

RULE 114. ORDERS AND COURT NOTICES: FILING; SERVICE; AND DOCKET ENTRIES.

(A) Filing

(1) All orders and court notices promptly shall be transmitted to the clerk of courts' office for filing. Upon receipt in the clerk of courts' office, the order or court notice promptly shall be time stamped with the date of receipt.

(2) All orders and court notices promptly shall be placed in the criminal case file.

(B) Service

(1) A copy of any order or court notice promptly shall be served on each party's attorney, or the party if unrepresented.

(2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the court or court administrator.

(3) Methods of Service

Except as otherwise provided in Chapter 5 concerning notice of the preliminary hearing, service shall be:

(a) in writing by

- (i) personal delivery to the party's attorney or, if unrepresented, the party; or
- (ii) personal delivery to the party's attorney's employee at the attorney's office; or
- (iii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office; or
- (iv) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, when counsel has agreed to receive service by this method, leaving a copy for the party's attorney in the box in the courthouse assigned to the attorney for service; or
- (v) sending a copy to an unrepresented party by certified,

registered, or first class mail addressed to the party's place of residence, business, or confinement; or

- (vi) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has filed a written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or
- (vii) delivery to the party's attorney, or the party if unrepresented, by carrier service; or

(b) orally in open court on the record.

(C) Docket Entries

(1) Docket entries promptly shall be made.

(2) The docket entries shall contain:

- (a) the date of receipt in the clerk's office of the order or court notice;
- (b) the date appearing on the order or court notice; and
- (c) the date of service of the order or court notice.

(D) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a party to file or serve orders or court notices.

COMMENT: This rule was amended in 2004 to provide in one rule the procedures for the filing and service of all orders and court notices, and for making docket entries of the date of receipt, date appearing on the order or notice, and the date of service. This rule incorporates the provisions of former Rule 113 (Notice of Court Proceedings Requiring Defendant's Presence). *But see* Rules 511, 540(F)(2), and 542(D) for the procedures for service of notice of a preliminary hearing, which are different from the procedures in this rule.

Historically, some orders or court notices have been served by the court administrator or by the court. Paragraph (B)(2) permits the president judge to continue this practice by designating either the court or the court administrator to serve orders and court notices. When the president judge makes such a designation, the designation must be in the form of a local rule promulgated in compliance with Rule 105 (Local Rules).

Paragraph (C)(2) requires three dates to be entered in the list of docket entries with regard to the court's orders and notices: the date of receipt of the order or notice; the date appearing on the order or notice; and the date the order or notice is served. The date of receipt is the date of filing under these rules. Concerning appeal periods and entry of orders, see Rule 720 (Post-Sentence Procedures; Appeal) and Pa.R.A.P. 108 (Date of Entry of Orders).

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the defendant's presence.

Although paragraph (B)(3)(a)(iv) permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(vi). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization must be filed in each case the party or attorney wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping or making docket entries.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Under the post-sentence motion procedures, the clerk of courts must comply with this rule after entering an order denying a post-sentence motion by operation of law. See Rule 720(B)(3)(c).

This rule makes it clear that the procedures for filing and service, and making docket entries are mandatory and may not be modified by local rule.

Paragraph (D), titled "Unified Practice," emphasizes that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all Criminal Rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 *Comment*. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

For the definition of "carrier service," see Rule 103.

See Rule 103 for the definitions of "clerk of courts" and "court administrator."

See Rule 113 (Criminal Case File and Docket Entries) for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

NOTE: Formerly Rule 9024, adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 and *Comment* revised June 2, 1994, effective

September 1, 1994; renumbered Rule 114 and *Comment* revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended July 20, 2006, effective September 1, 2006 [.] ; **Comment revised September 18, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

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

Report explaining the June 2, 1994 rule changes published at 23 **Pa.B.** 5008 (October 23, 1993).

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 March 3, 2004 rule changes concerning filing and service, making docket entries, and orders and court notices published with the Court's Order at 34 **Pa.B.** 1561 (March 20, 2004).

