

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

### PART I. GENERAL

[234 PA. CODE CH. 50]

Order Amending Rules 75 and 84; No. 219; Doc. No. 2

#### Order

*Per Curiam:*

Now, this 18th day of April, 1997, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been published at 25 Pa.B. 5919 (December 23, 1995) and in the *Pennsylvania Reporter* (Atlantic Second Series Advance Sheets Vol. 672) before adoption, with a *Final Report* to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.Rs.Crim.P. 75 and 84 are hereby amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1997.

#### Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 50. PROCEDURE IN SUMMARY CASES

#### PART V. PROCEDURE REGARDING ARREST WARRANTS IN SUMMARY CASES

#### Rule 74. Issuance of Arrest Warrant.

(1) A warrant for the arrest of the defendant shall be issued when:

\* \* \* \* \*

(c) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

**(2) A warrant for the arrest of the defendant may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 84(A), that the trial should not be conducted in the defendant's absence.**

[ (2) ] (3) A warrant for the arrest of the defendant may be issued when:

\* \* \* \* \*

(b) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay a fine and costs, and the collateral deposited by the defendant is less than the amount of fine and costs imposed.

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997.

#### Comment

[ Paragraph (1) of this rule is derived from previous Rule 51B. Paragraph (2) of this rule is derived from previous Rule 65. ]

\* \* \* \* \*

Ordinarily, pursuant to Rule 84, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a warrant for the arrest of the defendant pursuant to paragraph (2) in order to bring the defendant before the issuing authority for the summary trial.

An arrest warrant issued under paragraph [ (2) ] (3) should state the amount required to satisfy the sentence.

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).**

#### PART VI. GENERAL PROCEDURE IN SUMMARY CASES

#### Rule 84. Trial in Defendant's Absence.

[ (a) ] (A) If the defendant fails to appear for trial in a summary case, the trial [ may ] shall be conducted in the defendant's absence, unless the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the issuing authority may issue a warrant for the defendant's arrest.

[ (b) ] (B) \*\*\*

[ (c) ] (C) \*\*\*

[ (d) ] (D) \*\*\*

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997.

#### Comment

In those cases in which the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence, the issuing authority may issue a warrant for the arrest of the defendant in order to have the defendant brought before the issuing authority for the summary trial. See Rule 75(2). The trial would then be conducted with the defendant present as provided in these rules. See Rule 83.

[ Paragraphs (a)—(c) of this rule replace previous Rule 64. ] Paragraph (d) [ , which is derived from previous Rules 64(d) and 65(e), ] was amended in 1989 to provide notice to the defendant of conviction and sentence after trial in absentia to alert the defendant that the time for filing an appeal has begun to run. See Rule 63(b)(3).

**[ If the issuing authority determines that there is a likelihood that the sentence will be imprisonment, the issuing authority should issue a warrant for the defendant's arrest. The trial would then be conducted with the defendant present as provided in these rules. See Rule 83. ]**

**[ With regard to ]** For the defendant's right to counsel, see Rule 316.

For **[ procedures regarding ]** arrest **[ warrants ]** warrant procedures in summary cases, see Rules 75 and 76.

#### **Committee Explanatory Reports:**

**Final Report explaining the April 18, 1997 amendments mandating a summary trial in absentia with certain exceptions published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).**

### **FINAL REPORT**

Amendments to Pa.Rs.Crim.P. 75 and 84

#### PROCEDURES WHEN DEFENDANT FAILS TO APPEAR FOR SUMMARY TRIAL

##### *Introduction*

On April 18, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court amended Rules of Criminal Procedure 75 (Issuance of Arrest Warrant) and 84 (Trial in Defendant's Absence) to clarify when a district justice must conduct a trial in the defendant's absence, and when a district justice may issue an arrest warrant when a defendant has failed to appear for the summary trial. The amendments will be effective July 1, 1997. This Final Report highlights the Committee's considerations in formulating these amendments.<sup>1</sup>

##### *Background*

The Committee recommended the amendments to Rules 75 and 84 in response to several questions concerning the Rule 84 (Trial in Defendant's Absence) procedures, which were raised in correspondence with the Committee.

