

INTRODUCTION

The Juvenile Court Procedural Rules Committee is planning to recommend to the Supreme Court of Pennsylvania that the modification of Rules 167, 170, and 172 be adopted and prescribed. The proposed modified Rule 167 adds court designee as a person that may distribute court orders or notices. The proposed modified Rule 170 clarifies in the *Comment* when records may be expunged. The proposed modified Rule 172 provides for directives in the court's order. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory *Report* highlights the intent of this rule. 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, Christine Riscili at juvenile.rules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of Comments to the Committee.

If you do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq., Staff Counsel
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All Comments shall be received no later than Monday, January 25, 2010.

December 11, 2009

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:

Cynthia K. Stoltz, Esq., Chair

A. Christine Riscili, Esq.
Staff Counsel

EXPLANATORY REPORT

RULE 167. FILINGS AND SERVICE OF COURT ORDERS AND NOTICES

The addition to Rule 167(B)(2) deletes “court” and adds “court designee” as persons who may serve court orders and notices. It is not the court that does the serving but rather the court designee performs this function for the court.

RULE 170. EXPUNGING OR DESTROYING JUVENILE COURT RECORDS

The addition to Rule 170(B) clarifies that there is a separate motion and a proposed court order.

The addition to the *Comment* to Rule 170 sets forth the statutory authority for expunging records. Pursuant to 18 Pa.C.S. § 9123, records may be expunged because: a) the written allegation was not substantiated or the petition was dismissed; b) six months have elapsed since the final discharge of the person from supervision under a consent decree and no proceeding seeking adjudication or conviction is pending; c) five years have elapsed since the final discharge of the juvenile from commitment, placement, probation, or any other disposition and referral, and since such final discharge, the juvenile has not been convicted or adjudicated delinquent of a felony or misdemeanor, and no such proceeding is pending seeking such conviction or adjudication; or d) the individual is eighteen years of age or older, the attorney for the Commonwealth consents to the expungement, and the Court has given consideration to the factors listed in 18 Pa.C.S. § 9123(A)(4)(i) - (iv). See 18 Pa.C.S. § 9123.

RULE 172. ORDER TO EXPUNGE OR DESTROY

The additions to Rule 172(A)(2) & (3) include two directives. First, the keeper of the juvenile records must expunge all records pertaining to the arrest. This includes official and unofficial records, fingerprints, photographs, officer notes, reports, and any other information maintained by a law enforcement agency. Second, each agency, department, or office must notify the court that it has complied with the court order. The *Comment* to Rule 172 lists some registries that may have this information.

Rule 172(B) and its *Comment* add that the court administrator or another court designee may provide service of the court order if the President Judge of a judicial district has promulgated a local rule. See Rule 121 for procedures on local rules.

RULE 167. FILINGS AND SERVICE OF COURT ORDERS AND NOTICES

A. Filings.

- 1) All orders and court notices shall be transmitted promptly to the clerk of courts for filing. Upon receipt by the clerk of courts, the order or court notice shall be time stamped promptly with the date of receipt.
- 2) All orders and court notices shall be filed in the juvenile court file.

B. Service.

- 1) A copy of any order or court notice shall be served promptly on each party's attorney, and the juvenile, if unrepresented.
- 2) The clerk of courts shall serve the order or court notice, unless the president judge has promulgated a local rule designating service to be by the **[court or court administrator or other court designee]**.
- 3) **Methods of service.** Service shall be:
 - a) in writing by:
 - i) personal delivery to the party's attorney, and if unrepresented, the juvenile;
 - ii) mailing a copy to the party's attorney or leaving a copy for the attorney at the attorney's office;
 - iii) in those judicial districts that maintain in the courthouse assigned boxes for counsel to receive service, leaving a copy for the attorney in the attorney's box;
 - iv) sending a copy to an unrepresented juvenile by first class mail addressed to the juvenile's place of residence, detention, or placement;
 - v) sending a copy by facsimile transmission or other electronic means if the party's attorney, and if unrepresented, the juvenile has filed written request for this method of service or has included a facsimile number or an electronic address on a prior legal paper filed in the case; or
 - vi) delivery to the party's attorney, and if unrepresented, the juvenile by carrier service; or
 - b) orally in open court on the record.

C. **Unified Practice.** Any local rule that is inconsistent with the provisions of this rule is prohibited, including any local rule requiring a person to file or serve orders or court notices.

COMMENT

Court notices, as used in this rule, are communications that ordinarily are issued by a judge or the court administrator concerning, for example, calendaring or scheduling, including proceedings requiring the juvenile's presence.

A facsimile number or electronic address set forth on the letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(a)(v). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization is to be filed in each case by the juvenile, if unrepresented, or by the attorney who wants to receive documents by this method of service.