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

Final Report explaining the July 20, 2006 deletion of "manner of service" from paragraph (C)(2)(c) published with the Court's Order at 36 **Pa.B.** 4173 (August 5, 2006).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. (, 2008).

RULE 430. ISSUANCE OF WARRANT.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

A warrant for the arrest of the defendant shall be issued when:

- (1) the citation or summons is returned undelivered; or
- (2) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

(B) BENCH WARRANTS

(1) A bench warrant shall be issued when:

- (a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or
- (b) the defendant has failed to appear for the execution of sentence as required in Rule 454(F)(3).

(2) A bench warrant may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

(3) A bench warrant may be issued when:

- (a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of the fine and costs specified in the citation or summons; or
- (b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or
- (c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of the fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last

known address.

COMMENT: Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1).

A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph **(B)(1)(b), formerly paragraph** (A)(1)(d), was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a bench warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The bench warrant issued under paragraph (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

See Rule 431 for the procedures when a warrant of arrest is executed.

NOTE: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; *Comment* revised August 7, 2003, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective February 1, 2008 [.]; **Comment revised September 18, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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 February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the January 26, 2007 changes published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

**Final Report explaining the September 18, 2008 revision of the
Comment concerning the United States Postal Service's return
receipt electronic option published with the Court's Order at 38
Pa.B. (, 2008).**

RULE 451. SERVICE.

(A) Citations, summonses, and trial notices in summary cases may be served either personally upon the defendant or by mail to the defendant's last known address.

(B) When service of a summons has been made by first class mail and the defendant fails to respond or appear within the time specified by these rules, the issuing authority shall cause service to be made upon the defendant personally or by certified mail, return receipt requested. Thereafter, the case shall proceed as provided in these rules.

COMMENT: This rule provides the procedures for service in summary cases. These procedures are different from those provided by Rule 576 for motions and documents in court cases. See *also* Rule 114, which sets forth, *inter alia*, the procedures for providing notice to a defendant of court proceedings requiring the defendant's presence in court cases and in summary cases on appeal for a trial *de novo*.

A citation is served personally upon the defendant within the meaning of this rule when the citation is issued to the defendant as provided in Rule 400(A) and the rules of Chapter 4 Part (B)(1).

Paragraph (B) makes it clear that the issuing authority must only provide additional notice to a defendant by personal service or certified mail when a defendant fails to respond to a summons. It is intended that, when a defendant fails to appear for trial pursuant to a trial notice served by first class mail, the issuing authority need provide no further notice, but should proceed to conduct the trial in the defendant's absence pursuant to Rule 455.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

NOTE: Rule 80 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; *Comment* revised June 2, 1994, effective September 1, 1994; renumbered Rule 451 and amended March 1, 2000, effective April 1, 2001; *Comment* revised March 3, 2004, effective July 1, 2004 [.]; ***Comment* revised September 18, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the June 2, 1994 Comment revision published at 23 Pa.B. 5008 (October 23, 1993).

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 March 3, 2004 Comment revision updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. (, 2008).

RULE 509. USE OF SUMMONS OR WARRANT OF ARREST IN COURT CASES.

If a complaint charges an offense that is a court case, the issuing authority with whom it is filed shall:

- (1) issue a summons and not a warrant of arrest in cases in which the most serious offense charged is a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802, except as set forth in paragraph (2);
- (2) issue a warrant of arrest when:
 - (a) one or more of the offenses charged is a felony or murder; or
 - (b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons; or
 - (c) the issuing authority has reasonable grounds for believing that the defendant poses a threat of physical harm to any other person or to himself or herself; or
 - (d) the summons was mailed pursuant to Rule 511(A) and has been returned undelivered; or
 - (e) the identity of the defendant is unknown; or
- (3) issue a summons or a warrant of arrest, within the issuing authority's discretion, when the offense charged does not fall within any of the categories specified in paragraphs (1) or (2).

COMMENT: This rule provides for the mandatory use of a summons instead of a warrant in court cases except in the special circumstances enumerated in paragraphs (2) and (3).

