

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
PRESIDENT JUDGE GENERAL COURT REGULATION NO. 97-01

In Re: Rescission of existing Phila. Civ.R.No. 320, 325,
330, 206.1(F)(2)(b), and 7109

and Adoption of Phila. Civ.R.No. 320 and 7109

O R D E R

AND NOW, this 23rd day of May, 1997, the Board of Judges of Philadelphia County having voted, at the Board of Judges' Meeting held May 21, 1997, to rescind existing Phila.Civ.R. No. 320, 325, 330, 206.1 (F)(2)(b) and 7109 and to adopt Phila.Civ.R.No. 320 and 7109, which are attached hereto, IT IS HEREBY ORDERED AND DECREED that the above referenced rules are rescinded and the attached rules are adopted.

This General Court Regulation is issued in accordance with Phila. Civ.R.No. 51 and Pa.R.C.P. 239 and shall become effective on July 1, 1997. As required by Pa.R.C.P. No. 239, the original General Court Regulation shall be filed with the Prothonotary in a Docket maintained for General Court Regulations issued by the President Judge of the Court of Common Pleas of Philadelphia County, and copies shall be submitted to the Administrative Office of Pennsylvania Courts, the Legislative Reference Bureau and the Civil Procedural Rules Committee. Copies of the Order shall also be submitted to Legal Communications, Ltd., The Legal Intelligencer, Jenkins Memorial Law Library, and the law library for the First Judicial District.

BY THE COURT:
ALEX BONAVIDACOLA
PRESIDENT JUDGE
COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

Phila. Civ. R. No. 320 APPEALS FROM STATE & LOCAL AGENCIES

(A) **Applicability.** The Prothonotary shall maintain a special docket for appeals from the determinations of state and local agencies ("statutory appeals"). Statutory appeals (and matters ancillary thereto) shall be presented to and determined by the supervising Judge of Appeals ("Supervising Judge").

(B) **Manner of Taking Appeal.** An appeal may be commenced by filing a Notice of Appeal with the Prothonotary.⁽¹⁾ The Notice of Appeal shall be in substantially the following form:

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY CIVIL DIVISION - SPECIAL DOCKET PROGRAM

Appeal of [name] from a decision

of [name of agency]

No. 96 _____ SD _____

NOTICE OF APPEAL

[Name] hereby appeals from the decision of [name of agency], dated _____ 19 ____, a copy of which is attached hereto. The following persons entered an appearance in the proceedings below:

[if "none", say so. Otherwise, list the name and address of each person using an extra page, if necessary].

Dated: _____

[Appellant or Attorney]

(C) **Procedure on Appeal.** The Supervising Judge shall publish a standing case management order for each agency whose determinations are appealed on a regular basis ("agency-specific orders"). For agencies whose determinations are seldom appealed, the Supervising Judge shall publish a standing order of a generic nature. The Prothonotary shall provide appellant(s) with an agency-specific (or generic) standing order whenever a notice of appeal is filed.

Every appeal (and matter ancillary thereto) shall be governed by the aforesaid standing order and any supplemental order, which may be issued by the Supervising Judge.

(D) **Manner of Service.** The persons to be served, and the manner of making service, shall be specified in the standing order.

(E) **Parties.**

(a) The following persons shall be deemed parties opposed to the appeal unless they opt out by filing a praecipe with the Prothonotary within 60 days of service of the Notice of Appeal:

- (1) the person(s) who initiated the proceedings before the agency below;
- (2) the City of Philadelphia, but only in appeals involving local agencies;
- (3) the School District of Philadelphia, but only in appeals involving school taxes; and
- (4) the Commonwealth of Pennsylvania, but only in appeals involving state agencies.

(b) Others may obtain party status by intervening in accordance with the procedures set forth in the standing order.

