

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rule 512 and the new rule 518 be adopted and prescribed. The proposed modified Rule 512 sets forth that the trial court shall ensure the juvenile is advised of the right to file post-dispositional motions and the right to an appeal. Rule 518 sets forth the procedures of a post-dispositional motion. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the intent of the rules. Please note that the Committee's *Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the explanatory *Reports*.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel,

A. Christine Riscili, Esq.
Staff Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, PA 17055

no later than Monday, November 6, 2006.

September 26, 2006

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Francis Barry McCarthy, Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

RULE 512 - DISPOSITIONAL HEARING

The Committee is proposing that paragraph (C) be added to Rule 512. At the dispositional hearing, the court is to determine on the record if the juvenile has been advised of the right to file a post-dispositional motion, the right to file an appeal, the time limits for a post-dispositional motion and appeal, the right to counsel to prepare the post-dispositional motion and appeal, the time limits within which the post-dispositional motion must be decided, and that issues raised before and during adjudication shall be deemed preserved for appeal whether the juvenile elects to file a post-dispositional motion.

In some counties, the District Attorney advises the juvenile of these rights on the record. In other counties, the juvenile's attorney advises the juvenile of these rights. Under the proposed rule change, any person can advise the juvenile of these rights. It is the court's duty to ensure that someone has spoken to the juvenile about these rights.

RULE 518 - POST-DISPOSITIONAL MOTIONS

This proposed rule gives the parties the option to file a post-dispositional motion. A motion may include, but is not limited to, a motion challenging the validity of an admission pursuant to Rule 407 or a motion to withdraw the admission, a motion for reconsideration of findings, a motion for a new adjudication, a motion to modify disposition, or a motion of ineffective assistance of counsel.

See *In re Brandon Smith*, 573 A.2d 1077 (Pa. Super. Ct. 1990), for a matter of first impression when the Superior Court sitting *en banc* held that a post-dispositional motion is the appropriate means for alleging ineffective assistance of counsel.

Under paragraph (B)(1), a supplemental motion may be filed but it must be filed within the ten-day limit. Because of the urgency of moving the juvenile case through the system and the judge has only thirty days to respond to the motion pursuant to paragraph (D)(1), no supplemental motions can be filed after the original ten-day time frame. Pursuant to paragraph (A)(2), issues raised before or during the adjudicatory hearing are deemed preserved regardless of whether the party elects to file a post-dispositional motion. See *also* Rule 512 (C)(6).

Paragraph (B)(2) sets forth the time clock for when an appeal must be taken. If a post-dispositional motion is not filed, a notice of appeal must be filed within thirty days of the imposition of disposition. See paragraph (B)(3).

Under paragraph (C), the judge shall determine within ten days of the filing of a post-dispositional motion, if briefs, memoranda of law, or arguments are necessary. If they are deemed necessary, the judge is set a briefing and argument schedule.

Paragraph (D) sets forth the time limits for the decision on the post-dispositional motion. If the court fails to respond to the motion, the motion is denied by operation of law pursuant to paragraph (D)(3). The clerk of courts shall forthwith enter an order denying the motion on behalf of the judge.

RULE 512. DISPOSITIONAL HEARING

A. **Manner of hearing.** The court shall conduct the dispositional hearing in an informal but orderly manner.

- 1) **Evidence.** The court shall receive any oral or written evidence that is helpful in determining disposition, including evidence that was not admissible at the adjudicatory hearing.
- 2) **Opportunity to be heard.** Before deciding disposition, the court shall give the juvenile and the victim an opportunity to make a statement.

B. **Recording.** The dispositional hearing shall be recorded. The recording shall be transcribed:

- 1) at the request of a party;
- 2) pursuant to a court order; or
- 3) when there is an appeal.

C. Duties of the court. The court shall determine on the record that the juvenile has been advised of the following:

- 1) the right to file a post-dispositional motion;**
- 2) the right to file an appeal;**
- 3) the time limits for a post-dispositional motion and appeal;**
- 4) the right to counsel to prepare the motion and appeal;**
- 5) the time limits within which the post-dispositional motion must be decided; and**
- 6) that issues raised before and during adjudication shall be deemed preserved for appeal whether or not the juvenile elects to file a post-dispositional motion.**

COMMENT

Under paragraph (A)(2), for victim's right to be heard, see Victim's Bill of Rights, 18 P.S. § 11.201 *et seq.*

To the extent practicable, the judge or master that presided over the adjudicatory hearing for a juvenile should preside over the dispositional hearing for the same juvenile.