Before a warrant may be issued pursuant to paragraph (2) (d) when a summons is returned undelivered, the summons must have been served upon the defendant by both first class mail and certified mail, return receipt requested as provided in Rule 511(A), and both the certified mail and the first class mail must have been returned undelivered. "Undelivered" includes a return receipt that is signed by someone other than the defendant.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Pursuant to Rule 511, a return receipt signed by the defendant or a notation on the transcript that the first class mailing was not returned within 20 days is proof that the defendant received notice of the summons for purposes of paragraph (2)(d). See *also* Rule 543(D)(1).

When a defendant has been released pursuant to Rule 519(B), the issuing authority must issue a summons.

See Rule 1003 (Procedure in Non-Summary Municipal Court Cases), paragraph (C), for the procedures for issuing a summons and a warrant in Philadelphia.

It is expected when a case meets the requirements for the issuance of a summons, the police officer will proceed during the normal business hours of the proper issuing authority except in extraordinary circumstances. See Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

The procedure in paragraph (3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, *etc.* However, in all cases in which the defendant has been released pursuant to Rule 519(B), a summons shall be issued.

NOTE: Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; *Comment* revised April 24, 1981, effective July 1, 1981; amended

October 22, 1981, effective January 1, 1982; renumbered Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 24, 2004, effective August 1, 2005; amended June 30, 2005, effective August 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007 [.] ; ***Comment* revised September 18, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

***Report* explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); *Final Report* published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).**

***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 *Comment* revision adding a new second paragraph elaborating on paragraph (2)(c) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

***Final Report* explaining the June 30, 2005 amendments concerning in which cases a summons or a warrant are issued published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).**

***Final Report* explaining the May 1, 2007 amendments amending paragraph (2)(d) and the *Comment* and deleting paragraph (2)(e) published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).**

***Final Report* explaining the September 18, 2008 revision of the *Comment* concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. (, 2008).**

RULE 511. SERVICE OF SUMMONS; PROOF OF SERVICE.

(A) The summons shall be served upon the defendant by both first class mail and certified mail, return receipt requested. A copy of the complaint shall be served with the summons.

(B) Proof of service of the summons by mail shall include:

- (1) a return receipt signed by the defendant; or
- (2) the returned summons showing that the certified mail was not signed by the defendant and a notation on the transcript that the first class mailing of the summons was not returned to the issuing authority within 20 days after the mailing.

COMMENT: This rule was amended in 2004 to require that the summons be served by both first class mail and certified mail, return receipt requested.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Paragraph (B) sets forth what constitutes proof of service of the summons by mail in a court case for purposes of these rules.

NOTE: Original Rule 111, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 111 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 112 September 18, 1973, effective January 1, 1974; renumbered Rule 511 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 [.] ; **Comment revised September 18, 2008, effective February 1, 2009.**

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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 amendments adding new paragraph (B) concerning proof of service published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments amending paragraph (B)(2) concerning proof of service published with the Court's Order at 37 Pa.B. 2503 (June 2, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. (, 2008).

RULE 536. PROCEDURES UPON VIOLATION OF CONDITIONS:
REVOCATION OF RELEASE AND FORFEITURE; BAIL PIECES;
EXONERATION OF SURETY.

(A) SANCTIONS

(1) *Revocation of Release*

- (a) A person who violates a condition of the bail bond is subject to a revocation of release and/or a change in the conditions of the bail bond by the bail authority.
- (b) When a violation of a condition occurs, the bail authority may issue a bench warrant for the defendant's arrest. When the bench warrant is executed, the bench warrant proceedings shall be conducted pursuant to Rule 150.
- (c) The bail authority also may order the defendant or the defendant's surety to explain why the defendant's release should not be revoked or why the conditions of release should not be changed. A copy of the order shall be served on the defendant and the defendant's surety, if any.
- (d) When the bail authority changes the conditions of the bail bond and/or revokes the defendant's release, the bail authority shall state in writing or on the record the reasons for so doing.

(2) *Forfeiture*

- (a) When a monetary condition of release has been imposed and the defendant has violated a condition of the bail bond, the bail authority may order the cash or other security forfeited and shall state in writing or on the record the reasons for so doing.
- (b) Written notice of the forfeiture shall be given to the defendant and any surety, either personally or by both first class and certified mail at the defendant's and the surety's last known addresses.
- (c) The forfeiture shall not be executed until 20 days after notice of the forfeiture order.
- (d) The bail authority may direct that a forfeiture be set aside or remitted if justice does not require the full enforcement of the forfeiture order.

