

The Greene Reports

Official Legal Publication for Greene County, Pennsylvania
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Greene County Courthouse, Waynesburg, PA 15370

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August 25, 2022



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Serving the Legal Community of Greene County
Since October 1982

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COURT OF COMMON PLEAS
Honorable Louis Dayich, President Judge
Honorable Jeffry N. Grimes, Judge

MOTIONS

Criminal & Civil & O.C.:
August 29 and August 31, 2022

CRIMINAL

Arraignments: August 29, 2022
ARDs: September 12, 2022
ARD Revocations: September 12, 2022
Parole Violations: August 29, 2022
Plea Court: September 13-15, 2022
License Suspension Appeals: October 25, 2022
Argument Court: TBD

ORPHANS

Accounts Nisi: September 6, 2022
Accounts Absolute: September 16, 2022

SUPREME COURT
SUPERIOR COURT
COMMONWEALTH COURT

Convenes in Pgh.: October 24-28, 2022
Convenes in Pgh.: September 19-23, 2022
Convenes in Pgh.: October 11-14, 2022

THE GREENE REPORTS

Owned and published by the GREENE COUNTY BAR ASSOCIATION
Editor: Kayla M. Sammons
E-mail address: editor.greenerreports@yahoo.com

EDITORIAL POLICY

All articles published in The Greene Reports are intended to inform, educate or amuse. Any article deemed by the editorial staff to be reasonably interpreted as offensive, demeaning or insulting to any individual or group will not be published.

The views expressed in the articles represent the views of the author and are not necessarily the views of The Greene Reports or the Greene County Bar Association.

The Greene Reports welcomes letters to the Editor both for publication and otherwise. All letters should be addressed to: Editor, The Greene Reports, Greene County Courthouse, 10 East High Street, Waynesburg, PA 15370. Letters must include signature, address and telephone number. Anonymous correspondence will not be published. All letters for publication are subject to editing and, upon submission, become the property of The Greene Reports.

THE GREENE COUNTY BAR ASSOCIATION

Christopher M. Simms, President
Timothy M. Ross, Vice-President
Allen J. Koslovsky, Secretary
Blake Birchmeier, Treasurer
Jessica L. Phillips, Ex-Officio

ARGUMENTS

Argument Court: September 21, 2022

CIVIL

Domestic Relations Contempts: September 26, 2022
Domestic Relations Appeals: September 26, 2022

JUVENILE

Plea Day: September 15, 2022

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DEED TRANSFERS

The following property transfers have been recorded in the Greene County Recorder of Deeds office.

CUMBERLAND TOWNSHIP

TW Plus LLC to Nathan James Lash, et ux., Lots, John Baily Plan, \$115,000.00 (8-17-22)
Drew M. Deardorff to Steven Husted, et ux., Tract, \$195,000.00 (8-17-22)
Joseph Cybak, Jr Estate, et al., to Melissa L. Burnett, Lot 178, Nemaocolin, \$3,000.00 (8-18-22)
Michael Moser, et ux., to Kelly McGurgan, Lots, Colonial Heights Plan, \$168,888.00 (8-22-22)

GILMORE TOWNSHIP

CNX Land LLC to Curtis B. Huffman, 1.489 Acres, \$5,000.00 (8-22-22)

JACKSON TOWNSHIP

Ronald Lapping, et ux., to Three Rivers Royalty II LLC, 55.375 Acres, O&G, \$17,443.13 (8-17-22)

JEFFERSON TOWNSHIP

Tracey A. Ronan to William J. Lyttle, et ux., 12.53 Acres, \$250,000.00 (8-18-22)

SPRINGHILL TOWNSHIP

Paul Cole Jr., et al., to Three Rivers Royalty III LLC, 2 Tracts, O&G, \$12,333.82 (8-17-22)

WAYNESBURG BOROUGH

Scott A. Rhodes, et ux., to Triple H Realty Group LLC, Tract, \$51,500.00 (8-18-22)

WHITELEY TOWNSHIP

Peggy Sue Blake, et al., to Paul A. Hannah, et ux., .8798 Acres, \$54,421.50 (8-22-22)
Candy Ackley A/K/A Candy Ackley, et ux., to Paul A. Hannah, et ux., 1.9136 Acres, \$70,912.20 (8-22-22)

ESTATE NOTICES

NOTICE is hereby given of the grant of letters by the Register of Wills to the Estates of the following named decedents. All persons having claims are requested to make known the same and all persons indebted to the decedent are requested to make payment to the personal representative or his attorney without delay.

FIRST PUBLICATION

DURBIN, HARRY KENNETH A/K/A HARRY K. DURBIN
Late of Center Township, Greene County, Pennsylvania
Executrix: Candace Lee Reese, 147 Turkey Hollow Road, Waynesburg, PA 15370
Attorney: Kirk A. King, Esquire, 77 South Washington Steet, Waynesburg, PA 15370

MILLER, SHIRLEY J.
Late of Jefferson Borough, Greene County, Pennsylvania
Executor: Daniel Scott Brummage, 2596 Daybrook Road, Fairview, WV 26570
Attorney: None

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REBHOLZ, CLAIRE JUDITH

Late of Gilmore Township, Greene County, Pennsylvania
Executor: Norbert V. Rebholz, 1407 Toms Run Road, Gilmore Township, PA 15341
Attorney: Benjamin E. Cohen, Esquire, Two Chatman Center, Suite 985, Pittsburgh, PA 15219

STOCKDALE, RICHARD PAUL

Late of Franklin Township, Greene County, Pennsylvania
Executrix: Victoria Ann Margaret Stockdale, 3200 Walnut Street SW, Apt. #B, McChord AFB, WA 98439
Attorney: Robert Berryman, Esquire, 2917 University Ave., Morgantown, WV 26505

WISE, GARY ARTHUR

Late of New Freeport, Greene County, Pennsylvania
Executor: Larry Austin Wise, C/O Timothy M. Ross, Esquire, Phillips & Ross LLC, 82 West High Street, Waynesburg, PA 15370
Attorney: Timothy M. Ross, Esquire, Phillips & Ross LLC, 82 West High Street, Waynesburg, PA 15370

SECOND PUBLICATION

CONKLIN, CAROL ANN

Late of Cumberland Township, Greene County, Pennsylvania
Executrix: Rita McMillen, 233 Old Ferry Road, Rices Landing, PA 15357
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

DIEHL, LINDA LEE A/K/A LINDA L. DIEHL

Late of Perry Township, Greene County, Pennsylvania
Co-Administrator: Shirley Hoy, 136 Loop Road, Waynesburg, PA 15370
Co-Administrator: Amy Diehl, 119 Sarvers Mill Drive, Sarver, PA 16055
Attorney: Kirk A. King, Esquire, 77 South Washington Street, Waynesburg, PA 15370

THIRD PUBLICATION

COMER, WILLIAM A.

