

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
NOTICE OF PROPOSED RULEMAKING**

**Proposed New Pa.R.Crim.P. 113.1
Proposed Amendment of Pa.Rs.Crim.P. 206, 504, 560, and 575
Proposed Revision of the *Comment* to Pa.Rs.Crim.P. 513 and 578**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania adoption of New Rule 113.1, the amendment of Rules 206, 504, 560 and 575, and the revision of the *Comments* to Rules 513 and 578 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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Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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All communications in reference to the proposal should be received by **no later than Tuesday, September 12, 2017**. 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.

August 1, 2017

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Charles A. Ehrlich
Chair*

(This is an entirely new rule.)

RULE 113.1. CONFIDENTIAL INFORMATION AND CONFIDENTIAL DOCUMENTS. CERTIFICATION.

Unless public access is otherwise constrained by applicable authority, any attorney, or any party if unrepresented, or any affiant who files a document pursuant to these rules with the issuing authority or clerk of courts' office shall comply with the requirements of Sections 7.0 and 8.0 of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy). In accordance with the Policy, the filing shall include a certification of compliance with the Policy and, as necessary, a Confidential Information Form, unless otherwise specified by rule of court, or a Confidential Document Form."

Comment: "Applicable authority," as used in this rule, includes but is not limited to statute, procedural rule, or court order. The *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (Policy) can be found on the website of the Supreme Court of Pennsylvania at _____. The Policy is applicable to all filings by the parties or an affiant in any criminal court case.

Sections 7.0(D) and 8.0(D) of the Policy provide that the certification shall be in substantially the following form:

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Filings may require further precautions, such as placing certain types of information in a "Confidential Information Form." The Confidential Information Form and the Confidential Document Form can be found at _____. In lieu of the Confidential Information Form, Section 7.0(C) of the Policy provides for a court to adopt a rule or order pursuant to Pa.R.J.A. No. 103(c) permitting the filing of a document in two versions, a "Redacted Version" and an "Unredacted Version."

In addition to the restrictions above, a filing party should be cognizant of the potential impact that inclusion of personal information may have on an individual's privacy rights and security. Therefore, inclusion of such information should be done only when necessary or required to effectuate the purpose of the filing. Consideration of the use of sealing or protective orders also should be given if inclusion of such information is necessary.

While the Public Access Policy is not applicable to orders or other documents filed by a court, judges should give consideration to the privacy interests addressed by the Policy when drafting an order that might include information considered confidential under the Policy.

NOTE: New Rule 113.1 adopted , 2017, effective , 2017.

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the provisions of the new rule published for comment at 47 Pa.B. (, 2017).

RULE 206. CONTENTS OF APPLICATION FOR SEARCH WARRANT

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

- (1) state the name and department, agency, or address of the affiant;
- (2) identify specifically the items or property to be searched for and seized;
- (3) name or describe with particularity the person or place to be searched;
- (4) identify the owner, occupant, or possessor of the place to be searched;
- (5) specify or describe the crime which has been or is being committed;
- (6) 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 identified are evidence or the fruit of a crime, or are contraband, or are 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 at the particular place described;
- (7) 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; **[and]**
- (8) 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) a certification that the application complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts regarding confidential information and documents.**

COMMENT: 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.

The 2005 amendments to paragraph (6) recognize anticipatory search warrants. To satisfy the requirements of paragraph (6) 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*, [574 Pa. 261,] 830 A.2d 554 (Pa. 2003), and *Commonwealth v. Glass*, [562 Pa. 187,] 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 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 Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts and the requirements regarding filings and documents that contain confidential information.

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 _____, 2017, effective _____, 2017.**

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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).

Report explaining the proposed amendment regarding the Court's public access policy published for comment at 47 Pa.B. (_____, 2017).

RULE 504. CONTENTS OF COMPLAINT.

