senator Doug Mastriano provided a comment relating to use limitation of the terms "Doctor of Naturopathy" and "N.D." As previously set forth, reference to the post-nominal "N.D." is deleted in this final-form rulemaking. The Board likewise deletes § 18.907(b). The Board does not find additional amendments are necessary to address the concerns relating to this comment.

The Board received 46 form comments suggesting that § 18.907 is insufficiently specific. As previously set forth fully in response to the comment received from the Honorable Senator Jay Costa, § 18.907(b) is deleted in this final-form rulemaking. By way of further response, the Board asserts the list of titles in § 18.907(a) and the phrase "any similar title implying that the individual holds a current registration as a naturopathic doctor in this Commonwealth" are sufficiently specific to place individuals on notice that they may be subjected to disciplinary action for title utilization without having first secured registration from the Board.

Additional comments were received regarding the deletion of § 18.907(b). The Board received 18 comments in substantially similar form, a comment from a practicing naturopathic doctor, the CNME, the AANP and a comment from a practicing naturopathic doctor requesting deletion of § 18.907(b). As previously set forth fully in response to the comment received from the Honorable Senator Jay Costa, § 18.907(b) is deleted in this final-form rulemaking.

The Board received a comment from a self-identified traditional naturopath, who opposes any restriction on the use of "N.D." As set forth in the NDRA, it is "unlawful for an individual to use the title 'naturopathic doctor' or 'doctor of naturopathic medicine' unless that person is registered as a naturopathic doctor with the board." As previously set forth in response to the Honorable Senator Jay Costa and many other commentors, § 18.907(b), which addressed traditional naturopaths such as this commentor, is deleted from this final-form rulemaking.

In addition to the foregoing, a self-identified naturopathic doctor comments that public confusion will surface should the regulations specifically provide for indiscriminate title usage by registrants and nonregistrants or fail to address title usage at all. The Board finds the NDRA and § 18.907, as it reads with the deletion of subsection (b) as provided herein, are sufficient to address concerns that members of the public will not be able distinguish between a registered naturopathic doctor and any other nonregistered individual practicing naturopathy. The commentor further suggests providing a post-nominal that could be used by an individual who holds a degree as a naturopathic doctor but is not registered with the Board. There are many practitioners regulated by the Board subject to restriction on the usage of any title that would imply the individual is currently licensed by the Board to practice a particular profession. The Board declines to make any changes to this final-form rulemaking specific to naturopathic doctors that would result in inconsistency with other Board-regulated practitioners.

An additional comment was received highlighting the differences between an individual who would qualify for registration as a naturopathic doctor and as traditional naturopaths. The comment also relays a concern that usage of the post-nominal "N.D." by anyone, registered with the Board or not, will blur the distinction between those who have obtained a naturopathic doctor degree after completing a robust postgraduate naturopathic doctor program and those who have engaged in other types of naturopathic education or training. The Board deletes § 18.907(b) in this final-form rulemaking for the multiple reasons set forth herein. The Board believes this will allay, to the extent possible, commentors' concerns that the public will be unable to distinguish a registered naturopathic doctor, who has met the corresponding education and training requirements, from all others practicing as traditional naturopaths.

The Board received a comment from the AANMC relating to this section and post-nominal usage. The AANMC opines that the patients are often unable to distinguish between a naturopathic doctor who meets the education and training requirements in the regulation and a naturopath who does not meet those requirements.

For public safety purposes and to promote the public understanding of the distinction between the two, AANMC suggests title protection within the regulation of the following terms: "naturopath," "traditional naturopath," "naturopathic doctor and naturopathic physician," and the post-nominals "N.D.," "N.M.D." and "D.N.M." The Board deletes § 18.907(b) for the reasons set forth herein. The Board declines to include the requested titles and post-nominals in the regulation.

The AANMC requests the regulation authorize the use of N.D. or N.D. (ret.) by individuals who have earned a naturopathic doctor degree but may not be registered with the Board for various reasons, including retirement and engagement in academia. This appears to contradict the request of AANMC to limit the usage of N.D. to those who are registered with the Board. Nevertheless, the Board similarly finds that § 18.907 provides sufficient notice to the public of when certain title usage is appropriate.

The AANP offered an additional comment relating to § 18.907(c). In its comment, the AANP suggests an amendment that would include the post-nominals for the designations contained in the subsection as published. The Board declines to include the post-nominals as requested.

§ 18.908. Informed consent and disclosure of financial interest

The comments received from IRRC address several facets of § 18.908. The first of the three concerns raised relate to what appears to be a conflict between § 18.908(b), which requires disclosures relating to certain financial incentives, and § 18.911(d)(3) and (8), which appears to categorize the same activity as unethical. The second concern of IRRC related to the lack of a definition for "purveyors of merchandise or services" and "commercial activity." To cure any inconsistencies, the Board replaces the terms "purveyors of merchandise or services" and "commercial activity" with the term "marketing activity" and provides a definition in § 18.902. The definition of the term "marketing activity" excludes health care providers as service providers. The Board published these amendments in the ANFR along with other added definitions and finds these changes to be sufficient to address the third concern of IRRC relating to duties of a naturopathic doctor.

In response to the ANFR, the Board received a comment regarding §§ 18.908(b) and 18.913(a)(6)); the commentor asserts the former is too broad and the latter too restrictive resulting in a provision that is difficult for the regulated public to follow and the Board to enforce. The commentor further suggests deletion of § 18.913(a)(6), pertaining to the authority to discipline for promoting the sale of services, drugs, devices, appliances or goods to a patient so as to exploit the patient for financial gain, as it is duplicative given the breadth of § 18.908(b). The Board notes that §§ 18.908(b), 18.911(d) and 18.913(a)(5) and (6) address the monetary aspects attendant to the practice of naturopathic medicine. Upon review, the Board determined that § 18.908(b) can be more narrowly tailored to apply only to merchandise, as it appears that §§ 18.911(d) and 18.913(a)(5) and (6) address the other financial-related topics of concern to the Board. As a result of that amendment, the Board declines to delete § 18.913(a)(6) as requested.

An additional comment was received requesting deletion of § 18.908 in its entirety. The Board declines to delete this section. The Board would like to note that informed consent is also a duty of physicians prior to conducting certain procedures, as set forth in section 504 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.504).

In addition, the disclosure of financial interests in § 18.908(b), with the amendments made in response to the ANFR comments received, address commissions, rebates, referral fees or other financial incentives received by the registrant for recommending any merchandise to the patient. Subsection (b) is a means of public protection and is consistent with Federal and State laws governing other healthcare practitioners and healthcare related fields. For example: (1) pharmaceutical manufacturer gift bans of items exceeding a specific dollar amount and other restrictions; (2) Federal anti-kickback laws which make it illegal to knowingly and willfully offer, pay or provide anything of value to induce an individual or entity to recommend or prescribe a product or service reimbursed by the government; (3) the Prescription Drug Marketing Act of 1987 (P.L. 100-293, 102 Stat. 95) prohibits the sale, purchase, or trade of drug samples and for an individual to sell or seek reimbursement for samples; and (4) The Physician Payments Sunshine Act (42 U.S.C. § 1320a-7h), which is designed to increase transparency around financial relationships between physicians, teaching hospitals, and manufacturers of drugs, medical devices and biologics. For all of the reasons set forth herein, the Board does not find it is in the public interest to delete § 18.908.

§ 18.911. Code of Ethics

Five subsections were found by IRRC to contain nonregulatory language lacking clarity and failing to set a binding norm. In response thereto, the Board amended the annex and published in the ANFR clear compliance standards for the regulated community. Section 18.911(f) is amended consistent with these comments, as set forth in the ANFR, to prohibit a naturopathic doctor from using the absence of a specific ethical, legal or professional duty as a defense to a disciplinary action, when the duty is within the standard of care. In addition, the Board amends the language in subsection (c) as suggested. With regard to subsection (d)(3), the Board amends this subsection to replace the term "commercial activity" with the term "marketing activity" and replace reference to the "duties of a naturopathic doctor" with a cross-reference to subsection (c).

In response to the concern relating to the enforceability of these regulations as contemplated by the language of the NDRA, the Board adds subsection (d)(13) which specifically precludes providing or performing a naturopathic service at a level beneath the standard of care.

The Board received a comment to § 18.911 unrelated to the compliance standards as modified by the IRRC comments to the proposed rulemaking. AANMC requested the Board confirm that § 18.911(b) does not contradict the Americans with Disabilities Act of 1990 (ADA) (P.L. 101-336, 104 Stat. 327). The Board complies with Federal laws relating to the ADA while exercising its authority to protect the public. The Board's concern is not with all disabilities, but only those that impact an individual's ability to practice naturopathic medicine or provide naturopathic services with reasonable skill and safety to patients and has amended this provision accordingly.

§ 18.913. Grounds for discipline

In response to a comment received from IRRC, the Board amends § 18.913(a)(8) to clarify that a

naturopathic doctor is prohibited from failing to disclose the contents of medicines or merchandise or the nature and description of naturopathic services, replacing the language in this proposed rulemaking relating to "secret method, treatment, product or medicine." The Board believes the amended language addresses IRRC's concerns.

IRRC also submitted a comment to subsection (b) pertaining to the Board's authority in section 204(5)(iv) of the NDRA to impose disciplinary or corrective action when a naturopathic doctor is unable to practice naturopathic medicine with reasonable skill and safety to patients by reason of illness, addiction or other enumerated conditions. Specifically, IRRC noted that "a naturopathic doctor shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume a competent practice of his profession with reasonable skill and safety to patients," and asked the Board to provide a detailed descript of how it will administer this provision in this final-form rulemaking. The Board notes that nearly identical language can be found in section 41(5) of the act for all other Board-regulated practitioners and has been part of the Board's practice since at least 1985. Generally, a Board-regulated practitioner may petition for relief from a disciplinary order under this provision at any time and is given an opportunity to demonstrate that he or she can resume a competent practice of his or her profession with reasonable skill and safety. Thus, the Board does not dictate what a "reasonable interval" may be and leaves that to the affected individual to determine. The Board is required to follow 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), the act, the Board's regulations in Chapter 16 (relating to general provisions) and any other statutory or constitutional authority relating to due process and the property interest a naturopathic doctor may have in a registration when enforcing these provisions. The Board declines to reiterate those standards in this final-form rulemaking.

The Board received a comment in response to the ANFR pertaining to § 18.913(a)(6), in which the commentor asserts that the acts that would constitute patient deception and exploitation are vague. While the Board cannot foresee, and consequently list, every activity that could be considered deceitful or exploitive, the common legal definition of exploitation and understanding of exploitation are sufficient to overcome the purported vagueness. Therefore, the Board declines to make an amendment.

IRRC Comments to RAF

IRRC noted the incorrect dates set forth the RAF at # 29. The Board amends its response to RAF # 29 to reflect the correct timeline.

IRRC also notes the reactivation fee of $100 set forth in RAF # 17 and the absence of the same fee in the regulation. The Board will not require registrants to pay an additional $100 reactivation fee. Therefore, reference to this fee is deleted from RAF # 17.

Comments to proposed rulemaking applicable to multiple or unspecified subsections

IRRC mentions inconsistency with usage of the terms "initial registration" and "naturopathic service." The Board finds the amendments made in response to the prior comments made by IRRC to correct inconsistencies.

The Board received a comment to the proposed rulemaking suggesting the inclusion of the abbreviation "N.D." in all parts of the regulation where the titles "naturopathic doctor" and "doctor of naturopathic medicine" appear for the purpose of excluding any individual who does not have a current registration with the Board from using the abbreviation for the title "naturopathic doctor." In balancing the competing interests identified through the various comments, the Board finds the inclusion throughout the regulation of the phrase "any other term implying that the individual is currently registered as a naturopathic doctor" is sufficiently inclusive and consistent with legislative intent and the plain language of the NDRA.