Late of Jefferson Township, Greene County, Pennsylvania
Administrator: John Comer, 3280 Eastview Road, Bethel Park, PA 15102
Attorney: Lukas B. Gatten, Esquire, 54 N. Richhill Street, Waynesburg, PA 15370

KING, ANNA MAE

Late of Franklin Township, Greene County, Pennsylvania
Executor: Diane Tedrow, 444 Moore Road, New Freeport, PA 15352
Attorney: Timothy N. Logan, Esquire, 54 N. Richhill Street, Waynesburg, PA 15370

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MORRIS, BARBARA

Late of Whiteley Township, Greene County, Pennsylvania
Executor: Robert Morris, 586 White Barn Road, Waynesburg, PA 15370
Attorney: None

RYNIAK, ANGELA LORIN

Late of Jefferson Borough, Greene County, Pennsylvania
Administrator: Nicholas C. Felice, 55 Woodbine Road, Lewistown, PA 17044
Attorney: None

FIRST AND FINAL ACCOUNT

LIST OF FIRST AND FINAL ACCOUNTS TO BE PRESENTED TO THE COURT BY SHERRY L. WISE, CLERK OF COMMON PLEAS COURT, ORPHANS' COURT DIVISION ON September 6, 2022 FOR NISI CONFIRMATION AND ON September 16, 2022 FOR FINAL CONFIRMATION.

The First & Final Account of Betty Anderson, Executrix of Estate of Irene C Renner, late of Waynesburg, Greene County, Pennsylvania

Attorney: Timthoy N. Logan, Esquire
54 North Richhill Street
Waynesburg, PA 15370

SHERIFF'S SALE

**By Virtue of a Writ of Execution (Mortgage Foreclosure)
No. ED-18-2022 AD-451-2016**

Issued out of the Court of Common Pleas of Greene County, Pennsylvania and to me directed, I will expose the following described property at public sale at the Greene County Courthouse in the City of Waynesburg, County of Greene, Commonwealth of Pennsylvania on:

**FRIDAY, SEPTEMBER 16, 2022
AT 10:00 O'CLOCK A.M.**

All parties in interest and claimants are further notified that a proposed schedule of distribution will be on file in the Sheriff's Office no later than twenty (20) days after the date of the sale of any property sold hereunder, and distribution of the proceeds will be made in accordance with the schedule ten (10) days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

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Address of the Property: 555 Steel Hill Road, Mount Morris, PA 15349
PARCEL NO.: 06-02-143

ALL THAT CERTAIN property situated in the Dunkard Township in the County of Greene and Commonwealth of Pennsylvania, being described as Follows: being more fully described in a Deed Dated January 13, 2010 and recorded January 13, 2010 among the land records of the county and state set forth above, in Deed Volume 425 and Page 1267.

PROPERTY ADDRESS: 555 Steel Hill Road, Mount Morris, PA 15349

UPI/TAX PARCEL NUMBER: 06-02-143

Seized and taken into execution to be sold as the property of KELLY D RAPONI, SOLELY IN HER CAPACITY AS KNOWN HEIR OF LESLIE T MEEDER, DECEASED, JAMIE ROHANNA, SOLELY IN HER CAPACITY AS KNOWN HEIR OF LESLIE T MEEDER, DECEASED, KRISTI ROHANNA, SOLELY IN HER CAPACITY AS KNOWN HEIR OF LESLIE T MEEDER, DECEASED, AND ANY AND ALL KNOWN AND UNKNOWN HEIRS, EXECUTORS, ADMINISTRATORS AND DEVISEES OF THE ESTATE OF LESLIE T MEEDER, DECEASED, JAMIE ROHANNA, KRISTI ROHANNA, SOLELY IN HER CAPACITY AS KNOWN HEIR OF LESLIE T MEEDER, ANY AND ALL KNOWN AND UNKNOWN HEIRS, EXECUTORS, ADMINISTRATORS AND DEVISEES OF THE ESTATE OF LESLIE T MEEDER, DECEASED, KELLY D RAPONI in suit of ROCKET MORTGAGE, LLC F/K/A QUICKEN LOANS, LLC.

Attorney for the Plaintiff:
Stern & Eisenberg PC
Warrington, PA 215-572-8111

MARCUS N. SIMMS, Sheriff
Greene County, Pennsylvania

SUPREME COURT NOTICE

SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE

NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Civ.P. 2005
with Corollary Amendments to Pa.R.A.P. 1007 and 1018

The Civil Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.Civ.P. 2005 with corollary amendments to Pa.R.A.P. 1007 and 1018 for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 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 report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

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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:

Karla M. Shultz, Counsel
Civil Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9526
civilrules@pacourts.us

All communications in reference to the proposal should be received by **November 4, 2022**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Civil Procedural Rules Committee,
Kathleen D. Bruder
Chair

Rule 2005. [Unknown] Known, but Unnamed Defendant. Doe Designation.

[(a) This rule shall only apply to in personam actions.

(b) The plaintiff or joining party may designate an unknown defendant by a Doe designation in a complaint provided that:

- (1) a defendant’s actual name is unknown to the plaintiff or joining party after having conducted a reasonable search with due diligence;**
- (2) the Doe designation is averred to be fictitious;**
- (3) a factual description of the unknown defendant is averred with sufficient particularity for identification; and**
- (4) the plaintiff or joining party avers that a reasonable search to determine the actual name has been conducted.**

Note: This rule does not authorize use of a Doe designation in an action commenced by a writ of summons.

The unknown defendant should be designated by a Doe designation such as John Doe or Jane Doe.

(c) Within 20 days after the actual name of the defendant has been identified, the plaintiff or joining party shall file a motion to amend the complaint pursuant to this rule and Rule 1033 by replacing the Doe designation with the defendant’s actual name. An affidavit shall be attached to the motion describing the nature and extent of the investigation that was made to determine the identity of the defendant, and the date upon and the manner in which the defendant’s actual name was identified.

