

# THE COURTS

## Title 201—RULES OF JUDICIAL ADMINISTRATION

[ 201 PA. CODE CHS. 2 AND 5 ]

**Amendment of Rules 204, 205 and 509 of the Rules of Judicial Administration; No. 385 Judicial Administration Doc.**

### Order

*Per Curiam*

*And Now*, this 16th day of July, 2012, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of efficient administration:

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rules 204, 205 and 509 of the Pennsylvania Rules of Judicial Administration are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

### Annex A

#### TITLE 201. RULES OF JUDICIAL ADMINISTRATION

##### CHAPTER 2. POLICY ON NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

**Rule 204. Compliance and Reporting Responsibilities.**

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(e) Any Personnel of the System, Related Staff or Court Users who do not have access to these complaint procedures may obtain a copy of these procedures from their local personnel office, the AOPC Office of Human Resources at [ 717-795-2080 ] 717-231-3309, or the UJS Website at [ [www.courts.state.pa.us](http://www.courts.state.pa.us) ] [www.pacourts.us](http://www.pacourts.us).

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**Rule 205. Filing Complaints under This Policy.**

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(b) If the appropriate procedures are not immediately available, complainants may obtain a copy of these procedures from their local personnel office, the AOPC Office of Human Resources at [ (717) 795-2080 ] 717-231-3309, or the UJS Website at [ [www.courts.state.pa.us](http://www.courts.state.pa.us) ] [www.pacourts.us](http://www.pacourts.us).

#### CHAPTER 5. ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

##### [ ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS ]

**Rule 509. Access to Financial Records.**

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(c) *Procedure for requesting access.*

(1) A request to inspect or obtain copies of records accessible pursuant to this rule and in possession or control of the Administrative Office of Pennsylvania Courts shall be made in writing to the records manager,

as designated by the Court Administrator of Pennsylvania. A request to inspect or obtain copies of records accessible pursuant to this rule and in possession or control of a court of a judicial district shall be made in writing to the records manager, as designated by the president judge. A written request may be submitted in person, by mail, by e-mail, by facsimile, or, to the extent provided, any other electronic means, on a form provided by the Administrative Office.

**Official Note:** Information related to procedures applicable to written requests to the AOPC may be found on the UJS website, located at [ [www.courts.state.pa.us](http://www.courts.state.pa.us) ] [www.pacourts.us](http://www.pacourts.us). Information related to procedures applicable to requests for courts within a judicial district should be posted on the local court's website.

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[Pa.B. Doc. No. 12-1444. Filed for public inspection August 3, 2012, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 3000 ]

**Amendment of Rule 3302 of the Rules of Civil Procedure; No. 566 Civil Procedural Rules Doc.**

### Order

*Per Curiam*

*And Now*, this 16th day of July, 2012, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of efficient administration:

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Note to Rule 3302 of the Pennsylvania Rules of Civil Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

### Annex A

#### TITLE 231. RULES OF CIVIL PROCEDURE

### PART I. GENERAL

#### CHAPTER 3000. JUDGMENTS

##### Subchapter F. ATTACHMENT OF WAGES, SALARY AND COMMISSIONS UNDER SECTION 8127(A)(3.1) OF THE JUDICIAL CODE

**Rule 3302. Commencement. Notice.**

\* \* \* \* \*

(b) Upon the filing of the praecipe, the prothonotary shall issue a Notice of Intent to Attach Wages in the form prescribed by Rule 3312(a). The prothonotary shall attach to the notice a copy of both (1) the praecipe filed with the prothonotary for issuance of the Notice of Intent to Attach Wages and (2) the most recent poverty income guidelines issued by the Federal Department of Health and Human

Services as they appear on the web site of the Civil Procedural Rules Committee.

**Official Note:** The web site of the Civil Procedural Rules Committee is part of the home page of the Administrative Office of Pennsylvania Courts at [ [www.aopc.org](http://www.aopc.org) ] [www.pacourts.us](http://www.pacourts.us).

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[Pa.B. Doc. No. 12-1445. Filed for public inspection August 3, 2012, 9:00 a.m.]