Every complaint shall contain:

- (1) the name of the affiant;
- (2) the name and address of the defendant, or if unknown, a description of the defendant as nearly as may be;
- (3) a direct accusation to the best of the affiant's knowledge, or information and belief, that the defendant violated the penal laws of the Commonwealth of Pennsylvania;
- (4) the date when the offense is alleged to have been committed; provided, however:
 - (a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
 - (b) if the date or day of the week is an essential element of the offense charged, such date or day must be specifically set forth;
- (5) the place where the offense is alleged to have been committed;
- (6)
 - (a) in a court case, a summary of the facts sufficient to advise the defendant of the nature of the offense charged, but neither the evidence nor the statute allegedly violated need be cited in the complaint. However, a citation of the statute allegedly violated, by itself, shall not be sufficient for compliance with this subsection; or
 - (b) in a summary case, a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;
- (7) a statement that the acts of the defendant were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- (8) a notation if criminal laboratory services are requested in the case;
- (9) a notation that the defendant has or has not been fingerprinted;
- (10) a request for the issuance of a warrant of arrest or a summons, unless an arrest has already been effected;

(11) a verification by the affiant that the facts set forth in the complaint are true and correct to the affiant's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; **[and]**

(12) **a certification that the complaint complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts regarding confidential information and documents; and**

(13) the signature of the affiant and the date of the execution of the complaint.

COMMENT: This rule sets forth the required contents of all complaints whether the affiant is a law enforcement officer, a police officer, or a private citizen. When the affiant is a private citizen, the complaint must be submitted to an attorney for the Commonwealth for approval. See Rule 506. When the district attorney elects to proceed under Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth - Local Option), the police officer must likewise submit the complaint for approval by an attorney for the Commonwealth.

Ordinarily, whenever a misdemeanor, felony, or murder is charged, any summary offense in such a case, if known at the time, should be charged in the same complaint, and the case should proceed as a court case under Chapter 5 Part B. See *Commonwealth v. Cauffman*, [541 Pa. 299,] 662 A.2d 1050 (Pa. 1995) and *Commonwealth v. Campana*, [455 Pa. 622,] 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, [454 Pa. 233,] 314 A.2d 854 (Pa. 1974) (compulsory joinder rule). In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301-1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, [275 Pa.Super. 166], 418 A.2d 664 (Pa. Super. 1980).

Paragraph (8) requires the affiant who prepares the complaint to indicate on the complaint whether criminal laboratory services are requested in the case. This information is necessary to alert the magisterial district

judge, the district attorney, and the court that the defendant in the case may be liable for a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 that requires a defendant to be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

The requirement that the affiant who prepares the complaint indicate whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is included so that the issuing authority knows whether it is necessary to issue a fingerprint order with the summons as required by Rule 510.

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

NOTE: Original Rule 104 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and *Comment* revised August 9, 1994, effective January 1, 1995; renumbered Rule 504 and *Comment* revised March 1, 2000, effective April 1, 2001; *Comment* revised March 9, 2006, effective September 1, 2006; amended July 10, 2008, effective February 1, 2009 [.] ; **amended _____, 2017, effective _____, 2017.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the July 25, 1994 amendment published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

Report explaining the August 9, 1994 Comment revisions 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 March 9, 2006 Comment revision published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).

Final Report explaining the July 10, 2008 amendments adding new paragraph (9) requiring a notation concerning fingerprinting published with the Court's Order at 38 Pa.B. 3971 (July 26, 2008).

Report explaining the proposed amendment regarding the Court's public access policy published for comment at 47 Pa.B. (_____, 2017).

RULE 513. REQUIREMENTS FOR ISSUANCE; DISSEMINATION OF ARREST WARRANT INFORMATION.

(A) For purposes of this rule, “arrest warrant information” is defined as the criminal complaint in cases in which an arrest warrant is issued, the arrest warrant, any affidavit(s) of probable cause, and documents or information related to the case.

(B) ISSUANCE OF ARREST WARRANT

(1) In the discretion of the issuing authority, advanced communication technology may be used to submit a complaint and affidavit(s) for an arrest warrant and to issue an arrest warrant.

(2) No arrest warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

(3) Immediately prior to submitting a complaint and affidavit to an issuing authority using advanced communication technology, the affiant must personally communicate with the issuing authority by any device which, at a minimum, allows for simultaneous audio-visual communication. During the communication, the issuing authority shall verify the identity of the affiant, and orally administer an oath to the affiant.