Note: Rule 1033 and this rule govern the requirements for amending a complaint to replace a Doe designation with the actual name of a defendant.

(d) The court shall grant a motion to amend filed pursuant to subdivision (c) unless the court finds that the party seeking the amendment failed to exercise due diligence in identifying the actual name of the defendant.

(e) A defendant introduced to an action by its actual name in an amended complaint, after the filing of a motion pursuant to subdivision (c) and the court’s ruling,

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may respond by preliminary objection challenging compliance with this rule, asserting prejudice or any other ground set forth in Rule 1028.

(f) No subpoena in aid of discovery relating to a defendant identified by a Doe designation may be issued or be served without leave of court upon motion stating with particularity from whom information is sought and how the discovery will aid in identification of the unknown defendant. In deciding the motion, the court shall weigh the importance of the discovery sought against unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party from whom the discovery is sought, and prejudice to any person or entity suspected of being the unknown defendant. Leave to serve a subpoena in aid of discovery does not preclude a challenge to the subpoena by the person or entity served.

(g) No final judgment may be entered against a defendant designated by a Doe designation.]

[EXPLANATORY COMMENT

The Supreme Court of Pennsylvania has adopted new Rule 2005 governing the naming of unknown, or John/Jane Doe, defendants in a complaint. Currently, the Rules of Civil Procedure are silent as to the use of Doe defendants in litigation; however, case law shows that the naming of Doe defendants has occurred. Rule 2005 is intended to fill this gap by standardizing the procedure in which to assert a cause of action against a Doe defendant.

The rule requires a complaint using a John/Jane Doe or similar designation to describe the defendant with sufficient particularity for identification. The rule imposes a duty on the plaintiff or joining party to exercise due diligence in identifying the actual name of the defendant both before and after the complaint is filed. While a sufficient description of an unknown defendant is typically fact specific to a particular case, it may include the physical characteristics of the unknown defendant, the position or title of the job performed by the unknown defendant, the alleged conduct of the unknown defendant, and how the unknown defendant is connected to the action.

Once served, the previously designated Doe defendant may challenge the filing party's due diligence by filing preliminary objections, asserting prejudice or any other ground set forth in Rule 1028. A defendant originally named by a Doe designation is not precluded from asserting nor is the grant of a motion to amend determinative of a defense based on a statute of limitations or repose.

It is important to note that designating a Doe defendant as a mere placeholder or as use as a class of defendants, e.g., John Doe Defendants 1-10, is not a valid use of Rule 2005. The rule is not intended to create a practice of naming Doe defendants as a catch-all category in the event a probable defendant is not named in a complaint. Rule 2005 requires the information in the complaint concerning the Doe defendant to sufficiently describe that defendant for all intents and purposes except by its actual name.

Rule 2005 is not intended to affect the substantive rights of any litigant. The ability to substitute the actual name of the Doe defendant after the expiration of the statute of limitations does not impermissibly extend it. Rule 2005 does not extend the time for filing an action as prescribed by the applicable statute of limitations.

The rule is intended solely to provide a procedural mechanism to substitute the actual name of a Doe-designated defendant where the action has been filed within the limitations period and the defendant has been adequately described in the complaint to demonstrate that it was *that defendant* against whom the action was asserted.]

(This is entirely new text.)

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(a) **Scope.** This rule shall only apply to *in personam* actions.

(b) **Doe Designation.** The plaintiff or joining party may designate a known, but unnamed defendant with a Doe designation, such as John Doe, Jane Doe, or ABC Corporation.

(c) **Content of Complaint.**

(1) The complaint shall aver:

(i) the plaintiff or joining party is unable to ascertain a known, but unnamed defendant's actual name after having conducted a reasonable search with due diligence;

(ii) the Doe designation is fictitious;

(iii) a detailed description of the reasonable search with due diligence for the known, but unnamed defendant's actual name;

(iv) a factual description of the known, but unnamed defendant with sufficient particularity for identification; and

(v) the plaintiff or joining party conducted a reasonable search to determine the actual name of the defendant.

(2) The plaintiff or joining party shall not designate a class of known, but unidentified defendants, e.g., John Doe 1-10, as a placeholder in the complaint. The court may impose sanctions for such a designation.

(d) **Motion to Amend Complaint.**

(1) Within 20 days after the actual name of the Doe-designated defendant has been ascertained, the plaintiff or joining party shall file a motion to amend the complaint pursuant to this rule and Rule 1033 by replacing the Doe designation with the defendant's actual name. An affidavit shall be attached to the motion setting forth the nature and extent of the investigation that was made to ascertain the name of the defendant, and the date upon and the manner in which the defendant's actual name was ascertained.

(2) The plaintiff or joining party shall serve the motion to amend on the named defendant pursuant to Rules 400 *et seq.*

(3) A Doe-designated defendant to be named in a complaint may file and serve an answer to the motion and contest the adequacy of the description of the Doe-designated defendant within the complaint, whether the plaintiff or joining party has conducted a reasonable search with due diligence to ascertain the name of the defendant, and the timeliness of the motion.

(e) **Trial Court Determination on Motion to Amend.** The court shall grant a motion to amend filed pursuant to subdivision (d) if the court determines the allegations in the motion and the complaint support a finding that the party seeking the amendment failed to exercise due diligence in identifying the actual name of the defendant.

(f) **Preliminary Objection.** A defendant introduced to an action by its actual name in an amended complaint, after the filing of a motion pursuant to subdivision (d) and the court's ruling, may respond by preliminary objection challenging compliance with this rule, asserting prejudice or any other ground set forth in Rule 1028.

(g) **Subpoenas.** No subpoena in aid of discovery relating to a Doe-designated defendant may be issued or served without leave of court upon motion stating with particularity from whom information is sought and how the discovery will aid in identification of the Doe-designated defendant. In deciding the motion, the court shall weigh the importance of the discovery sought against unreasonable annoyance, embarrassment, oppression, burden, or expense to any person or party from whom the discovery is sought, and prejudice to any person or entity suspected of being the Doedesignated defendant. Leave to serve a subpoena in aid of discovery does not preclude a challenge to the subpoena by the person or entity served.

(h) **No Entry of Final Judgment Permitted.** No final judgment may be entered against a Doe-designated defendant.