RULE 518. POST-DISPOSITIONAL MOTIONS

A. Optional Post-Dispositional Motion.

- 1) The parties shall have the right to make a post-dispositional motion. All requests for relief from the court shall be stated with specificity and particularity, and shall be consolidated in the post-dispositional motion.**
- 2) Issues raised before or during the adjudicatory hearing shall be deemed preserved for appeal whether or not the party elects to file a post-dispositional motion on those issues.**

B. Timing.

- 1) If a post-dispositional motion is filed, it shall be filed no later than ten days after the imposition of disposition.**
- 2) If a timely post-dispositional motion is filed, the notice of appeal shall be filed:**
 - a) within thirty days of the entry of the order deciding the motion;**
 - b) within thirty days of the entry of the order denying the motion by operation of law in cases which the judge fails to decide the motion; or**
 - c) within thirty days of the entry of the order memorializing the withdrawal in cases in which a party withdraws the motion.**
- 3) If a post-dispositional motion is not timely filed, a notice of appeal shall be filed within thirty days of the imposition of disposition.**

C. Trial Court Action.

- 1) Briefing Schedule and Argument. Within ten days of the filing of the post-dispositional motion, the court shall:**
 - a) determine if briefs, memoranda of law, or oral arguments are required;**
 - b) set a briefing schedule and dates for oral argument, if necessary.**

- 2) Failure to Set Schedule. If the court fails to act according to paragraph (C)(1), briefs and oral arguments are deemed unnecessary.
- 3) Transcript. If the grounds asserted in the post-dispositional motion do not require a transcript, neither the briefs nor arguments on the post-dispositional motion shall be delayed for transcript preparation.

D. Time Limits for Decision on Motion. The judge shall not vacate disposition pending the decision on the post-dispositional motion, but shall decide the motion as provided in this paragraph.

- 1) Except as provided in paragraph (D)(2), the judge shall decide the post-dispositional motion as soon as possible but within 30 days of the filing of the motion. If the judge fails to decide the motion within 30 days, or to grant an extension as provided in paragraph (D)(2), the motion shall be deemed denied by operation of law.
- 2) Upon motion of a party within the 30-day disposition period, for good cause shown, the judge may grant one 30-day extension for decision on the motion. If the judge fails to decide the motion within the 30-day extension period, the motion shall be deemed denied by operation of law.
- 3) When a post-dispositional motion is denied by operation of law, the clerk of courts shall forthwith enter an order on behalf of the court, and, as provided pursuant to Rule 167, forthwith shall serve a copy of the order on each attorney and the juvenile, if unrepresented, that the post-dispositional motion is deemed denied. This order is not subject to reconsideration.
- 4) If the judge denies the post-dispositional motion, the judge promptly shall issue an order and the order shall be filed and served as provided in Rule 167.
- 5) If a party withdraws a post-dispositional motion, the judge promptly shall issue an order memorializing the withdrawal, and the order shall be filed and served as provided in Rule 167.

E. Contents of order. An order denying a post-dispositional motion, whether issued by the judge pursuant to paragraph (D)(4) or entered by the clerk of courts pursuant to paragraph (D)(3), or an order issued following a party's withdrawal of the post-dispositional motion pursuant to paragraph (D)(5), shall include notice to the party of the following:

- 1) the right to appeal;
- 2) the time limits within which the appeal must be filed; and

3) the right to counsel in the preparation of the appeal.

F. After-discovered evidence. A motion for a new adjudication on the grounds of after-discovered evidence shall be filed in writing promptly after such discovery. If an appeal is pending, the judge may grant the motion only upon remand of the case.

Comment

The purpose of this rule is to promote the fair and prompt disposition of all issues relating to admissions, adjudication, and disposition by consolidating all possible motions to be submitted for trial court review, and by setting reasonable but firm time limits within which the motion must be decided. Because the post-dispositional motion is optional, a party may choose to raise any or all properly preserved issues in the trial court, in the appellate court, or both.