**PART II. ORPHANS' COURT RULES**  
**[ 231 PA. CODE PART II ]**

**Amendment of Rule 1.3 of the Rules of Orphans' Court Procedure; No. 571 Supreme Court Rules Doc.**

**Order**

*Per Curiam*

*And Now*, this 16th day of July, 2012, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of efficient administration:

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Comment to Rule 1.3 of the Pennsylvania Rules of Orphans' Court Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

**Annex A**

**TITLE 231. RULES OF CIVIL PROCEDURE**

**PART II. ORPHANS' COURT RULES**

**RULE 1: JUDGES—LOCAL RULES**

**Rule 1.3. Forms.**

\* \* \* \* \*

*Committee Comment—2006:* A number of forms previously recommended by the Committee for use before the Register of Wills, but not formally adopted by the Court, had appeared following Rule 10.1. Most of those forms have now been consolidated or revised and set forth in the Appendix hereto. However, certain forms have been deleted because they are properly generated by the Register of Wills rather than counsel. The forms formerly set forth in the body of Rules 5.7, 6.12[ . ], 14.5, 16.11 and 16.12, some with minor revisions, have been moved to the Appendix as well. In addition, a number of new forms for use in the Orphans' Court have been adopted by the Court. The current website for electronic access to the forms is found at [ <http://www.aopc.org/Index/Forms/IndexForms.asp> ] [www.pacourts.us/Forms/OrphansCourtForms.htm](http://www.pacourts.us/Forms/OrphansCourtForms.htm). The forms posted on the website are capable of on-line completion.

[Pa.B. Doc. No. 12-1446. Filed for public inspection August 3, 2012, 9:00 a.m.]

**Title 237—JUVENILE RULES**

**PART I. RULES**

**[ 237 PA. CODE CH. 2 ]**

**Amendment of Rule 210 of the Rules of Juvenile Court Procedure; No. 572 Supreme Court Rules Doc.**

**Order**

*Per Curiam*

*And Now*, this 16th day of July, 2012, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of efficient administration:

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Comment to Rule 210 of the Pennsylvania Rules of Juvenile Court Procedure is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

**Annex A**

**TITLE 237. JUVENILE RULES**

**PART I. RULES**

**Subpart A. DELINQUENCY MATTERS**

**CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION**

**PART B. ARREST PROCEDURES IN DELINQUENCY CASES**

**(a) Arrest Warrants**

**Rule 210. Arrest Warrants.**

\* \* \* \* \*

**Comment**

For the contents of a written allegation, see Rule 232. See [ <http://www.courts.state.pa.us> ] <http://www.pacourts.us/Forms/Default.htm> for a copy of the written allegation form. For the requirements of the issuance of an arrest warrant, see Rule 211. The arrest warrant form may be accessed by a judge in the Magisterial District Judge System (MDJS) or the Common Pleas Criminal Court Case Management System (CPCMS).

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**Official Note:** Rule 210 adopted April 1, 2005, effective October 1, 2005. Amended March 23, 2007, effective August 1, 2007. Amended December 3, 2007, effective immediately. **Amended July 16, 2012, effective immediately.**

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[Pa.B. Doc. No. 12-1447. Filed for public inspection August 3, 2012, 9:00 a.m.]

## PART I. RULES

## [ 237 PA. CODE CHS. 2—5 AND 8 ]

## Order Amending Rules 242, 394, 406, 512 and 800 of the Rules of Juvenile Court Procedure; No. 573 Supreme Court Rules Doc.

## Order

*Per Curiam*

*And Now*, this 18th day of July, 2012, upon the recommendation of the Juvenile Court Procedural Rules Committee; the proposal having been published for public comment before adoption at 40 Pa.B. 7034 (December 11, 2010), in the *Atlantic Reporter* (Third Series Advance Sheets, Vol. 7, No. 2, December 24, 2010), and on the Supreme Court's web-page, and an Explanatory Report to be published with this *Order*:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the modifications to Rules 242, 394, 406, 512, and 800 of the Rules of Juvenile Court Procedure are approved in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective October 1, 2012.

Mr. Justice Saylor files a dissenting statement, which Mr. Justice Baer joins.