Comment: This rule authorizes the use of a Doe designation in an action commenced by a complaint. It does not authorize use of a Doe designation in an action commenced by a writ of summons. The rule requires a complaint using a John/Jane Doe, ABC Corporation, or a similar designation to describe the defendant with sufficient particularity for identification. The rule imposes a duty on the plaintiff or joining party to exercise due diligence in identifying the actual name of the defendant both before and after the complaint is filed. While a sufficient description of a known, but unnamed defendant is typically fact specific to a particular case, it may include the physical characteristics of the known, but unnamed defendant, the position or title of the job performed by the known, but unnamed defendant, the alleged conduct of known, but unnamed defendant, and how the known, but unnamed defendant is connected to the action.

It is important to note that designating a Doe defendant as a mere placeholder or as a class of defendants, e.g., John Doe Defendants 1-10, is not a valid use of Rule 2005. The rule is not intended to create a practice of designating known, but unnamed defendants as a catch-all category in the event a probable defendant is not named in a complaint. Designating known, but unnamed defendants in this manner may lead to sanctions. Rule 2005 requires the information in the complaint concerning the known, but unnamed defendant to sufficiently describe that defendant for all intents and purposes except by its actual name.

Once the actual name of Doe-designated defendant has been identified, a plaintiff or joining party must file a motion to amend pursuant to the requirements of subdivision (d) of this rule and Rule 1033. The trial court will grant a motion to amend unless the allegations in the motion and the complaint support a finding that the party seeking the amendment failed to exercise due diligence in ascertaining the actual name of the defendant.

Once served the complaint, the previously Doe-designated defendant may challenge the plaintiff or joining party's due diligence by filing preliminary objections, asserting prejudice or any other ground set forth in Rule 1028. A defendant originally designated as a Doe is not precluded from asserting, nor is the grant of a motion to amend determinative of, a defense based on a statute of limitations or repose.

Rule 2005 is not intended to affect the substantive rights of any litigant. The ability to substitute the actual name of the Doe-designated defendant after the expiration of the statute of limitations does not impermissibly extend it. Rule 2005 does not extend the time for filing an action as prescribed by the applicable statute of limitations.

The rule is intended solely to provide a procedural mechanism to substitute the actual name of a Doe-designated defendant where the action has been filed within the limitations period and the defendant has been adequately described in the complaint to demonstrate that it was that defendant against whom the action was asserted.

Rule 1007. Commencement of Action.

An action may be commenced by filing with the prothonotary:

- (1) a *praecipe* for a writ of summons^[,]; or
- (2) a complaint.

[Note] Comment:

For the form of the writ of summons, see Rule 1351.

See Rule 205.5 governing the requirement for filing a cover sheet with the pleading commencing the action.

Rule 2005(b) does not authorize the filing of a *praecipe* for a writ of summons if **[an unknown] a known, but unnamed** defendant is to be identified by a Doe designation.

Rule 1018. Caption.

Every pleading shall contain a caption setting forth the name of the court, the number of the action and the name of the pleading. The caption of a complaint shall set forth the form of the action and the names of all the parties, including a Doe designation for **[an unknown] a known, but unnamed** defendant as provided in Rule 2005, but in other pleadings it is sufficient to state the name of the first party on each side in the complaint with an appropriate indication of other parties.

[Note] Comment: Civil Actions and proceedings shall be captioned “Court of Common Pleas of _____ County -- Civil Action” or other appropriate form of action.

The caption of all legal papers filed in a medical professional liability action must contain the designation “Civil Action -- Medical Professional Liability Action.” See Rule 1042.16.

The caption of all legal papers filed in a civil action by and against a minor must designate the minor by the initials of his or her first and last name. See Rule 2028.

SUPREME COURT OF PENNSYLVANIA CIVIL PROCEDURAL RULES COMMITTEE

PUBLICATION REPORT Proposed Amendment of Pa.R.Civ.P. 2005 with Corollary Amendments to Pa.R.A.P. 1007 and 1018

The Civil Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pennsylvania Rule of Civil Procedure 2005 governing the naming of unknown defendants in a complaint with a Doe designation.

The Committee considered a request to clarify Rule 2005 because John Doe complaints were not being filed in compliance with the rule. Adopted in 2019, Rule 2005 was intended to standardize the procedure for naming a Doe defendant. It requires a plaintiff using a Doe designation to describe that defendant with sufficient particularity for identification and to exercise due diligence in identifying the Doe defendant both before and after the filing of the complaint. Once the actual name of the Doe defendant is identified, the plaintiff must then file a motion to replace the Doe designation with the defendant’s actual name.

The requester indicated that, in practice, some John Doe complaints routinely provide a minimal description in the averments as to the due diligence of the plaintiff to determine the name of the defendant. Absent this information, the trial court is unable to determine the nature of the plaintiff’s search to determine the actual name of the defendant. In addition, the requester noted that some complaints have used John Doe as a placeholder in the event the plaintiff discovers additional defendants who may be liable in contravention to the intent of the rule.

To address the first concern, the Committee is proposing modification of the current rule in two respects. Current subdivision (b) would retain language authorizing the use of John Doe defendants. Current subdivisions (b)(1)-(4) would be placed in a new subdivision (c) setting forth the requirements of the complaint. Included in new subdivision (c) would be a requirement for an averment in the complaint describing the steps taken by plaintiff in its reasonable search to determine the defendant’s actual name.

For the second concern, the Committee considered the commentary that accompanied the adoption of the rule in 2019. The rule had never been contemplated as creating a mechanism for plaintiffs to designate a placeholder for any possible future defendants who may not have been discovered or known at the time of the filing of the complaint. To obviate any question as to the use of “John Doe” pursuant to the rule, the Committee proposes adding this commentary

into the rule text as subdivision (c)(2). As a result, the rule would expressly prohibit this use. Further, the proposed amendment would permit the trial court to sanction a litigant who insists on using a Doe designation as a placeholder.

In addition, the Committee also identified other portions of the rule worthy of clarification. First, the proposal would add additional procedures regarding the motion to amend when replacing the Doe designation with the defendant’s actual name. New subdivision (d)(1) would retain the requirement of the current rule to file the motion to amend within 20 days of ascertaining the actual name of the defendant and to attach to the motion an affidavit describing the steps taken to ascertain the name of the defendant. New subdivisions (d)(2)-(3) would add a requirement for service of the motion on the tobe-named defendant and give that defendant the opportunity to contest the adequacy of the description of the Doe defendant in the complaint, whether a reasonable search was conducted with due diligence to ascertain the name of the defendant, and the timeliness of the motion.