OPTIONAL POST- DISPOSITIONAL MOTION

See *In re Brandon Smith*, 393 Pa.Super. 39, 573 A.2d 1077 (1990) for motions on ineffective assistance of counsel.

Under paragraph (A)(2), any issue raised before or during adjudication is deemed preserved for appeal whether or not a party chooses to raise the issue in a post-dispositional motion. It follows that the failure to brief or argue an issue in the post-dispositional motion would not waive that issue on appeal as long as the issue was properly preserved, in the first instance, before or during adjudication. Nothing in this rule, however, is intended to address Pa.R.A.P. 1925(b) or the preservation of appellate issues once an appeal is filed. See *Commonwealth v. Lord*, 553 Pa. 415, 719 A.2d 306 (1998) (any issues not raised in a 1925(b) statement will be deemed waived).

Under paragraph (B)(1), if a party chooses to file a post-dispositional motion, the motion must be filed within 10 days of imposition of disposition. The filing of the written post-dispositional motion triggers the time limits for decision on the motion. See paragraph (D)(1).

TIMING

Paragraph (B) contains the timing requirements for filing the optional post-dispositional motion and taking an appeal. Under paragraph (B)(1), the post-dispositional motion must be filed within 10 days of imposition of disposition. Supplemental motions may be filed but the time requirements of paragraph (B)(1) must be followed.

When a party files a timely post-dispositional motion, the 30-day period for the juvenile's direct appeal on all matters in that case is triggered by the trial judge's decision on the post-dispositional motion, the denial of the motion by operation of law, or the withdrawal of the post-dispositional motion. The appeal period runs from the entry of the order. As to the date of entry of orders, see Pa.R.A.P. 108. No direct appeal may be taken by the party while the post-dispositional motion is pending. See paragraph (B)(2).

If no timely post-dispositional motion is filed, the party's appeal period runs from the date disposition is imposed. See paragraph (B)(3).

BRIEFS; TRANSCRIPTS; ARGUMENT

Under paragraph (C)(1), the judge should determine, on a case-by-case basis, whether briefs, memoranda of law, or arguments are required for a fair resolution of the post-dispositional

motion. If they are not needed, or if a concise summary of the relevant law and facts is sufficient, the judge should so order. Any local rules requiring briefs or oral argument are inconsistent with this rule. See Rule 121(C).

Under paragraph (C)(3), the judge, in consultation with the attorneys, should determine what, if any, portions of the notes of testimony must be transcribed so that the post-dispositional motion can be resolved. The judge should then set clear deadlines for the court reporter to insure timely disposition of the motion. Nothing in this rule precludes the judge from ordering the transcript or portions of it immediately after the conclusion of the adjudicatory hearing or the entry of an admission.

For the recording and transcribing of court proceedings generally, see Rule 127. The requirements for the record and the writing of an opinion on appeal are set forth in the Pennsylvania Rules of Appellate Procedure.

There is no requirement that oral argument be heard on every post-dispositional motion. When oral argument is heard on the post-dispositional motion, the juvenile need not be present.

DISPOSITION

Under paragraph (D), once a party makes a timely written post- dispositional motion, the judge retains jurisdiction for the duration of the disposition period. The judge may not vacate the order imposing disposition pending decision on the post-dispositional motion.

Paragraph (D)(2) permits one 30-day extension of the 30-day time limit, for good cause shown, upon motion of a party. In most cases, an extension would be requested and granted when new counsel has entered the case. Only a party may request such an extension. The judge may not, sua sponte, extend the time for decision: a congested court calendar or other judicial delay does not constitute "good cause" under this rule.

The possibility of an extension is not intended to suggest that 30 days are required for decision in most cases. The time limits for disposition of the post-dispositional motion are the outer limits. Easily resolvable issues, such as a modification of disposition or an admission challenge, should ordinarily be decided in a much shorter period of time.