## Annex A

## TITLE 237. JUVENILE RULES

## PART I. RULES

## Subpart A. DELINQUENCY MATTERS

## CHAPTER 2. COMMENCEMENT OF PROCEEDINGS, ARREST PROCEDURES, WRITTEN ALLEGATION, AND PRE-ADJUDICATORY DETENTION

## PART D. PRE-ADJUDICATORY DETENTION

## Rule 242. Detention Hearing.

A. *Informing juvenile of rights.* Upon commencement of the hearing, the court shall:

1) provide a copy of the written allegation to the juvenile and the juvenile's guardian, if present;

2) inform the juvenile of the right to counsel and to **retain private counsel or to be assigned counsel**; and

3) inform the juvenile of the right to remain silent with respect to any allegation of delinquency.

B. *Manner of hearing.*1) *Conduct.*

a) The hearing shall be conducted in an informal but orderly manner.

b) **The attorney for the Commonwealth shall:**

i) **attend the hearing; and**

ii) **present such evidence as the Commonwealth deems necessary to support the written allegation and the need for detention.**

2) *Recording.* If requested by the juvenile or the Commonwealth, or if ordered by the court, the hearing shall be recorded by appropriate means. If not so recorded, full minutes of the hearing shall be kept.

3) *Testimony and evidence.*

a) All evidence helpful in determining the questions presented, including oral or written reports, may be received by the court and relied upon to the extent of its probative value even though not competent in the hearing on the petition.

b) The juvenile's attorney, the juvenile, if [ **unrepresented** ] the juvenile has waived counsel pursuant to Rule 152, and the attorney for the Commonwealth shall be afforded an opportunity to examine and controvert written reports so received.

4) [ **Presence at hearing** ] *Juvenile's rights.* The juvenile shall be present at the detention hearing and the juvenile's attorney or the juvenile, if [ **unrepresented** ] the juvenile has waived counsel pursuant to Rule 152, may:

\* \* \* \* \*

**Official Note:** Rule 242 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. **Amended July 18, 2012, effective October 1, 2012.**

*Committee Explanatory Reports:*

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**Final Report explaining the amendments to Rule 242 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).**

## CHAPTER 3. PRE-ADJUDICATORY PROCEDURES

## PART G. TRANSFER FOR CRIMINAL PROSECUTION

## Rule 394. Transfer Hearing.

\* \* \* \* \*

C. *Burden of proof.* Unless the provisions of 42 Pa.C.S. § 6355 (g)(1) and (2) apply, the attorney for the Commonwealth shall have the burden of establishing:

1) a *prima facie* case that the juvenile committed a felony delinquent act; and

2) by a preponderance of the evidence that the public interest is served by transfer of the case to criminal proceedings.

D. *Findings.*

1) *Transfer:* At the hearing, the court shall transfer the case to the division or a judge assigned to conduct criminal proceedings if the court finds:

[ 1 ] a) the juvenile is fourteen years old or older at the time of the alleged delinquent act;

[ 2 ] b) notice has been given pursuant to Rule 390;

[ 3 ] there is a *prima facie* showing of evidence that the juvenile committed a felony delinquent act;

4) there are reasonable grounds to believe that transfer of the case for criminal prosecution will serve the public interest by considering all the relevant factors; and

5) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill,

Then the court shall transfer the case to the division or a judge of the court assigned to conduct

criminal proceedings for prosecution. Otherwise, the court shall schedule an adjudicatory hearing. ]

c) the Commonwealth has met its burden of proof pursuant to paragraph (B); and

d) there are reasonable grounds to believe that the juvenile is not committable to an institution for the mentally retarded or mentally ill.

2) No Transfer. If the required findings of paragraph (C)(1) have not been met, the court shall schedule an adjudicatory hearing pursuant to Rule 404.

Comment

The transfer hearing ordinarily has two phases. The first phase of the transfer hearing is the "prima facie phase." The court [ should ] is to determine [ if there is ] whether the Commonwealth has established a prima facie showing of evidence that the juvenile committed a delinquent act and if an adult committed the offense, it would be considered a felony. If a prima facie showing of evidence is found, the court proceeds to the second phase, known as the "public interest phase." During the "public interest phase," the court [ should ] is to determine [ if the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile and ] what is in the public's interest.