Second, the Committee observed that the current rule requires the trial court to grant the motion unless the court finds that the party seeking the amendment failed to exercise due diligence. The proposed change in new subdivision (e) would clarify that the trial court does not make findings as to the party’s due diligence; rather, the trial court determines whether to grant the motion to amend based on whether the allegations in the motion and the complaint support a finding that the party exercised due diligence in determining the actual name of the defendant.

Finally, the Committee is proposing changing the term “unknown defendant” to “known, but unnamed defendant” throughout the rule. An “unknown defendant” suggests a defendant that is not known at all and will be identified in the future. In contrast, a “known, but unnamed defendant” is intended to clarify that the plaintiff may use Doe designation because it has identified a defendant exists, but has not yet been able to ascertain the name of that defendant.

Given the affect of these amendments, the Committee proposes replacing the entirety of the text and commentary to Rule 2005. Corollary amendments to Rule 1007 and Rule 1018 reflect the change to the description of the Doe designation.

The Committee invites all comments, concerns, and suggestions.

SUPREME COURT NOTICE

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

NOTICE OF PROPOSED RULEMAKING

**Proposed Amendment of Pa.R.A.P. 102, 120,
907, 1112, 1311, 1514, and 1602**

The Appellate Court Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Pa.R.A.P. 102, 120, 907, 1112, 1311, 1514, and 1602 for the reasons set forth in the accompanying publication 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 will neither constitute a part of the rules nor 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:

Karla M. Shultz, Counsel
Appellate Court Procedural Rules Committee
Supreme Court of Pennsylvania
Pennsylvania Judicial Center
PO Box 62635
Harrisburg, PA 17106-2635
FAX: 717-231-9551
appellaterules@pacourts.us

All communications in reference to the proposal should be received by **November 4, 2022**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Appellate Court Procedural Rules Committee,
Honorable J. Andrew Crompton
Chair

Rule 102. Definitions.

Subject to additional definitions contained in subsequent provisions of these rules which are applicable to specific provisions of these rules, the following words and phrases when used in these rules shall have, unless the context clearly indicates otherwise, the meanings given to them in this rule:

Counsel of [record.—] Record. All attorneys who were counsel of record in the trial court at the time of the filing of the notice of appeal will be counsel of record in the appellate courts. For a criminal defendant, the representation extends up to and including the filing of a petition for allowance of appeal and the handling of such an appeal if granted, unless [(1) **substitute counsel has entered an appearance and is expressly identified in the *praecipe* as substitute, rather than additional, counsel;** (2)] the Court of Common Pleas has entered on the docket an order permitting the attorney to withdraw[; or (3) **an application for withdrawal is granted by the appellate court] or counsel is permitted to withdraw pursuant to Pa.R.A.P. 120.**

Rule 120. Entry and Withdrawal of Appearance.

[Any counsel filing papers required or permitted to be filed in an appellate court must enter an appearance with the prothonotary of the appellate court unless that counsel has been previously noted on the docket as counsel pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d). New counsel appearing for a party after docketing pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d) shall file an entry of appearance simultaneously with or prior to the filing of any papers signed by new counsel. The entry of appearance shall specifically designate each party the attorney represents, and whether the attorney is entering an appearance as substitute or additional counsel. The attorney shall file a certificate of service pursuant to paragraph (d) of Pa.R.A.P. 121 and to Pa.R.A.P. 122. If an attorney enters an appearance as substitute counsel for a party, the original counsel

of record for that party may withdraw by *praecipe*, without filing an application for permission to withdraw.

Official Note: For admission pro hac vice, see Pa.B.A.R. 301.]

(This is entirely new text.)

(a) **Entry of Appearance.**

(1) **Requirement.** Counsel’s appearance shall be entered prior to or with the filing of any documents in the appellate court.

(2) **Procedure.** Unless counsel has been noted as counsel of record pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d), counsel shall file an entry of appearance by *praecipe*:

- (i) designating the party or interest counsel represents; and
- (ii) indicating whether counsel is new counsel, additional counsel, or substitute counsel.

(b) **Withdrawal of Appearance – General Rule.** Except as provided by subdivision (e), and subject to the additional requirements of subdivisions (c) and (d), counsel may withdraw from representation on appeal only with permission of court through an application for relief filed in the appellate court.

(c) **Criminal Matters - Direct Appeals.** Counsel seeking permission of court to withdraw from representation of an appellant in a direct appeal of a criminal matter on the basis that all issues that could be raised on appeal are frivolous shall:

- (1) file a brief prepared pursuant to Pa.R.A.P. 2111; and
- (2) serve a copy of the application and brief on the appellant, accompanied by a notice informing the appellant that, within 60 days of service of the application and brief, the appellant has the right to:
 - (i) retain private counsel for representation; or
 - (ii) self-representation and to respond to the issues raised in the application or brief, or to bring any additional issues to the court’s attention.

(3) Within 14 days after service of the appellant’s response, the Commonwealth or appellant’s counsel may file a reply to the appellant’s response.

(d) **Post Conviction Relief Act Appeals.** Counsel seeking permission of court to withdraw from representation of an appellant in a Post Conviction Relief Act appeal on the basis that all issues sought to be raised by the appellant on appeal are without merit shall:

- (1) file a letter detailing the nature and extent of counsel’s review, listing each issue the appellant seeks to raise, and counsel’s explanation of why the issues have no merit; and
- (2) serve a copy of the application and letter on the appellant, accompanied by a notice informing the appellant that, within 60 days of service of the application and letter, the appellant has the right to:

- (i) retain private counsel for representation; or
 - (ii) self-representation and to respond to the issues raised in the application or brief, or to bring any additional issues to the court’s attention.
- (3) Within 14 days after service of the appellant’s response, the Commonwealth or appellant’s counsel may file a reply to the appellant’s response.

(e) **Withdrawal of Appearance - Exception.** Counsel may withdraw by filing a *praecipe* in the appellate court in the following circumstances:

- (1) In civil matters where the party is not entitled by law to be represented by counsel on appeal and the *praecipe* is filed within 30 days of the notation of counsel on the docket pursuant to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), or 1602(d).

(2) Substitute counsel has entered an appearance or other counsel remains to represent a party or interest, and substitute counsel or remaining counsel assumes representation for all relevant appellate purposes.

(f) **Additional Service.** In addition to any requirements set forth in Pa.R.A.P. 121(c)(1)-(4), counsel seeking to withdraw shall serve **[his or her]** the client with any application, *praecipe*, brief, or letter filed pursuant to this rule.

