

SUPREME COURT OF PENNSYLVANIA

In Re: Order Adopting New Rule 791 and Amending Rules 490 and 790 of the Pennsylvania Rules of Criminal Procedure

In re Order Adopting New Rule 791 · Decided November 9, 2016

SUMMARY

This document contains Pennsylvania Rules of Criminal Procedure 490, 790, and new Rule 791. Rules 490 and 790 establish procedures for seeking expungement in summary and court cases, respectively, while Rule 791 establishes procedures for obtaining limited-access orders in court cases. The rules address petition contents, criminal history reports, Commonwealth responses, hearings, appeals, orders, and service on criminal justice agencies.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Pennsylvania
DECIDED	November 9, 2016
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Pennsylvania exercised its rulemaking authority to adopt new Pennsylvania Rule of Criminal Procedure 791 and amend Rules 490 and 790.
PRECEDENTIAL VALUE	Rulemaking order; establishes binding Pennsylvania Rules of Criminal Procedure rather than a conventional precedential adjudication.

TOPICS

[criminal procedure](#) [post-conviction relief](#) [remedies](#) [state post-conviction relief](#)

PRACTICE AREAS

[criminal procedure](#) [expungement](#) [criminal-record privacy](#) [post-conviction relief](#)

QUESTIONS PRESENTED

1. What procedures should govern petitions and orders for expungement of summary cases under Rule 490?

2. What procedures should govern petitions and orders for expungement of court cases under Rule 790?
3. What procedures should govern petitions and orders for limited access to criminal history record information under new Rule 791?
4. When should an expungement or limited-access order be stayed pending appeal, particularly when the Commonwealth consents?

HOLDINGS

1. Rule 490 establishes the required procedure for seeking and obtaining expungement of a summary case, including the petition contents, criminal-history-report requirement, service on the Commonwealth, response period, hearing and decision procedures, order contents, and service of certified orders on identified criminal justice agencies.
2. Rule 790 establishes the required procedure for seeking and obtaining expungement of a court case, including the required petition and order information, criminal-history-report requirement, service and response periods, hearings, appeal stays, and service of certified orders.
3. New Rule 791 establishes the procedure for obtaining a limited-access order under 18 Pa.C.S. § 9122.1, including petition requirements, the criminal-history-report requirement, Commonwealth response and hearing procedures, order contents, appeal stays, and restricted dissemination.
4. An expungement or limited-access order is stayed for 30 days pending appeal, and remains stayed if a timely appeal is filed, except when the attorney for the Commonwealth has consented to the petition.

KEY QUOTATIONS

“the judge shall enter an order directing that the petitioner’s criminal record history information that is subject to the limited access order shall not be disseminated to an individual, a noncriminal justice agency, or an internet website” (Rule 791(B)(4))

“Additional information shall not be required by local rule or practice.” (Rule 490(A)(2))

FACTUAL BACKGROUND

The court addressed the need for procedural rules governing criminal-record expungement and limited-access orders. Rules 490 and 790 already governed expungement in summary and court cases, while new Rule 791 was created to implement the statutory limited-access procedure under 18 Pa.C.S. § 9122.1. The rules prescribe the required contents of petitions and orders, service, Commonwealth responses, hearings, stays pending appeal, and dissemination restrictions.

PROCEDURAL HISTORY

The court promulgated procedural rules governing petitions and orders for expungement in summary and court cases and for limited access to criminal history information. The order also amended the stay provisions applicable when the Commonwealth consents to relief and established related petition and order requirements and procedures.

DISPOSITION

other

CASES CITED

- In re Administrative Order No. 1-MD-2003, 594 Pa. 346, 936 A.2d 1 (Pa. 2007)
- Commonwealth v. J.H., 563 Pa. 248, 759 A.2d 1269 (Pa. 2000)

OPINION

PER CURIAM.

RULE 490. PROCEDURE FOR OBTAINING EXPUNGEMENT IN SUMMARY CASES; EXPUNGEMENT ORDER. (A) PETITION FOR EXPUNGEMENT (1) Except as provided in Rule 320, an individual who satisfies the requirements of 18 Pa.C.S. § 9122 for expungement of a summary case may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth: (a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number; (b) the name and address of the issuing authority who accepted the guilty plea or heard the case; (c) the name and mailing address of the affiant as shown on the complaint or citation, if available; (d) the magisterial district court number; (e) the docket number; (f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest; (g) the specific charges, as they appear on the charging document, to be expunged; (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid; (i) the reason(s) for expungement; and (j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief.

The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904. Additional information shall not be required by local rule or practice.

(3) Unless the attorney for the Commonwealth agrees to waive this requirement, [A] a current copy of the petitioner's Pennsylvania State Police criminal [record] history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. Absent a waiver by the attorney for the Commonwealth, the judge shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing. (B) OBJECTIONS; HEARING (1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action.