(4) At any hearing on a motion challenging an arrest warrant, no evidence shall be admissible to establish probable cause for the arrest warrant other than the affidavits provided for in paragraph (B)(2).

(C) DELAY IN DISSEMINATION OF ARREST WARRANT INFORMATION

The affiant or the attorney for the Commonwealth may request that the availability of the arrest warrant information for inspection and dissemination be delayed. The arrest warrant affidavit shall include the facts and circumstances that are alleged to establish good cause for delay in inspection and dissemination.

(1) Upon a finding of good cause, the issuing authority shall grant the request and order that the availability of the arrest warrant information for inspection and dissemination be delayed for a period of 72 hours or until receipt of notice by the issuing authority that the warrant has been executed, whichever occurs first. The 72-hour period of delay may be preceded by an initial delay period of not more than 24 hours, when additional time is required to complete the administrative processing of the arrest warrant information before the arrest warrant is issued.

The issuing authority shall complete the administrative processing of the arrest warrant information prior to the expiration of the initial 24-hour period.

(2) Upon the issuance of the warrant, the 72-hour period of delay provided in paragraph (C)(1) begins.

(3) In those counties in which the attorney for the Commonwealth requires that complaints and arrest warrant affidavits be approved prior to filing as provided in Rule 507, only the attorney for the Commonwealth may request a delay in the inspection and dissemination of the arrest warrant information.

COMMENT: This rule was amended in 2013 to add provisions concerning the delay in inspection and dissemination of arrest warrant information. Paragraph (A) provides a definition of the term “arrest warrant information” that is used throughout the rule. Paragraph (B) retains the existing requirements for the issuance of arrest warrants. Paragraph (C) establishes the procedures for a temporary delay in the inspection and dissemination of arrest warrant information prior to the execution of the warrant.

ISSUANCE OF ARREST WARRANTS

Paragraph (B)(1) recognizes that an issuing authority either may issue an arrest warrant using advanced communication technology or order that the law enforcement officer appear in person to apply for an arrest warrant.

This rule does not preclude oral testimony before the issuing authority, but it requires that such testimony be reduced to an affidavit prior to issuance of a warrant. All affidavits in support of an application for an arrest warrant must be sworn to before the issuing authority prior to the issuance of the warrant. The language “sworn to before the issuing authority” contemplates, when advanced communication technology is used, that the affiant would not be in the physical presence of the issuing authority. See paragraph (B)(3).

All affidavits and applications filed pursuant to this rule are public records. However, in addition to restrictions placed by law and rule on the disclosure of confidential information, the filings required by this rule are subject to the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts and may require further precautions,

such as placing certain types of information in a “Confidential Information Form” or providing both a redacted and unredacted version of the filing. See Rule 113.1.

This rule carries over to the arrest warrant the requirement that the evidence presented to the issuing authority be reduced to writing and sworn to, and that only the writing is subsequently admissible to establish that there was probable cause. In these respects, the procedure is similar to that applicable to search warrants. See Rule 203. For a discussion of the requirement of probable cause for the issuance of an arrest warrant, see *Commonwealth v. Flowers*, [24 Pa.Super. 198,] 369 A.2d 362 (Pa. Super. 1976).

The affidavit requirements of this rule are not intended to apply when an arrest warrant is to be issued for noncompliance with a citation, with a summons, or with a court order.

An affiant seeking the issuance of an arrest warrant, when permitted by the issuing authority, may use advanced communication technology as defined in Rule 103.

When advanced communication technology is used, the issuing authority is required by this rule to (1) determine that the evidence contained in the affidavit(s) establishes probable cause, and (2) verify the identity of the affiant.

The “visual” requirement in paragraph (B)(3) must allow, at a minimum, the issuing authority to see the affiant at the time the oath is administered and the information received.

Under Rule 540, the defendant receives a copy of the warrant and supporting affidavit at the time of the preliminary arraignment.

DELAY IN DISSEMINATION OF ARREST WARRANT INFORMATION

Paragraph (C) was added in 2013 to address the potential dangers to law enforcement and the general public and the risk of flight when arrest warrant information is disseminated prior to the execution of the arrest warrant. The paragraph provides that the affiant or the attorney for the

Commonwealth may request, for good cause shown, the delay in the inspection and dissemination of the arrest warrant information for 72 hours or until receipt of notice by the issuing authority that the warrant has been executed, whichever occurs first. Upon a finding of good cause, the issuing authority must delay the inspection and dissemination.