The Board received a comment to the proposed rulemaking suggesting further clarification on whether naturopathic doctors are providing homeopathic care, medical care or nursing care, and the level of education required. The Board believes that the addition of the definitions requested by IRRC satisfies the request for clarity as to what type of care naturopathic doctors provide. In addition, the act and the Professional Nursing Law (63 P.S. §§ 211—225.5) limit the practice of these professions to those who are properly licensed by the applicable Board. The educational requirements for naturopathic doctors registered with the Board are set forth in the NDRA and § 18.903. In addition, the educational requirements and practice responsibilities of all other health-related professions are set forth in the respective Boards' practice acts and regulations.

The Board received a comment to the proposed rulemaking expressing concern relating to the implementation of oversight of naturopathic doctors registered with the Board. In response thereto, the Board refers the commentor to §§ 18.911—18.913 and to the Board's regulations in Chapter 16, Subchapter E (relating to medical disciplinary process and procedures), pertaining to the Board's disciplinary process and procedures.

Comments to ANFR applicable to multiple or unspecified subsections

The Honorable Senator Doug Mastriano

As previously indicated relative to § 18.907(b), the Board received a comment from the Honorable Senator Doug Mastriano. The Honorable Representatives Dawn Keefer, David Zimmerman, Wendy Fink, Rob Kauffman, Barbara Gleim and Stephanie Borowicz were also signatories to this letter. The Board recognizes that the pool of naturopathic doctors who may qualify for registration as a naturopathic doctor does not encompass all current practitioners of naturopathy. This final-form rulemaking reflects a regulatory scheme the Board finds is consistent with the legislative intent of the NDRA.

The Board received a comment requesting the Board authorize prescriptive authority for naturopathic doctors. Authorization for prescriptive authority must be derived from a specific act of the General Assembly. Because this authority does not exist, the Board has not and will not consider prescriptive authority for registered naturopathic doctors.

The American Naturopathic Association (ANA) provided comments which highlight the difference between the class of professionals who meet the registration requirements of the NDRA and all others who identify as traditional naturopaths and suggests both should be permitted to register as naturopathic doctors. The ANA posits that these regulations would "severely limit the practice of many in the State of Pennsylvania." However, the ANA fails to provide specific details as to how these regulations limit that practice. Thus, the Board is unable to respond directly to this comment. The ANA concludes

that a separate regulatory scheme is needed to encompass the practice of the traditional naturopathy. The Board appreciates the comments and brief, yet comprehensive, historical narrative of the "schism between naturopaths." However, the creation of a new type of license, registration, permit or certification for traditional naturopaths is a function of the General Assembly. Therefore, the Board is unable to act upon the suggestions of the ANA.

Description of Amendments to the Final-form Rulemaking

The Board amends § 18.13a(e) to delete implicit reference to the scope of practice of a naturopathic doctor by replacing the phrase "the practice of a naturopathic doctor" with "a registered naturopathic doctor."

The Board amends § 18.15 to delete the proposed amendment to subsection (b), which was deleted in a previous rulemaking of the Board. Because that rulemaking restructured § 18.15, it was necessary to amend subsections (a) and (b.1) to provide that an individual licensed as an acupuncturist or as a practitioner of Oriental medicine who also possesses a current and active registration as a naturopathic doctor may utilize the title "doctor of naturopathic medicine" or "naturopathic doctor" notwithstanding the general prohibition on the use of the word "doctor" on their identification tag or badge.

The Board amends § 18.15a(d) to delete implicit reference to the scope of practice of a naturopathic doctor by replacing the phrase "the practice of a naturopathic doctor" with "a registered naturopathic doctor."

The Board amends § 18.902 to revise the definition of "CNME" to correspond to the information provided by CNME as to programmatic accreditation. The Board adds definitions for the following terms: "marketing activity," "naturopathic medicine," "naturopathic physical medicine," "naturopathic service" and "natural therapies." Finally, the Board deletes "natural substances" from the definition of "merchandise" because it is overbroad, and the remaining list is sufficient.

The Board amends § 18.903(a) to include a cross reference to § 16.16 for clarity. Section 18.903(b) is amended to simply refer to a registration as a naturopathic doctor and (b)(2) to read "holds a doctoral degree from an institutionally accredited or pre-accredited college or university offering a naturopathic doctor program which has been granted programmatic candidacy or accreditation by the CNME. . ." instead of "holds a doctoral degree from a naturopathic school accredited by the CNME. . ." based on the comment submitted by CNME. Finally, § 18.903(b)(5) is amended to include a cross reference to the mandatory training requirement in child abuse recognition and reporting in § 16.108(a) as a condition of initial registration to aid clarity.

The Board amends § 18.904(a) to add "registered naturopathic doctor" to the list of titles prohibited from use when registration is expired to be consistent with § 18.907. Additionally, the Board amends § 18.904(b)(5) to add a cross reference to the mandatory continuing education in child abuse recognition and reporting in § 16.108(b) as a condition of biennial renewal to aid clarity.

The Board amends § 18.905(a) and (b)(2) to add "registered naturopathic doctor" to the list of titles prohibited from use when registration is on inactive status. Section 18.905(b)(6) is also amended to add a cross reference to the mandatory continuing education in child abuse recognition and reporting in § 16.108(b) as a condition of reactivation of an expired or inactive registration. The Board amends § 18.905(c) to specify the examination required to demonstrate competency is the "NPLEX Part II—Core Clinical Science Examination."

The Board amends § 18.907 to change the title from "[a]cceptable titles and professional designations by registrants and nonregistrants; prohibited titles" to "[a]cceptable titles and professional designations by registrants; prohibited titles." The Board further amends § 18.907 to delete proposed subsection (b) which sought to instruct nonregistrants as to what titles they could utilize.

The Board amends § 18.908(b) to replace "referral of a patient to purveyors of merchandise or services or for recommending any merchandise to a patient" to "any marketing activity relating to merchandise."

The Board amends § 18.910(b)(9) to replace the undefined term "natural substances" with the defined term "merchandise" and to utilize the defined term "naturopathic service."

The Board amends § 18.911(a) to clarify that the Board is concerned about impairments that impact a naturopathic doctor's ability to practice naturopathic medicine or to provide naturopathic services. Subsection (c) is amended to delete "nonregulatory" language, to use the defined term "naturopathic services" throughout and to provided needed clarity.

The Board amends § 18.911(d) as follows: subsection (d)(3) is amended to read "engage in a marketing activity which conflicts with subsection (c)" instead of "engage in a commercial activity which conflicts with the duties of a naturopathic doctor;" subsection (d)(9) is amended to delete the phrase "a particular course of care" and add the phrase "particular naturopathic service;" subsection (d)(13) is added which reads "provide or perform a naturopathic service at a level beneath the accepted standard of care for a naturopathic doctor which would be normally exercised by the average professional of the same kind in this Commonwealth under the circumstances, including locality and whether the naturopathic doctor is or purports to be a specialist in the area;" and to use the defined term "naturopathic service" throughout.

The Board amends § 18.911(e) to read "A naturopathic doctor may not perform or provide a naturopathic service that the naturopathic doctor is not qualified to perform, or which is beyond the naturopathic doctor's education and training.

The Board amends § 18.911(f) to replace the entire subsection with the following language: "A naturopathic doctor may not assert as a defense to a disciplinary action under 204 of the NDRA (63 P.S. § 272.204) or § 18.913, the absence of a specific ethical, legal or professional duty in this subsection when such duty is normally exercised by the average professional of the same kind in this Commonwealth under the circumstances, including locality and whether the naturopathic doctor is or purports to be a specialist in the area.

The Board amends § 18.913(a)(8) to replace "offering, undertaking or agreeing to cure or treat a disease by a secret method, treatment, product or medicine" with "failing to disclose the contents of merchandise or the nature and description of services recommended, provided or offered to a patient."

Fiscal Impact and Paperwork Requirements

The only fiscal impacts of this final-form rulemaking are the fees imposed upon naturopathic doctors for initial registration ($100) or biennial renewal ($50). Naturopathic doctors applying for initial registration, biennial renewal of registration or reactivation of an inactive or

expired registration will be required to submit online applications and submit required documentation to the Board.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 30, 2021, the Board submitted a copy of the proposed rulemaking, published at 51 Pa.B. 7877 (December 18, 2021) and a copy of a Regulatory Analysis form to IRRC and to the chairpersons of the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, the Board provided IRRC, SCP/PLC and HPLC with copies of the comments received, as well as other documents when requested. In preparing the final-form regulation, the Board considered the comments from IRRC, the legislative comments and the public comments. The Board received no comments from the HPLC or SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on January 18, 2024, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1 (j.2) of the Regulation Review Act, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on March 20, 2024. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2024, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Saiyad Ali, Acting Board Administrator, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-MEDICINE@PA.GOV.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments received were considered in drafting this final-form rulemaking.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 51 Pa.B. 7877.

(4) This final-form rulemaking is necessary and appropriate for the administration of the NDRA.

Order

The Board, therefore, orders that:

(a) The regulations of the Board, at 49 Pa. Code Chapters 16 and 18, are amended by amending §§ 16.1, 16.11—16.13, 18.13a, 18.15, 18.15a and adding §§ 18.901—18.913, as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this final-form regulation to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form regulation to IRRC, the SCP/PLC and the HPLC as required by law.

(d) The Board shall certify this final-form regulation and deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form regulation shall take effect upon notice or publication in the *Pennsylvania Bulletin*.

MARK B. WOODLAND, MS, MD,
Chairperson

(*Editor's Note*: See 54 Pa.B. 1907 (April 6, 2024) for IRRC's approval.)

Fiscal Note: Fiscal Note 16A-4953 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter A. BASIC DEFINITIONS AND INFORMATION

§ 16.1. Definitions.

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Act—The Medical Practice Act of 1985 (63 P.S. §§ 422.1—422.53).

Approved activity—A continuing medical education activity accepted for AMA PRA credit.

Board—The State Board of Medicine.

Board-regulated practitioner—A medical doctor, midwife, physician assistant, respiratory therapist, athletic trainer, acupuncturist, practitioner of Oriental medicine, genetic counselor, behavior specialist, perfusionist, prosthetist, orthotist, pedorthist, orthotic fitter, naturopathic doctor or an applicant for a license, registration or certificate that the Board may issue.

* * * * *

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

* * * * *

(c) The following registrations are issued by the Board:

(1) Registration as a supervising physician of a physician assistant.

(1.1) Initial registration as a naturopathic doctor.

(2) Biennial registration of a license without restriction.

(3) Biennial registration of an extraterritorial license.

(4) Biennial registration of a midwife license.

(5) Biennial registration of a physician assistant license.

(6) [Reserved].

(7) Biennial registration of a limited license-permanent.

* * * * *

(18) Biennial registration of an orthotic fitter license.

(19) Biennial registration of a naturopathic doctor registration.

§ 16.12. General qualifications for licenses, registrations and certificates.

To qualify for an initial license, registration or certificate issued by the Board, an applicant shall establish that the following criteria are satisfied:

* * * * *

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(d) *Acupuncturist licenses:*

(1) *Acupuncturist*:

Application $30

Biennial renewal $40

(2) *Practitioner of Oriental medicine license*:

Application $30

Biennial renewal $40

(e) [Reserved].

* * * * *

(q) *Orthotic fitters*:

Application for orthotic fitter license $25

Biennial renewal of orthotic fitter license $75

Application for reactivation of orthotic fitter license $25

Application for orthotic fitter temporary permit ... $25

(r) *Naturopathic doctor registration*:

Application for initial registration $100

Biennial renewal $50

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter B. REGISTRATION AND PRACTICE OF ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

§ 18.13a. Requirements for licensure as a practitioner of Oriental medicine.

* * * * *

(d) This section does not apply to a medical doctor licensed as an acupuncturist nor does it restrict the practice of medicine by a medical doctor.

(e) This section does not limit a registered naturopathic doctor who is also licensed as an acupuncturist when recommending herbs, minerals and other supplements, or combinations, according to traditions other than Oriental medicine traditions.

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of an acupuncturist who is licensed as a medical doctor.