In determining public interest, the court [ should balance ] is to consider the following factors: 1) the impact of the offense on the victim or victims; 2) the impact of the offense on the community; 3) the threat posed by the juvenile to the safety of the public or any individual; 4) the nature and circumstances of the offense allegedly committed by the juvenile; 5) the degree of the juvenile's culpability; 6) the adequacy and duration of dispositional alternatives available under the Juvenile Act and in the adult criminal justice system; and 7) whether the juvenile is amenable to treatment, supervision, or rehabilitation as a juvenile by considering the following factors: a) age; b) mental capacity; c) maturity; d) the degree of criminal sophistication exhibited by the juvenile; e) previous records, if any; f) the nature and extent of any prior delinquent history, including the success or failure of any previous attempt by the juvenile court to rehabilitate the juvenile; g) whether the juvenile can be rehabilitated prior to the expiration of the juvenile court jurisdiction; h) probation or institutional reports, if any; and 8) any other relevant factors.

The burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court [ and that the juvenile is not amenable to treatment, supervision, or rehabilitation in the juvenile system ] rests with the Commonwealth unless: 1) a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) was used and the juvenile was fourteen years of age at the time of the offense; or the juvenile was fifteen years of age or older at the time of the offense and was previously adjudicated delinquent of a crime that would be considered a felony if committed by an adult; and 2) there is a prima facie case that the juvenile committed a delinquent act that, if committed by an adult, would be classified as rape, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), robbery of motor vehicle, aggravated indecent assault, kidnapping,

voluntary manslaughter, an attempt, conspiracy, or solicitation to commit any of these crimes or an attempt to commit murder as specified in paragraph (2)(ii) of the definition of "delinquent act" in 42 Pa.C.S. § 6302. If the preceding criteria are met, then the burden of proof rests with the juvenile. See 42 Pa.C.S. § 6355 and Rule 800 for suspension of a portion of § 6355(g).

For detention time requirements for juveniles scheduled for a transfer hearing, see Rule 391.

Official Note: Rule 394 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 394 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

CHAPTER 4. ADJUDICATORY HEARING

Rule 406. Adjudicatory Hearing.

A. Manner of hearing.

1) The court shall conduct the adjudicatory hearing without a jury, in an informal but orderly manner.

2) The attorney for the Commonwealth shall:

a) attend the hearing; and

b) have the burden of establishing beyond a reasonable doubt that the juvenile committed the delinquent act(s).

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Official Note: Rule 406 adopted April 1, 2005, effective October 1, 2005. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. Amended July 18, 2012, effective October 1, 2012.

Committee Explanatory Reports:

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Final Report explaining the amendments to Rule 406 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).

CHAPTER 5. DISPOSITIONAL HEARING

PART B. DISPOSITIONAL HEARING AND AIDS

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 from both parties and the juvenile probation officer 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 be heard.

3) Advanced communication technology. A court may utilize advanced communication technology pursuant to Rule 129 for the appearance of the juvenile or the witness only if the parties consent.

4) Prosecutor's presence. The attorney for the Commonwealth shall attend the hearing.

\* \* \* \* \*

Comment

\* \* \* \* \*

Under paragraph (A)(2), prior to deciding disposition, the court is to give the victim an opportunity to submit an oral and/or written victim-impact statement if the victim so chooses.

**Before deciding disposition, the court may hear oral argument from the parties' attorneys.**

\* \* \* \* \*

**Official Note:** Rule 512 adopted April 1, 2005, effective October 1, 2005. Amended May 17, 2007, effective August 20, 2007. Amended April 21, 2011, effective July 1, 2011. Amended April 29, 2011, effective July 1, 2011. Amended May 16, 2011, effective July 1, 2011. Amended May 26, 2011, effective July 1, 2011. **Amended July 18, 2012, effective October 1, 2012.**

*Committee Explanatory Reports:*

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**Final Report explaining the amendments to Rule 512 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).**

CHAPTER 8. SUSPENSIONS

**Rule 800. Suspensions of Acts of Assembly.**

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

\* \* \* \* \*

10) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6304(a)(2), which provides that **juvenile** probation officers may receive and examine complaints for the purposes of commencing proceedings, is suspended only insofar as the Act is inconsistent with Rules 231 and 330, which provide that the District Attorney may file a certification that requires an attorney for the Commonwealth to initially receive and approve written allegations and petitions.

11) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6331, which provides for the filing of a petition with the court within twenty four hours or the next business day of the admission of the juvenile to detention or shelter care, is suspended only insofar as the Act is inconsistent with the filing of a petition within twenty-four hours or the next business day from the detention hearing if the juvenile is detained under Rule 242.

**12) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6336(b), which provides that the district attorney, upon request of the court, shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth, is suspended only insofar as the Act is inconsistent with Rules 242(B)(1)(b), 406(A)(2)(b), and 512(A), which provide the district attorney shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the Commonwealth.**

13) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged* delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.

[ 13 ] 14) Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P. L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.

[ 14 ] 15) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.

[ 15 ] 16) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile's detention unless the exceptions of (a)(1) & (2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.

**17) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6355(g), which provides the burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court and that a child is not amenable to treatment, supervision, or rehabilitation as a juvenile shall rest with the Commonwealth unless the exceptions of paragraphs (g)(1) and (2) apply, is suspended only insofar as the Act is inconsistent with Rule 394, which provides only the burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court shall rest with the Commonwealth unless the exceptions of paragraph (g)(1) and (2) apply.**

[ 16 ] 18) The Act of July 9, 1976, P. L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months when a juvenile is removed from the home, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months.

Comment

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. See also Rule 102.

The partial suspension of 42 Pa.C.S. § 6355(g) in paragraph (17) is due to the redundancy of proving the juvenile is not amenable to treatment, supervision, and rehabilitation, which is a factor already considered by the court in 42 Pa.C.S. § 6355(a)(4)(iii)(G). Pursuant to 42 Pa.C.S. § 6355(a)(4)(iii)(G), the court must find that there are reasonable grounds to believe that the public interest is served by the transfer of the case for criminal prosecution while considering whether the juvenile is amenable to treatment, supervision, and rehabilitation among other enumerated factors. Because the court considers amenability to treatment, supervision, and rehabilitation as one of many enumerated factors, the court does not need to hear additional evidence later in the proceed-

**ings. As provided in 42 Pa.C.S. § 6355(a)(4)(iii)(G), the standard of proof is reasonable grounds.**

**Official Note:** Rule 800 adopted April 1, 2005, effective October 1, 2005. Amended December 30, 2005, effective immediately. Amended March 23, 2007, effective August 1, 2007. Amended February 26, 2008, effective June 1, 2008. Amended March 19, 2009, effective June 1, 2009. Amended February 12, 2010, effective immediately. Amended April 21, 2011, effective July 1, 2011. **Amended July 18, 2012, effective October 1, 2012.**

*Committee Explanatory Reports:*

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**Final Report explaining the amendments to Rule 800 published with the Court's Order at 42 Pa.B. 4909 (August 4, 2012).**

### EXPLANATORY REPORT July 2012

The Supreme Court of Pennsylvania has adopted the modifications to Rules 242, 394, 406, 512, and 800 with this Recommendation. These changes are effective October 1, 2012.

#### *Background*

The Interbranch Commission on Juvenile Justice (ICJJ) Report specifically addresses the special ethical obligations of prosecutors, including their role and function as “ministers of justice.” It is the prosecutors’ function to assure the safety of the community and protect the right of victims, while applying a balanced approach to restorative justice, rather than punishment.<sup>1</sup>

Looking at the ICJJ Recommendations, the Committee believes that the Rules of Juvenile Court Procedure need to clarify that the *prosecutor* must prosecute. It has been brought to the Committee’s attention that juvenile probation officers in some judicial districts are performing this function. Therefore, the following changes to the rules address the prosecutors’ function, burden of proof, and presence at juvenile hearings.

These changes highlight the need to discontinue the practice of allowing the juvenile probation officer to prosecute the juvenile. Pursuant to the Juvenile Act, the duties of the juvenile probation officer do not include prosecuting the case. *See* 42 Pa.C.S. § 6304.

#### *Rule 242. Detention Hearing*

The changes to this rule provide that the attorney for the Commonwealth must present the evidence. The Juvenile Act provides that the attorney for the Commonwealth, at the request of the court, shall present the evidence in support of the petition. *See* 42 Pa.C.S. § 6336(b). Rule 800 suspends the Juvenile Act only by removing the “at the request of the court” language thereby making the prosecutor’s presence mandatory.