If the trial judge decides the motion within the time limits of this rule, the judge may grant reconsideration on the post-dispositional motion pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701(b)(3), but the judge may not vacate the disposition pending reconsideration. The reconsideration period may not be used to extend the timing requirements set forth in paragraph (D) for decision on the post-disposition motion: the time limits imposed by paragraphs (D)(1) and (D)(2) continue to run from the date the post-dispositional motion was originally filed. The trial judge's reconsideration must therefore be resolved within the 30-day decision period of paragraph (D)(1) or the 30-day extension period of paragraph (D)(2), whichever applies. If a decision on the reconsideration is not reached within the appropriate period, the post-dispositional motion, including any issues raised for reconsideration, will be denied pursuant to paragraph (D)(3).

Under paragraph (D)(1), on the date when the court disposes of the motion, or the date when the motion is denied by operation of law, the judgment becomes final for the purposes of appeal. See Judicial Code, 42 Pa.C.S. §§ 102, 722, 742, 5105(a) and *Commonwealth v. Bolden*, 472 Pa. 602, 373 A.2d 90 (1977). See Pa.R.A.P. Rule 341.

An order entered by the clerk of courts under paragraph (D)(3) constitutes a ministerial order and, as such, is not subject to reconsideration or modification pursuant to 42 Pa.C.S. § 5505 or Pa.R.A.P. 1701.

If the motion is denied by operation of law, paragraph (D)(3) requires that the clerk of courts enters an order denying the motion on behalf of the court and immediately notifies the attorneys, or the juvenile, if unrepresented, that the motion has been denied. This notice is intended to protect the party's right to appeal. The clerk of courts also must comply with the filing, service, and docket entry requirements of Rule 167.

CONTENTS OF ORDER

Paragraph (E) protects a party's right to appeal by requiring that the judge's order denying the motion, the clerk of courts' order denying the motion by operation of law, or the order entered memorializing a party's withdrawal of a post-dispositional motion, contain written notice of the party's appeal rights. This requirement ensures adequate notice to the party, which is important given the potential time lapse between the notice provided at disposition and the resolution of the post-dispositional motion. See also *Commonwealth v. Miller*, 715 A.2d 1203 (Pa. Super. Ct. 1998), concerning the contents of the order memorializing the withdrawal of a post-sentence motion.

When a party withdraws a post-dispositional motion in open court and on the record, the judge should orally enter an order memorializing the withdrawal for the record, and give the party notice of the information required by paragraph (E). See *Commonwealth v. Miller, supra*.

MISCELLANEOUS

Under paragraph (A)(1), the grounds for the post-dispositional motion should be stated with particularity. Motions alleging insufficient evidence, for example, must specify in what way the evidence was insufficient, and motions alleging that the court's findings were against the weight of the evidence must specify why the findings were against the weight of the evidence.

Because the post-dispositional motion is optional, the failure to raise an issue with sufficient particularity in the post-dispositional motion will not constitute a waiver of the issue on appeal as long as the issue was preserved before or during adjudication. See paragraph (A)(2).

Issues properly preserved at the dispositional hearing need not, but may be raised again in a motion to modify disposition in order to preserve them for appeal. In deciding whether to move to modify disposition, counsel must carefully consider whether the record created at the dispositional hearing is adequate for appellate review of the issues, or the issues may be waived. See *Commonwealth v. Jarvis*, 444 Pa. Super. 295, 663 A.2d 790 (1995). As a general rule, the motion to modify disposition under paragraph (A)(1) gives the dispositional judge the earliest opportunity to modify the disposition. This procedure does not affect the court's inherent powers to correct an illegal disposition or obvious and patent mistakes in its orders at any time before appeal or upon remand by the appellate court. See, e.g., *Commonwealth v. Jones*, 520 Pa. 385, 554 A.2d 50 (1989) (trial court can, *sua sponte*, correct an illegal sentence even after the defendant has begun probation or placement) and *Commonwealth v. Cole*, 437 Pa. 288, 263 A.2d 339 (1970) (inherent power of the court to correct obvious and patent mistakes).

Once a disposition has been modified or reimposed pursuant to a motion to modify disposition under paragraph (A)(1), a party wishing to challenge the decision on the motion does not have to file an additional motion to modify disposition in order to preserve an issue for appeal, as long as the issue was properly preserved at the time disposition was modified or reimposed.