(a) *Responsibilities to patient and public—acupuncturist who is not a physician.* An acupuncturist who is not a physician:

* * * * *

(10) Shall wear a tag or badge with lettering clearly visible to the patient bearing the acupuncturist's name and the title "acupuncturist." The use of the words, doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited, provided, however, that an individual licensed as an acupuncturist who also possesses a current and active registration as a naturopathic doctor may utilize the title "doctor of naturopathic medicine" or "naturopathic doctor" in addition to the title "acupuncturist."

(b) [Reserved].

(b.1) *Additional responsibilities to patient and public—practitioner of Oriental medicine who is not a physician.* In addition to the responsibilities in subsection (a)(1)—(9), a licensed practitioner of Oriental medicine who provides, or contemplates providing, herbal therapy:

* * * * *

(3) Shall wear a tag or badge with lettering clearly visible to the patient bearing the licensee's name, as well as the title "practitioner of Oriental medicine." The use of the words doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited, provided, however, that an individual licensed as a practitioner of Oriental medicine who also possesses a current and active registration as a naturopathic doctor may utilize the title "doctor of naturopathic medicine" or "naturopathic doctor" in addition to the title "practitioner of Oriental medicine."

* * * * *

§ 18.15a. Scope of practice of acupuncturists and practitioners of Oriental medicine.

* * * * *

(c) This section does not limit the scope of practice of a medical doctor who is registered as an acupuncturist.

(d) This section does not limit a registered naturopathic doctor when recommending herbs, minerals and other supplements, or combinations, according to traditions other than Oriental medicine traditions.

Subchapter M. REGISTRATION OF NATUROPATHIC DOCTORS

Sec.

§ 18.901. Purpose.

This subchapter implements the NDRA pertaining to the registration of naturopathic doctors.

§ 18.902. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Authorization to practice—A license, registration, certificate, permit, authorization or approval issued by a state or Federal agency which authorizes the holder to advertise, engage in, or both advertise and engage in the practice of a profession or occupation.

CNME—Council on Naturopathic Medical Education—The accrediting body which grants candidacy and accreditation to programs of naturopathic medicine for the education of naturopathic doctors.

Marketing activity—A communication about a service or merchandise that encourages recipients of the communication to purchase or use the merchandise or service. For purposes of this chapter, the term does not include a service from or referral to another health care practitioner.

Merchandise—Items that can be sold including vitamins, supplements, food, food extracts, homeopathic remedies, botanical medicines and herbs.

NABNE—North American Board of Naturopathic Examiners—The organization which administers the NPLEX.

NDRA—The Naturopathic Doctor Registration Act (63 P.S. §§ 272.101—272.301).

NPLEX—Naturopathic Physicians Licensing Examinations—The licensing examination accepted by the Board as a prerequisite to registration, consisting of Part I—Biomedical Science Examination and Part II—Core Clinical Science Examination, or its successor recognized by the Board.

Natural therapies—Treatment of an individual through the use of substances in which the active ingredient is derived from plant, mineral or fungal sources, or any substance found in nature, and which may also contain common pharmaceutical excipients, and nonprescription drugs as defined by the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. §§ 301—399g).

Naturopathic doctor—An individual who holds an active registration issued by the Board under the NDRA.

Naturopathic medicine—Naturopathic physical medicine, natural therapies, naturopathic counseling or a combination thereof, to support and stimulate the individual's self-healing processes.

Naturopathic physical medicine—The use of the physical agents of air, water, heat, cold, sound and light, and the physical modalities of electrotherapy, biofeedback, diathermy, ultraviolet light, ultrasound, hydrotherapy and exercise, including naturopathic manipulation and mobilization therapy.

Naturopathic service—Providing or performing naturopathic physical medicine, natural therapies, naturopathic counseling or a combination thereof, to support and stimulate an individual's self-healing processes.

Regionally accredited or pre-accredited college or university—A college or university which is accredited or pre-accredited by one of the following:

(1) Accrediting Commission of Career Schools and Colleges.

(2) Accrediting Council for Continuing Education and Training.

(3) Accrediting Council for Independent Colleges and Schools.

(4) Council on Occupational Education.

(5) Distance Education Accrediting Commission.

(6) Higher Learning Commission.

(7) Middle States Commission on Higher Education.

(8) Middle States Commission on Secondary Schools.

(9) New England Commission of Higher Education.

(10) New York State Board of Regents and the Commissioner of Education.

(11) Northwest Commission on Colleges and Universities.

(12) Southern Association of Colleges and Schools, Commission on Colleges.

(13) Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges.

(14) Western Association of Schools and Colleges, Senior Colleges and University Commission.

(15) Other regional or National accrediting agency which has been recognized by the United States Department of Education as being a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs they accredit.

§ 18.903. Application for naturopathic doctor registration.

(a) An applicant for a registration to practice naturopathic medicine shall submit, on an application made available by the Board, a completed application for a registration, including the necessary supporting documents, including information required by § 16.16 (relating to reporting of disciplinary actions, criminal dispositions and other licenses, certificates or authorizations to practice) and pay the application fee in § 16.13 (relating to licensure, certification, examination and registration fees).

(b) Except as otherwise provided by law, the Board will issue a registration as a naturopathic doctor to an applicant who meets all of the following requirements:

(1) Holds a bachelor's degree from a regionally accredited or pre-accredited college or university or the equivalent.

(2) Holds a doctoral degree from an institutionally accredited or pre-accredited college or university offering a naturopathic doctor program which has been granted programmatic candidacy or accreditation by the CNME which consists of at least 4,100 total credit hours in basic and clinical sciences and naturopathic philosophy and modalities, including at least 2,500 hours of academic instruction and at least 1,200 hours of supervised clinical training. Proof of the degree shall be sent directly from the applicant's education program and include an official transcript.

(3) Has passed Parts I and II of a competency-based National naturopathic licensing examination administered by the NABNE or a successor agency. An applicant who graduated prior to 1986 shall demonstrate a passing score on a state naturopathic examination.

(4) Holds a current basic cardio-pulmonary resuscitation (CPR) certificate issued by the American Heart Association, American Red Cross or a similar health authority or professional body approved by the Board.

(5) Has completed at least 3 hours of approved education/training in child abuse recognition and reporting requirements as set forth in 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training) and in § 16.108(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(6) Is of good moral character.

(c) The Board may deny an application for registration as a naturopathic doctor upon any of the grounds for

disciplinary action in § 18.913 (relating to grounds for discipline).

§ 18.904. Biennial registration of naturopathic doctor.

(a) The registration of a naturopathic doctor will expire biennially on December 31 of each even-numbered year in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status). A naturopathic doctor may not use the title of "naturopathic doctor," "doctor of naturopathic medicine," "registered naturopathic doctor" or any other term implying that the individual is currently registered as a naturopathic doctor unless the individual holds a current and unexpired registration.

(b) As a condition of biennial renewal, a naturopathic doctor shall:

(1) Submit a completed application, including payment of the biennial registration fee in § 16.13 (relating to licensure, certification, examination and registration fees).

(2) Disclose on the application any authorization to practice as a naturopathic doctor in another state, district, territory, possession or country.

(3) Disclose on the application disciplinary action pending before, or taken by, the appropriate licensing, registration or certification authority in another jurisdiction since the most recent application for biennial registration, whether or not authorized to practice or advertise in that other jurisdiction.

(4) Affirm that the applicant holds a current basic cardio-pulmonary resuscitation (CPR) certificate issued by the American Heart Association, American Red Cross or a similar health authority or professional body approved by the Board.

(5) Certify that the applicant has completed at least 2 hours of approved continuing education in child abuse recognition and reporting as set forth in 23 Pa.C.S. § 6383(b)(3)(ii) (relating to education and training) and in § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 18.905. Inactive status; reactivation of inactive or expired registration.

(a) A naturopathic doctor may request in writing that the Board place the registration on inactive status. Confirmation of inactive status will be forwarded to the registrant. A naturopathic doctor may not use the title of "naturopathic doctor," "doctor of naturopathic medicine," "registered naturopathic doctor" or any other term implying that the individual is currently registered as a naturopathic doctor while on inactive status.

(b) To reactivate an inactive or expired registration, the registrant shall apply for reactivation by completing an application for reactivation on a form made available by the Board. The registrant shall:

(1) Pay the current biennial registration fee specified in § 16.13 (relating to licensure, certification, examination and registration fees) and any applicable late fees required under section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. § 1401-225).

(2) Disclose whether the registrant used the title of "naturopathic doctor," "doctor of naturopathic medicine," "registered naturopathic doctor" or any other term implying that the individual was currently registered as a naturopathic doctor in the Commonwealth while the registration was inactive or expired.

(3) Disclose on the application any authorization to practice as a naturopathic doctor in another state, district, territory, possession or country.

(4) Disclose on the application disciplinary action pending before or taken by the appropriate licensing, registration, or certification authority in another jurisdiction since the most recent application for biennial registration, whether or not authorized to practice or advertise in that other jurisdiction.

(5) Submit evidence the registrant holds a current basic cardio-pulmonary resuscitation (CPR) certificate issued by the American Heart Association, American Red Cross or a similar health authority or professional body approved by the Board.

(6) Verify completion of at least 2 hours of approved continuing education in child abuse recognition and reporting in the 2 years immediately preceding the application for reactivation as set forth in 23 Pa.C.S. § 6383(b)(3)(ii) (relating to education and training) and in § 16.108(b) (relating to child abuse recognition and reporting—mandatory training requirement).

(c) A registrant who has not had clinical contact with patients for 4 years or more shall demonstrate current competency and qualification to hold forth as a naturopathic doctor by demonstrating a passing score on the NPLEX Part II—Core Clinical Science Examination, completed within 12 months of the application to reactivate the registration.

(d) Payment of applicable late fees required under section 225 of the Bureau of Professional and Occupational Affairs Fee Act does not preclude the Board from taking disciplinary action for utilizing the title of "naturopathic doctor," "doctor of naturopathic medicine," "registered naturopathic doctor" or any other term implying that the individual was currently registered as a naturopathic doctor while holding an inactive or expired registration.

§ 18.906. Display of registration.

A naturopathic doctor registrant shall prominently display the certificate of registration and evidence of biennial renewal in a publicly accessible location at the registrant's regular place of business. The registrant shall have evidence of current registration available for inspection by authorized agents of the Board and by persons receiving services when the naturopathic doctor provides services at locations other than the registrant's regular place of business.

§ 18.907. Acceptable titles and professional designations by registrants; prohibited titles.

(a) An individual must have a current, active and unsuspended registration to claim to be, or hold oneself out as, a naturopathic doctor, registered naturopathic doctor, doctor of naturopathic medicine or use any similar title implying that the individual holds a current registration as a naturopathic doctor in this Commonwealth.

(b) A naturopathic doctor who uses the designation "Dr." shall further identify himself as a "naturopathic doctor," "registered naturopathic doctor" or "doctor of naturopathic medicine" and may not use any term or designation that would imply that the naturopathic doctor is licensed or authorized to practice medicine and surgery, dentistry, podiatry, optometry, psychology, nursing, physical therapy, acupuncture, chiropractic, genetic counseling, athletic training, massage therapy or any other health care profession, unless that individual also holds a current and active authorization to practice the

other profession issued by the appropriate licensing authority of this Commonwealth.

§ 18.908. Informed consent and disclosure of financial interests.

(a) A naturopathic doctor shall obtain written informed consent from the patient prior to providing naturopathic services to the patient. The informed consent shall include notification to the patient that the naturopathic doctor is not a physician. This subsection shall not apply to registrants who are also currently and actively licensed to practice as a physician in this Commonwealth.

(b) A naturopathic doctor shall disclose to patients and prospective patients if the naturopathic doctor receives any commission, rebate, referral fee or similar financial incentive in connection with any marketing activity relating to merchandise.

§ 18.909. Naturopathic records.

(a) A naturopathic doctor shall maintain patient records that accurately describe the patient's concerns, evidence the naturopathic doctor's plan of service and implementation of service and document the patient's response to any services provided.