(e) When a magisterial district judge orders bail forfeited pursuant to this rule, the magisterial district judge shall generate a check in the amount of the bail monies he or she has on deposit in the case, and shall send the check and a copy of the docket transcript to the clerk of courts for processing and disbursement as provided by law.

(B) BAIL PIECES

- (1) A surety or bail agency may apply to the court for a bail piece.
- (2) If the court is satisfied that a bail piece is required, it may issue a bail piece authorizing the surety or bail agency to apprehend and detain the defendant, and to bring the defendant before the bail authority without unnecessary delay.

(C) EXONERATION

- (1) A bail authority, in his or her discretion, may exonerate a surety who deposits cash in the amount of any forfeiture ordered or who surrenders the defendant in a timely manner.
- (2) When the conditions of the bail bond have been satisfied, or the forfeiture has been set aside or remitted, the bail authority shall exonerate the obligors and release any bail.

COMMENT: This rule does not apply when a defendant has been arrested pursuant to extradition proceedings. See *generally* Uniform Criminal Extradition Act, 42 Pa.C.S. §§ 9121-9148, and particularly Section 9139 concerning forfeiture proceedings in such cases. See *also* the Crimes Code, 18 Pa.C.S. § 5124, which imposes criminal sanctions for failing to appear in a criminal case when required.

Paragraph (A)(1)(b) was amended and **former** paragraph (A)(1)(d) was deleted in 2005 to make it clear that a warrant for the arrest of the defendant for failure to comply with a condition of bail is a bench warrant. For the procedures when a paragraph (A)(1)(b) bench warrant is executed, see Rule 150 (Bench Warrants). For the procedures for issuing a bench warrant when a defendant fails to appear for a preliminary hearing, see paragraph

(D) of Rule 543 (Disposition of Case at Preliminary Hearing).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Once bail has been modified by a common pleas judge pursuant to Rule 529, only the common pleas judge subsequently may change the conditions of release, even in cases that are pending before a magisterial district judge. See Rules 543 and 529.

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

Paragraph (A)(2)(c) provides an automatic 20-day stay on the execution of the forfeiture to give the surety time to produce the defendant or the defendant time to appear and comply with the conditions of bail.

"Conditions of the bail bond" as used in this rule include the conditions set forth in Rule 526(A) and the conditions of release defined in Rules 524, 527, and 528.

NOTE: Former Rule 4016 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 536 and *Comment* revised March 1, 2000, effective April 1, 2001; amended March 2, 2004, effective July 1, 2004; *Comment* revised August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; *Comment* revised May 1, 2007, effective

September 4, 2007, and May 1, 2007 Order amended May 15, 2007 [.] ; **Comment revised September 18, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with Court's Order at 25 **Pa.B.** 4116 (September 30, 1995).

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 March 3, 2004 rule changes deleting "show cause" published with the Court's Order at 34 **Pa.B.** 1561 (March 20, 2004).

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

Final Report explaining the December 30, 2005 amendments concerning bench warrants published with the Court's Order at 36 **Pa.B.** 184 (January 14, 2006).

Final Report explaining the May 1, 2007 **Comment** revision concerning bench warrants following a failure to appear at a preliminary hearing published with the Court's Order at 37 **Pa.B.** 2503 (June 2, 2007).

Final Report explaining the September 18, 2008 revision of the **Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. (, 2008).**

RULE 576. FILING AND SERVICE BY PARTIES.

(A) FILING

(1) All written motions and any written answers, and any notices or documents for which filing is required, shall be filed with the clerk of courts.

(2) Filing shall be by:

(a) personal delivery to the clerk of courts; or

(b) mail addressed to the clerk of courts. Except as provided by law, filing by mail shall be timely only when actually received by the clerk of courts within the time fixed for filing.

