

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modifications of Rules 121 and 1121 be adopted and prescribed. The proposed modified Rules provide that a local rule shall be submitted to the Juvenile Court Procedural Rules Committee to ensure that there are no inconsistencies with the statewide rules prior to adoption of the local rule and a reorganization of the rule to emphasize the intent of this proposed change. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

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

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

no later than Friday, May 9, 2008.

March 4, 2008

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Francis Barry McCarthy, Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

I. BACKGROUND

Rule of Juvenile Court Procedure 121 was adopted in 2005 and Rule of Juvenile Court Procedure 1121 was adopted in 2007 "to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered." The Juvenile Rules were modeled after Pa.R.Crim.P. 105 and Pa.R.C.P. 239, which were both adopted in 1983. To provide consistency among the Court's rules, changes are proposed to mirror the new language and intent of the Pa.R.Crim.P. 105 adopted January 25, 2008.

The new proposed rules will provide a uniform definition of local rules, prerequisites to effectiveness and effective dates, procedures for accessibility and distribution, and for the suspension of inconsistent local rules.

When Pa.Rs.J.C.P. 121 and 1121 were adopted, all local rules were vacated. Each judicial district could promulgate new local rules that did not conflict with the Rules of Juvenile Court Procedure and each judicial district may continue to promulgate new consistent local rules.

Because judicial districts have continued to enact local rules that fail to comply with the provisions of Rules 121 or 1121, this proposal is requesting several additional amendments that are intended to make the requirements for local rules absolutely clear. Judicial districts continue to enact local rules by calling them something other than a local rule, even though the practices and procedures are local rules within the definitions of Rules 121 or 1121. In addition, some judicial districts' "local rules" still are not being published or are not being made available to the members of the Bar. Finally, in many cases, these local practices and procedures conflict with the statewide rules.

Because of this failure to comply with the requirements of these rules by some judicial districts and to provide procedure uniformity with the Rules of Juvenile Court Procedure, the Committee agreed to recommend that the only recourse to ensure compliance with Rules 121 or 1121 is to require that before a

judicial district may enact or amend a local rule, the local rule or local rule amendments must be submitted in writing to the Committee for review. Unless the local adopting court receives a written notification from the Committee that the local rule is not inconsistent, the local rule will not be effective and enforceable. This requirement and some additional proposed clarifying amendments are discussed below.

To clarify the reorganization and discussion of paragraphs, the “proposed new” paragraph refers to the renumbered proposed new paragraph that the Committee is suggesting be changed. The “current” paragraph refers to the current language of the Rule.

II. DISCUSSION

The proposed new procedural requirement that all new local rules and local rule amendments must be submitted to the Committee for the Committee’s review before the local rule may be published and before the rule or amendments will be effective and enforceable is set forth in new proposed paragraph (D). Pursuant to this new proposed procedure, the adopting court is required to submit in writing to the Committee for the Committee’s review any proposal that governs juvenile court practice and procedure. This pre-adoption review is narrow in scope. The Committee will merely determine whether the proposed local rule provisions comply with the requirements of Rule 121 or 1121. Specifically, the Committee will be considering whether the local rule change is consistent with the general rules of the Supreme Court as required in new proposed Rule 121(E) or 1121(E). The Committee will not be passing judgment on the wisdom of the local rule or the substantive validity of the provisions of the local rule or on the merits of the local rule.

Following this review, the Committee will communicate in writing with the adopting court. The adopting court will be prohibited from proceeding with the local rule proposal until receiving written notification from the Committee that the proposed local rule satisfies the requirements of Rule 121 or 1121 and is not inconsistent with the statewide rules. In addition, new proposed paragraph

(F)(2)(c) will require the adopting court to send a copy of the written statement received from the Committee to the Legislative Reference Bureau when publishing a new local rule.