(b) All patient records for minors and adults shall be retained for a minimum period of 7 years from the date of the service for which a naturopathic record entry is required. Patient records for minor patients shall also be retained until 1 year after the minor patient reaches majority, even if this means that the naturopathic doctor retains the record for a period of more than 7 years.

(c) Upon written request, a naturopathic doctor shall make true, correct and legible copies of the written records of service available to the patient or the person or persons designated by the patient.

(d) Payment for naturopathic services rendered may not be required as a condition to making the written records of service available to the patient or the patient's designee. A naturopathic doctor may require pre-payment of the costs to copy and produce the naturopathic records. The maximum applicable copying and reproduction costs for naturopathic service records shall be the same as those costs applicable to production of health records as annually adjusted by the Secretary of the Department of Health and published in the *Pennsylvania Bulletin*.

§ 18.910. Advertising.

(a) An advertisement by a naturopathic doctor shall contain both of the following:

(1) The name of the naturopathic doctor as registered with the Board.

(2) The words "naturopathic doctor," "doctor of naturopathic medicine," or "registered naturopathic doctor."

(b) Advertisements by a naturopathic doctor may not contain any of the following:

(1) The word "physician" unless the naturopathic doctor is also currently and actively licensed as a physician or physician assistant in this Commonwealth.

(2) Words or phrases indicating or implying that the naturopathic doctor is "board certified" or "board eligible" unless the certification body is also disclosed.

(3) Statements containing misrepresentations of facts.

(4) Statements that cannot be verified by the Board for truthfulness.

(5) Statements likely to mislead or deceive because of their context or because the statements make only a partial disclosure of relevant facts.

(6) Statements intended to, or likely to, create false or unjustified expectations of favorable results.

(7) Statements containing representations or implications that can reasonably be expected to cause an ordinary prudent person to misunderstand or be deceived.

(8) Statements that are untruthful and improbable or contain misstatements, falsehoods, misrepresentations, distorted or fabulous statements as to cures.

(9) Statements that misrepresent the nature, characteristics or qualities of merchandise or naturopathic services provided by a naturopathic doctor.

(10) Statements that a manifestly incurable condition can be cured or that guarantee a cure of any condition.

(11) Statements promoting herbal, natural or dietary supplements as drugs.

(12) Statements recommending any modality of service that is inconsistent with the health, safety and welfare of the public.

§ 18.911. Code of Ethics.

(a) Naturopathic doctors shall concern themselves primarily with the welfare of the patient.

(b) A naturopathic doctor who suffers from a physical, mental or emotional impairment, including substance abuse, that impacts the individual's ability to practice naturopathic medicine or to provide naturopathic services with reasonable skill and safety to patients shall seek professional treatment and refrain from the practice of naturopathic medicine until the impairment no longer exists or reasonable accommodations can be made.

(c) A naturopathic doctor shall:

(1) Respect and maintain the privacy and confidentiality of the patient.

(2) Disclose the patient's records or information about the patient only with the patient's consent or as required by law.

(3) Safeguard patient protected health information, including storage and disposal of records.

(4) Provide sufficient information to a patient to allow the patient to make an informed decision regarding care, including:

(i) The purpose and nature of a naturopathic evaluation or naturopathic service regimen.

(ii) Alternatives to naturopathic care.

(iii) Side effects and benefits of a proposed naturopathic service regimen.

(iv) The estimated cost of naturopathic services.

(v) The right of the patient to withdraw from naturopathic services.

(5) Maintain professional boundaries, even when the patient initiates crossing the boundaries of the professional relationship.

(6) Decline to administer a naturopathic service if the naturopathic doctor believes that the service is contraindicated or unjustified.

(7) Make referrals only to registered naturopathic doctors or other qualified and duly licensed health care providers.

(8) Inform the patient, other health care professionals and the public of the limitations of naturopathic medicine.

(9) Assess the patient to determine if contraindications against naturopathic service exist and refer the patient to an appropriate health care practitioner.

(10) At all times respect the patient's dignity, autonomy and privacy.

(11) Cooperate with any lawful investigation conducted by the Board, including:

(i) Furnishing information requested as directed by the Board.

(ii) Complying with a subpoena.

(iii) Responding to a complaint at the request of the Board.

(iv) Providing access to relevant patient records.

(12) Report to the Board misconduct committed by a naturopathic doctor in the practice of naturopathic medicine or in the provision of naturopathic services.

(d) A naturopathic doctor may not:

(1) Misrepresent credentials, qualifications or affiliations, and shall attempt to correct others who misrepresent the naturopathic doctor's credentials, qualifications or affiliations.

(2) Knowingly engage in or condone behavior that is fraudulent, dishonest or deceitful.

(3) Engage in a marketing activity which conflicts with subsection (c).

(4) Perform naturopathic medicine on or provide a naturopathic service to a patient if a contraindication against naturopathic service exists.

(5) Intimidate, threaten, influence or attempt to influence any person regarding any violation of law or regulation.

(6) Aid or abet any individual violating or attempting to violate any provision of law or regulation.

(7) Accept a patient for a naturopathic service, or continue unnecessary service, when the patient cannot be reasonably expected to benefit from the service.

(8) Receive remuneration from, or provide remuneration to, or split a fee, for either making or accepting a referral of the patient to or from another health care provider.

(9) Make a guarantee or promise about the efficacy of the naturopathic doctor's practice, particular naturopathic service or the anticipated results of care.

(10) Exploit the professional relationship by either of the following:

(i) Continuing naturopathic service unnecessarily.

(ii) Charging for a naturopathic service not provided or different from what was actually provided.

(11) Exploit a relationship with a patient, staff member or student for the naturopathic doctor's personal advantage including, but not limited to, a personal, sexual, romantic or financial relationship.

(12) Engage in sexual misconduct.

(13) Provide or perform a naturopathic service at a level beneath the accepted standard of care for a naturopathic doctor which would be normally exercised by the average professional of the same kind in this commonwealth under the circumstances, including locality and whether the naturopathic doctor is or purports to be a specialist in the area.

(e) A naturopathic doctor may not perform or provide naturopathic service that the naturopathic doctor is not qualified to perform, or which is beyond the naturopathic doctor's education and training.

(f) A naturopathic doctor may not assert as a defense to a disciplinary action under section 204 of the NDRA (63 P.S. § 272.204) or § 18.913 (relating to grounds for discipline), the absence of a specific ethical, legal or professional duty in this subsection when the duty is normally exercised by the average professional of the same kind in this Commonwealth under the circumstances, including locality and whether the naturopathic doctor is or purports to be a specialist in the area.

§ 18.912. Sexual misconduct.

(a) Sexual exploitation by a naturopathic doctor of a current or former patient, or of an immediate family member of a patient, constitutes unprofessional conduct, is prohibited and subjects the naturopathic doctor to disciplinary action under section 204(8) of the NDRA (63 P.S. § 272.204(8)).

(b) Sexual behavior that occurs with a current patient, other than the naturopathic doctor's spouse, constitutes unprofessional conduct, is prohibited and subjects the practitioner to disciplinary action under section 204(8) of the NDRA.

(c) When a naturopathic doctor was involved with the management or directly provided naturopathic services to a patient other than the naturopathic doctor's spouse for a mental health disorder, any sexual behavior with that patient which occurs prior to the 2-year anniversary of the termination of the professional relationship constitutes unprofessional conduct, is prohibited and subjects the naturopathic doctor to disciplinary action under section 204(8) of the NDRA.

(d) A practitioner who engages in conduct prohibited by this section will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective actions.

(e) Consent is not a defense to conduct prohibited by this section.

§ 18.913. Grounds for discipline.

(a) The Board shall have the authority to impose disciplinary or corrective measures on a naturopathic doctor or applicant for registration as a naturopathic doctor for the reasons set forth in section 204 of the NDRA (63 P.S. § 272.204) and any of the following:

(1) Fraudulently or deceptively obtaining, or attempting to obtain, or using a registration or assisting another in fraudulently or deceptively obtaining or using a registration.

(2) Using false, deceptive or misleading advertising.

(3) Advertising, practicing or attempting to practice under a name other than the naturopathic doctor's name as registered with the Board; provided, however, that a naturopathic doctor may advertise utilizing a business name if the advertisement also includes the naturopathic doctor's name as registered by the Board.

(4) Aiding, assisting, employing or advising any unregistered individual to hold himself out in a manner which states or implies the unregistered individual is a naturopathic doctor.

(5) Paying or receiving any commission, bonus, kickback or rebate, or engaging in any split-fee arrangement in any form with a licensed physician, organization, agency or other person, either directly or indirectly, for patients referred to other health care providers.

(6) Promoting the sale of services, drugs, devices, appliances or goods to a patient so as to exploit the patient for financial gain.

(7) Failing to keep written records justifying the course of service of a patient.

(8) Failing to disclose the contents of merchandise or the nature and description of naturopathic services recommended, provided or offered to a patient.

(9) Failing to cooperate with a lawful investigation of the Board.

(b) When the Board is empowered to take disciplinary or corrective action under the provisions of the NDRA, the Board's regulations or other statutory or regulatory authority, the Board may impose one or more of the following disciplinary or corrective actions as set forth in section 206 of the NDRA (63 P.S. § 272.206), section 42 of the act (63 P.S. § 422.42) and 63 Pa.C.S. § 3108 (relating to civil penalties):

(1) Deny the application for registration.

(2) Administer a public reprimand with or without probation.

(3) Revoke, suspend, limit or otherwise restrict a registration.

(4) Require the registrant to submit to the care, counseling or treatment of a physician or a psychologist designated by the Board.

(5) Require the registrant to take refresher educational courses or demonstrate passage of the NPLEX examination, or both.

(6) Stay enforcement of any suspension and place the registrant on probation with the right to vacate the probationary order for noncompliance.

(7) Impose a civil penalty of up to $1,000 in accordance with the NDRA.

(8) Impose a civil penalty of up to $10,000 in accordance with 63 Pa.C.S. § 3108(b); provided, however, that the Board will not impose a civil penalty under the NDRA and also impose a civil penalty under 63 Pa.C.S. § 3108(b) for the same violation, as prohibited by 63 Pa.C.S. § 3108(c)(2).

(9) Impose the costs of investigation underlying the disciplinary action.

[Pa.B. Doc. No. 24-722. Filed for public inspection May 17, 2024, 9:00 a.m.]

PROPOSED RULEMAKING

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA CODE CH. 25]

Licensure Requirements

The State Board of Osteopathic Medicine (Board) proposes to amend Chapter 25 (relating to State Board of Osteopathic Medicine) by amending §§ 25.1, 25.231(a), 25.241, 25.242, 25.244, 25.251, 25.254, 25.262—25.264 and 25.303, and adding §§ 25.248 and 25.249 (relating to licensure by endorsement under 63 Pa.C.S. § 3111; and provisional endorsement license under 63 Pa.C.S. § 3111) to read as set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

Section 3111 of 63 Pa.C.S. (relating to licensure by endorsement) requires licensing boards and commissions "[to] issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth. . ." provided the applicant meets the following criteria: "[h]olds a current license, certificate, registration or permit from another state, territory or country" whose licensing "requirements are substantially equivalent to or exceed the requirements. . .in this Commonwealth;" "[d]emonstrates competency;" "[h]as not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth, unless the board or commission determines" this conduct is not an impediment to granting the "license, certificate, registration or permit;" "[i]s in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit, unless the. . .board or. . .commission determines" this conduct is not an impediment to granting the "license, certificate, registration or permit;" and the applicant "[p]ays any fees established by. . .regulation." Additionally, 63 Pa.C.S. § 3111(b) authorizes boards and commissions to "issue a provisional license, certificate, registration or permit" while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration.

Section 16 of the Osteopathic Medical Practice Act (act) (63 P.S. § 271.16) and section 3 of the Acupuncture Licensure Act (ALA) (63 P.S. § 1803) provide the Board with broad authority to adopt regulations as are reasonably necessary to carry out the purposes of the act and the ALA.

The act of July 1, 2020 (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (repealed) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41) (Act 41).

