

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

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.J.C.P. 191

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 191 to require that a juvenile be advised of the right to challenge a hearing officer recommendation and for a colloquy and inquiry of post-dispositional rights when a hearing officer recommends an adjudication of delinquency for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

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

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

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

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Juvenile Court Procedural Rules Committee
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Pennsylvania Judicial Center
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All communications in reference to the proposal should be received by **January 2, 2018**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Juvenile Court Procedural Rules Committee,

Kelly L. McNaney, Esq., Chair

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

REPORT

Proposed Amendment of Pa.R.J.C.P. 191

The Juvenile Court Procedural Rules Committee proposes the amendment of Rule 191 to require that a juvenile be advised of the right to challenge a hearing officer recommendation and for a colloquy and inquiry of post-dispositional rights when a hearing officer recommends an adjudication of delinquency.

The Committee observes there is no rule-based requirement that the juvenile be advised of the right to challenge a hearing officer's recommendation pursuant to Rule 192. The Common Pleas Case Management System form being generated contains the following statement:

This Master's recommendation is not final until confirmed by the Court below. A party may challenge the Master's recommendation by filing a motion with the clerk of the courts within three (3) days of receipt of the recommendation.

The Committee proposes adding this requirement to Rule 191 as new subparagraph (B)(1).

With the amendment of Rule 512(C) to require a colloquy and inquiry of post-dispositional rights, the Committee considered whether a post-dispositional rights colloquy and inquiry should be conducted when an adjudication of delinquency arises from a recommendation of a hearing officer. It was not evident from either the text of Rule 512 concerning dispositional hearings or by practice that the requirements set forth in the Rule 512 extend to proceedings before a hearing officer. The Committee found it to procedurally inconsistent for colloquy and inquiry to occur when a juvenile appears before a judge, but not when a juvenile appears before a hearing officer, especially where the judge or hearing officer could hear the same case insofar as only misdemeanors are petitioned. Accordingly, the Committee believes that a colloquy and notice of post-dispositional rights should be conducted for such matters.

The Committee proposes the colloquy and inquiry be conducted at the hearing officer level after the recommendation has been announced. Obviously, a recommendation lacks finality until acted upon by a judge. Further, the Committee realizes that it would be better timed for the juvenile's counsel to review the colloquy after the judge has acted on the recommendation. Yet, an inquiry at that juncture would either require the juvenile re-appear before the hearing officer or appear in front of the

judge. It seems inefficient to schedule an appearance before either the hearing officer or the judge solely for the purpose of conducting an inquiry regarding post-dispositional rights.

Therefore, it is proposed that the inquiry be conducted by the hearing officer after the announcement of the recommendation, assuming the recommendation includes an adjudication of delinquency. The Committee acknowledges that the colloquy and inquiry will be prospective in nature until a judge acts upon the hearing officer's recommendation.

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

RULE 191. JUVENILE COURT HEARING OFFICER'S FINDINGS AND RECOMMENDATION TO THE JUDGE

A. **Announcement of Findings and Recommendation.** At the conclusion of the hearing, the juvenile court hearing officer shall announce in open court on the record, the juvenile court hearing officer's findings and recommendation to the judge.

B. Delinquency Recommendation. If a recommendation includes an adjudication of delinquency:

1) the juvenile shall be advised of the right to challenge the recommendation pursuant to Rule 192; and

2) a colloquy and inquiry of post-dispositional rights shall be conducted pursuant to Rule 512(C).

[B]C. Submission of Papers and Contents of Recommendation. Within one business day, the juvenile court hearing officer shall submit a summary of the recommendation to the juvenile court judge. If requested, a copy of the summary shall be given to the juvenile's attorney, the juvenile, if unrepresented, the attorney for the Commonwealth, and the juvenile probation officer. The summary shall specifically state a recommendation to the judge.

[C]D. Judicial Action. The judge shall by order:

- 1) accept the recommendation;
- 2) reject the recommendation and issue an order with a different disposition;
- 3) send the recommendation back to the juvenile court hearing officer for more specific findings; or
- 4) schedule a rehearing under Rule 192 within seven days.

Comment

The juvenile court may promulgate a form for juvenile court hearing officers to use. The summary of the recommendation may take the form of a court order to be adopted by the court.

The requirements of paragraph (B) are intended to ensure the juvenile is advised of the right to challenge the juvenile court hearing officer's

recommendation and post-dispositional rights in the event the judge accepts the recommendation. If a party **[contests] challenges** the juvenile court hearing officer's decision, the copy of the summary may be used as an attachment in a motion for a rehearing in front of the judge.

The juvenile court hearing officer's decision is subject to approval of the judge. When the judge, in rejecting the juvenile court hearing officer's recommendation, modifies a factual determination, a rehearing is to be conducted. The judge may reject the juvenile court hearing officer's findings and enter a new finding or disposition without a rehearing if there is no modification of factual determinations. See *In re Perry*, 459 A.2d 789 (Pa. Super. 1983). The juvenile waives the right to complain of double jeopardy if the Commonwealth requests a rehearing before the judge. See *In re Stephens*, 419 A.2d 1244 (Pa. Super. 1980).

Nothing in this rule prohibits the court from modifying conclusions of law made by the juvenile court hearing officer.

Official Note: Rule 191 adopted April 1, 2005, effective April 1, 2006. Amended April 6, 2017, effective September 1, 2017. **Amended _____, 2017, effective _____, 2017.**

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 191 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005). Final Report explaining the amendments to Rule 191 published with the Court's Order at **47 Pa.B. 2313 (April 22, 2017).** **Final Report explaining the amendments to Rule 191 published with the Court's Order at - Pa.B. - (-).**