The request for delay in inspection and dissemination is intended to provide a very limited delay in public access to arrest warrant information in those cases in which there is concern that pre-execution disclosure of the existence of the arrest warrant will endanger those serving the warrant or will impel the subject of the warrant to flee. This request is intended to be an expedited procedure with the request submitted to an issuing authority.

A request for the delay in dissemination of arrest warrant information made in accordance with this rule is not subject to the requirements of Rule 576.

Once the issuing authority receives notice that the arrest warrant is executed, or when 72 hours have elapsed from the issuance of the warrant and the warrant has not been executed, whichever occurs first, the information must be available for inspection or dissemination unless the information is sealed pursuant to Rule 513.1.

The provision in paragraph (C)(2) that provides up to 24 hours in the delay of dissemination and inspection prior to the issuance of the arrest warrant recognizes that, in some cases, there may be administrative processing of the arrest warrant request that results in a delay between when the request for the 72-hour period of delay permitted in paragraph (C)(1) is approved and when the warrant is issued. In no case may this additional period of delay exceed 24 hours and the issuing authority must issue the arrest warrant within the 24-hour period.

When determining whether good cause exists to delay inspection and dissemination of the arrest warrant information, the issuing authority must consider whether the presumption of openness is rebutted by other interests that

include, but are not limited to, whether revealing the information would allow or enable flight or resistance, the need to protect the safety of police officers executing the warrant, the necessity of preserving the integrity of ongoing criminal investigations, and the availability of reasonable alternative means to protect the interest threatened by disclosure.

Nothing in this rule is intended to limit the dissemination of arrest warrant information to court personnel as needed to perform their duties. Nothing in this rule is intended to limit the dissemination of arrest warrant information to or by law enforcement as needed to perform their duties.

Pursuant to paragraph (C)(3), in those counties in which the district attorney's approval is required only for certain, specified offenses or grades of offenses, the approval of the district attorney is required for a request to delay inspection and dissemination only for cases involving those specified offenses.

NOTE: Rule 119 adopted April 26, 1979, effective as to arrest warrants issued on or after July 1, 1979; *Comment* revised August 9, 1994, effective January 1, 1995; renumbered Rule 513 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended December 23, 2013, effective March 1, 2014 [.] ; **Comment revised _____, 2017, effective _____, 2017.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 Comment revisions 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 May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2582 (May 25, 2002).

Final Report explaining the December 23, 2013 amendments providing procedures for delay in dissemination and sealing of arrest warrant information published with the Court's Order at 44 Pa.B. 239 (January 11, 2014).

Report explaining the proposed Comment revision regarding the Court's public access policy published for comment at 47 Pa.B. (_____, 2017).

RULE 560. INFORMATION: FILING, CONTENTS, FUNCTION.

(A) After the defendant has been held for court following a preliminary hearing or an indictment, the attorney for the Commonwealth shall proceed by preparing an information and filing it with the court of common pleas.

(B) The information shall be signed by the attorney for the Commonwealth and shall be valid and sufficient in law if it contains:

- (1) a caption showing that the prosecution is carried on in the name of and by the authority of the Commonwealth of Pennsylvania;
- (2) the name of the defendant, or if the defendant is unknown, a description of the defendant as nearly as may be;
- (3) the date when the offense is alleged to have been committed if the precise date is known, and the day of the week if it is an essential element of the offense charged, provided that if the precise date is not known or if the offense is a continuing one, an allegation that it was committed on or about any date within the period fixed by the statute of limitations shall be sufficient;
- (4) the county where the offense is alleged to have been committed;
- (5) a plain and concise statement of the essential elements of the offense substantially the same as or cognate to the offense alleged in the complaint;
[and]
- (6) a concluding statement that "all of which is against the Act of Assembly and the peace and dignity of the Commonwealth[.]" ; **and**
- (7) a certification that the information complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts regarding confidential information and documents.**

(C) The information shall contain the official or customary citation of the statute and section thereof, or other provision of law that the defendant is alleged therein to have violated; but the omission of or error in such citation shall not affect the validity or sufficiency of the information.