Background and Need for the Amendments

This proposed rulemaking is needed for several purposes. Amendments are necessary as a result of the transition of the American Osteopathic Association (AOA) and the Accreditation Council for Graduate Medical Education (ACGME) into a single accreditation system. The transition was completed effective July 1, 2020. Under the new system, graduates of osteopathic medical schools (DOs) and allopathic medical schools (MDs) complete their postgraduate training in ACGME-accredited programs. To address the foregoing, this proposed rulemaking seeks to delete the definitions of "approved graduate osteopathic medical training," "approved internship" and "approved residency" in § 25.1 (relating to definitions) and to provide more specificity relating to internships and graduate training programs at §§ 25.262 and 25.263 (relating to approved internships; and other approved graduate training programs), respectively. Instead, the Board proposes a new definition of "graduate medical training" to encompass either an approved internship or an approved residency.

Next, the Board proposes amendments to the licensure requirements for an unrestricted license by examination as set forth in § 25.241 (relating to unrestricted license by examination). The proposed regulations reflect the current status of National examination and licensure. First, beginning in 2023, the National Board of Osteopathic Medical Examiners (NBOME) no longer require a practical examination for passage of the NBOME series of examinations. Thus, it is necessary to remove this requirement as it relates to licensure by examination. Second, the proposed regulation updates the training requirement for licensure to include both an approved internship and an approved residency. This proposed amendment is consistent with the series of graduate training years undertaken by osteopathic medical school graduates. Third, the Board proposes to add an allowance for an NBOME successor to be accepted for licensure by examination purposes.

In keeping with the proposed amendments to § 25.241 pertaining to approved internships and residencies, a corresponding amendment is needed for the Board's existing licensure-by-endorsement pathway. Specifically, with the elimination of the practical examination by the NBOME in 2023, the Board determined that its own regulatory requirement that calls for passage of a practical examination to obtain a license by endorsement, as set forth in § 25.242(4) (relating to unrestricted license by endorsement), is inconsistent with the national standards for licensure. Furthermore, the practical examination requirement for a license by endorsement under § 25.241 is only applicable to a minute segment of the applicant population, most of whom have practiced for decades prior to submitting a licensure application to the Board. Rather than serve its initial purpose of ensuring competency to engage in the holistic practice of osteopathic medicine, the practical examination requirement has evolved into an unnecessary burden on otherwise experienced and qualified applicants seeking to practice in this Commonwealth. To remove this burden, the Board proposes to delete the practical examination requirement from § 25.241.

Next, the Board proposes to amend § 25.244 (relating to temporary license). The amendments to the title and body of this section change the license type from a "temporary license" to a "temporary graduate training license" because these licenses are used by graduates of osteopathic medical colleges to practice within the confines of graduate training programs. Generally, graduate training programs consist of more than 1 year of training;

therefore, the Board also proposes to amend this section to specifically allow for renewal of the license upon the payment of the required fee. The Board's fee schedule at § 25.231(a) (relating to schedule of fees) is proposed to be amended to reflect the revised nomenclature "temporary graduate training license."

This proposed rulemaking is further needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license to an applicant who is licensed in another jurisdiction and meets the requirements for licensure by endorsement as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S. § 3111, the Board must determine whether the other jurisdiction's standards for licensure are substantially equivalent to or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111(a)(2) requires the Board to determine the methods of demonstrating competency, including completion of continuing education or experience in the profession or occupation for at least 2 years of the 5 years immediately preceding the filing of the application. Under 63 Pa.C.S. § 3111(b)(2), the Board must establish, by regulation, the expiration of the provisional endorsement license. This proposed rulemaking would include two new sections to set forth the criteria for eligibility for licensure by endorsement under 63 Pa.C.S. § 3111, namely, § 25.248 which sets forth the specific methods required for an applicant to demonstrate competency, and § 25.249 which sets forth the requirements for granting a provisional endorsement license.

The Board proposes to amend § 25.251 (relating to general requirements), pertaining to unrestricted licensure by examination, to delete references to the practical examination because the practical examination will not be a required component of the National Board Examination beginning in 2023. The Board also proposes to include a successor to the NBOME examination, to avoid future need for regulatory clarification or confusion should the NBOME merge with another organization or become defunct. In keeping with other proposed amendments set forth herein, the Board also proposes to add completion of an approved residency as a method for an applicant to satisfy the training prerequisite to unrestricted licensure.

The Board proposes to delete § 25.254 (relating to frequency and content of examinations). The frequency of examinations is addressed in section 8(a) and (f) of the act (63 P.S. § 271.8(a) and (f)). The content of the examinations is obsolete given that the National Board Examination will no longer contain a practical examination component. Deletion of § 25.254 is also consistent with the Board's proposed removal of the practical examination as a requirement for issuance of a license by endorsement under § 25.242.

The Board further proposes to amend §§ 25.262 and 25.263 (relating to approved internships; and other approved graduate training programs). The current regulations require an applicant for licensure as an osteopathic physician to complete an AOA-approved internship. The reasons for revising this requirement are two-fold. First, as a result of the new single accreditation system, the AOA no longer approves postgraduate training programs. Second, with the single accreditation system now in place, graduates of osteopathic medical schools can be matched into an ACGME-accredited program with osteopathic recognition, an ACGME-accredited rotating internship, an ACGME-approved residency, or a specialty or subspecialty residency. Without changes to the prerequisite graduate training, the Commonwealth will have difficulty retaining osteopathic medical school graduates of schools located within the Commonwealth. Likewise, it will be difficult to attract students from other states to train within this Commonwealth. Furthermore, the current regulations direct the Board to work with the AOA to evaluate and approve internships and other graduate training programs, which is no longer possible given that the AOA is no longer the graduate training approval body.

For those reasons, the Board proposes to amend § 25.262(a) to list the types of approved internships. The Board believes this list reflects the current internship landscape and provides the clarity needed for the graduate and applicant population. Relating to subsection (b), the AOA Board of Trustees does not approve internship programs occurring after June 30, 2022; thus, an amendment is proposed to allow for the continuation of Board discretion in approving graduate training programs that are not specifically identified in the regulations without dependence on AOA action.

Similarly, the Board proposes to amend § 25.263 to remove the AOA reference and dependence and provide a list of residencies and other graduate training programs that are approved by the Board to satisfy the requirements of licensure. As with the approved internships, the amendments to this section provide a conciseness and clarity relating to the types of approved programs, thus negating any need for a separate definition.

The Board also proposes to amend § 25.264 (relating to approval dates) to delete subsection (a), which relates to applications occurring between July 1, 1992, and June 30, 1993, as it is no longer relevant. Subsection (b), as amended, is sufficiently specific to encompass the training completed by all applicants for licensure.

Finally, to maintain consistency with § 25.248, the Board proposes to amend § 25.303 (relating to requirements for registration as an acupuncturist and an acupuncturist supervisor) so that the means by which an acupuncturist applicant can establish English language proficiency are the same for all applicants, not just those applying for licensure by endorsement under 63 Pa.C.S. § 3111.

Description of Proposed Amendments

The Board proposes to amend § 25.1 to add, delete and amend several terms and definitions. The Board adds and defines the acronyms "ABMS (American Board of Medical Specialties)", "ACGME (Accreditation Council for Graduate Medical Education)" and "PGY (post-graduate year)". The Board deletes the term "approved graduate osteopathic medical training" and adds the simpler term "graduate medical training," which is defined to encompass the various graduate training options available. The terms "approved internship" and "approved residency" are deleted because the definitions are unnecessary in view of the substantive provisions relating to internships and residencies that are delineated in amended §§ 25.262 and 25.263, respectively. The term "jurisdiction" is added and defined. The term "National Board Examination" is amended to identify the exam provider referenced throughout the regulations, and to include the possibility of a successor to the examination.

The Board proposes to amend § 25.241 to remove specific reference to the numbered parts of the National Board Examination, clarify to whom examination fees should be paid, remove reference to the practical examination, and include the option of completing an approved residency to satisfy licensure requirements. The Board is also deleting references to the Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006) which

has been repealed and replaced with the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910).

Section 25.242 sets forth the Board's existing licensure by endorsement requirements. Paragraph (4) is proposed to be deleted in its entirety to remove the requirement that an applicant for a license by endorsement receive a passing score on the osteopathic diagnosis and manipulative therapy examination administered by the Board or a professional testing organization. Paragraph (5) is amended to include the successful completion of an approved residency as an acceptable form of training prerequisite to licensure.

The Board proposes to amend § 25.244, changing "temporary graduate training licenses" to "temporary graduate training licenses." The section would further be amended to specifically allow for renewal of the license upon application and payment of the required fee. Corresponding amendments are proposed to the Board's fee schedule in § 25.231(a) to reflect the revised nomenclature "temporary graduate training license."

The Board proposes to add § 25.248, which requires an applicant to satisfy nine criteria required for licensure by endorsement. Under subsection (a)(1), an applicant shall have a current license, certificate, registration or permit in good standing to practice as an osteopathic physician and surgeon, acupuncturist, physician assistant, respiratory therapist, athletic trainer, perfusionist or genetic counselor, as applicable, in another jurisdiction whose standards for licensure are substantially equivalent to or exceed those under the act, or the ALA.

Proposed subsection (a)(1)(ii) would also require the standards for licensure to be substantially equivalent to standards set forth in the Board's regulations, including, as applicable, the regulatory requirements under §§ 25.161, 25.241, 25.303, 25.507, 25.704, 25.803, 25.903 or 25.904, pertaining to licensure as a physician assistant, an osteopathic physician, an acupuncturist, a respiratory therapist, an athletic trainer, a perfusionist or a genetic counselor, respectively.

Proposed subsection (a)(2) would require an applicant to submit a copy of the current applicable law, regulation or other rule governing licensure and scope of practice in the jurisdiction that issued the license. Subsection (a)(2)(i) would be applicable to countries where the applicable law, regulation or other rule is in a language other than English. The Board proposes to require, at the applicant's expense, translation of the applicable law, regulation or other rule by a professional translation service. Subsection (a)(2)(ii) would also require that the copy of the applicable law, regulation or other rule include the enactment date. The purpose of this section is to allow the Board to evaluate the licensure requirements of the other jurisdiction to determine whether their licensure standards are substantially equivalent to those of this Commonwealth.

In proposed subsection (a)(3), the Board would set forth the requirements to demonstrate competency. Under this provision, an applicant for a license by endorsement under 63 Pa.C.S. § 3111 to practice as an osteopathic medical physician and surgeon, acupuncturist, physician assistant, respiratory therapist, athletic trainer, perfusionist or genetic counselor must provide proof of competency by demonstrating experience in the practice of the applicable profession. To demonstrate competency by experience, an applicant must demonstrate the licensed practice of the profession for at least 2 years of the 5 years immediately preceding the filing of the application, under a license, certificate, registration or permit in a substantially equivalent jurisdiction or jurisdictions. This means that the individual must establish to the Board that they practiced for any 2 years of the preceding 5 years while holding the license, certificate, registration or permit in the profession for which the applicant is applying.

Proposed subsection (a)(4) and (5) would incorporate the statutory prohibitions in 63 Pa.C.S. § 3111(a)(3) and (4) pertaining to conduct that would constitute grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice the profession or occupation, and prior discipline by the jurisdiction that issued the license, respectively.

Proposed subsection (a)(6) would require payment of an application fee, as required by 63 Pa.C.S. § 3111(a)(5). The applicable fee for licensure by endorsement is the same application fee already set forth in § 25.231 for each of the professions licensed by the Board.

Next, proposed subsection (a)(7) would require that applicants meet the malpractice insurance requirements under the act, section 3.2 of the ALA (63 P.S. § 1803.2) and this chapter. Similarly, proposed subsection (a)(8) would require applicants to satisfy application requirements, as set forth in the act and this chapter. In subsection (a)(9), the Board proposes to include the requirement that an applicant complete 3 hours of training in child abuse recognition and reporting, which is mandated continuing education under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training).