Rules 121 and 1121 also have been reorganized to emphasize more clearly the essential requirements of the rule. Paragraph (A), which sets forth the “definition” of local rule, remains mostly the same. The term “administrative order” has been added to the list of things in this paragraph that are considered “local rules.” In our experience, many local enactments labeled “administrative orders” are in fact “local rules” that should comply with Rule 121 or 1121 requirements. Because some judicial districts continue to ignore the clear mandate of Rule 121 or 1121 by, for example, designating as “administrative orders” various directives that actually govern practice and procedure in juvenile court cases, and by failing to publish or provide copies of these administrative orders to the Committee, the Committee agreed that “administrative order” should be added to paragraph (A). As has been intended since the inception of Rule 121 or 1121, only administrative orders that govern juvenile court practice and procedure in some way would be subject to Rule 121 or 1121. This change is not intended to affect administrative orders that govern other aspects of court operations, such as administrative orders that establish local court calendars.

In addition, the Committee is requesting the phrase “which requires a party or party’s attorney to do or refrain from doing something” to be removed from paragraph (A) because these same non-compliant judicial districts fail to send in a local rule rationalizing that it is not a local rule because it does not meet the definition of a party or party’s attorney doing or refraining from doing something.

Paragraph (B) has been reworded to show that all local rules promulgated before October 1, 2005 were vacated at the time of adoption of these Rules and moved to paragraph (B)(1). Current paragraph (C)(1) was moved to new proposed paragraph (B)(2), which provides that each judicial district may adopt new local rules that are not in conflict with the Rules of Juvenile Court Procedure.

Current paragraph (C)(2) will become paragraph (C), which requires that local rules be given numbers keyed to the statewide rules to add emphasis to this requirement.

Current paragraph (G) will be retained as new proposed paragraph (E)(1)&(2). The requirements are now separated to show and emphasize that the Committee may recommend to the Supreme Court the suspension, vacation, and amendment of local rules that are not in compliance with Rule 121 or 1121. Pending that action, the Committee may suspend a local rule.

New proposed paragraph (F) sets forth the provisions related to publishing proposed local rules in the *Pennsylvania Bulletin*, making it clear that to be effective and enforceable, the local rule must be published, but not until the Committee has provided written notification that the local rule is not inconsistent as required by new proposed paragraph (D). In addition, current paragraph (D)(3) that explains what must be sent to the *Pennsylvania Bulletin* is now new proposed paragraph (F)(2), and current paragraph (E) that requires the effective date of new local rules and amended local rules be not less than 30 days after publishing in the *Pennsylvania Bulletin* is now new proposed paragraph (F)(3).

New proposed paragraph (G) is taken from current paragraph (D)(2); however, new proposed paragraph (G) requires that, contemporaneously with publishing in the *Pennsylvania Bulletin*, the adopting court must file one copy of the local rule with the AOPC. Current paragraph (D)(2) requires that seven copies be sent to the AOPC.

Because new proposed paragraph (D) requires that the adopting court submit a written copy of the proposed local rule to the Committee for prior approval, current paragraphs (D)(1) and (D)(4) will no longer be necessary.

Current paragraph (D)(5) has been moved to new proposed paragraph (H).

New proposed paragraph (I) incorporates current paragraph (F), and includes as a first sentence the requirement that the clerk of courts accept all pleadings and other legal papers for filing even if the document does not satisfy the requirements of a local rule. This new proposal is comparable to Pa.R.C.P.

205.2, Pa.Rs.Crim.P. 105 and 576(A), and complies with the requirements in Pa.R.J.C.P. 345(A).

RULE 121. LOCAL RULES

A. **Definition of Local Rule.** For the purpose of this rule, the term, "local rule" shall include every rule, **administrative order**, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, **which is** adopted or enforced by a court of common pleas to govern juvenile delinquency practice and procedure[, **which requires a party or party's attorney to do or refrain from doing something**].

B. **Vacated Local Rules and Repromulgation.** [All previously promulgated local rules are hereby vacated, effective October 1, 2005.]