The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented. (2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition. (4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement. (a) The order shall contain the information required in paragraph (C). (b) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), [T]the order shall be stayed for 30 days pending an appeal.

If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court. (5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial. (C) ORDER (1) Every order for expungement shall include: 2 (a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number; (b) the name and address of the issuing authority who accepted the guilty plea or heard the case; (c) the name and mailing address of the affiant as shown on the complaint or citation, if available; (d) the magisterial district court number; (e) the docket number; (f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest; (g) the specific charges, as they appear on the charging document, to be expunged; (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid; (i) the reason(s) for expungement; and (j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice. (2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order. COMMENT: This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103).

The petition for expungement of the summary offense in such a case would proceed under Rule 790. See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a 3 summary case and Rule 790 for court case expungement procedures. This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal [record] history report to the petition. The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition.

The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition. [A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.] A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>. "Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age. For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114. For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102. Concerning standing, see *In Re Administrative Order No. 1- MD-2003*, [594 Pa. 346,] 936 A.2d 1 (Pa. 2007); *4 Commonwealth v. J.H.*, [563 Pa. 248,] 759 A.2d 1269 (Pa.

2000). NOTE: Adopted September 22, 2010 effective in 90 days [.]; amended November 9, 2016, effective November 14, 2016. * * * * * COMMITTEE EXPLANATORY REPORTS: Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court's Order at 40 Pa.B. 5737 (October 9, 2010).

Final Report explaining the November 9, 2016 amendment regarding the stay of expungement when the Commonwealth has consented and petition and order forms published for comment at 46 Pa.B. (, 2016). 5 RULE 790. PROCEDURE FOR OBTAINING EXPUNGEMENT IN COURT CASES; EXPUNGEMENT ORDER. (A) PETITION FOR EXPUNGEMENT (1) Except as provided in Rule 320 and 35 P.S. § 780-119, an individual who satisfies the requirements for expungement may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth: (a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number; (b) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case; (c) the name and mailing address of the affiant as shown on the complaint, if available; (d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies; (e) the offense tracking number (OTN); (f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest; (g) the specific charges, as they appear on the charging document, to be expunged; (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid; (i) the reason(s) for expungement; and

(j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief.

The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904. 6 Additional information shall not be required by local rule or practice.

(3) Unless the attorney for the Commonwealth agrees to waive this requirement, [A] a current copy of the petitioner's Pennsylvania State Police criminal [record] history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. Absent a waiver by the attorney for the Commonwealth, the judge shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing. (B) OBJECTIONS; HEARING (1) Within 60 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action.

The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented. (2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 60-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition. (4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement. (a) The order shall contain the information required in paragraph (C). (b) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), [T]the order shall be stayed for 30 days pending an appeal.

If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court. (5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial. 7 (C) ORDER (1) Every order for expungement shall include: (a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number; (b) the name and address of the judge of the court of common pleas who accepted the guilty plea or heard the case; (c) the name and mailing address of the affiant as shown on the complaint, if available; (d) the Philadelphia Municipal Court docket number or the court of common pleas docket number, whichever applies; (e) the offense tracking number (OTN); (f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest; (g) the specific charges, as they appear on the charging document, to be expunged; (h) the disposition and, if the

sentence includes a fine, costs, or restitution, whether the amount due has been paid; (i) the reason(s) for expungement; and (j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice. (2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order. COMMENT: This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in court cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103).

The petition for expungement of the summary offense in such a case would proceed under this rule. See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary case expungement procedures, and 35 P.S. § 780-119 for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act.

This rule sets forth the only information that must be included in every expungement petition and order. Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal [record] history report to the petition.

The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition. The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition. An order for expungement under the Controlled Substance, Drug, Device, and Cosmetic Act, 35 P.S. § 780-119, also must include the information in paragraph (C).

[A form petition is to be designed and published by the Administrative Office of Pennsylvania Courts in consultation with the Committee as provided in Rule 104.] A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>. "Petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal or age. For the procedures for filing and service of petitions, see Rule 576. 9 For the procedures for filing and service of orders, see Rule 114. When a summons instead of an arrest warrant is issued pursuant to Rule 519, the date of the summons constitutes the "date of arrest" for purposes of paragraph (A)(2)(f).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102. Concerning standing, see *In Re Administrative Order No. 1- MD-2003*, [594 Pa. 346,] 936 A.2d 1 (Pa. 2007); *Commonwealth v.*

J.H., [563 Pa. 248,] 759 A.2d 1269 (Pa. 2000). NOTE: Adopted September 22, 2010 effective in 90 days [.]; amended November 9, 2016, effective November 14, 2016. * * * * * COMMITTEE EXPLANATORY REPORTS: Final Report explaining the September 22, 2010 promulgation of new Rule 790 providing the procedures for expungements in court cases published with the Court's Order at 40 Pa.B.