It is the role of the prosecutor to put forth the evidence on behalf of the Commonwealth. This duty cannot be performed by a juvenile probation officer, master, judge, or any other person.

#### *Rule 394. Transfer Hearing*

This rule clarifies the allocation of the burden of proof.

Unless the exceptions of 42 Pa.C.S. § 6355 (g)(1) and (2) apply, the attorney for the Commonwealth has the burden of establishing that: 1) there is a *prima facie* showing that the juvenile committed a felony delinquent

act; and 2) there is a preponderance of evidence showing that public interest is served by the transfer.

If 42 Pa.C.S. § 6355 (g)(1) and (2) apply, the juvenile has the burden of establishing by a preponderance of evidence that public interest is served by adjudicating the juvenile in juvenile court.

This rule eliminates the requirement “and that a child is not amenable to treatment, supervision, or rehabilitation as a juvenile” from the Juvenile Act in 42 Pa.C.S. § 6355(g) because it is already included as a factor in determining whether public interest is served by the transfer of the juvenile case to criminal proceedings in 42 Pa.C.S. § 6355(a)(4)(iii)(G). *See* Rule 800 and its Comment.

#### *Rule 406. Adjudicatory Hearing*

This rule requires the attorney for the Commonwealth to present the evidence in support of the petition and to establish beyond a reasonable doubt that the juvenile committed the delinquent act(s). *See* Rule 800 for suspension of the Juvenile Act by eliminating “at the request of the court” from 42 Pa.C.S. § 6336(b). The presence of the prosecutor at this hearing is mandatory.

#### *Rule 512. Dispositional Hearing*

This rule provides that the juvenile, the attorney for the Commonwealth, and the juvenile probation officer may submit evidence for the court’s consideration in determining the disposition of the juvenile. The victim’s testimony may be presented through the attorney for the Commonwealth. The attorney for the Commonwealth may decide not to present evidence as to the disposition of the juvenile; however, the prosecutor must be present at this hearing.

#### *Rule 800. Suspensions of Acts of Assembly*

Section 6336(b) of the Juvenile Act requires that the attorney for the Commonwealth present evidence in support of the petition at the request of the court. The attorney for the Commonwealth must attend every proceeding and present the evidence. The “at the request of the court” language is removed by this suspension.

As stated *supra*, it is not the role of any other person to perform this prosecutorial function, which has been the practice in some counties. Juvenile probation officers, masters, judges, and other persons should not perform any functions of the prosecutor. It is the attorney for the Commonwealth exclusively who represents the interests of this Commonwealth.

Additionally, § 6355(g) of the Juvenile Act is suspended in part by eliminating the need to prove twice whether the juvenile is amenable to treatment, supervision, and rehabilitation in the juvenile system. This is a duplicative requirement because amenability to treatment is required to be proven under the public interest prong of § 6355(a)(4)(iii)(G).

### Dissenting Statement

#### Mr. Justice Saylor

I respectfully dissent to the partial suspension of Section 6355(g) of the Judicial Code, 42 Pa.C.S. § 6355(g), governing transfer of delinquency to criminal proceedings. In relevant part, this statute merely allocates the burden of proof to the Commonwealth to establish that: 1) the public interest is served by the transfer of a case to adult criminal court; and 2) the child is not amenable to treatment, supervision, or rehabilitation as a juvenile. *Id.*

<sup>1</sup> Interbranch Commission on Juvenile Justice, Report, May 2010, at page 47.

In its Explanatory Report, the Juvenile Procedural Rules Committee indicates that the specific allocation of the burden of proof pertaining to non-amenable is being “eliminated” from the statute, since non-amenable is subsumed within the broader assessment of public interest. While this may be true, the Legislature has placed particular emphasis on the non-amenable factor by lifting it from a list of seven considerations relevant to the overall public interest determination, *see id.* § 6355(a)(4), and attaching a specific burden of proof, *see id.* § 6355(g). Given the profound substantive consequences associated with a transfer from juvenile to adult criminal court, I fail to see the justification for adjusting such allocation under the rubric of procedural rule-making.