1) **All local rules promulgated before October 1, 2005 were vacated at the time of the adoption of these Rules.**

2) **Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure after submission under paragraph (D).**

C. **Corresponding numbers.** Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.

D. Submission to Committee.

1) **All proposed local delinquency rules and proposed amendments to local delinquency rules shall be submitted in writing to the Juvenile Court Procedural Rules Committee for the Committee to review.**

2) **The adopting court shall not proceed with the proposed local rule or amendments until the adopting court receives written notification from the Committee that the proposed local rule or amendments are not inconsistent with any general rule of the Supreme Court.**

[C]E. **Vacating and Suspending Local Rules.** Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.

1) **The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule.**

2) **The Juvenile Court Procedural Rules Committee may suspend that local rule pending action by the Court on that recommendation.**

- [1) Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure.
- 2) Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.]

F. Publication of Local Rules. All local rules shall be published in the *Pennsylvania Bulletin* to be effective and enforceable.

- 1) The adopting court shall not publish the local rule in the *Pennsylvania Bulletin* until it has received the statement from the Committee that the proposed local rule is not inconsistent with any general rule of the Supreme Court.**
- 2) The adopting court shall submit the following items to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*:**
 - a) two certified copies of the local rule;**
 - b) a copy of the local rule on a computer diskette, CD-ROM, or electronic copy that complies with the requirements of 1 Pa.Code § 13.11(b) - (f); and**
 - c) a copy of the written notification, received from the Juvenile Court Procedural Rules Committee, providing that the local rule is not inconsistent with the Pennsylvania Rules of Juvenile Court Procedure.**
- 3) The effective date of the local rule shall not be less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.**

G. Filing with AOPC. Contemporaneously with publishing the local rule in the *Pennsylvania Bulletin*, the adopting court shall file one certified copy of the local rule with the Administrative Office of Pennsylvania Courts.

[D. A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

- 1) A local rule shall be in writing.
- 2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.

- 3) **Two certified copies of the local rule shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.**
- 4) **One certified copy of the local rule shall be filed by the court promulgating the rule with the Juvenile Court Procedural Rules Committee.]**

[5)]H. Public inspection.

- 1) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts.
- 2) Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.

[E. A local rule shall become effective not less than thirty days after the date of publication of the rule in the *Pennsylvania Bulletin*.]

[F)]I. Mandatory Acceptance of Filing.

- 1) **No pleading or other legal paper shall be refused for filing by the clerk of courts based on a requirement of a local rule.**
- 2) No case shall be dismissed nor request for relief granted or denied because of the failure to comply with a local rule.
- 3) In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the **[attorney] party** to comply with the local rule.

[G. The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.]

COMMENT

The purpose of this rule is to further the policy of the Supreme Court to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered. It is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation **[shall] is** not **to** determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied, the matter is a local rule regardless of what it may be called. The provisions of this rule also are intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

Paragraph (B) vacated~~d[s]~~ all current local rules on October 1, 2005, the **original** effective date of this rule. The local rules are to be repromulgated to comply with this rule. This includes rekeying pursuant to paragraph (C)(2) and meeting the appropriate filing requirements under paragraphs (D)~~E~~ & (G).

To simplify the use of local rules, local juvenile delinquency procedural rules are required to be given numbers that are keyed to the number of the general juvenile delinquency procedural rules to which the local rules correspond **pursuant to paragraph (C)**. This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general juvenile delinquency procedural rule.

Paragraph (D), added in 2008, requires that, before publishing the local rule or proceeding with any of the other requirements in paragraphs (F) and (G), the adopting court must submit all proposed local delinquency rules or rule amendments to the Juvenile Court Procedural Rules Committee for review.

[The purpose of paragraph (D) is to] **The 2008 amendments** emphasize that the adopting authority [shall] **is to** comply with all the provisions of [paragraph (D)] **this rule** before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (F) requires the local rule to be published in the Pennsylvania Bulletin to be effective. Pursuant to 1 Pa.Code § 13.11(b) - (f), any documents that are submitted for publication must be accompanied by a diskette or CD-ROM formatted in MS-DOS, ASCII, Microsoft Word, or WordPerfect or in lieu of a diskette or CD-ROM, an electronic copy may be submitted to Legislative Reference Bureau at pabsupreme@palrb.us. The diskette, CD-ROM, or email cover sheet must be labeled with the court's name and address and the local rule's computer file name. In addition, a copy of the written notification, received from the Juvenile Court Procedural Rules Committee, that the local rule is not inconsistent with the Rules of Juvenile Court Procedure is to be submitted.