Finally, proposed subsection (a)(10) would require that applicants for an acupuncturist license by endorsement demonstrate English proficiency. This subsection is consistent with § 25.303. To demonstrate English proficiency, an applicant for an acupuncturist license by endorsement may take an English proficiency examination, including the Test of English as a Foreign Language (TOEFL®), the Occupational English Test (OET) or an English proficiency examination equivalent to the TOEFL® or OET, as approved by the Board. In following the spirit of 63 Pa.C.S. § 3111, which encourages elimination of unnecessary barriers to licensure, the Board also offers other options that allow an applicant to demonstrate English proficiency, including the following: the applicant's professional education program was in English; the applicant's professional training was in an English-speaking facility; the applicant's entry examination to practice in the profession was in English; or the applicant was required to demonstrate English language proficiency to be issued a license in the jurisdiction in which the applicant is licensed. The Board will make available a list of Board-approved English language proficiency (or any successor examinations) on its web site.

In proposed subsection (b), the Board may require a personal interview or additional information to assist the Board in determining eligibility and competency. When a personal interview is necessary, the applicant may request the interview to be conducted by video conference or teleconference for good cause shown. Consistent with 63 Pa.C.S. § 3111(a)(4) and (5), proposed subsection (c) authorizes the Board, in its discretion, to determine that an act prohibited under section 15 of the act (63 P.S. § 271.15) or disciplinary action imposed by another jurisdiction are not impediments to the granting of a license, certificate, registration or permit under 63 Pa.C.S. § 3111.

Consistent with 63 Pa.C.S. § 3111(b), proposed § 25.249 would set forth the parameters of a provisional endorsement license). Proposed subsection (a) provides that the Board, in its discretion, may issue a provisional endorsement license while an applicant is satisfying remaining requirements under 63 Pa.C.S. § 3111 and § 25.248. Proposed subsection (b) sets the expiration of a provisional endorsement license at 1 year, unless the Board determines that an expiration date of less than 1 year is appropriate. Additionally, upon a written request, the Board may extend the term of the license upon a showing of good cause. Proposed subsection (c) sets forth reasons for which a provisional endorsement license will be terminated by the Board, including: upon the granting or denial of a license by the Board; upon the failure of the provisional endorsement licensee to comply with the terms of the provisional endorsement license; or upon the expiration of the provisional endorsement license. Finally, proposed subsection (d) clarifies that while an individual may reapply for a license by endorsement under proposed § 25.248, the Board will not issue a subsequent provisional endorsement license to an applicant who previously held a provisional endorsement license that expired or was terminated.

Section 25.251 relates to the general requirements for licensure by examination. The Board proposes to amend subsection (a) to simply require passage of all parts of the National Board Examination. Subsection (b) would be amended to allow for an NBOME successor. To maintain consistency with several other changes proposed in this rulemaking, subsection (c) is proposed to be deleted. The Board proposes to amend subsection (d) to remove the requirement relating to eligibility for admission to the practical examination after graduation and to allow an approved residency to satisfy the licensure training prerequisite. Subsection (e) is proposed to be deleted because it relates to applications for the practical examination. As previously set forth relating to the proposed amendments to the unrestricted license by examination and unrestricted license by endorsement requirements, a practical examination will not be part of the National examination standards beginning in June 2023. Therefore, retention of information relating to application for the practical examination is unnecessary.

The Board proposes to delete § 25.254 in its entirety. The frequency of examinations is addressed in section 8(a) and (f) of the act. Additionally, the National Board Examination will no longer contain a practical examination component.

The Board proposes to amend § 25.262 to remove reliance upon the AOA for approved internships. The section is specifically amended to allow for a graduate of an osteopathic medical training program to satisfy the internship prerequisite in one of several ways. The amendment further allows for the Board to exercise discretion in approving internships, without limiting said discretion to exigent circumstances caused by the AOA.

The Board is also proposing amendments to § 25.263 to include approved residencies as graduate training programs. The section provides a list of approved residencies that will satisfy the residency prerequisite and also provides the Board with discretion to approve other graduate training programs not specifically identified in the list.

The Board proposes to amend § 25.264 to delete subsection (a) which relates to graduate training occurring between 1992 and 1993. Subsection (b) is amended to include approved residencies as acceptable training prerequisite to licensure.

Finally, to maintain consistency with the English language proficiency provisions proposed in § 25.248(10)(i)—(vii), the Board proposes to amend § 25.303 so that the means by which an acupuncturist applicant can establish English language proficiency are the same for all applicants, not just those applying for licensure by endorsement under 63 Pa.C.S. § 3111.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The costs to the Board related to processing applications for licensure by endorsement under 63 Pa.C.S. § 3111 will be recouped through fees paid by applicants. Applicants who apply for licensure by endorsement will be impacted by the initial application fees in § 25.231. Applicants will have to pay the same initial application fee as all other applicants for a license in each profession (osteopathic physician $185, physician assistant $125, acupuncturist $110, respiratory therapist $110, athletic trainer $110, perfusionist $130, genetic counselor $130). All applicants must complete child abuse recognition and reporting training, as required under 23 Pa.C.S. § 6383(b)(3)(i). Applicants may avail themselves of free in-person and online child abuse recognition and reporting training courses; therefore, the Board does not anticipate a negative fiscal impact for this statutorily mandated training. If an acupuncturist applicant is unable to establish English proficiency by demonstrating that their education, training or examination was in English or by establishing that they were required to demonstrate English language proficiency to become licensed in their jurisdiction, they must take the TOEFL® examination or another examination, with a cost to the applicant of approximately $200.

Sunset Date

The Board continuously monitors the cost effectiveness of the Board's regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 7, 2024, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate and the chairperson of the Professional Licensure Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.56) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to the Board Counsel, State Board of

Osteopathic Medicine, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference "16A-5336 (Licensure by Endorsement and Licensure Requirements)" when submitting comments.

JOHN B. BULGER, DO,
Chairperson

Fiscal Note: 16A-5336. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter A. GENERAL PROVISIONS

§ 25.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

***ABMS*—The American Board of Medical Specialties.**

ACCME—The Accreditation Council on Continuing Medical Education.

***ACGME*—The Accreditation Council for Graduate Medical Education.**

AMA PRA—American Medical Association Physician's Recognition Award.

* * * * *

Approved activity—A continuing medical education activity accepted for AOA credit, ACCME credit or AMA PRA credit.

[*Approved graduate osteopathic medical training*—An approved internship or an approved residency.

***Approved internship*—An osteopathic rotating internship program approved by the AOA and the Board.**

***Approved residency*—A training program approved by the AOA and the Board leading toward certification in a specialty or subspecialty.]**

Board—State Board of Osteopathic Medicine.

* * * * *

Category 2 activities—Continuing medical education activities approved for AOA Category 2 credit, ACCME Category 2 credit or AMA PRA Category 2 credit.

***COMLEX*—Comprehensive Osteopathic Medical Licensing Examination.**

Emergency medical services personnel—Individuals who deliver emergency medical services and who are regulated by the Department of Health under the Emergency Medical Services Act (35 P.S. §§ 6921—6938).

FLEX—The uniform written examination of the Federation of State Medical Boards of the United States, Inc.

***Graduate medical training*—An approved internship in accordance with § 25.262 (relating to approved internships) or an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs).**

Immediate family member—A parent, a spouse, a child or an adult sibling residing in the same household.

***Jurisdiction*—A state, territory or country.**

NBOME—The National Board of Osteopathic Medical Examiners.

National Board Examination—**[The uniform written examination of the NBOME] The NBOME COMLEX, or its successor examination**.

***PGY*—Post-Graduate Year.**

Subchapter F. FEES

§ 25.231. Schedule of fees.

(a) An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

		Effective August 15, 2020	*Effective July 1, 2022*	*Effective July 1, 2024*
(1) *Osteopathic Physician*				
	Application for unrestricted license to practice as an osteopathic physician—original reciprocal, boundary or by endorsement	$170	$185	$205
	Application for short-term camp license as an osteopathic physician	$100	$110	$120
	Temporary **graduate** training license or graduate training certificate	$115	$125	$140
	Annual renewal of temporary graduate training license or **graduate** training certificate	$25	$25	$25
* * * * *				

Subchapter G. LICENSING, EDUCATION AND GRADUATE TRAINING

LICENSURE REQUIREMENTS

§ 25.241. Unrestricted license by examination.

To secure an unrestricted license for the practice of osteopathic medicine and surgery by examination, the applicant shall meet the following educational and professional requirements. The applicant shall have:

(1) Graduated from an approved osteopathic medical college.

(2) Received **[passing scores on Parts I, II and III of]** **a passing score on** the National Board Examination. The applicant shall pay the required examination fee at the direction of the National Board **Examination provider**.

(3) **[Received a passing score on the practical examination in osteopathic diagnosis and manipulative therapy developed and administered by the Board or a designated professional testing organization]** **[Reserved]**.

(4) Successfully completed an approved internship **in accordance with § 25.262 (relating to approved internships) or an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs)**.

(5) Complied with the malpractice insurance requirements of the **[Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006)]** **Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910)** and regulations thereunder.

(6) Completed an application obtained from the Board detailing education and experience and indicating compliance with the applicable provisions of the act and this chapter, submitted with the required fees.

§ 25.242. Unrestricted license by endorsement **under section 9 of the act**. To secure an unrestricted license for the practice of osteopathic medicine and surgery by endorsement, the applicant shall meet the following educational and professional requirements. The applicant shall have:

(1) Provided evidence of a valid license in good standing to practice osteopathic medicine and surgery in another state or territory of the United States or Canada whose standards are substantially equivalent to those established by the Board and who reciprocate with the Commonwealth.

(2) Graduated from an approved osteopathic medical college.

(3) Received a passing score on the National Board Examination, FLEX or a written state or territorial examination developed by the NBOME or otherwise acceptable to the Board.

(4) **[Received a passing score on the practical examination in osteopathic diagnosis and manipulative therapy developed and administered by the Board or a designated professional testing organization]** **[Reserved]**.

(5) Successfully completed an approved internship **in accordance with § 25.262 (relating to approved internships) or an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs)**.

(6) Complied with the malpractice insurance requirements of the **[Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006)]** **Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910** and regulations thereunder.

(7) Completed an application obtained from the Board detailing education and experience and indicating compliance with the applicable provisions of the act and this chapter, submitted with the required fees.

§ 25.244. Temporary **graduate training** license.

(a) A temporary **graduate training** license is required of an osteopathic medical college graduate for permission to participate in an approved graduate **[osteopathic or]** medical training program in this Commonwealth.

(b) Specific requirements for temporary **graduate** training **[licensure]** **license** are as follows. The applicant shall have:

(1) Graduated from an approved osteopathic medical college.

(2) Submitted an application obtained from the Board, together with the required fee.

(c) The temporary **graduate** training license permits the graduate to train only within the complex of the hospital and its affiliates where the graduate is engaged in an approved graduate **[osteopathic or]** medical training program.

(d) The temporary **graduate** training license is valid for 1 year, **[after which it shall be surrendered to the Board. The Board may extend the validity of the temporary training license within its discretion]** **but may be renewed annually by the filing of a renewal form obtained from the Board and payment of the required fee**.

(*Editor's Note*: Sections 25.248 and 25.249 are proposed to be added and are printed in regular type to enhance readability.)

§ 25.248. Licensure by endorsement under 63 Pa.C.S. § 3111.

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement), an applicant shall satisfy all of the following conditions:

(1) Have a current license, certificate, registration or permit in good standing in another jurisdiction whose standards for licensure are substantially equivalent to or exceed those established under the following:

(i) The act or the Acupuncture Licensure Act (ALA) (63 P.S. §§ 1801—1806.1).

(ii) Regulations of the Board at one of the following sections, as applicable:

(A) Section 25.161 (relating to criteria for licensure as a physician assistant).

(B) Section 25.241 (relating to unrestricted license by examination).

(C) Section 25.303 (relating to requirements for licensure as an acupuncturist and registration as an acupuncturist supervisor).

(D) Section 25.507 (relating to criteria for licensure as a respiratory therapist).