(D) In all court cases tried on an information, the issues at trial shall be defined by such information.

COMMENT: The attorney for the Commonwealth may electronically prepare, sign, and transmit the information for

filing.

Before an information is filed, the attorney for the Commonwealth may withdraw one or more of the charges by filing a notice of withdrawal with the clerk of courts. See Rule 561(A). Upon the filing of an information, any charge not listed on the information will be deemed withdrawn by the attorney for the Commonwealth. See Rule 561(B). After the information is filed, court approval is required before a *nolle prosequi* may be entered on a charge listed therein. See Rule 585.

In any case in which there are summary offenses joined with the misdemeanor, felony, or murder charges that are held for court, the attorney for the Commonwealth must include the summary offenses in the information. See *Commonwealth v. Hoffman*, 406 Pa. Super. 583, 594 A.2d 772 (1991).

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

When there is an omission or error of the type referred to in paragraph (C), the information should be amended pursuant to Rule 564.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing. When the preliminary hearing is held in the defendant's absence and the case is held for court, the attorney for the Commonwealth should proceed as provided in this rule.

See Chapter 5 Part E for the procedures governing indicting grand juries. As explained in the *Comment* to Rule 556.11, when the grand jury indicts the defendant, this is the functional equivalent to holding the defendant for court following a preliminary hearing.

NOTE: Rule 225 adopted February 15, 1974, effective immediately; *Comment* revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; *Comment* revised

April 23, 2004, effective immediately; *Comment* revised August 24, 2004, effective August 1, 2005; *Comment* revised March 9, 2006, effective September 1, 2006; amended June 21, 2012, effective in 180 days [.] ; amended _____, 2017, effective _____, 2017.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 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 April 23, 2004 Comment revision published with the Court's Order at 34 Pa.B. 2543 (May 15, 2004).

Final Report explaining the August 24, 2004 Comment revision concerning failure to appear for preliminary hearing published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the March 9, 2006 Comment revision concerning joinder of summary offenses with misdemeanor, felony, or murder charges published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).

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

Report explaining the proposed amendment regarding the Court's public access policy published for comment at 47 Pa.B. (_____, 2017).

RULE 575. MOTIONS AND ANSWERS.

(A) MOTIONS

(1) All motions shall be in writing, except as permitted by the court or when made in open court during a trial or hearing.

(2) A written motion shall comply with the following requirements:

(a) The motion shall be signed by the person or attorney making the motion. The signature of an attorney shall constitute a certification that the attorney has read the motion, that to the best of the attorney's knowledge, information, and belief there is good ground to support the motion, and that it is not interposed for delay. **The motion also shall contain a certification that the motion complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts regarding confidential information and documents.***

(b) The motion shall include the court, caption, term, and number of the case in which relief is requested.

(c) The motion shall state with particularity the grounds for the motion, the facts that support each ground, and the types of relief or order requested.

(d) The motion shall be divided into consecutively numbered paragraphs, each containing only one material allegation as far as practicable.

(e) The motion shall include any requests for hearing or argument, or both.

(f) The motion shall include a certificate of service as required by Rule 576(B)(4).

(g) If the motion sets forth facts that do not already appear of record in the case, the motion shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

(3) The failure, in any motion, to state a type of relief or a ground therefor shall constitute a waiver of such relief or ground.

(4) Any motion may request such alternative relief as may be appropriate.

(5) Rules to Show Cause and Rules Returnable are abolished. Notices of hearings are to be provided pursuant to Rules 114(B) and 577(A)(2).

(B) ANSWERS

(1) Except as provided in Rule 906 (Answer to Petition for Post-Conviction Collateral Relief), an answer to a motion is not required unless the judge orders an answer in a specific case as provided in Rule 577. Failure to answer shall not constitute an admission of the facts alleged in the motion.

(2) A party may file a written answer, or, if a hearing or argument is scheduled, may respond orally at that time, even though an answer is not required.