Although I have had reservations, I have abided the incorporation of substantive aspects of the statutory transfer scheme (and various other policy matters) into our Juvenile Procedural Rules. I did so, because our Juvenile Procedural Rules Committee recently undertook the ambitious project of drafting a set of comprehensive rules; I believed the incorporation of statutory provisions into such rules provided salutary guidance to practitioners; and I found the substantive inroads to be generally consistent with governing statutory provisions. I also supported some modest suspensions in areas I believed to be procedural or quasi-procedural in nature. *See* Pa.R.J.C.P. 800.

However, I do not support adjustments to burdens of proof assigned by the policymaking branch in matters steeped in substantive consequences. To the degree that any clarification of such affairs is necessary, I believe the appropriate vehicle is through statutory construction under the decisional law.

Mr. Justice Baer joins this Dissenting Statement.

[Pa.B. Doc. No. 12-1448. Filed for public inspection August 3, 2012, 9:00 a.m.]

## Title 246—MINOR COURT CIVIL RULES

### PART I. GENERAL

[ 246 PA. CODE CH. 1000 ]

**Amendment of Rules 1008 and 1013 of the Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges; No. 291 Magisterial Rules Doc.**

#### Order

*Per Curiam*

*And Now*, this 16th day of July, 2012, the proposal having been submitted without publication pursuant to Pa.R.J.A. No. 103(a)(3) in the interests of efficient administration:

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Notes to Rules 1008 and 1013 of the Pennsylvania Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges are amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective immediately.

## Annex A TITLE 246. MINOR COURT CIVIL RULES PART I. GENERAL CHAPTER 1000. APPEALS APPEAL

### Rule 1008. Appeal as Supersedeas.

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#### C. Indigent Tenants

\* \* \* \* \*

(4) The prothonotary’s office of the Court of Common Pleas in which the appeal is taken shall provide residential tenants who have suffered a judgment for possession with a “Supplemental Instructions for Obtaining a Stay of Eviction” as it appears on the website of the Minor Court Rules Committee.

**Official Note:** The website of the Minor Court Rules Committee is part of the home page of the Administrative Office of Pennsylvania Courts at [ [www.aopc.org](http://www.aopc.org) ] [www.pacourts.us](http://www.pacourts.us). The Supplemental Instructions include both instructions and income limits.

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### CERTIORARI

### Rule 1013. Writ of Certiorari as Supersedeas.

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#### C. Indigent Tenants

\* \* \* \* \*

(4) The prothonotary’s office of the Court of Common Pleas in which the praecipe is filed shall provide residential tenants who have suffered a judgment for possession with a “Supplemental Instructions for Obtaining a Stay of Eviction” as it appears on the website of the Minor Court Rules Committee.

**Official Note:** The website of the Minor Court Rules Committee is part of the home page of the Administrative Office of Pennsylvania Courts at [ [www.aopc.org](http://www.aopc.org) ] [www.pacourts.us](http://www.pacourts.us). The Supplemental Instructions include both instructions and income limits.

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[Pa.B. Doc. No. 12-1449. Filed for public inspection August 3, 2012, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### LEHIGH COUNTY

**Digital Forensics Laboratory Fees; No. AD 5-2012**

#### Administrative Order

*And Now*, this 2nd day of July, 2012,

*It Is Hereby Ordered:*

Effective 30 days after publication in the *Pennsylvania Bulletin*, pursuant to 16 P.S. § 1403, any person who pleads guilty or nolo contendere, who is convicted, or who is placed in any diversionary program (i.e. A.R.D.) for any criminal offense shall, in addition to any fines, penalties

or costs, in every case where the Lehigh County Digital Forensics Laboratory services were utilized to prosecute the offense, be sentenced to pay a laboratory user fee as listed below. The funds so collected shall be paid into the general fund of the County of Lehigh, but shall be separately identified in the County's records so that the amounts collected during any given period can be readily determined.

1) a fee of \$85.50 for each logical forensic examination of a mobile device (an examination which does not analyze a memory card separately from a mobile communication device);

2) A fee of \$193.50 for each physical forensic examination of a mobile device (an examination which analyzes both the memory card and the mobile communication device);

3) A fee of \$475 for each video field capture, edit; and enhancement;

4) A fee of \$1,392.25 for each forensic computer examination.