Nothing in this rule is intended to preclude the use of automated or other electronic means for the transmission of the orders or court notices between the judge, court administrator, and clerk of courts, or for time stamping.

Official Note: Rule 167 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 167 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005)

PART C(3)
EXPUNGING OR DESTROYING RECORDS

170. Expunging or Destroying Juvenile Court Records
172. Order to Expunge or Destroy

RULE 170. EXPUNGING OR DESTROYING JUVENILE COURT RECORDS

- A. **Motion.** Juvenile records may be expunged upon motion.
- B. **Contents of Motion.** A motion, which shall **include** [take the form of] a proposed court order, shall contain the following information:
- 1) [T]he name of the juvenile;
 - 2) the date of birth of the juvenile, if known;
 - 3) the juvenile's case docket number, if any;
 - 4) the allegations to which the order pertains;
 - 5) the law enforcement agency that initiated the allegations;
 - 6) the reference number of the police report or written allegation to be expunged or destroyed;
 - 7) the date of arrest;
 - 8) the disposition of the written allegation or petition;
 - 9) the reasons and statutory authority for expunging or destroying the document;
and
 - 10) the agencies upon which certified copies of the court order shall be served.
- C. **Service of Motion.** In addition to the service required by Rule 345, the movant shall serve the motion on the chief juvenile probation officer.
- D. **Answer.** The attorney for the Commonwealth, and any other person upon whom the motion was served, may file an answer to the motion.
- E. **Hearing.** Unless the attorney for the Commonwealth consents to expunging the records, the court shall schedule and conduct a hearing, and thereafter grant or deny the motion.

COMMENT

[See 18 Pa.C.S. § 9123 for records that may be expunged and 42 Pa.C.S. § 6341(a) for destruction of fingerprints and photographs.]

Under paragraph (B)(6), any number assigned to police papers helpful in tracking the police report or written allegation that would assist the law enforcement agency in expunging or destroying the document is to be listed. A reference number could be an offense tracking number, district control number, crime control number, incident number, Philadelphia identification number, or another number assigned by the law enforcement agency to track the document.

Pursuant to paragraph (B)(9), the reasons and the statutory authority for expunging the records are to be included in the motion. Pursuant to 18 Pa.C.S. § 9123, records may be expunged because: a) the written allegation was not substantiated or the petition was dismissed; b) six months have elapsed since the final discharge of the person from supervision under a consent decree and no proceeding seeking adjudication or conviction is pending; c) five years have elapsed since the final discharge of the juvenile from commitment, placement, probation, or any other disposition and referral, and since such final discharge, the juvenile has not been convicted or adjudicated delinquent of a felony or misdemeanor, and no such proceeding is pending seeking such conviction or adjudication; or d) the individual is eighteen years of age or older, the attorney for the Commonwealth consents to the expungement, and the court has given consideration to the factors listed in 18 Pa.C.S. § 9123(A)(4)(i) - (iv). See 18 Pa.C.S. § 9123 for records that may be expunged. See also 42 Pa.C.S. § 6341(a) for destruction of fingerprints and photographs.

Official Note: Rule 170 adopted April 1, 2005, effective October 1, 2005.

Committee Explanatory Reports:

Final Report explaining the provisions of Rule 170 published with the Court's Order at 35 Pa.B. 2214 (April 16, 2005)

RULE 172. ORDER TO EXPUNGE OR DESTROY

A. **Contents.** Any order to expunge or destroy the juvenile court file, docket entries, law enforcement records, or fingerprints and photographs shall include the following information:

- 1) ~~[A]~~all items contained in Rule 170(B);
- 2) **a directive that the keeper of the juvenile records shall expunge all official and unofficial law enforcement, probation, and juvenile court records, including fingerprints, photographs, and all other information pertaining to the arrest;**
- 3) **a directive that each agency, department, or office shall notify the court or its designee of the action taken in response to the order to expunge or destroy;**
- 4) the printed name and signature of the judge issuing the order; and
- ~~[3]~~5) the date of the court order.

B. **Service.** In addition to the service required by Rule 167, the clerk of courts, **court administrator, or other court designee** shall serve certified copies of the order on the chief juvenile probation officer and any other person or agency as directed by the court.

COMMENT

Pursuant to Rule 167(B)(2), the clerk of courts is to serve orders from the court unless the President Judge has promulgated a local rule designating service to be by the court administrator or other court designee. See Rule 121 for procedures on local rules.

The directive is to include expungement from all registries, including but not limited to the Central Repository maintained by the Pennsylvania State Police, JNET, CLEAN, PCIC, and NCIC. Each agency, department, or office is to notify the court that it has complied with the expungement order. See also 42 Pa.C.S. § 6309.

Official Note: Rule 172 adopted April 1, 2005, effective October 1, 2005.