1. Statutes authorizing appeals from state agencies (and some local agencies) often require the appeal to be commenced by "petition." See, e.g., 47 P.S. §4-464 (appeals involving the Liquor Control Board). Statutory requirements of this sort usually predate the constitutional remodeling of 1968 but, in any event, may be ignored. See, e.g., **Appeal of Borough of Churchill**, 575 A.2d 550, 554 (Pa. 1990) (legislative bodies may not dictate civil procedure to Pennsylvania Courts). See also **Albrechta v. Borough of Shickshinny**, 565 A.2d 198, 201 (Pa. Commw. 1989) (improper appeal process may be transformed into valid process), appeal denied, 577 A.2d 891 (Pa. 1990).

Phila. Civ. R. No. 7109 Mental Health Review Officer

(a) **Appointment.** The President Judge may, from time to time, appoint such Mental Health Review Officers as may be needed to effectuate the purposes of the Mental Health Procedures Act of 1976, as amended.

(b) **Qualification of Mental Health Review Officer.** The Mental Health Review Officer shall be a member in good standing of the Bar of the Supreme Court of Pennsylvania and possess such other knowledge, expertise and experience as may be required by the President Judge.

(c) **Venue.** The Philadelphia Court of Common Pleas, or the Mental Health Review Officer appointed pursuant to this rule, shall exercise jurisdiction in proceedings pursuant to the Mental Health Procedures Act of 1976, as amended, only in the following situations:

(1) when the subject of the proceedings is or resides in Philadelphia County; or

(2) when the subject of the proceedings has been subjected to involuntary treatment by another county and that county has determined that Philadelphia County is the county of the person's usual residence, and has transferred the case to Philadelphia County for further proceedings. In that case, the Philadelphia Court of Common Pleas, or Mental Health Review Officer appointed pursuant to this rule, may conduct legal proceedings at such locations as may be directed by the Court, including the facility where the person is in treatment, even if the facility is not located in Philadelphia County.

(d) **Form of Applications, Petitions and Certifications.** All Applications, Petitions and Certifications filed pursuant to the Mental Health Procedures Act shall be on forms approved by the Department of Public Welfare.

(e) **Application for Extended Involuntary Treatment Pursuant to Section 303 of the Act.**

(1) **Applicant/Petitioner.** The County Mental Health Administrator, or the Director of the Facility in which the mentally ill person resides.

(2) **Contents of Application/Petition.**

(A) grounds on which extended emergency medical treatment is believed to be necessary;

(B) the name of any examining physician and substance of his/her opinion regarding the mental condition of the person; and

(C) any other appropriate information.

(3) **Filing and Service of Petition.** The Petition must be filed with the Prothonotary within 120 hours of commencement of involuntary emergency treatment rendered pursuant to Section 302, and served on the person by the Petitioner as soon as practicable.

(4) **Scheduling of Conference.** An informal conference shall be scheduled and held within 24 hours after the application is filed, and concluded within 120 hours of the commencement of involuntary emergency treatment rendered pursuant to Section 302.

(5) **Conference.** At the informal conference, the person shall be informed of the nature of the proceedings, and the following information shall be considered by the Mental Health Review Officer:

(A) Information relevant to whether the person is severely mentally disabled and in need of treatment, including the reasons that continued involuntary treatment is considered necessary;

(B) Testimony from a physician who examined the person explaining in terms understandable to a layperson whether the person is severely mentally disabled and in need of treatment;

(C) Information contained in, and appended to, the Application for Involuntary Emergency Examination and Treatment under Section 302; and

(D) Any other information relevant to the issue of whether the person is severely mentally disabled and in need of treatment, even if such information is normally excludable under the rules of evidence, provided the information is found to be reliable.

(6) **Decision.** At the conclusion of the conference, the Mental Health Review Officer shall either:

(A) Certify that the person is severely mentally disabled and in need of continued involuntary treatment. The certification shall be filed with the Prothonotary and served on the parties as required by Section 303(e) of the Act; or

(B) Direct that the facility director or his designee discharge the person.

(7) **Duration of Court-Ordered Involuntary Treatment.** A period not to exceed twenty (20) days.

(f) ***Petition for Court-Ordered Involuntary Treatment Pursuant to Section 304 of the Act.***

(1) ***Persons Already Subject to Involuntary Treatment***

(A) ***Petitioner.*** The County Mental Health Administrator, or the Director of the Facility in which the mentally ill person resides.