(3) A written answer shall comply with the following requirements:

(a) The answer shall be signed by the person or attorney making the answer. The signature of an attorney shall constitute a certification that the attorney has read the answer, that to the best of the attorney's knowledge, information, and belief there is good ground to support the answer, and that it is not interposed for delay. **The answer also shall contain a certification that the answer complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts regarding confidential information and documents.**

(b) The answer shall meet the allegations of the motion and shall specify the type of relief, order, or other action sought.

(c) The answer shall include a certificate of service as required by Rule 576(B)(4).

(d) If the answer sets forth facts that do not already appear of record in the case, the answer shall be verified by the sworn affidavit of some person having knowledge of the facts or by the unsworn written statement of such a person that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

(e) The answer shall be filed not later than 10 days after service of the motion, unless otherwise ordered by the court.

(C) Format of Motions, Answers, and Briefs

All motions, answers, and briefs must conform to the following requirements:

(1) The document shall be on 8 1/2 inch by 11 inch paper.

(2) The document shall be prepared on white paper (except for dividers and similar sheets) of good quality.

(3) The first sheet shall contain a 3-inch space from the top of the paper for all court stampings, filing notices, etc.

(4) The text must be double spaced, but quotations more than two lines long may be indented and single spaced. Margins must be at least one inch on all four sides.

(5) The lettering shall be clear and legible and no smaller than point 12. The lettering shall be on only one side of a page, except that exhibits and similar supporting documents may be lettered on both sides of a page.

(6) Documents and papers shall be firmly bound.

(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 attach a proposed order to a motion or an answer, requiring an answer to every motion, or requiring a cover sheet or a backer for any motion or answer.

COMMENT: For the definition of "motion," see Rule 103.

See Rule 1005 for the procedures for pretrial applications for relief in the Philadelphia Municipal Court.

"Rules to Show Cause" and "Rules Returnable" were abolished in 2004 because the terminology is arcane, and the concept of these "rules" has become obsolete. These "rules" have been replaced by the plain language "notice of hearings" provided in Rule 577(A)(2).

Pursuant to paragraphs (A)(2)(f) and (B)(3)(c), and Rule 576(B)(4), all filings by the parties must include a certificate of service setting forth the date and manner of service, and the names, addresses, and phone numbers of the persons served.

Although paragraph (B)(1) does not require an answer to every motion, the rule permits a judge to order an answer in a specific case. See Rule 114 for the requirements for the filing and serving of orders, and for making docket entries.

Paragraph (B)(1) changes prior practice by providing that the failure to answer a motion in a criminal case never constitutes an admission. Although this prohibition applies in all cases, even those in which an answer has been ordered in a specific case or is required by the rules, the judge would have discretion to impose other appropriate sanctions if a party fails to file an answer ordered by the judge or required by the rules.

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

Paragraph (C), added in 2006, sets forth the format requirements for all motions, answers, and briefs filed in criminal cases. These new format requirements are substantially the same as the format requirements in Pennsylvania Rule of Appellate Procedure 124(a) and Pennsylvania Rule of Civil Procedure 204.1.

The format requirements in paragraph (C) are not intended to apply to pre-printed and computer-generated forms prepared by the Administrative Office of Pennsylvania Courts; to charging documents; to documents routinely used by court-related agencies; or to documents routinely prepared or utilized by the courts.

Pro se defendants may submit handwritten documents that comply with the other requirements in paragraph (C) and are clearly readable.

Paragraph (D), titled "Unified Practice," was added in 2004 to emphasize that local rules must not be inconsistent 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).

The prohibition on local rules mandating cover sheets was added because cover sheets are no longer necessary with the addition of the Rule 576(B)(1) requirement that the court administrator be served a copy of all motions and answers.

Although paragraph (D) precludes local rules that require a proposed order be included with a motion, a party should consider whether to include a proposed order. Proposed orders may aid the court by defining the relief requested in the motion or answer.

NOTE: Former Rule 9020 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 574 and amended March 1, 2000, effective April 1, 2001; rescinded March 2, 2004, effective July 1, 2004. Former Rule 9021 adopted October 21, 1983, effective January 1, 1984; renumbered Rule 575 and amended March 1, 2000, effective April 1, 2001; Rules 574 and 575 combined as Rule 575 and amended March 2, 2004, effective July 1, 2004; amended July 7, 2006, effective February 1, 2006 [.] ; amended _____, 2017, effective _____, 2017.