The questions may be summarized as follows:

- (1) in summary cases, under what circumstances should a trial in the defendant's absence be held; and
- (2) are district justices authorized to issue a warrant for the arrest of a defendant who has failed to appear for the summary trial?

Prompted by these questions, the Committee reviewed the provisions of Rule 84. Paragraph (A) provides that if a defendant fails to appear for trial in a summary case, "the trial *may* be conducted in the defendant's absence." (emphasis added) The Rule 84 Comment suggests that if "the issuing authority determines that there is a likelihood that the sentence will be imprisonment, the issuing authority should issue a warrant for the defendant's arrest" so that the trial may be conducted with the defendant present. We also looked at Rule 75 (Issuance of Arrest Warrant), which sets forth the procedures for issuing arrest warrants in summary cases. This rule does not provide for the issuance of an arrest warrant when a defendant has failed to appear for the summary trial.

From our discussion of these rules and questions, the Committee concluded that the use of "may" in Rule 84(A) concerning when a trial in the defendant's absence should be conducted, and the procedural gaps in Rules 75 and 84 concerning whether arrest warrants may be issued in these cases, are the source of the confusion about the procedures for handling summary cases when a defendant fails to appear for trial. Recognizing the importance of having the summary case rules provide issuing authorities with clear guidance about how to proceed under the rules, we agreed that Rules 75 and 84 should be amended accordingly.

##### *Discussion of Rule Changes*

###### (A) Rule 84 (Trial in Defendant's Absence)

The Committee agreed that in summary cases in which a defendant fails to appear for the trial, the general requirement should be that the trial will be conducted in the defendant's absence. However, we recognized that there are situations in which the trial should not be conducted in the defendant's absence. First, the defendant should not be tried in his or her absence if there is a likelihood that the sentence will be imprisonment. Second, it would be inappropriate to conduct the trial in the defendant's absence when there is a good reason for the defendant's failure to appear, such as cases in which the defendant is confined, for example, in an inpatient drug program, or is involved in an accident on the way to trial. To make this clear, Rule 84(A) has been amended to require that the trial be conducted in the defendant's absence, and to expressly provide for the two exceptions to the general requirement: (1) if there is a likelihood that the sentence will be imprisonment; and (2) if there is other good cause not to hold the trial in the defendant's absence.

Rule 84(A) has also been amended to provide that, in cases in which the issuing authority determines that the summary trial should not be conducted in the defendant's absence, the issuing authority has the discretion to issue a warrant for the defendant's arrest in order to bring the defendant in for the trial.

The Rule 84 Comment reiterates that an arrest warrant may be issued to bring the defendant before the issuing authority for trial, and cross-references Rule 75 (Issuance of Arrest Warrant). In addition, the Comment explains that when the defendant is brought in for trial on an arrest warrant, the trial is to be conducted as provided in Rule 83 (Trial in Summary Cases).

###### (B) Rule 75 (Issuance of Arrest Warrant)

To fill the procedural gaps in Rule 75 discussed above, Rule 75 has been amended as follows:

(1) paragraph (2) expressly permits the issuing authority to issue an arrest warrant when a defendant has entered a plea of not guilty and has failed to appear for the summary trial, if the issuing authority determines, pursuant to Rule 84(A), that the trial should not be conducted in the defendant's absence; and

(2) the Comment explains that, ordinarily, when a defendant fails to appear for a summary trial, the trial must be held in the defendant's absence pursuant to Rule 84, and reiterates the two exceptions to this general rule discussed in Section (A).

The Committee's Final 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 Committee's explanatory Final Reports.

[Pa.B. Doc. No. 97-672. Filed for public inspection May 2, 1997, 9:00 a.m.]

