

INTRODUCTION

The Supreme Court of Pennsylvania has adopted the proposed changes to Rules 121 and 1121. The changes are effective immediately.

EXPLANATORY REPORT DECEMBER 2008

I. BACKGROUND

Rule of Juvenile Court Procedure 121 was adopted in 2005 and Rule of Juvenile Court Procedure 1121 was adopted in 2007 "to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered." The Juvenile Rules were modeled after Pa.R.Crim.P. 105 and Pa.R.C.P. 239, which were adopted in 1983. To provide consistency among the Court's rules, these amendments mirror the new language and intent of the Pa.R.Crim.P. 105 adopted January 25, 2008.

The amended rules provide a uniform definition of local rules, prerequisites to effectiveness and effective dates, procedures for accessibility and distribution, and for the suspension of inconsistent local rules.

When Pa.Rs.J.C.P. 121 and 1121 were adopted, all local rules were vacated. Each judicial district could promulgate new local rules that did not conflict with the Rules of Juvenile Court Procedure and each judicial district may continue to promulgate new consistent local rules.

Because judicial districts have continued to enact local rules that fail to comply with the provisions of Rule 121 or 1121, these amendments make the requirements for local rules absolutely clear. Judicial districts that continue to enact local rules by calling them something other than a local rule, even though the practices and procedures are local rules within the definitions of Rule 121 or 1121, will be prohibited from enacting those local rules until Rule 121 or 1121 have been followed. In addition, local rules will be published and made available to the members of the Bar.

Because of this non-compliance by some judicial districts and the need to provide uniform procedure, the Committee agreed that the only recourse to ensure

compliance was to require that local rule amendments be submitted in writing to the Committee for review before a judicial district may enact or amend a local rule. The local rule will not be effective and enforceable unless the local adopting court receives a written notification from the Committee that the local rule is consistent with the Rules of Juvenile Court Procedure. This requirement and some additional clarifying amendments are discussed below.

II. DISCUSSION

The amended rule, which requires that all new local rules and local rule amendments must be submitted to the Committee for the Committee's review before the local rule may be published and before the rule or amendments will be effective and enforceable, is set forth in amended paragraph (D). Pursuant to this new amendment, the adopting court is required to submit in writing any proposal that governs juvenile court practice and procedure to the Committee for the Committee's review. This pre-adoption review is narrow in scope. The Committee will merely determine whether the proposed local rule provisions comply with the requirements of Rule 121 or 1121. Specifically, the Committee will be considering whether the local rule change is consistent with the general rules of the Supreme Court as required in Rule 121(E) or 1121(E). The Committee will not be passing judgment on the wisdom of the local rule or the substantive validity of the provisions of the local rule or on the merits of the local rule.

Following this review, the Committee will communicate in writing with the adopting court. The adopting court will be prohibited from proceeding with the local rule proposal until receiving written notification from the Committee that the proposed local rule satisfies the requirements of Rule 121 or 1121 and is consistent with the statewide rules. In addition, paragraph (F)(2)(c) will require the adopting court to send a copy of the written statement received from the Committee to the Legislative Reference Bureau when publishing a new local rule.

Rules 121 and 1121 also have been reorganized to emphasize more clearly the essential requirements of the rule. Paragraph (A), which sets forth the "definition" of local rule, remains mostly the same. The term "administrative order" has been added to the list of things in this paragraph that are considered "local rules." In our experience,

many local enactments labeled “administrative orders” are in fact “local rules” that should comply with Rule 121 or 1121 requirements. The Committee agreed that “administrative order” should be added to paragraph (A) because some judicial districts continue to ignore the clear mandate of Rule 121 or 1121. For example, they are designating various directives as “administrative orders” that actually govern practice and procedure in juvenile court cases or they are failing to publish or provide copies of these administrative orders to the Committee. As has been intended since the inception of Rule 121 or 1121, only administrative orders that govern juvenile court practice and procedure in some way would be subject to Rule 121 or 1121. This change is not intended to affect administrative orders that govern other aspects of court operations, such as administrative orders that establish local court calendars.

In addition, the phrase “which requires a party or party’s attorney to do or refrain from doing something” has been removed from paragraph (A). These same non-compliant judicial districts fail to send in a local rule rationalizing that it is not a local rule because it does not meet the definition of “a party or party’s attorney doing or refraining from doing something.”

Paragraph (B) has been reworded to show that all local rules promulgated before October 1, 2005 were vacated at the time of adoption of these Rules and moved to paragraph (B)(1). Old paragraph (C)(1) was moved to new paragraph (B)(2), which provides that each judicial district may adopt new local rules that are not in conflict with the Rules of Juvenile Court Procedure.

Old paragraph (C)(2) is now paragraph (C), which requires that local rules be given numbers keyed to the statewide rules to add emphasis to this requirement.

Old paragraph (G) will be retained as new paragraph (E)(1)&(2). The requirements are now separated to emphasize that the Committee may recommend the suspension, vacation, and amendment of local rules that do not comply with Rule 121 or 1121 to the Supreme Court. Pending that action, the Committee may suspend a local rule.

New paragraph (F) sets forth the provisions related to publishing proposed local rules in the *Pennsylvania Bulletin*, making it clear that to be effective and enforceable, the local rule must be published, but not until the Committee has provided written

notification that the local rule is not inconsistent as required by new paragraph (D). In addition, old paragraph (D)(3) that explains what must be sent to the *Pennsylvania Bulletin* is now new paragraph (F)(2). Old paragraph (E) that requires the effective date of new local rules and amended local rules be not less than 30 days after publishing in the *Pennsylvania Bulletin* is now new paragraph (F)(3).

New paragraph (G) is taken from old paragraph (D)(2); however, new paragraph (G) requires that, contemporaneously with publishing in the *Pennsylvania Bulletin*, the adopting court must file one copy of the local rule with the AOPC. Old paragraph (D)(2) required that seven copies be sent to the AOPC.

Because new paragraph (D) requires that the adopting court submit a written copy of the proposed local rule to the Committee for prior approval, old paragraphs (D)(1) and (D)(4) will no longer be necessary.

Old paragraph (D)(5) has been moved to new paragraph (H).

New paragraph (I) incorporates old paragraph (F), and includes as a first sentence the requirement that the clerk of courts accept all pleadings and other legal papers for filing even if the document does not satisfy the requirements of a local rule.

This new recommendation is comparable to Pa.R.C.P. 205.2, Pa.Rs.Crim.P. 105 and 576(A), and complies with the requirements in Pa.R.J.C.P. 345(A).