(3) The clerk of courts shall accept all written motions, answers, notices, or documents presented for filing. When a document, which is filed pursuant to paragraph (A)(1), is received by the clerk of courts, the clerk shall time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and promptly shall place the document in the criminal case file.

(4) In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall accept it for filing, time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and place the document in the criminal case file. A copy of the time stamped document shall be forwarded to the defendant's attorney and the attorney for the Commonwealth within 10 days of receipt.

(5) If a defendant submits a document *pro se* to a judge without filing it with the clerk of courts, and the document requests some form of cognizable legal relief, the judge promptly shall forward the document to the clerk of courts for filing and processing in accordance with this rule.

(6) Unified Practice

Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring that a document has to be presented in person before filing or requiring review by a court or court administrator before a document may be filed.

(B) SERVICE

(1) All written motions and any written answers, and notices or documents for which filing is required, shall be served upon each party and the court administrator concurrently with filing.

(2) Service on the parties shall be by:

(a) personal delivery of a copy to a party's attorney, or the party if unrepresented; or

(b) personal delivery of a copy to the party's attorney's employee at the attorney's office; or

(c) mailing a copy to a party's attorney or leaving a copy for the attorney at the attorney's office; or

(d) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, when counsel has agreed to receive service by this method, leaving a copy for the attorney in the attorney's box; or

(e) sending a copy to an unrepresented party by certified, registered, or first class mail addressed to the party's place of residence, business, or confinement; or

(f) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has made a written request for this method of service for the document; or

(g) delivery to the party's attorney, or the party if unrepresented, by carrier service.

(3) Service on the court administrator shall be by:

(a) mailing a copy to the court administrator; or

(b) in those judicial districts that maintain in the courthouse assigned boxes for the court administrator to receive service, leaving a copy for the court administrator in the court administrator's box; or

(c) leaving a copy for the court administrator at the court administrator's office; or

(d) sending a copy to the court administrator by facsimile transmission or other electronic means if authorized by local rule; or

(e) delivery to the court administrator by carrier service.

(4) Certificate of Service

(a) All documents that are filed and served pursuant to this rule shall include a certificate of service.

(b) The certificate of service shall be in substantially the form set forth in the *Comment*, signed by the party's attorney, or the party if unrepresented, and shall include the date and manner of service, and the names, addresses, and phone numbers of the persons served.

(C) Any non-party requesting relief from the court in a case shall file the motion with the clerk of courts as provided in paragraph (A), and serve the defendant's attorney, or the defendant if unrepresented, the attorney for the Commonwealth, and the court administrator as provided in paragraph (B).

COMMENT: Paragraph (A)(1) requires the filing of all written motions and answers. The provision also applies to notices and other documents only if filing is required by some other rule or provision of law. See, e.g., the notice of withdrawal of charges provisions in Rule 561 (Withdrawal of Charges by Attorney for the Commonwealth), the notice of alibi defense and notice of insanity defense or mental infirmity defense provisions in Rule 573 (Pretrial Discovery and Inspection), the notice that offenses or defendants will be tried together provisions in Rule 582 (Joinder -- Trial of Separate Indictments or Informations), the notice of aggravating circumstances provisions in Rule 802 (Notice of Aggravating Circumstances), and the notice of challenge to a guilty plea provisions in Municipal Court cases in Rule 1007 (Challenge to Guilty Plea).

When a motion, notice, document, or answer is presented for filing pursuant to paragraph (A)(1), the clerk of courts must accept it for filing even if the motion, notice, document, or answer does not comply with a rule or statute or appears to be untimely filed. It is suggested that the judicial district

implement procedures to inform the filing party when a document is not in compliance with these rules or a local rule so the party may correct the problem.

See *Commonwealth v. Jones*, **549 Pa. 58**, 700 A.2d 423 ([Pa.] 1997); and *Commonwealth v. Little*, 716 A.2d 1287 (Pa. Super. 1998) concerning the timeliness of filings by prisoners proceeding *pro se* (the "prisoner mailbox rule").

