

RULE 202. APPROVAL OF SEARCH WARRANT APPLICATIONS BY ATTORNEY FOR THE COMMONWEALTH -- LOCAL OPTION.

(A) The district attorney of any county may require that search warrant applications filed in the county have the approval of an attorney for the Commonwealth prior to filing.

(B) If the district attorney elects to proceed under paragraph (A), the district attorney shall file a certification with the court of common pleas, which certification shall specify the circumstances in which search warrant applications shall require prior approval and shall also specify the date such procedure is to become effective. The court of common pleas shall thereupon promulgate a local rule in the following form, setting forth the circumstances specified in the certification:

RULE _____. APPROVAL OF SEARCH WARRANT APPLICATIONS BY ATTORNEY FOR THE COMMONWEALTH.

The District Attorney of _____ County having filed a certification pursuant to Pa.R.Crim.P. 202, search warrants in the following circumstances:

shall not hereafter be issued by any judicial officer unless the search warrant application has the approval of an attorney for the Commonwealth prior to filing.

(C) If an attorney for the Commonwealth disapproves a search warrant application, the attorney shall furnish to the police officer who prepared the application a written notice of the disapproval, in substantially the form set forth in Rule 507(C), and the attorney shall maintain a record of the written notice.

(D) No defendant shall have the right to relief based solely upon a violation of this rule.

COMMENT: For reasons set forth in the *Comment* to Rule 507, this rule authorizes the adoption and withdrawal of the prior approval requirement on a local option basis.

Other principles and comments concerning this rule, including the intended meaning of "attorney for the Commonwealth," **and the use of advanced communication technology or other electronic methods to convey the approval of the search warrant application**, are set forth in the Rule 507 *Comment*.

NOTE: Rule 2002A adopted December 11, 1981, effective July 1, 1982; amended August 9, 1994, effective January 1, 1995; renumbered Rule 202 and amended March 1, 2000, effective April 1, 2001[.]; **Comment revised February 26, 2010, effective April 1, 2010.**

* * * * *

COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Final Report explaining the February 26, 2010 Comment revision regarding electronic approval published with the Court's Order at 40 Pa.B. (, 2010).

RULE 507. APPROVAL OF POLICE COMPLAINTS AND ARREST WARRANT AFFIDAVITS BY ATTORNEY FOR THE COMMONWEALTH -- LOCAL OPTION.

(A) The district attorney of any county may require that criminal complaints, arrest warrant affidavits, or both filed in the county by police officers, as defined in these rules, have the approval of an attorney for the Commonwealth prior to filing.

(B) If the district attorney elects to proceed under paragraph (A), the district attorney shall file a certification with the court of common pleas, which certification shall state whether prior approval of police complaints, or arrest warrant affidavits, or both shall be required, shall specify which offenses or grades of offenses shall require such prior approval, and shall also specify the date such procedure is to become effective. The court of common pleas shall thereupon promulgate a local rule in the following form, setting forth the offenses or grades of offenses specified in the certification and stating whether prior approval of police complaints, arrest warrant affidavits, or both shall be required:

RULE ____ APPROVAL OF POLICE (COMPLAINTS)
(ARREST WARRANT AFFIDAVITS)
(COMPLAINTS AND ARREST WARRANT AFFIDAVITS)
BY ATTORNEY FOR THE COMMONWEALTH.

The District Attorney of _____ County having filed a certification pursuant to Pa.R.Crim.P. 507, (criminal complaints) (arrest warrant affidavits) (criminal complaints and arrest warrant affidavits) by police officers, as defined in the Rules of Criminal Procedure, charging

shall not hereafter be accepted by any judicial officer unless the (complaint) (affidavit) (complaint and affidavit) has the approval of an attorney for the Commonwealth prior to filing.

(C) If an attorney for the Commonwealth disapproves a police complaint, arrest warrant affidavit, or both, the attorney shall furnish to the police officer who prepared the complaint, affidavit, or both a written notice of the disapproval, in substantially the following form, and the attorney shall maintain a record of the written notice.

D.A. File Number _____

COMMONWEALTH OF PENNSYLVANIA
_____ COUNTY

NOTICE AND RECORD OF DISAPPROVAL

Commonwealth of Pennsylvania

Complaint/Affidavit/Application of:

vs.

Occurrence Date: _____

Charge: _____
Police Number: _____
Police Department: _____
Time: _____ Location: _____

SUMMARY OF FACTS AND PROBABLE CAUSE

[PCIC] CLEAN/NCIC check reveals no outstanding warrants.