5737 (October 9, 2010). Final Report explaining the November 9, 2016 amendment regarding the stay of expungement when the Commonwealth has consented and petition and order forms published with the Court's Order at 46 Pa.B. (, 2016). 10 (This is an entirely new rule.) RULE 791. PROCEDURE FOR OBTAINING ORDER FOR LIMITED ACCESS IN COURT CASES; ORDER FOR LIMITED ACCESS.

(A) PETITION FOR ORDER FOR LIMITED ACCESS (1) Pursuant to 18 Pa.C.S. § 9122.1, an individual who satisfies the statutory requirements for obtaining an order for limited access may request an order that limits the dissemination of his or her criminal history record information by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth: (a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number; (b) the name and address of the judge of the court of common pleas, magisterial district judge, or Philadelphia Municipal Court judge who accepted the guilty plea or heard the case; (c) the name and mailing address of the affiant as shown on the complaint, if available; (d) the court of common pleas docket number, magisterial district court docket number, or the Philadelphia Municipal Court docket number, whichever applies; (e) the offense tracking number (OTN); (f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest; (g) the specific charges, as they appear on the charging document, to be subject to limited access; (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid; (i) the reason(s) for the order for limited access; (j) a statement that the case qualifies for a limited access order and none of the exceptions under 18 Pa.C.S. § 9122.1(b) are applicable; and 11 (k) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief.

The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904. Additional information shall not be required by local rule or practice.

(3) Unless the attorney for the Commonwealth agrees to waive this requirement, a current copy of the petitioner's Pennsylvania State Police criminal history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the

petition. Absent a waiver by the attorney for the Commonwealth, the court shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing. (B) OBJECTIONS; HEARING (1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action.

The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented. (2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge of the court of common pleas shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition. (4) If the judge grants the petition for limited access, the judge shall enter an order directing that the petitioner's criminal record history information that is subject to the limited access order shall not be disseminated to an individual, a noncriminal justice agency, or an internet website and that dissemination of the petitioner's criminal record history be limited only to a criminal justice agency or government agency as provided in 18 Pa.C.S. § 9122.1. (a) The order shall contain the information required in paragraph (C).

12 (b) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the order for limited access is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for an order of limited access, the judge shall enter an order denying the petition and stating the reasons for the denial. (6) If the judge grants the petition for an order of limited access, the petition and order are subject to limited access. (C) ORDER (1) Every order for limited access shall include: (a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number; (b) the name and address of the judge of the court of common pleas, magisterial district judge, or Philadelphia Municipal Court judge who accepted the guilty plea or heard the case; (c) the name and mailing address of the affiant as shown on the complaint, if available; (d) the court of common pleas docket number, magisterial district court docket number, or the Philadelphia Municipal Court docket number, whichever applies; (e) the offense tracking number (OTN); (f) the date on the complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest; (g) the specific charges, as they appear on the charging document, to be subject to limited access; (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid; (i) the reason(s) for the order for limited access; 13 (j) a statement that the case qualifies for a limited

access order and none of the exceptions under 18 Pa.C.S. § 9122.1(b) are applicable; and (k) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice. (2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order. COMMENT: Section 9122.1 of the Criminal Code provides for an order limiting dissemination of a record of a criminal conviction for a misdemeanor of the second degree, a misdemeanor of the third degree, or an ungraded misdemeanor which carries a maximum penalty of no more than two years only to a criminal justice agency or government agency.

This rule, adopted in 2016, provides the procedures for requesting and ordering an order for limited access as provided in the statute. This rule sets forth the only information that must be included in every petition and order for limited access.

The petition must be filed with the clerk of courts of the judicial district in which the charges that are the subject of the petition were disposed. The petition must be decided by a judge of the court of common pleas, even if the charges that are the subject of the petition were disposed by a magisterial district judge or Philadelphia Municipal Court judge.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal history report to the petition. The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition.

The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition. A form petition and form order for limited access has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the 14 following website: <http://www.pacourts.us/forms/for-the-public>. "Petition" as used in this rule is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for the order for limited access" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, the defendant's freedom from arrest or prosecution for 10 years. For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114. When a summons instead of an arrest warrant is issued pursuant to Rule 519, the date of the summons constitutes the "date of arrest" for purposes of paragraph (A)(2)(f).

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102. For the definition of "government agency," see 18 Pa.C.S. § 9121(b.1) and (b.2). Nothing in this rule is intended to alter procedures regarding expungement. See Rule 320 for the procedures for expungement following the successful completion of an ARD program in a court case, Rule 490 for summary

case expungement procedures, Rule 790 for court case expungement, and 35 P.S. § 780-119 for expungement procedures under the Controlled Substance, Drug, Device, and Cosmetic Act.

Concerning standing, see *In Re Administrative Order No. 1- MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000). NOTE: Adopted November 9, 2016, effective November, 2016. 15 * * * * * COMMITTEE EXPLANATORY REPORTS: Final Report explaining new Rule 791 providing the procedures for orders for limited access in court cases published with the Court's Order at 46 Pa.B. (, 2016).