The 2004 amendments to paragraph (A)(4) modified the procedure by which the clerks of courts handle filings by represented defendants when the defendant's attorney has not signed the document being filed by the defendant. As amended, paragraph (A)(4) requires, in all cases in which a represented defendant files a document, that the clerk of courts make a docket entry of the defendant's filing and place the document in the criminal case file, and then forward a copy of the document to both the attorney of record and the attorney for the Commonwealth. See *Commonwealth v. Castro*, 766 A.2d 1283 (Pa. Super. 2001). Compare Pa.R.A.P. 3304 (Hybrid Representation). The requirement that the clerk time stamp and make docket entries of the filings in these cases only serves to provide a record of the filing, and does not trigger any deadline nor require any response. See Rules 120 (Attorneys -- Appearance and Withdrawals) and 122 (Assignment of Counsel) concerning the duration of counsel's obligation under the rules.

Paragraph (A)(4) only applies to cases in which the defendant is represented by counsel, not cases in which the defendant is proceeding *pro se*.

The purpose of paragraph (A)(5) is to ensure documents raising cognizable legal issues submitted to the judge are transmitted to the clerk of courts, and does not relieve the defendant from complying with the other requirements of the rules. When a document is forwarded to the clerk from a judge, if the defendant is unrepresented, the clerk is to proceed as provided in paragraph (A)(3) and the defendant is to be treated like any other party. If the defendant is represented, the clerk is to proceed pursuant to paragraph (A)(4).

Paragraph (A)(6), titled "Unified Practice," was added in 2004 to emphasize that local rules must not conflict with the statewide rules. Although this prohibition on local rules that are inconsistent with the statewide rules applies to all Criminal Rules through Rule 105 (Local Rules), the reference to the specific prohibitions is included because these types of local rules have been identified by practitioners as creating significant impediments to the statewide practice of law within the unified judicial system. See the first paragraph of the Rule 105 *Comment*. The term "local rule" includes every rule, regulation, directive, policy, custom, usage, form or order of general application. See Rule 105(A).

Any local rule that requires personal appearance in addition to filing with the clerk of courts is inconsistent with this rule.

See Rule 113 (Criminal Case File and Docket Entries) for the requirements concerning the contents of the criminal case file and the minimum information to be included in the docket entries.

Paragraph (B)(1) requires that, concurrently with filing, the party must serve a copy on the court administrator. This requirement provides flexibility to accommodate the various practices for scheduling. However, it is not intended to replace the requirement that the party must file with the clerk of courts.

When a judge is assigned to a case, in addition to the requirements of paragraph (B)(1), it is suggested counsel send the judge a courtesy copy of any filings.

Under any system of scheduling, once a hearing or argument is scheduled, the court or court administrator must give notice of the hearing or argument to the parties, and a copy of the notice must be filed in the criminal case file and a docket entry made. See Rule 114(C)(2).

Although paragraph (C)(1)(d) permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(2)(f). The authorization for service by facsimile transmission or other electronic means under this rule is document specific and only valid for an individual document. Counsel will have to renew the authorization for each document.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

For the definition of "carrier service," see Rule 103.

Paragraph (B)(4) requires the filing party to include with the document filed a certificate of service. The certificate of service should be in substantially the following form:

I hereby certify that I am this day serving upon the persons and in the manner indicated below. The manner of service satisfies the requirements of Pa.R.Crim.P. 575.

Service by first class mail addressed as follows:

(NAME) (717) 787-0000
Deputy Attorney General
Office of the Attorney General
16 Floor Strawberry Square
Harrisburg PA 17120
(Attorney for the Commonwealth)

Service in person as follows:

(NAME) (717) 240-0000
Assistant District Attorney
Cumberland County Courthouse
Carlisle, PA
(Attorney for the Commonwealth)

Service by leaving a copy at the office of:

(NAME) (717) 240-0000
Court Administrator
Cumberland County Courthouse
Carlisle, PA

Service by certified mail, return receipt requested,
as follows:

(NAME) (no phone)
Drawer 00000000
Camp Hill, PA

Service by electronic means addressed as follows:

(NAME) (717) 545-0000
000 Magnolia Ave, Suite A
Harrisburg, PA 17122
email address: johndoe@hotmail.com
(Attorney for the Defendant)

Dated:

(S)
(NAME), Esq. (Attorney Registration No. 00000)

Under 18 Pa.C.S. § 4904 (unsworn falsification to authorities), a knowingly false certificate of service constitutes a misdemeanor of the second degree.