(E) Section 25.704 (relating to application for licensure).

(F) Section 25.803 (relating to application for perfusionist license).

(G) Section 25.903 or § 25.904 (relating to application for genetic counselor license; or application for genetic counselor license by noncertified persons).

(2) An applicant shall submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit.

(i) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(ii) The copy of the applicable law, regulation or other rule must include the enactment date.

(3) Demonstrate competency in the practice of the profession by establishing, at a minimum, that the applicant has actively engaged in the licensed practice of the profession under a license, certificate, registration or permit in a substantially equivalent jurisdiction or jurisdictions, for at least 2 years of the 5 years immediately preceding the filing of the application with the Board.

(4) Have not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice prohibited by section 15 of the act (63 P.S. § 271.15).

(5) Have not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(6) Have paid the applicable application fee as required by § 25.231 (relating to schedule of fees).

(7) Have satisfied the professional liability insurance coverage requirements as required under the act or section 3.2 of the ALA (63 P.S. § 1803.2) and this chapter.

(8) Have applied for a license, certificate, registration or permit in accordance with this chapter in the manner and format prescribed by the Board.

(9) Have completed 3 hours of training in child abuse recognition and reporting from a provider approved by the Department of Human Services as required under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training).

(10) For applicants for an acupuncturist license by endorsement, demonstrate English language proficiency by demonstrating one of the following:

(i) The applicant's educational program was in English.

(ii) The applicant's training was at an English-speaking facility.

(iii) The applicant's entry examination was taken in English.

(iv) The applicant has achieved a scaled score of 83 on the Test of English as a Foreign Language (TOEFL®) internet-based test, 220 on the TOEFL® computer-based test or 550 on the TOEFL® paper-based test, or an equivalent score on a successor examination of the TOEFL®. The Board will make available a list of Board-approved successor examinations on its web site.

(v) The applicant has achieved a score of 350 in each of the four sub-tests of the Occupational English Test.

(vi) The applicant has achieved a passing score on an English language proficiency examination equivalent to the TOEFL® or Occupational English Test, as determined by the Board. The Board will make available a list of equivalent Board-approved English language proficiency examinations on its web site.

(vii) The applicant was required to demonstrate English language proficiency to be issued a license in the applicant's jurisdiction.

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and submit additional information, including supporting documentation relating to competency, experience or English proficiency. The applicant may request the interview to be conducted by videoconference or teleconference for good cause shown.

(c) *Prohibited acts and discipline.* Notwithstanding subsection (a)(4) and (5), the Board may, in its discretion, determine that an act prohibited under section 15 of the act or a disciplinary action taken by another jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 25.249. Provisional endorsement license under 63 Pa.C.S. § 3111.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement) and § 25.248 (relating to licensure by endorsement under 63 Pa.C.S. § 3111).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates if any of the following occurs:

(1) The Board completes its assessment of the applicant and denies or grants the license.

(2) The holder of the provisional license fails to comply with the terms of the provisional endorsement license.

(3) The provisional endorsement license expires.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 25.248 after expiration or termination of a provisional endorsement license. The individual may not be issued a subsequent provisional endorsement license.

LICENSURE EXAMINATIONS

§ 25.251. General requirements.

(a) An applicant is eligible for unrestricted licensure **by examination** only if the applicant has passed **[the required written examination and the practical examination]** **the National Board Examination**.

(b) An applicant shall apply directly to the NBOME, or its successor, for admission to the required parts of the National Board Examination and shall pay the required fees at the direction of the NBOME **or its successor**.

(c) **[An applicant for admission to the practical examination in osteopathic diagnosis and manipulative therapy shall be a graduate of an approved osteopathic medical college and shall fulfill the requirements of the act and this chapter]** [Reserved].

(d) An applicant **[is eligible for admission to the practical examination after graduation from an approved osteopathic medical college, but]** is not eligible for unrestricted licensure until the applicant has completed **either** an approved internship **in accordance with § 25.262 (relating to approved internships) or an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs)**.

(e) **[An applicant for the practical examination and State written, if applicable, may obtain an application form by contacting the Board office at the following address: State Board of Osteopathic Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649]** [Reserved].

§ 25.254. **[Frequency and content of examinations]** [Reserved].

[(a) A minimum of two written examinations shall be administered each year.

(b) The practical examination in osteopathic diagnosis and manipulative therapy shall test diagnostic and therapeutic techniques applicable to the entire body.]

EDUCATION AND GRADUATE TRAINING PROGRAMS

§ 25.262. Approved internships.

(a) **[The Board will work cooperatively with the AOA under standards established by the Committee on Post-Doctoral Training of the AOA to evaluate and approve internship programs prerequisite to unrestricted licensure in this Commonwealth. AOA-approved programs are approved by the Board, but the Board may conduct or cause to be conducted inspections it deems necessary to assure educational quality.]** **An approved internship program prerequisite to unrestricted licensure in this Commonwealth must be one of the following:**

(1) An AOA-approved internship.

(2) An ACGME-accredited training program that has received ACGME Osteopathic Recognition.

(3) An ACGME-accredited training program that includes 24 weeks of rotations in internal medicine, general surgery, pediatrics, family medicine, emergency medicine and obstetrics/gynecology.

(b) **[Internship programs which have not been approved by the AOA Board of Trustees may be approved by the Board at its discretion in the event]** **The Board, in its discretion, and upon a showing** of exigent circumstances **[wherein a sufficient number of AOA-approved internship positions are not available], may approve other internship programs** to accommodate osteopathic medical school graduates desiring to obtain licensure in this Commonwealth.

§ 25.263. **[Other]** **Approved residencies and other** approved graduate training programs.

[The Board will work cooperatively with the AOA under standards established by the Committee on Post-Doctoral Training of the AOA to evaluate and approve other supervised graduate training programs leading to certification in a medical specialty by the appropriate specialty board of the AOA. AOA-approved programs are approved by the Board, but the Board may conduct or cause to be conducted inspections it deems necessary to ensure educational quality.] **An approved residency program prerequisite to unrestricted licensure in this Commonwealth must be one of the following:**

(1) An AOA-approved or accredited residency program.

(2) An ACGME-approved or accredited residency program.

(3) A training program provided by a hospital accredited by the Joint Commission on Accreditation of Hospitals which is acceptable to the AOA or ABMS toward the training it requires for certification in a specialty or subspecialty.

(4) A graduate training program otherwise approved by the Board.

§ 25.264. Approval dates.

(a) **[On and after July 1, 1992, internships prerequisite to unrestricted licensure shall have been approved in accordance with § 25.262 (relating to approved internships)]** [Reserved].

(b) A candidate for unrestricted licensure **[applying on or after July 1, 1993,]** shall have completed an **[AOA-approved]** **approved** internship in accordance with § 25.262 **(relating to approved internships), an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs)**, or an internship **or residency** which had been approved by the Board at the time the candidate participated in the program.

Subchapter I. REGISTRATION AND PRACTICE OF ACUPUNCTURISTS

§ 25.303. Requirements for licensure as an acupuncturist and registration as an acupuncturist supervisor.

(a) The Board will register as an acupuncturist a nonosteopathic physician who satisfies the following requirements:

(1) Has successfully completed an acupuncture program which includes a course in needle sterilization techniques.

(i) If the acupuncture education program is taken within the United States, the applicant shall complete 2 academic years of acupuncture training and shall complete 2 academic years of a college level educational program.

(ii) If the educational program is taken outside of the United States, an applicant shall graduate from a college

with a program of study including Oriental medicine and document 300 class hours of study in acupuncture training.

(2) Has obtained a passing grade on an acupuncture examination or has been certified by NCCA by credential review. The Board accepts the passing grade on the certifying examination of the NCCA as determined by the NCCA, and accepts a passing grade on any state's acupuncture examination taken prior to January 1, 1987, as determined by the licensing or registering authority in the other state. If the examination was not taken in English, but is otherwise acceptable and a passing score was secured, the Board will accept the examination result if the applicant **[has also secured a passing score on the test of English as a Foreign Language (TOEFL®).] can demonstrate English language proficiency by one of the following:**

(i) The applicant's educational program was in English.

(ii) The applicant's training was at an English-speaking facility.

(iii) The applicant's entry examination was taken in English.

(iv) The applicant has achieved a scaled score of 83 on the Test of English as a Foreign Language (TOEFL®) internet-based test, 220 on the TOEFL® computer-based test or 550 on the TOEFL® paper-based test or an equivalent score on a successor examination of the TOEFL®. The Board will make available a list of Board-approved successor examinations on its web site.

(v) The applicant has achieved a score of 350 in each of the four sub-tests of the Occupational English Test.

(vi) The applicant has achieved a passing score on an English language proficiency examination equivalent to the TOEFL® or Occupational English Test, as determined by the Board. The Board will make available a list of equivalent Board-approved English language proficiency examinations on its web site.

(vii) The applicant was required to demonstrate English language proficiency to be issued a license in another jurisdiction.

(2.1) Completes at least 3 hours of mandatory training in child abuse recognition and reporting in accordance with § 25.417(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(3) Submits an application for licensure as an acupuncturist accompanied by the required fee.

(b) The Board will license as an acupuncturist an osteopathic physician who satisfies the following requirements:

(1) Has successfully completed 200 hours of training in acupuncture medical programs including examinations required by those programs or has engaged in clinical acupuncture practice for at least 3 years prior to January 1, 1987, documented to the satisfaction of the Board.

(1.1) Completes at least 3 hours of mandatory training in child abuse recognition and reporting in accordance with § 25.417(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(2) Submits an application for licensure as an acupuncturist accompanied by the required fee.

* * * * *

[Pa.B. Doc. No. 24-723. Filed for public inspection May 17, 2024, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Broker Price Opinions

The State Real Estate Commission (Commission) proposes to amend Chapter 35 (relating to State Real Estate Commission) by deleting the current temporary regulations in Subchapter I (relating to broker price opinions—temporary regulations) and adding permanent regulations in Subchapter J (relating to broker price opinions). The proposed permanent regulations are set forth in Annex A.

Effective Date

This proposed rulemaking will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The act of June 29, 2018 (P.L. 500, No. 75) (Act 75 of 2018) amended the Real Estate Licensing and Registration Act (act) (63 P.S. §§ 455.101—455.902) and authorizes the Commission to promulgate regulations for the implementation of section 608.6 of the act (63 P.S. § 455.608f) regarding broker price opinions. Section 404 of the act (63 P.S. § 455.404) also authorizes the Commission to promulgate rules or regulations to administer and effectuate the purposes of the act.

Background and Need for the Amendment

Act 75 of 2018 made two major changes to the act. It increased the minimum amount of education necessary for licensure as a salesperson and it allowed for broker price opinions to be performed by licensed brokers, associate brokers and salespersons. Broker price opinions are considered another form of valuation for a property. Act 75 of 2018 amended section 201 of the act (63 P.S. § 455.201) to define a broker price opinion as "[a]n estimate prepared by a broker, associate broker or salesperson that details the probable selling price of a particular parcel of real property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales, but does not include an automated valuation model. . . ." Until the amendments were made to the act, a broker price opinion was considered an appraisal under Pennsylvania law which could be performed only by a certified real estate appraiser. Broker price opinions are most frequently used by banks to determine an approximate value of the bank's real estate inventory. Prior to Act 75 of 2018, banks would have to either obtain a formal appraisal or a comparative market analysis. Banks find it cost prohibitive to pay for a full appraisal when they only want a quick opinion as to the value. The purpose of a comparative market analysis is for a real estate licensee to give an opinion of value for the purpose of listing a property for sale or aiding a buyer to determine the offering price. A comparative market analysis would not help a bank for its needs concerning valuation of its inventory. A broker price opinion creates a viable alternative for those consumers that would just like an estimate of value for their

property without having to pay for an expensive appraisal or to have the property listed for sale. The trend across the country is to allow broker price opinions. The amendments to the act keep this Commonwealth current with practices in other states.

Act 75 of 2018 also authorized the Commission to promulgate temporary regulations to facilitate the prompt implementation of the practice of broker price opinions by brokers, associate brokers and salespersons. This proposed rulemaking will make the temporary regulations permanent.