[Paragraph (D)(5) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The Administrative Office of Pennsylvania Courts maintains a web-page containing the text of local rules. That web-page is located at: <http://www.courts.state.pa.us/judicial-council/local-rules/index.htm>.]

Pursuant to paragraph (F)(2), an electronic copy is a document sent via email to the Pennsylvania Bulletin.

Although under paragraph (E)~~F~~(3) a local rule [shall] **is not to** be effective until at least thirty days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The Administrative Office of Pennsylvania Courts maintains a web-page containing the text of local rules. That web-page is located at: http://www.courts.state.pa.us/judicial-council/local-rules/index.htm.

Paragraph (H) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The purpose of paragraph (F)~~I~~ is to: **1) require that all documents presented for filing are accepted by the clerk of court, also see Rule 345 (A)(2); and 2)** prevent the dismissal of cases, or the granting or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (F)~~I~~ requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (F)~~I~~, the court may impose a sanction for subsequent noncompliance either on the attorney or the juvenile if proceeding *pro se*, but may not dismiss the case, or grant or deny relief because of non-compliance.

Official Note: Rule 121 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 121 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005).

RULE 1121. LOCAL RULES

A. **Definition of Local Rule.** For the purpose of this rule, the term, "local rule" shall include every rule, **administrative order**, regulation, directive, policy, custom, usage, form, or order of general application, however labeled or promulgated, **which is** adopted or enforced by a court of common pleas to govern juvenile dependency practice and procedure[, **which requires a party or party's attorney to do or refrain from doing something**].

B. **Vacated Local Rules and Repromulgation.** [All local rules promulgated before the effective date of this rule are hereby vacated on the date this rule becomes effective.]

1) **All local rules promulgated before February 1, 2007 were vacated at the time of the adoption of these Rules.**

2) **Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure after submission under paragraph (D).**

C. **Corresponding numbers.** Local rules shall be given numbers that are keyed to **the number of the Rules of Juvenile Court Procedure to which the local rules correspond.**

D. Submission to Committee.

1) **All proposed local dependency rules and proposed amendments to local dependency rules shall be submitted in writing to the Juvenile Court Procedural Rules Committee for the Committee to review.**

2) **The adopting court shall not proceed with the proposed local rule or amendments until the adopting court receives written notification from the Committee that the proposed local rule or amendments are not inconsistent with any general rule of the Supreme Court.**

[C]E. **Vacating and Suspending Local Rules.** Local rules shall not be inconsistent with any rule of the Supreme Court or any Act of Assembly.

1) **The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule.**

2) **The Juvenile Court Procedural Rules Committee may suspend that local rule pending action by the Court on that recommendation.**

- [1] Each judicial district may promulgate new local rules that do not conflict with the Rules of Juvenile Court Procedure.
- 2) Local rules shall be given numbers that are keyed to the number of the Rules of Juvenile Court Procedure to which the local rules correspond.]

F. Publication of Local Rules. All local rules shall be published in the *Pennsylvania Bulletin* to be effective and enforceable.

- 1) The adopting court shall not publish the local rule in the *Pennsylvania Bulletin* until it has received the statement from the Committee that the proposed local rule is not inconsistent with any general rule of the Supreme Court.**
- 2) The adopting court shall submit the following items to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*:**
 - a) two certified copies of the local rule;**
 - b) a copy of the local rule on a computer diskette, CD-ROM, or electronic copy that complies with the requirements of 1 Pa.Code § 13.11(b) - (f); and**
 - c) a copy of the written notification, received from the Juvenile Court Procedural Rules Committee, providing that the local rule is not inconsistent with the Pennsylvania Rules of Juvenile Court Procedure.**
- 3) The effective date of the local rule shall not be less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.**

G. Filing with AOPC. Contemporaneously with publishing the local rule in the *Pennsylvania Bulletin*, the adopting court shall file one certified copy of the local rule with the Administrative Office of Pennsylvania Courts.