(B) ***Contents of Petition.***

(i) facts constituting reasonable grounds to believe that the person is severely mentally disabled and in need of treatment;

(ii) name of the examining physician and substance of the physician's opinion regarding mental condition of the person;

(iii) allegation that the person has been provided with the information required by Section 304(b)(3); and

(iv) any other relevant information.

(C) ***Filing and Service of the Petition.*** The Petition must be filed with the Prothonotary and served as required by Section 304(b)(3).

(D) **Scheduling of Hearing.** A hearing must be scheduled for a date not more than five (5) days after the filing of the Petition.

(E) **Continuation of Treatment Pending Hearing.** Treatment shall continue pending determination of Petition.

(F) **Hearing.** The following information shall be considered by the Mental Health Review Officer:

(i) Evidence reestablishing that the conduct originally required by Section 301 in fact occurred and that the person's condition continues to evidence a clear and present danger to himself/herself or others. It is not necessary to show the recurrence of dangerous conduct within the past 30 days;

(ii) Information relevant to whether the person is severely mentally disabled and in need of treatment, including the reasons that continued involuntary treatment is considered necessary;

(iii) Information contained in, or appended to, the Application for Involuntary Emergency Examination and Treatment under Section 302 or 303;

(iv) Testimony by a physician who examined the person;

(v) Any other relevant information, even if normally excludable under the rules of evidence, provided the information is found to be reliable.

(G) **Decision.** The Mental Health Review Officer shall render a decision within 48 hours after the close of evidence, and shall either:

(i) find that the person is severely mentally disabled and in need of continued involuntary inpatient or outpatient treatment and issue an appropriate order as set forth in Section 304(f) of the Act; or

(ii) deny the Petition and direct that the facility director or his designee discharge the person.

(2) **Persons Not Already Subject to Involuntary Treatment**

(A) **Petitioner.** Any responsible party.

(B) **Contents of Petition.**

(i) facts constituting reasonable grounds to believe that the person is severely mentally disabled and in need of treatment;

(ii) name of the examining physician and substance of the physician's opinion regarding mental condition of the person; and

(iii) any other appropriate information.

(C) **Filing of Petition.** The Petition must be filed with the Prothonotary.

(D) ***Scheduling of Hearing and Service of Petition.*** Upon being satisfied that the Petition sets forth reasonable cause to believe that the person is within the criteria for court-ordered treatment as set forth in Section 304(a), the Court shall schedule a hearing, which may be conducted by a Mental Health Review Officer, and issue a summons or warrant to ensure the person's attendance at the hearing. The hearing shall be scheduled as soon as practicable, and the person must be served with a copy of the Petition and required notices at least three (3) days before the scheduled hearing.

(E) ***Administration of Treatment Pending Hearing.*** No treatment shall be authorized during the pendency of the Petition except in accordance with Sections 302 or 303 of the Act.

(F) ***Hearing.*** The following information shall be considered by the Court or Mental Health Review Officer:

(i) Information relevant to whether the person is severely mentally disabled and in need of treatment, including the reasons that involuntary treatment is considered necessary;

(ii) Testimony from a physician who examined the person explaining in terms understandable to a layperson whether the person is severely mentally disabled and in need of treatment; and

(iii) Any other information relevant to the issue of whether the person is severely mentally disabled and in need of treatment, even if such information is normally excludable under the rules of evidence, provided the information is found to be reliable.

(G) ***Decision.*** The Mental Health Review Officer, or Court, shall render a decision within 48 hours after the close of evidence, and shall either:

(i) find that the person is severely mentally disabled and in need of involuntary inpatient or outpatient treatment and issue an appropriate order as set forth in Section 304(f) of the Act; or

(ii) deny the Petition.

(3) ***Duration of Court-Ordered Involuntary Treatment.***

(A) A period not to exceed ninety days under Section 304(g)(1) of the Act; or

(B) A period not to exceed one year under Section 304(g)(2) of the Act, subject to the provisions of Section 304(g)(4) as to termination or continuance of involuntary treatment.