Description of the Proposed Amendments

This proposed rulemaking replaces Subchapter I with Subchapter J which proposes limitations and requirements for broker price opinions, including required disclosures, signature requirements, permissible uses and required experience and education for brokers, associate brokers and salespersons.

Definitions

The Commission proposes to amend § 35.201 (relating to definitions) to add the following terms, which are defined in the act: "broker price opinion" and "short sale." The definition of "comparative market analysis" is proposed to be amended to comport with the act. In addition, "automated valuation model" is defined in accordance with section 1125(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. § 3354(d)). The definitions for "broker price opinion," "short sale" and "automated valuation model" are identical to the definitions provided in § 35.401 of the temporary regulations. The amended definition of "comparative market analysis" was not included in the temporary regulations. For the sake of clarity, all of the foregoing definitions have been consolidated in § 35.201 rather than defining terms separately in Subchapter J. Section 35.401 of the temporary regulations is proposed to be reserved.

Broker price opinion

Section 35.501 (relating to broker price opinion) lists the requirements of a broker price opinion. Under subsection (a), a broker price opinion is required to have a specific statement displayed indicating that the broker price opinion was not prepared in accordance with the Uniform Standards of Professional Appraisal Practice and that it is not to be construed as an appraisal. Subsection (b) requires a signature by the person who prepares the broker price opinion and lists the information that must be on every broker price opinion, as required by section 608.6(c) of the act. Based on the suggestion of one of the comments received from stakeholders during the drafting of the temporary regulations, the Commission added "cost data" to subsection (b)(4) as another way of basing a conclusion as to price. Subsection (b)(9) requires the license numbers of the preparer and any broker or associate broker reviewing the broker price opinion because the Commission believes it is important to identify all licensees involved with a broker price opinion.

Consistent with the act, subsection (c) requires that any compensation for preparing a broker price opinion be paid directly to the employing broker of the licensee who prepared the broker price opinion. This mirrors section 608.6(d) of the act but adds the word "employing" in front of broker. The Commission believes that adding the word "employing" in front of broker clarifies that only the broker can be compensated by a consumer and is consistent with section 604(a)(12) of the act (63 P.S. § 455.604(a)(12)), which prohibits an associate broker or salesperson from accepting a commission or other valuable consideration from anyone other than the employing broker. Subsections (d) and (e) set forth the minimum requirements for a salesperson to prepare a broker price opinion, which includes experience, education and required review and signature by the employing broker or designated associate broker as set forth in section 608.6(j) of the act.

Section 35.501 is nearly identical to § 35.402 of the temporary regulations. The lone differences are proposed amended subsection (c) begins "[a]ny fee . . ." rather than "[a] fee . . ."; and the cross-reference in subsection (d) to "§ 35.404" is proposed to be amended to "35.503."

Use of broker price opinions

Section 35.502 (relating to use of broker price opinion) is identical to § 35.403 of the temporary regulations. Subsection (a) lists the permissible uses of a broker price opinion as set forth in section 608.6(e) of the act. Subsection (b) lists the prohibited uses of a broker price opinion as set forth in section 608.6(f) of the act.

Broker price opinion education

Section 35.503 (relating to broker price opinion education) sets forth the educational requirements a licensee must complete prior to preparing a broker price opinion. Subsection (a) requires brokers, associate brokers and salespersons to complete a Commission-approved initial education course in the preparation of broker price opinions. Subsection (b) requires a broker or associate broker to complete the Commission-approved initial education course in the preparation of broker price opinions prior to signing a broker price opinion prepared by a salesperson. Subsection (c) requires brokers, associate brokers and salespersons to complete at least 3 hours of Commission-approved continuing education in broker price opinion topics prior to preparing a broker price opinion. Subsection (d) requires brokers, associate brokers and salespersons to retain the transcript or certificate of instruction and provide a copy to the Commission upon request. Under subsection (e), the Commission pre-approves four broker prelicensure courses in the topics of valuation of residential property, valuation of income-producing property, basic appraisal principles and basic appraisal procedures for the initial educational requirement.

Section 35.503 is substantially similar to § 35.404 of the temporary regulations. Amended subsection (d) in this proposed rulemaking deletes the language "who has completed a Commission-approved initial education course, a broker prelicensure course listed in subsection (e) or continuing education referenced in subsection (c)" from the temporary regulation and adds "for all required broker price opinion courses." The phrase "Commission has approved the" is proposed to be added to subsection (e).

Fiscal Impact and Paperwork Requirements

This proposed rulemaking should have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Commission will not incur any additional costs due to the review and approval of the educational courses because those costs are paid for through application fees paid by the education providers. Those brokers, associate brokers and salespersons who want to perform broker price opinions will incur minimal costs associated with obtaining the necessary initial education if they have not already done so. On average, education providers are charging approximately $10 per credit hour for broker price opinion education. These costs are minimal and not prohibitive to obtain the education to perform a broker

price opinion. This proposed rulemaking does not increase the initial education or continuing education hour requirements. Costs to the licensee are included in what is already required for licensure and retention of the license. Also, licensees who complete the initial education requirement will be required to retain the transcript or certificate of instruction for as long as the licensees are performing broker price opinions.

Sunset Date

The Commission continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 7, 2024, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate and the chairperson of the Professional Licensure Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations, or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Marc Farrell, Counsel, State Real Estate Commission, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference "No. 16A-5626 (Broker Price Opinions)" when submitting comments.

GAETANO PICCIRILLI,
Chairperson

Fiscal Note: 16A-5626. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.201. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Associate broker—An individual broker who is employed by another broker.

***Automated valuation model*—A computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.**

Branch office—Any fixed location in this Commonwealth, other than the main office, maintained by a broker or cemetery broker, devoted to the transaction of real estate business.

* * * * *

Broker of record—The individual broker responsible for the real estate transactions of a partnership, association or corporation that holds a broker's license.

Broker—An individual or entity holding either a standard or reciprocal license, that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

(i) Negotiates with or aids a person in locating or obtaining for purchase, lease or acquisition of interest in real estate.

(ii) Negotiates the listing, sale, purchase, exchange, lease, time share and similarly designated interests, financing or option for real estate.

(iii) Manages real estate.

(iv) Represents himself or itself as a real estate consultant, counsellor or house finder.

(v) Undertakes to promote the sale, exchange, purchase or rental of real estate. This subparagraph does not apply to an individual or entity whose main business is that of advertising, promotion or public relations.

(vi) Undertakes to perform a comparative market analysis.

(vii) Attempts to perform one of the actions listed in subparagraphs (i)—(vi).

Builder-owner salesperson—An individual holding either a standard or reciprocal license, who is a full-time employee of a builder-owner of single-**family** and multifamily dwellings located in this Commonwealth and who is authorized, for and on behalf of, the builder-owner, to do one or more of the following:

(i) List for sale, sell or offer for sale real estate of the builder-owner.

(ii) Negotiate the sale or exchange of real estate of the builder-owner.

(iii) Lease or rent, or offer to lease, rent or place for rent, real estate of the builder-owner.

(iv) Collect or offer, or attempt to collect, rent for real estate of the builder-owner.

* * * * *

Comparative market analysis—A written analysis, opinion or conclusion by a **[contracted buyer's agent, transactional licensee or an actual or potential seller's agent] broker, associate broker or salesperson** relating to the probable sale **or rental** price of a specified **[piece of real estate] parcel of real property** in an identified real estate market at a specified time, **[offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer or for the purpose of securing a listing agreement with a seller] which is prepared for any of the following:**

(i) An existing or potential seller, buyer, lessor or lessee of the parcel of real property.

(ii) A person making decisions or performing due diligence related to the potential listing, offering, sale, option, lease or acquisition price of the parcel of real property.

Consumer—An individual or entity who is the recipient of any real estate service.

* * * * *

Seller agent—A licensee who enters into an agency relationship with a seller/landlord.

***Short sale*—A sale of real property in which the seller's proceeds are less than the amount required to pay off all liens secured by the property.**

Standard license—A license, other than a reciprocal license, issued to an individual or entity who has fulfilled the education/experience and examination requirements of the act.

* * * * *

Subchapter I. **[BROKER PRICE OPINIONS—TEMPORARY REGULATIONS] [Reserved.]**

§§ 35.401—35.404. [Reserved].

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

Subchapter J. BROKER PRICE OPINIONS

Sec.
35.501. Broker price opinion.
35.502. Use of broker price opinion.
35.503. Broker price opinion education.

§ 35.501. Broker price opinion.

(a) A broker price opinion must contain the following statement displayed conspicuously and without change:

> This analysis has not been prepared in accordance with the Uniform Standards of Professional Appraisal Practice which require valuers to act as unbiased, disinterested third parties with impartiality, objectivity and independence and without accommodation of personal interest. It is not to be construed as an appraisal and may not be used as such for any purpose.

(b) A broker price opinion must be signed manually or electronically by the person who prepared it and must contain all of the following information:

(1) An identification of the intended users and intended uses of the broker price opinion, if known.

(2) A brief description of the subject property.

(3) A brief description of the property interest to be priced.

(4) The basis for the conclusion as to the price, including applicable market data, cost data or capitalization computation.

(5) Each assumption or limiting condition.

(6) Each existing or contemplated interest of the licensee who prepared the broker price opinion.

(7) The effective date of the broker price opinion.

(8) The date that the document is signed.

(9) The real estate license number of the preparer and, if applicable, the reviewing broker or associate broker.

(c) A fee or valuable consideration for a broker price opinion, if any, shall be paid directly to the employing broker.

(d) A salesperson may not prepare a broker price opinion unless the salesperson has held an active license for the 3 years immediately preceding the effective date of the broker price opinion and has satisfied the educational requirements in § 35.503 (relating to broker price opinion education).

(e) A broker price opinion prepared by a salesperson must be signed by the salesperson and reviewed and signed by the employing broker or a designated associate broker.

§ 35.502. Use of broker price opinion.

(a) A broker price opinion may be prepared by a broker, associate broker or salesperson only for use in conjunction with any of the following:

(1) A property owned by a lender after an unsuccessful sale at a foreclosure auction.

(2) A modification of a first or junior mortgage or equity line of credit.

(3) A short sale of a property.

(4) An evaluation or monitoring of a portfolio of properties.

(b) A broker price opinion may not be prepared by a broker, associate broker or salesperson for use:

(1) As the basis to determine the value of a parcel of real property for a mortgage loan origination, including a first or junior mortgage, refinancing or equity line of credit.

(2) In connection with any of the following:

(i) An eminent domain proceeding.

(ii) A Federal, State or local tax appeal.

(iii) A bankruptcy or insolvency proceeding.

(iv) An action or proceeding involving divorce or equitable distribution of property.

(v) Any other action or proceeding before a court of record.

(vi) The distribution of a decedent's estate.

§ 35.503. Broker price opinion education.

(a) A broker, associate broker or salesperson may not prepare a broker price opinion unless the broker, associate broker or salesperson has completed a Commission-approved initial education course in the preparation of broker price opinions.

(b) A broker or associate broker may not sign a broker price opinion prepared by a salesperson unless the broker or associate broker has completed a Commission-approved initial education course in the preparation of broker price opinions.

(c) A broker, associate broker or salesperson may not prepare a broker price opinion unless the broker, associate broker or salesperson has completed at least 3 hours of Commission-approved continuing education in broker price opinion topics during the current or immediately preceding 2-year license period.

(d) A broker, associate broker or salesperson shall retain the transcript or certificate of instruction for all required broker price opinion courses and shall provide a copy to the Commission upon request.

(e) The Commission has approved the following broker prelicensure courses to satisfy the initial education requirement in subsections (a) and (b):

(1) Valuation of residential property.

(2) Valuation of income-producing property.

(3) Basic appraisal principles.

(4) Basic appraisal procedures.

[Pa.B. Doc. No. 24-724. Filed for public inspection May 17, 2024, 9:00 a.m.]

END OF ISSUE