Comment:

For admission *pro hac vice*, see Pa.B.A.R. 301.

The requirement of an entry of appearance pursuant to subdivision (a) includes counsel for *amicus curiae*. The entry of appearance for such counsel should indicate the interest, i.e., name of *amicus curiae*, represented by counsel. For additional rules pertaining to *amicus curiae*, see Pa.R.A.P. 531.

Subdivision (c) addresses withdrawal in criminal cases where there is a right to counsel, and where there is governing decisional authority concerning the procedures for seeking withdrawal. For the substance of the brief filed pursuant to subdivision (c)(1) in criminal cases, see *Anders v. California*, 386 U.S. 738 (1967); *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009). Briefs required by subdivision (c)(1) should comply with the content requirements of Pa.R.A.P. 2111 notwithstanding that such briefs are not advocating on behalf of an appellant. For the substance of the letter filed pursuant to subdivision (d)(1) in post conviction relief cases, see *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988); *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988).

For an appellant seeking to respond to counsel’s letter in subdivisions (c)(2) and (d)(2), see Pa.R.A.P. 121(g) (Hybrid Representation).

In cases not subject to subdivisions (c) or (d), where a party is entitled by law to be represented by counsel on appeal (whether by decisional law, rule, or otherwise), the developing case law should be consulted to determine if a procedure or other guidance exists governing or limiting withdrawal.

New or substitute counsel is subject to all existing deadlines. Counsel seeking to withdraw in any case has a responsibility to continue to meet all deadlines and to comply with all applicable law, rules, and orders of the trial and appellate court until the appellate court has granted the application to withdraw.

An entry of appearance immediately prior to oral argument may result in recusal or postponement if a conflict exists.

Rule 907. Docketing of Appeal.

(b) **[Entry of appearance] Notation of Counsel.**—Upon the docketing of the appeal, the prothonotary of the appellate court shall note on the **[record]** docket:

- (1)** as counsel for the appellant, the name of counsel, if any, set forth in or endorsed upon the notice of appeal;
- (2)** counsel of record; and
- (3)** any counsel named in the proof of service.

[The prothonotary of the appellate court shall upon *praecipe* of counsel filed within 30 days after the docketing of the notice of appeal correct the record of appearances. Also within 30 days after the docketing of the notice of appeal, counsel for a party may strike off his or her appearance by *praecipe*, unless that party is entitled by law to be represented by counsel on appeal. Thereafter, and at any time if a party is entitled by law to be represented by counsel on appeal, a counsel’s appearance for a party may not be withdrawn without leave of court,

unless another lawyer has entered or simultaneously enters an appearance for the party.]

[Official Note] Comment:

Paragraph (a).—The transmission of a photocopy of the notice of appeal, showing a stamped notation of filing and the appellate docket number assignment, without a letter of transmittal or other formalities, will constitute full compliance with the notice requirement of paragraph (a) of this rule.

[A party may be entitled to the representation by counsel on appeal by constitution, statute, rule, and case law. For example, the Rules of Criminal Procedure require counsel appointed by the trial court to continue representation through direct appeal. Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2). Similarly, the Rules of Criminal Procedure require counsel appointed in postconviction proceedings to continue representation throughout the proceedings, including any appeal from the disposition of the petition for post-conviction collateral relief. Pa.R.Crim.P. 904(F)(2) and Pa.R.Crim.P. 904(H)(2)(b). The same is true when counsel enters an appearance on behalf of a juvenile in a delinquency matter or on behalf of a child or other party in a dependency matter. Pa.R.J.C.P. 150(B), 151, Pa.R.J.C.P. 1150(B), 1151(B), (E). It would be rare for counsel in such cases to consider withdrawing by *praecipe*, but the 2020 amendment to the rule avoids any possibility of confusion by clarifying that withdrawal by *praecipe* is available only in matters that do not otherwise require court permission to withdraw.

If a party is entitled to representation on appeal, the appellate court will presume that counsel who represented the party in the trial court will also represent the party on appeal, and counsel will be entered on the appellate court docket. In order to withdraw in such cases, either (1) new counsel must enter an appearance in the appellate court prior to or at the time of withdrawal; (2) counsel must provide the appellate court with an order of the trial court authorizing withdrawal; or (3) counsel must petition the appellate court to withdraw as counsel. Counsel for parties entitled to representation on appeal are cautioned that if any critical filing in the appellate process is omitted because of an omission by counsel, and if the party ordinarily would lose appeal rights because of that omission, counsel may be subject to discipline.]

When an appeal is filed in a custody action, upon application of a party and for cause shown, the appellate court may make a determination that using the parties' initials in the caption is appropriate after considering the sensitive nature of the facts included in the case record and the child's best interest. See Pa.R.A.P. 904(b)(2).

Paragraph (b).—[With respect to appearances by new counsel following the initial docketing appearances, please note the requirements of Pa.R.A.P. 120.] For the definition of “counsel of record,” see Pa.R.A.P. 102 (Definitions). For entry of appearance of new counsel, substitution of counsel, or withdrawal of counsel, see Pa.R.A.P. 120 (Entry and Withdrawal of Appearance).

Rule 1112. Appeals by Allowance.

(f) [Entry of appearance.] **Notation of Counsel.** Upon the filing of the petition for allowance of appeal, the Prothonotary of the Supreme Court shall note on the [record] **docket:**

(1) as counsel for the petitioner, the name of his or her counsel, if any, set forth in or endorsed upon the petition for allowance of appeal[.]; and[.],

(2) as counsel for other parties, counsel, if any, named in the proof of service.

[Unless that party is entitled by law to be represented by counsel on allowance of appeal, the Prothonotary shall upon *praecipe* of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. If entry of appearance in the trial court extends through appeals, counsel's appearance for a party may not be withdrawn without leave of court. Appearance cannot be withdrawn without leave of court for counsel who have not filed a *praecipe* to correct appearance within the first 30 days after the petition is docketed, unless another lawyer has entered or simultaneously enters an appearance for the party.]