See Rule 451 (Service) for the procedures for service in summary cases.

See Rule 114 (Orders and Court Notices: Filing, Service, and Docket Entries) for the requirements for docketing and service of court orders and notices.

See Rule 103 (Definitions) for the definitions of court administrator, clerk of courts, and motions.

NOTE: Former Rule 9022 adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective January 1, 1994; amended July 9, 1996, effective September 1, 1996; renumbered Rule 576 and amended March 1, 2000, effective April 1, 2001. Former Rule 9023 adopted October 21, 1983, effective January 1, 1984; amended June 2, 1994, effective September 1, 1994; renumbered Rule 577 and amended March 1, 2000, effective April 1, 2001; rescinded March 2, 2004, effective July 1, 2004. Rules 576 and 577 combined and amended March 3, 2004, effective July 1, 2004, *Comment* revised June 4, 2004, effective November 1, 2004 **[.] ; Comment revised September 18, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 22, 1993 amendments to former Rule 9022 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Report explaining the June 2, 1994 amendments to former Rule 9023 published at 23 Pa.B. 5008 (October 23, 1993).

Final Report explaining the July 9, 1996 amendments to former Rule 9022 published with the Court's Order at 26 Pa.B. 3532 (July 27, 1996).

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 March 3, 2004 changes amending and

combining Rule 576 with former Rule 577 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. (, 2008).

RULE 907. DISPOSITION WITHOUT HEARING.

Except as provided in Rule 909 for death penalty cases,

(1) the judge shall promptly review the petition, any answer by the attorney for the Commonwealth, and other matters of record relating to the defendant's claim(s). If the judge is satisfied from this review that there are no genuine issues concerning any material fact and that the defendant is not entitled to post-conviction collateral relief, and no purpose would be served by any further proceedings, the judge shall give notice to the parties of the intention to dismiss the petition and shall state in the notice the reasons for the dismissal. The defendant may respond to the proposed dismissal within 20 days of the date of the notice. The judge thereafter shall order the petition dismissed, grant leave to file an amended petition, or direct that the proceedings continue.

(2) A petition for post-conviction collateral relief may be granted without a hearing when the petition and answer show that there is no genuine issue concerning any material fact and that the defendant is entitled to relief as a matter of law.

(3) The judge may dispose of only part of a petition without a hearing by ordering dismissal of or granting relief on only some of the issues raised, while ordering a hearing on other issues.

(4) When the petition is dismissed without a hearing, the judge shall issue an order to that effect and shall advise the defendant by certified mail, return receipt requested, of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken.

COMMENT: The judge is permitted, pursuant to paragraph (1), to summarily dismiss a petition for post-conviction collateral relief in certain limited cases. To determine whether a summary dismissal is appropriate, the judge should thoroughly review the petition, the answer, if any, and all other relevant information that is included in the record. If, after this review, the judge determines that the petition is patently frivolous and without support in the record, or that the facts alleged would not, even if proven, entitle the defendant to relief, or that there are no genuine issues of fact, the judge may dismiss the petition as provided herein.

A summary dismissal would also be authorized under this rule if the judge determines that a previous petition involving the same issue or issues was filed and was finally determined adversely to the defendant. See 42 Pa.C.S. § 9545(b) for the timing requirements for filing second and subsequent petitions.

Second or subsequent petitions will not be entertained unless a strong *prima facie* showing is offered to demonstrate that a miscarriage of justice may have occurred. See *Commonwealth v. Szuchon*, **534 Pa. 483, 486**, 633 A.2d 1098, 1099 ([Pa.] 1993) (citing *Commonwealth v. Lawson*, **519 Pa. 504**, 549 A.2d 107 ([Pa.] 1988)). This standard is met if the petitioner can demonstrate either: (1) that the proceedings resulting in the petitioner's conviction were so unfair that a miscarriage of justice occurred which no civilized society can tolerate; or (2) that the petitioner is innocent of the crimes charged. See *Commonwealth v. Szuchon*, **534 Pa. 483, 487**, 633 A.2d 1098, 1100 ([Pa.] 1993).