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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 March 2, 2004 rule changes combining Rule 574 with Rule 575 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the July 7, 2006 addition of the format requirements in paragraph (C) published with the Court's Order at 36 Pa.B. 3808 (July 22, 2006).

Report explaining the proposed amendment regarding the Court's public access policy published for comment at 47 Pa.B. (_____, 2017).

RULE 578. OMNIBUS PRETRIAL MOTION FOR RELIEF.

Unless otherwise required in the interests of justice, all pretrial requests for relief shall be included in one omnibus motion.

COMMENT: Types of relief appropriate for the omnibus pretrial motions include the following requests:

- (1) for continuance;
- (2) for severance and joinder or consolidation;
- (3) for suppression of evidence;
- (4) for psychiatric examination;
- (5) to quash or dismiss an information;
- (6) for change of venue or venire;
- (7) to disqualify a judge;
- (8) for appointment of investigator;
- (9) for pretrial conference;
- (10) challenging the array of an indicting grand jury; and
- (11) for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322.

The omnibus pretrial motion rule is not intended to limit other types of motions, oral or written, made pretrial or during trial, including those traditionally called motions *in limine*, which may affect the admissibility of evidence or the resolution of other matters. The earliest feasible submissions and rulings on such motions are encouraged.

All motions filed pursuant to this rule are public records. However, in addition to restrictions placed by law and rule on the disclosure of confidential information, the motions are subject to the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* and may require further precautions, such as placing certain types of information in a “Confidential Information Form” or providing both a redacted and unredacted version of the filing. See Rule 113.1.

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

See Rule 556.4 for challenges to the array of an indicting grand jury and for motions to dismiss an information filed after a grand jury indicts a defendant.

NOTE: Formerly Rule 304, adopted June 30, 1964, effective January 1, 1965; amended and renumbered Rule 306 June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended October 21, 1983, effective January 1, 1984; *Comment* revised October 25, 1990, effective January 1, 1991; *Comment* revised August 12, 1993, effective September 1, 1993; renumbered Rule 578 and *Comment* revised March 1, 2000, effective April 1, 2001; *Comment* revised June 21, 2012, effective in 180 days; *Comment* revised July 31, 2012, effective November 1, 2012 [.] ; *Comment* revised _____, 2017, effective _____, 2017.

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the October 25, 1990 Rule 306 *Comment* revision published at 12 Pa.B. 1696 (March 24, 1990).

Report explaining the August 12, 1993 *Comment* revision published at 22 Pa.B. 3826 (July 25, 1992).

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 June 21, 2012 revision of the *Comment* referencing indicting grand jury rules published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the July 31, 2012 *Comment* revision adding motions for transfer published with the Court's Order at 42 Pa.B. 5333 (August 18, 2012).

Report explaining the proposed *Comment* revision regarding the Court's public access policy published for comment at 47 Pa.B. (_____, 2017).

REPORT

*Proposed New Rule 113.1
Proposed Amendments to Pa.Rs.Crim.P.206, 504, 560 and 575
Proposed Revision of the Comment to Pa.Rs.Crim.P. 513 and 578*

PUBLIC ACCESS POLICY

The Supreme Court of Pennsylvania recently adopted the new *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* (hereafter “the new Policy”). The Court previously had adopted other policies governing public access to case records. These are: (1) the *Electronic Case Record Public Access Policy of the Unified Judicial System of Pennsylvania* (hereafter “the Electronic Records Policy”) that provides for access to the statewide case management systems’ web docket sheets and requests for bulk data; and (2) the *Public Access Policy of the Unified Judicial System of Pennsylvania: Official Case Records of the Magisterial District Courts* (hereafter “the MDJ Records Policy”) that provides for access to case records of the magisterial district courts maintained in a paper format. The new Policy, in essence, governs the paper case records of the common pleas and appellate courts and provides the final portion of the Court’s policy on public access to case records.