[Official Note] Comment:

[The Rules of Criminal Procedure require counsel appointed by the trial court to continue representation through direct appeal. Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2). Similarly, the Rules of Criminal Procedure require counsel appointed in post-conviction proceedings to continue representation throughout the proceedings, including any appeal from the disposition of the petition for post-conviction collateral relief. Pa.R.Crim.P. 904(F)(2) and Pa.R.Crim.P. 904(H)(2)(b). The same is true when counsel enters an appearance on behalf of a juvenile in a delinquency matter or on behalf of a child or other party in a dependency matter. Pa.R.J.C.P. 150(B), 151, Pa.R.J.C.P. 1150(B), 1151(B), (E). It would be rare for counsel in such cases to consider withdrawing by *praecipe*, but the 2020 amendment to the rule avoids any possibility of confusion by clarifying that withdrawal by *praecipe* is available only in matters that do not otherwise require court permission to withdraw.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to paragraph (f) of this rule, please note the requirements of Pa.R.A.P. 120.] For the definition of “counsel of record,” see Pa.R.A.P. 102 (Definitions). For entry of appearance of new counsel, substitution of counsel, or withdrawal of counsel, see Pa.R.A.P. 120 (Entry and Withdrawal of Appearance).

Rule 1311. Interlocutory Appeals by Permission.

(d) [Entry of appearance.—] **Notation of Counsel.** Upon the acceptance for filing of the petition for permission to appeal, the prothonotary of the appellate court shall note on the [record] **docket:**

(1) as counsel for the petitioner, the name of counsel, if any, set forth in or endorsed upon the petition for permission to appeal[.]; and[.],

(2) as counsel for other parties, counsel, if any, named in the proof of service.

[Unless that party is entitled by law to be represented by counsel on a petition for permission to appeal, the prothonotary shall upon *praecipe* of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. If entry of appearance in the trial court extends through appeals, counsel's appearance for a party may not be withdrawn without leave of court. Leave of court to withdraw is also required for any other counsel who have not filed a *praecipe* to correct appearance within the first 30 days after the petition is docketed, unless another lawyer has entered or simultaneously enters an appearance for the party.]

[Official Note] Comment:

[The Rules of Criminal Procedure require counsel appointed by the trial court to continue representation through direct appeal. Pa.R.Crim.P. 120(A)(4) and Pa.R.Crim.P. 122(B)(2). Similarly, the Rules of Criminal Procedure require counsel appointed in post-conviction proceedings to continue representation throughout the proceedings, including any appeal from the disposition of the petition for post-conviction collateral relief. Pa.R.Crim.P. 904(F)(2) and Pa.R.Crim.P. 904(H)(2)(b). The same is true when counsel enters an appearance on behalf of a juvenile in a delinquency matter or on behalf of a child or other party in a dependency matter. Pa.R.J.C.P. 150(B), 151, Pa.R.J.C.P. 1150(B), 1151(B), (E). It would be rare for counsel in such cases to consider withdrawing by *praecipe*, but the 2020 amendment to the rule avoids any possibility of confusion by clarifying that withdrawal by *praecipe* is available only in matters that do not otherwise require court permission to withdraw.

With respect to appearances by new counsel following the initial docketing of appearances pursuant to paragraph (d) of this rule, please note the requirements of Pa.R.A.P. 120.] For the definition of “counsel of record,” see Pa.R.A.P. 102 (Definitions). For entry of appearance of new counsel, substitution of counsel, or withdrawal of counsel, see Pa.R.A.P. 120 (Entry and Withdrawal of Appearance).

Rule 1514. Filing and Service of the Petition for Review.

(d) [Entry of appearance.—] **Notation of Counsel.** Upon the filing of the petition for review, the prothonotary shall note on the [record] **docket**:

- (1) as counsel for the petitioner, the name of counsel, if any, set forth in or endorsed upon the petition for review[.]; and[.],
- (2) as counsel for other parties, counsel, if any, named in the proof of service.

[The prothonotary shall, upon *praecipe* of any such counsel for other parties, filed within 30 days after filing of the petition, strike off or correct the record of appearances. Thereafter a counsel’s appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.]

[Official Note] **Comment:**

See the Official Note to Pa.R.A.P. 1112 (appeals by allowance) for an explanation of the procedure when Form 3817 or other similar United States Postal Service form from which the date of deposit can be verified is used.

The petition for review must be served on the government unit that made the determination in question.

Service on the Attorney General shall be made at: Strawberry Square, Harrisburg, PA 17120.

[With respect to appearances by new counsel following the initial docketing of appearances pursuant to paragraph (d) of this rule, please note the requirements of Pa.R.A.P. 120.] For the definition of “counsel of record,” see Pa.R.A.P. 102 (Definitions). For entry of appearance of new counsel, substitution of counsel, or withdrawal of counsel, see Pa.R.A.P. 120 (Entry and Withdrawal of Appearance).

Rule 1602. Filing.

(d) [Entry of appearance.—] **Notation of Counsel.** Upon the filing of the petition for specialized review, the prothonotary of the appellate court shall note on the [record] **docket**:

- (1) as counsel for the petitioner, the name of counsel, if any, set forth in or endorsed upon the petition for specialized review[.]; and[.],
 - (2) as counsel for other parties, counsel, if any, named in the proof of service.
- [The prothonotary shall upon *praecipe* of any such counsel for other parties, filed at any time within 30 days after filing of the petition, strike off or correct the record of appearance. Thereafter a counsel’s appearance for a party may not be withdrawn without leave of court, unless another lawyer has entered or simultaneously enters an appearance for the party.]**

Comment: For the definition of “counsel of record,” see Pa.R.A.P. 102 (Definitions). For entry of appearance of new counsel, substitution of counsel, or withdrawal of counsel, see Pa.R.A.P. 120 (Entry and Withdrawal of Appearance).

SUPREME COURT OF PENNSYLVANIA
APPELLATE COURT PROCEDURAL RULES COMMITTEE

RE-PUBLICATION REPORT

**Proposed Amendment of Pa.R.A.P. 102, 120,
907, 1112, 1311, 1514, and 1602**

The Appellate Court Procedural Rules Committee is considering proposing the amendment of Pennsylvania Rule of Appellate Procedure 120 to rescind and replace the current text governing the entry of appearance. This amendment, coupled with the amendment of Pa.R.A.P. 102, 907, 1112, 1311, 1514, and 1602, is intended to consolidate procedures for the entry, substitution, and withdrawal of appearance of counsel in the appellate courts.

The Committee previously published a proposal on this subject, see 51 Pa.B. 1780 (April 3, 2021), and received several comments. A comment questioned whether the prior proposal would authorize a previous entry of appearance in a trial court matter to apply again in subsequent or ancillary proceedings in the trial court after an appeal is final. The Committee refrained from addressing the continuity of representation in the trial court through the Rules of Appellate Procedure after an appeal has concluded. That matter is a subject for procedural rules governing the trial courts and the Pennsylvania Rules of Professional Conduct.