(g) ***Application for Additional Periods of Court-Ordered Involuntary Treatment Pursuant to Section 305 of the Act.***

(1) ***Applicant.*** The County Mental Health Administrator, or the Director of the Facility in which the mentally ill person resides.

(2) ***Contents of Petition.***

(A) facts constituting reasonable grounds to believe that the person is severely mentally disabled and in need of treatment;

(B) name of the examining physician and substance of the physician's opinion regarding mental condition of the person;

(C) allegation that the person has been provided with the information required by Section 304(b)(3); and

(D) any other appropriate information.

(3) **Filing and Service of Petition.** The Petition must be filed with the Prothonotary and served as required by Section 304(b)(3).

(4) **Scheduling of Hearing.** A hearing must be scheduled and held no more than five (5) days after the filing of the Petition.

(5) **Continuation of Treatment Pending Hearing.** Treatment shall continue pending determination of the Petition.

(6) **Hearing.** The following information shall be considered by the Mental Health Review Officer:

(A) Information contained in, or appended to, the Application for Involuntary Emergency Examination and Treatment under Section 302, 303 or 304;

(B) Testimony by a physician who examined the person;

(C) Information relevant to the reasons that continued involuntary treatment is considered necessary, as shown by conduct during the person's most recent period of court-ordered treatment; and

(D) Any other relevant information, even if normally excludable under the rules of evidence, provided the information is found to be reliable.

(7) **Decision.** The Mental Health Review Officer shall render a decision within 48 hours after the close of evidence, and shall either:

(A) find that the person is severely mentally disabled and in need of continued involuntary inpatient or outpatient treatment, as shown by conduct during the person's most recent period of court-ordered treatment; and issue an appropriate order as set forth in Section 305 of the Act; or

(B) deny the Petition and direct that the facility director or his designee discharge the person.

(8) **Duration of Court-Ordered Involuntary Treatment.**

(A) A period not to exceed one-hundred eighty (180) days; or

(B) A period not to exceed one year if the person meets the criteria of Section 304(g)(2) of the Act.

(h) ***Transfer of Persons in Involuntary Treatment.***

(1) Except as provided hereunder, any person in involuntary treatment may be transferred to any approved facility.

(2) Exceptions:

(A) persons committed pursuant to Section 304(g)(2) of the Act may not be transferred, in the absence of an emergency, unless written notice is given to the committing Judge or Mental Health Review Officer, and district attorney in the committing county and neither has objected to the transfer within twenty (20) days of receipt of said notice. In the event an objection is received, the Mental Health Review Officer shall hold a hearing within twenty days to review the commitment transfer and shall render a decision within 48 hours of the close of evidence; and

(B) transfers which constitute a greater restraint cannot be accomplished unless the Mental Health Review Officer holds a hearing and finds the transfer to be necessary and appropriate.

(i) ***Review of Mental Health Review Officer Certifications or Decisions.***

(1) ***Judicial Review and Assignment.*** Certifications of the Mental Health Review Officers, pursuant to Section 303 of the Act, and decisions of the Mental Health Review Officers pursuant to Sections 304, 305 and 306 of the Act are subject to Judicial review through the filing, by any party, of a Petition for Review with the Prothonotary of the Court of Common Pleas. Said Petitions shall be assigned to such Court of Common Pleas Judges ("Review Judge"), assigned to any Division of the Court, as may be determined by the President Judge from time to time.

(2) ***Scheduling of Hearing and Service.*** A hearing must be scheduled and held within 72 hours after the Petition is filed unless a continuance is requested by the person's counsel. The party filing the Petition for Review must forthwith serve a copy of the Petition and Notice of Hearing on the Mental Health Review Officer and all other interested parties. Service may be effectuated by hand-delivery or via facsimile.

(3) ***Preparation of Record for the Court.*** The Mental Health Review Officer shall cause the transcription of the underlying proceedings for presentation to the Review Judge no later than the hearing date, and shall ensure that the evidence relied upon by the Mental Health Review Officer is available to the Review Judge.

(4) ***Hearing.*** The Review Judge shall review the certification of the Mental Health Review Officer and shall consider such other evidence as the Review Judge may receive or require.