In January 2017, the Court sent a directive to all of the Procedural Rules Committees to consider correlative rule changes to implement the new Policy. In particular, the Court requested that the Committees examine rules that may require filings contain confidential information in light of the new Policy’s restrictions on access to this information. The rule changes proposed here is the product of the Criminal Procedural Rules Committee’s examination resulting from the Court’s directive. These proposed rules are being published in conjunction with proposals from the other Rules Committees

The new Policy provides that case records generally are publicly accessible but contains provisions that restrict certain types of information from being included in filings. This restricted information includes personal and financial information such as Social Security numbers, financial account numbers, driver license numbers, SID numbers, minors’ personal information, victims’ address and contact information, etc.

This restricted information is prohibited by the new Policy from being included in filings unless it is contained in a “Confidential Information Form” or provided in both a redacted and unredacted version of the filing. Under the new Policy, the burden of ensuring that the confidential information or documents are filed in the proper manner rests with the filer and the court or record custodian will not review or redact the filings. The new Policy recognizes that public access may also be restricted by a sealing or protective order or “by federal law, state law, or state court rule....”

Given the importance of the new Policy and the need for those working in the criminal justice system to comply with its provisions, the Committee concluded that it would be beneficial to have a specific rule referencing the policy. This rule would be numbered “Rule 113.1,” so that it would fall after Rule 113 (Criminal Case File and Docket Entries) since both rules deal with provisions applicable to all case records. The proposed new rule would alert filing parties to the requirements of the new Policy, in particular the provisions regarding the inclusion of confidential information.

New Rule 113.1 would apply to filings in court cases with issuing authorities as well as the clerk of courts. The Committee understands that the new Policy is intended to apply only to records in the courts of common pleas and appellate courts since the MDJ Records Policy already applies to case records in magisterial district courts. There are some differences between these policies. In particular, the new Policy is more detailed and explicit in the types of information that are prohibited from being included in case filings. It’s the Committee’s understanding that the MDJ Records Policy will be updated at some point in the future to comport with the provision in the new Policy. However, the Committee is concerned that most initial filings in criminal cases, such as criminal complaints and affidavits of probable cause, are filed in the magisterial district courts by non-lawyer police officers. The Committee believes that the provisions of the new Policy, where they differ from the existing provisions of the MDJ Records Policy, should be made applicable to filings in the magisterial district courts. **The Committee is soliciting input on this point.**

Due to the fact that the new Policy reflects a strong commitment to public access to most filings, the Committee also believes that filers should be more attuned to this accessibility and should limit the inclusion of personal information where possible.

Therefore, the *Comment* to proposed Rule 113.1 would contain an admonition that personal information should be included in a filing only where necessary and consideration given to the use of confidential information forms or sealing orders.

The Committee also noted that the restrictions on inclusion of confidential information contained in the Policy did not apply to filing by the courts but only to those made by the parties. The Committee believes that courts should comply voluntarily with similar restrictions on the inclusion of confidential information in court documents and so have included aspirational language in the *Comment* to proposed Rule 113.1 that a court should be careful about including such information in its filings.

Another area of concern to the Committee was the requirement that a certification of compliance with the Policy be included in most filings. The Committee believes that filers should be alerted to this requirement and its import. The Committee therefore is proposing to add to the rules that contain “contents” provisions for documents filed by the parties a cross-reference to the new Policy and the certification requirement in particular. These cross-references would be placed in the following rules:

- 206. Contents of Application for Search Warrant.
- 504. Contents of Complaint.
- 560. Information: Filing, Contents, Function.
- 575. Motions and Answers.

These rules contain the most clearly defined contents provisions as well as are some of the most significant filing rules.

Arrest warrant information is a bit more problematic. Unlike search warrants which have Rule 206 describing the necessary contents, Rule 513 (Requirements for Issuance; Dissemination of Arrest Warrant Information), the main rule for the issuance of arrest warrants, does not provide detailed contents for an arrest warrant application. The Committee concluded that an alert to the requirements of the new Policy should be added to this rule and is therefore proposing a detailed cross-reference in the *Comment*. A similar cross-reference also would be added to Rule 578 (Omnibus Pretrial Motion for Relief). While not a content rule, it does represent a significant number of the filing in criminal cases. The Committee concluded that a more detailed cross-reference to the policy be included here.