*It Is Further Ordered* that one (1) certified copy of this Order shall be filed by the Court Administrator of Lehigh County with the Administrative Office of the Pennsylvania Courts; that two (2) certified copies and a CD-ROM copy that complies with the requirement of Pa. Code § 13.11(b) shall be filed with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; that one (1) certified copy shall be filed with the Criminal Procedure Rules Committee, which Committee has certified to this court that this Administrative Order is not inconsistent with any general rule of the Supreme Court. Finally, it is ordered that the Court Administration of Lehigh County publish a copy of this Order on the Unified Judicial System's web site at: <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

By the Court

CAROL K. MCGINLEY,  
*President Judge*

[Pa.B. Doc. No. 12-1450. Filed for public inspection August 3, 2012, 9:00 a.m.]

#### WASHINGTON COUNTY

#### Local Rules L-407 Juvenile Court Admissions; L-610 Juvenile Court—Post-Dispositional and Commitment Review; No. 2012-1

#### Order

*And Now*, this 16th day of July, 2012; *It Is Hereby Ordered* that the previously stated Washington County Local Juvenile Rules be adopted/amended as follows.

These rules will become effective thirty days after publication in the *Pennsylvania Bulletin*.

By the Court

DEBBIE O'DELL SENECA,  
*President Judge*

#### RULES OF JUVENILE COURT PROCEDURE— DELINQUENCY

#### CHAPTER 4. ADJUDICATORY HEARING

#### L-407. Admissions.

*C. Written Admission Colloquy.* Every defense attorney representing a juvenile alleged to have perpetrated a delinquent act or acts where the juvenile is entering admissions shall ensure that the written colloquy required by amended Pa.R.J.C.P. 407 shall be completed prior to the date and time set for the adjudication hearing in the matter. No admission/s shall be accepted without the written colloquy completed and submitted to the Court. All attorneys representing the Commonwealth and/or the juvenile shall attend the scheduled Pre-Trial Conferences at which time the written colloquy may be completed in preparation for the hearings before the Juvenile Master and/or the Juvenile Judge.

#### CHAPTER 6. POST-DISPOSITIONAL PROCEDURES

#### PART B. MODIFICATIONS, REVIEWS, AND APPEALS

#### L-610 Dispositional and Commitment Review.

*A. Dispositional Review Hearing.* The Court and/or Master shall conduct Dispositional Review Hearings at least every six (6) months on every juvenile case in the system where the juvenile has been adjudicated delinquent. The defense attorney who represents the juvenile adjudicated delinquent shall appear for and be prepared to participate in Dispositional Review Conferences as scheduled by the Juvenile Probation Office. Further, the defense attorney and the juvenile adjudicated delinquent shall appear for and be prepared to participate in Dispositional Review Hearings.

[Pa.B. Doc. No. 12-1451. Filed for public inspection August 3, 2012, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

#### Notice of Disbarment

Notice is hereby given that Joseph N. DeFilippo having resigned from the practice of law in the State of Connecticut by Acceptance of Resignation and Waiver of the Connecticut Superior Court, Judicial District of Ansonia/Milford, effective September 8, 2011, the Supreme Court of Pennsylvania issued an Order on July 18, 2012, ordering the comparable discipline of disbarment in this Commonwealth, effective August 17, 2012. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary*  
*The Disciplinary Board of the  
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 12-1452. Filed for public inspection August 3, 2012, 9:00 a.m.]



**Notice of Hearing**

A Petition for Reinstatement to the active practice of law has been filed by Kirk Douglas Rhodes and will be the subject of a hearing on September 11, 2012, before a hearing committee designated by the Board. Anyone wishing to be heard in reference to this matter should contact the District I Office of the Disciplinary Board of the Supreme Court of Pennsylvania, 16th Floor, Seven Penn Center, 1635 Market St., Philadelphia, PA 19103 Phone 215-560-6296, on or before August 31, 2012. In accordance with Board Rule § 89.274(b), since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 12-1453. Filed for public inspection August 3, 2012, 9:00 a.m.]

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**Notice of Suspension**

Notice is hereby given that David Eldon Fretz having been suspended from the practice of law in the State of New York for a period of 3 years by Order of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, entered August 2, 2011, the Supreme Court of Pennsylvania issued an Order dated July 18, 2012 suspending David Eldon Fretz from the practice of law in this Commonwealth for a period of 3 years. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 12-1454. Filed for public inspection August 3, 2012, 9:00 a.m.]

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