Another comment suggested that the phrase, “entitled by law to be represented by counsel,” used in the prior proposal may be overbroad and subject to misunderstanding by litigants who believe they are entitled to representation even though that entitlement cannot be traced to a constitution, statute, or rule. That comment prompted further deliberations and substantial revision of the proposal.

Another comment objected to a requirement of prior court approval before current counsel for a criminal defendant could withdraw through substituted counsel. That requirement was viewed as cumbersome, unnecessary, and an additional burden, which would result in fewer attorneys withdrawing from appeals despite substitute counsel’s representation. The Committee’s intention with this requirement was to ensure that substitute counsel will assume representation of the party for all relevant appellate purposes and to minimize delays or disruptions of scheduling. In response, the Committee has eliminated this requirement for prior approval in the present proposal.

Finally, AOPC/IT commented that the requirement for counsel to serve the client when seeking to withdraw cannot be accommodated through PACFile. Service, therefore, would need

to be made by other means. The Committee agreed and noted that service would need to be made by the options available in Pa.R.A.P. 121(c).

In response to these comments and further deliberations, the Committee restructured Pa.R.A.P. 120 to set forth the general requirements for entering and withdrawing an appearance in subdivisions (a) and (b). Subdivisions (c) and (d) contain specific requirements for the withdrawal of appearance in criminal appeals and Post Conviction Relief Act (PCRA) appeals. Subdivision (e) creates an exception to the general requirement of subdivision (b). Subdivision (f) sets forth a requirement that counsel serve the client whenever seeking to withdraw.

Concerning subdivision (a), the requirements are largely carried over from the current Pa.R.A.P. 120 with one addition. Through subdivision (a)(2)(i), the *praecipe* for entry of appearance must designate the party or interest counsel represents. As for the latter, that requirement is intended to include counsel for *amicus curiae*. The commentary accompanying the rule explains this requirement.

Subdivision (b) states the general requirement that counsel must apply to the appellate court for permission to withdraw as counsel in a pending appellate matter.

Subdivisions (c) and (d) codify the procedural requirements for compliance with *Anders v. California*, 386 U.S. 738 (1967) and *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009) for the withdrawal of counsel in direct criminal appeals, and *Commonwealth v. Turner*, 544 A.2d 927 (Pa. 1988) and *Commonwealth v. Finley*, 550 A.2d 213 (Pa. Super. 1988) for the withdrawal of counsel in PCRA appeals. These subdivisions are narrower in scope than previously proposed. Previously, the Committee proposed applying these procedures based on whether a party was “entitled by law” to be represented by counsel and whether the basis for withdrawal was frivolity or lack of merit.

During the time between proposals, the Supreme Court of Pennsylvania amended Pa.R.A.P. 1925(c)(4) regarding counsel’s stated intent to withdraw as counsel in a criminal or Post Conviction Relief Act (PCRA) appeal, and subsequent remand for counsel to file a statement of matters complained of on appeal if withdrawal was denied. The scope of amended Pa.R.A.P. 1925(c)(4) informed the Committee, which recalibrated the scope of proposed Pa.R.A.P. 120(c) and (d) to bring those subdivisions in alignment with Pa.R.A.P. 1925(c)(4).

The Committee acknowledges that there may be cases other than a criminal or PCRA appeal when a party is entitled by law to counsel. However, the Committee was reluctant to codify withdrawal procedures without Supreme Court of Pennsylvania precedent. Instead, the commentary accompanying the rules advises readers to consult developing case law.

Similarly, the Committee discussed whether the differences in withdrawal of counsel procedures, namely the requirement of a brief in criminal appeals and the requirement of a letter in PCRA appeals, should be maintained. The Committee considered a proposal to require a brief in both instances but with fewer briefing requirements than those required by Pa.R.A.P. 2111(a) to lessen the burden. Ultimately, the Committee was not inclined to propose altering the requirements set forth in the case law.

Subdivision (e)(1) is intended to incorporate and preserve the current provisions of Pa.R.A.P. 907(b) (notice of appeal), 1112(f) (petition for allowance of appeal), 1311(d) (petition for permission to appeal), 1514(d) (petition for review), or 1602(d) (petition for specialized review), permitting the withdrawal of counsel by *praecipe* in civil matters where the party is not entitled to representation by law, provided the *praecipe* is filed within 30 days of noting counsel on the record. Subdivision (e)(2) reflects the existing permissibility of counsel to withdraw by *praecipe* through the substitution of counsel with the added condition that substitute counsel assumes complete representation for appellate matters. This condition is intended to guard against limited representation that may result in the client being unrepresented in further proceedings. Added to this subdivision is the permissibility of “surplus” counsel to withdraw by *praecipe* provided other counsel remains.

Additional amendments are proposed to Pa.R.A.P. 907(b), 1112(f), 1311(d), 1514(d), and 1602(d). The titles within these subdivisions have been changed from “Entry of Appearance” to “Notation of Counsel” to indicate that the subdivisions only address the responsibility of the prothonotary to note trial counsel on the appellate docket. As noted above, the current language on the entry of appearance by action of counsel and withdrawal of counsel will be removed and governed by new Pa.R.A.P. 120.

As for the mechanism currently contained in these rules for “correcting the record upon *praecipe* of counsel,” this was understood to allow for counsel to withdraw because counsel was not supposed to be in the appeal in the first place. That aspect is addressed by proposed Pa.R.A.P. 120(e)(1). Another aspect of correction may occur when counsel is not withdrawing, but there is some error in noting on the docket the name, address, or party represented by counsel. Upon consultation with the appellate court prothonotaries, it appears that the prothonotary’s office is able to correct these aspects of the record upon written communication by counsel. A formal *praecipe* is not necessary to accomplish it.

Additionally, “counsel of record,” as defined in Pa.R.A.P. 102, was reviewed. The definition was modified regarding representation of criminal defendants to remove provisions that would be incorporated into Pa.R.A.P. 120. The modified definition indicates that such representation extends to filing a petition for allowance of appeal and the handling of the appeal unless the court of common pleas enters an order permitting withdrawal of counsel, or counsel is permitted to withdraw pursuant to Pa.R.A.P. 120.

All comments, concerns, and suggestions concerning this proposal are welcome.