For the requirements for appointment of counsel on second and subsequent petitions, see Rule 904(B).

Relief may be granted without a hearing under paragraph (2) only after an answer has been filed either voluntarily or pursuant to court order.

A PCRA petition may not be dismissed due to delay in filing except after a hearing on a motion to dismiss. See 42 Pa.C.S. § 9543(b) and Rule 908.

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

NOTE: Previous Rule 1507 adopted January 24, 1968, effective August 1, 1968; rescinded December 11, 1981, effective June 27, 1982; rescission vacated June 4, 1982;

amended January 28, 1983, effective July 1, 1983;
rescinded February 1, 1989, effective July 1, 1989, and not
replaced. Present Rule 1507 adopted February 1, 1989,
effective July 1, 1989; amended August 11, 1997, effective
immediately; renumbered Rule 907 and amended March 1,
2000, effective April 1, 2001 [.] ; **Comment revised**
September 18, 2008, effective February 1, 2009.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 11, 1997 amendments
published with the Court's Order at 27 Pa.B. 4305 (August 23,
1997).

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 September 18, 2008 revision of the
Comment concerning the United States Postal Service's return
receipt electronic option published with the Court's Order at 38
Pa.B. (, 2008).

RULE 908. HEARING.

(A) Except as provided in Rule 907, the judge shall order a hearing:

- (1) whenever the Commonwealth files a motion to dismiss due to the defendant's delay in filing the petition; or
- (2) when the petition for post-conviction relief or the Commonwealth's answer, if any, raises material issues of fact. However, the judge may deny a hearing on a specific issue of fact when a full and fair evidentiary hearing upon that issue was held at trial or at any proceeding before or after trial.

The judge shall schedule the hearing for a time that will afford the parties a reasonable opportunity for investigation and preparation, and shall enter such interim orders as may be necessary in the interests of justice.

(B) The judge, on petition or request, shall postpone or continue a hearing to provide either party a reasonable opportunity, if one did not exist previously, for investigation and preparation regarding any new issue of fact raised in an amended petition or amended answer.

(C) The judge shall permit the defendant to appear in person at the hearing and shall provide the defendant an opportunity to have counsel.

(D) Upon the conclusion of the hearing the judge shall:

- (1) determine all material issues raised by the defendant's petition and the Commonwealth's answer, or by the Commonwealth's motion to dismiss, if any;
- (2) issue an order denying relief or granting a specific form of relief, and issue any supplementary orders appropriate to the proper disposition of the case.

(E) If the judge disposes of the case in open court at the conclusion of the hearing, the judge shall advise the defendant on the record of the right to appeal from the final order disposing of the petition and of the time within which the appeal must be taken. If the case is taken under advisement, the judge, by certified mail, return receipt requested, shall advise the defendant of the right to appeal.

COMMENT: The judge's power, under paragraph (A), to deny a hearing on a specific factual issue is intended to apply when an issue of fact already has been heard fully, but has never been determined. The judge need not

rehear such an issue, but would be required to determine it under paragraph (D).

The 1997 amendment to paragraph (A)(1) requires a hearing on every Commonwealth motion to dismiss due to delay in the filing of a PCRA petition. See 42 Pa.C.S. § 9543(b), as amended in 1995.

See *also* Rule 909 for procedures in death penalty cases.

Except as provided in Rule 902(E)(2) for first counseled petitions in death penalty cases, no discovery is permitted at any stage of the proceedings, except upon leave of the court with a showing of exceptional circumstances. See 42 Pa.C.S. § 9545(d)(2).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

NOTE: Rule 1508 adopted February 1, 1989, effective July 1, 1989; amended August 11, 1997, effective immediately; renumbered Rule 908 and amended March 1, 2000, effective April 1, 2001 [.] ; **Comment revised September 18, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 11, 1997 amendments published with the Court's Order at 27 Pa.B. 4305 (August 23, 1997).

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 September 18, 2008 revision of the
Comment concerning the United States Postal Service's return
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Pa.B. (, 2008).**