Date: _____

Source of Information: _____

REASON(S) FOR DISAPPROVAL
(Please check appropriate reason)

- IC= Insufficient Corroboration
- IE= Insufficient Evidence
- II= Identification Inconclusive
- IJ= Interest of Justice
- IS= Inadmissible Evidence
- IP= Insufficient Probable Cause
- LJ= Lacks Jurisdiction
- LP= Lacks Prosecutorial Merit
- UW= Unavailable or Un-cooperative Witness

- UV= Unavailable or Un-cooperative Victim
- WC= Witness Credibility/Contradicted
- ID= Inadequate Description of Persons, Premises, or Property
- NS= Insufficient Cause for Nighttime Search

Other: _____

DISAPPROVED BY:

ATTORNEY FOR COMMONWEALTH

DATE: _____

(D) No defendant shall have the right to relief based solely upon a violation of this rule.

COMMENT: This rule gives the district attorney of each county the option of requiring that criminal complaints and/or arrest warrant affidavits filed in that county by police officers, as defined in Rule 103, shall have the prior approval of an attorney for the Commonwealth. Under the rule, the district attorney may elect to require prior approval of police complaints, or arrest warrant affidavits (see Rule 513), or both. In addition, the district attorney is given the authority to define which offenses or grades of offenses will require such prior approval. For example, the district attorney may specify that prior approval will be required only if a felony is charged, or that prior approval will be required for all cases [;] , *i.e.*, whenever a misdemeanor or felony is charged.

In principle, this rule was promulgated and intended solely to enable an attorney for the Commonwealth to evaluate whether there is substance to the complaint and arrest warrant affidavit, and to give the prosecutor the option of assuming some control over the initiation of the proceedings. Allowing a law-trained prosecutor, rather than the police, to exercise the initial charging decision, as well as the decision regarding which charges to bring, is endorsed by the American Bar Association Project on Standards Relating to the Administration of Criminal Justice, The National Advisory Commission on Criminal Justice Standards and Goals, and the American Law Institute Model Code of Pre-Arrest Procedure. See ABA STANDARDS, PROSECUTION AND DEFENSE FUNCTION, STANDARD 3-3.4 (Approved 1979); NAC STANDARDS ON COURTS, STANDARD 1.2, PROCEDURE FOR SCREENING (1973); ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE, §130.2 (1975). Among the advantages generally asserted are that the prosecutor, whose responsibility it is to try cases, is in the best position to assess the existence of probable cause, whether additional police investigation is necessary before the filing of criminal charges, and to assess which charges should be brought. Moreover, the prosecutor's assumption of the initial charging function may result in significant savings of time and money by reducing the later withdrawal of cases or charges by the prosecutor.

To assume and exercise the charging function properly, the

district attorney must have sufficient personnel and other resources to provide that an attorney for the Commonwealth is available 24 hours a day. Some counties may not have sufficient personnel and other resources. Therefore, the rule authorizes assumption of the charging function on a local option basis.

Under this rule, requiring prior approval of police complaints, arrest warrant affidavits, or both is solely at the election of the district attorney. It is intended that once the certification is filed, the court of common pleas must promulgate the effectuating local rule. The local rule mechanism is used primarily for the advantage of notice, publication, and recordation, which are inherent in the local rule process. The parentheticals are used in the local rule form of paragraph (B) because, under paragraph (A), the district attorney has the alternatives of requiring prior approval of only complaints, or only arrest warrant affidavits, or both complaints and arrest warrant affidavits. The effectuating local rule will have to set forth which of these 3 alternatives has been selected by the district attorney, in accordance with the district attorney's certification.

The district attorney (or a successor district attorney) may withdraw the requirement of prior approval. This may be accomplished by filing a notice of withdrawal with the court of common pleas. In such event, the court of common pleas must rescind the local rule. The district attorney (or a successor district attorney) may also change the scope of the prior approval requirement by filing a new certification, in which event the court of common pleas shall promulgate a new local rule.

As used in this rule, "attorney for the Commonwealth" is intended to include not only the district attorney and any deputy or assistant district attorney in the county, but also the Attorney General, and any deputy or assistant attorney general, in those cases which the Attorney General is authorized by law to prosecute in the county.

Nothing in this rule is intended to preclude the use of advanced communication technology or other electronic methods to convey the approval of the complaint or affidavit by the attorney for the Commonwealth to the police officer acting as affiant.

See Rule 202 for a similar option as to search warrant applications.

See Rule 544 for the procedures requiring the written approval of the attorney for the Commonwealth for the refiling of a complaint.

NOTE: Rule 101A adopted December 11, 1981, effective July 1, 1982; *Comment* revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; renumbered Rule 107 and amended August 9, 1994, effective January 1, 1995; *Comment* revised October 8, 1999, effective January 1, 2000; renumbered Rule 507 and amended March 1, 2000, effective April 1, 2001[.] ; ***Comment* revised February 26, 2010, effective April 1, 2010.**

* * * * *

COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report concerning the October 8, 1999 Comment revision published with the Court's Order at 29 Pa.B. 5509 (October 8, 1999).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 26, 2010 Comment revision regarding electronic approval published with the Court's Order at 40 Pa.B. (, 2010).