(5) ***Decision.*** The Review Judge shall render a decision as soon as practicable, and, unless all parties agree to a remand to the Mental Health Review Officer, shall either:

(A) determine that the person is in need of involuntary treatment and that the procedures prescribed by the Mental Health Procedures Act have been followed; or

(B) determine that the procedures prescribed by the Mental Health Procedures Act have not been followed, or that the person is not in need of involuntary treatment, and, if appropriate, shall direct that the facility director or his designee discharge the person.

The decision of the Review Judge as set forth above is subject to appellate review as provided by rules of court.

(j) **Record of Proceedings.** A record of the proceedings (which need not be in a stenographic format) held pursuant to the Mental Health Procedures Act shall be made, impounded by the Court as provided in the Act, and kept by the Prothonotary for at least one year.

(k) **Appointment of Counsel.** The Public Defender is appointed to represent all persons who may be subject to involuntary medical examination and treatment, unless it appears that any such person can afford, and desires to have, private representation. In the event a conflict prevents the Public Defender from representing any eligible person, conflict counsel shall be appointed as directed by the President Judge.

Explanatory Note. *The Mental Health Procedures Act, as enacted on July 9, 1976, authorized the local courts to decide whether a judge of the Court of Common Pleas or a "Mental Health Review Officer" would conduct legal proceedings under the Act. Section 109 specifically provided that a Mental Health Review Officer could, if authorized by the Court, conduct proceedings under Section 303(c), which dealt with extended involuntary emergency treatment, and under Section 304, which dealt with court-ordered involuntary treatment. However, the Act did not specifically address the issue of whether the Mental Health Review Officer could issue orders for treatment or whether such orders were deemed to be final orders which were subject to appellate review.*

*In the case of **In re Chambers**, 282 Pa. Super. 327, 422 A.2d 1140 (1980), the Superior Court addressed the difference between "certifications" issued pursuant to Section 303 and "orders" issued pursuant to Section 304. The Superior Court found that Section 303 specifically authorized the Mental Health Review Officer to certify, without judicial approval, a person for extended involuntary emergency treatment for a period not to exceed 20 days, noting that under Section 303 the person made subject to such involuntary emergency treatment had the right to petition the Court of Common Pleas for review of the certification. However, the Superior Court found that the procedure for Section 304 proceedings was different, in that Section 304 required the entry of an "order" involuntarily committing a person, and since the Mental Health Review Officer is not a judge, the Mental Health Review Officer cannot enter a "final order" which is appealable to the Superior Court. Thus, the Superior Court concluded that a commitment "order" issued pursuant to Section 304 by a Mental Health Review Officer on August 28, 1978 was not a "final order" and accordingly, not ripe for appellate review, and remanded to the Court of Common Pleas with directions to enter a final appealable order. See also **In re Bishop**, 282 Pa. Super. 67, 422 A.2d 831 (1980).*

The Mental Health Procedures Act was amended by Act of November 26, 1978, P.L. No. 1362, No. 324, effective in 60 days. This amendment, inter alia, expanded the scope of the Mental Health Review Officer's authority by authorizing the Mental Health Review Officer to conduct hearings concerning extended involuntary emergency treatment under Section 303(c), court-ordered involuntary treatment under Sections 304 and 305, or transfer hearings under Section 306. More importantly, a new section was added, Section 109(b), which specifically provides, as did Section 303(g), that persons made subject to treatment by Mental Health Review Officers have a right to petition the Court of Common Pleas for review of such ordered treatment. Thus, under the 1978 amendments, providing that the Court of Common Pleas authorizes Mental Health Review Officers to conduct proceedings under Sections 303(c), 304, 305 and 306, they may require involuntary treatment, further provided that the persons subject to such treatment may file a petition for review with the Court of Common Pleas which will enter a final appealable order. The instant Rule constitutes authorization to Mental Health Review Officers to conduct proceedings under the Mental Health Procedures Act, as amended, and sets forth the procedure to be followed so as to clarify the rights of the persons affected.

Adopted by the Board of Judges on May 21, 1997. Effective on July 1, 1997.