[D. A local rule shall not become effective and enforceable until the adopting court has fully complied with all the following requirements:

- 1) A local rule shall be in writing.
- 2) Seven certified copies of the local rule shall be filed by the court promulgating the rule with the Administrative Office of Pennsylvania Courts.

- 3) **Two certified copies of the local rule shall be distributed by the court promulgating the rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.**
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- 1) The local rules shall be kept continuously available for public inspection and copying in the office of the clerk of courts.
- 2) Upon request and payment of reasonable costs of reproduction and mailing, the clerk shall furnish to any person a copy of any local rule.

[E. A local rule shall become effective not less than thirty days after the date of publication of the rule in the *Pennsylvania Bulletin*.]

[F)]I. Mandatory Acceptance of Filing.

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- 3) In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the **[attorney] party** to comply with the local rule.

[G. The Juvenile Court Procedural Rules Committee may at any time recommend that the Supreme Court suspend, vacate, or require amendment of a local rule and may suspend that local rule pending action by the Court on that recommendation.]

COMMENT

The purpose of this rule is to further the policy of the Supreme Court to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of juvenile court procedure normally preempts the subject covered. It is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation is not to determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied, the matter is a local rule regardless of what it may be called. The provisions of this rule also are intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

Paragraph (B) vacated~~d[s]~~ all current local rules on **February 1, 2007**, the **original** effective date of this rule. The local rules are to be repromulgated to comply with this rule. This includes rekeying

pursuant to paragraph (C)(2) and meeting the appropriate filing requirements under paragraphs (D) & (G).

To simplify the use of local rules, local juvenile dependency procedural rules are required to be given numbers that are keyed to the number of the general juvenile dependency procedural rules to which the local rules correspond pursuant to paragraph (C). This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general juvenile dependency procedural rule.

Paragraph (D), added in 2008, requires that, before publishing the local rule or proceeding with any of the other requirements in paragraphs (F) and (G), the adopting court must submit all proposed local delinquency rules or rule amendments to the Juvenile Court Procedural Rules Committee for review.

[The purpose of paragraph (D) is to] The 2008 amendments emphasize that the adopting authority [shall] is to comply with all the provisions of [paragraph (D)] this rule before any local rule, or any amendment to local rules, will be effective and enforceable.

Paragraph (F) requires the local rule to be published in the Pennsylvania Bulletin to be effective. Pursuant to 1 Pa.Code § 13.11(b) - (f), any documents that are submitted for publication must be accompanied by a diskette or CD-ROM formatted in MS-DOS, ASCII, Microsoft Word, or WordPerfect or in lieu of a diskette or CD-ROM, an electronic copy may be submitted to Legislative Reference Bureau at pabsupreme@palrb.us. The diskette, CD-ROM, or email cover sheet must be labeled with the court's name and address and the local rule's computer file name. In addition, a copy of the written notification, received from the Juvenile Court Procedural Rules Committee, that the local rule is not inconsistent with the Rules of Juvenile Court Procedure is to be submitted.

[Paragraph (D)(5) requires that a separate consolidated set of local rules be maintained in the clerk's office.

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Paragraph (H) requires that a separate consolidated set of local rules be maintained in the clerk's office.

The purpose of paragraph (F) is to: **1) require that all documents presented for filing are accepted by the clerk of court, also see Rule 345 (A)(2); and 2)** prevent the dismissal of cases, or the granting or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (F) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (F), the court may impose a sanction for subsequent noncompliance either on the attorney or the party if unrepresented, but may not dismiss the case, or grant or deny relief because of non-compliance.

Official Note: Rule 1121 adopted August, 21, 2006, effective February 1, 2007.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 1121 published with the Court's Order at 36 Pa.B. 5599 (September 2, 2006).