**Order Adopting New Rules 87 and 88; Amending Rule 145; and Approving Rule 83 Comment Revisions; No. 220; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a *Final Report* explaining the April 18, 1997 changes to the Rules of Criminal Procedure. These changes provide uniform procedures in summary criminal cases for the withdrawal of charges and for the dismissal of a case upon satisfaction being made to an aggrieved person or an agreement to make satisfaction, and are comparable to the procedures in court cases. The *Final Report* follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 18th day of April, 1997, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been published at 26 Pa.B. 3630 (August 3, 1996) and in the *Pennsylvania Reporter* (Atlantic Second Series Advance Sheets Vol. 678) before adoption, with a Final Report to be published with this Order:

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

- (1) new Pa.Rs.Crim.P. 87 and 88 are hereby promulgated;
- (2) Pa.R.Crim.P. 145 is hereby amended; and
- (3) the revision of the Comment to Pa.R.Crim.P. 83 is hereby approved, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1997.

**Annex A**

**TITLE 234. CRIMINAL RULES**

**PART I. GENERAL**

**CHAPTER 50. PROCEDURE IN SUMMARY CASES**

**Rule 83. Trial in Summary Cases.**

- [ (a) ] (A) \*\*\*
- [ (b) ] (B) \*\*\*
- [ (c) ] (C) \*\*\*
- [ (d) ] (D) \*\*\*
- [ (e) ] (E) \*\*\*

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; **Comment revised April 18, 1997, effective July 1, 1997.**

**Comment**

**[ This rule replaces previous Rule 63. ]**

\* \* \* \* \*

The affiant may be permitted to withdraw [ a prosecution ] the charges pending before the issuing authority. See Rule 87 (Withdrawal of Charges in Summary Cases).

\* \* \* \* \*

*Committee Explanatory Reports:*

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. [ 5843 ] 5841 (November 26, 1994).

**Final Report explaining the April 18, 1997 Comment revision cross-referencing Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).**

**Rule 87. Withdrawal of Charges in Summary Cases.**

(A) In any summary case pending before an issuing authority, at any time before the completion of the summary trial or acceptance of a guilty plea, the issuing authority may permit the affiant, or the affiant's designee, to withdraw one or more of the charges.

(B) When an issuing authority permits an affiant or the affiant's designee to withdraw one or more of the charges, the issuing authority shall record the withdrawal on the transcript, and promptly shall notify the defendant in writing.

**Official Note:** Adopted April 18, 1997, effective July 1, 1997.

**Comment**

This rule permits the withdrawal of charges in summary cases pending before an issuing authority.

To ensure that an adequate record is made of any withdrawals, the issuing authority is required to include in the transcript of the case the fact that he or she permitted the withdrawal. In addition, the issuing authority must give the defendant written notice of the withdrawal.

For the procedures for withdrawal of charges in a court case pending before an issuing authority, see Rule 151.

**Committee Explanatory Reports:**

Final Report explaining the provisions of new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

**Rule 88. Dismissal in Summary Cases Upon Satisfaction or Agreement.**

(A) When a defendant is charged with a summary offense, the issuing authority may dismiss the case upon a showing that:

- (1) the public interest will not be adversely affected;
- (2) the attorney for the Commonwealth, or in cases in which no attorney for the Commonwealth is present at the summary proceeding, the affiant, consents to the dismissal;

(3) satisfaction has been made to the aggrieved person or there is an agreement that satisfaction will be made to the aggrieved person; and

(4) there is an agreement as to who shall pay the costs.

(B) When an issuing authority dismisses a case pursuant to paragraph (A), the issuing authority shall record the dismissal on the transcript.

**Official Note:** Adopted April 18, 1997, effective July 1, 1997.

**Comment**

This rule permits an issuing authority to dismiss a summary case when the provisions of paragraph (A) are satisfied.

Paragraphs (A)(1) through (4) set forth those criteria that a defendant must satisfy before the issuing authority has the discretion to dismiss the case under this rule.

The requirement in paragraph (A)(2) that, when the attorney for the Commonwealth is present at the summary proceeding, he or she must consent to the dismissal, is one of the criteria, along with the other enumerated criteria, which gives the issuing authority discretion to dismiss a case under this rule, even when the affiant refuses to consent.

The requirement in paragraph (B) that the issuing authority include in the transcript of the case the fact that he or she dismissed the case is intended to ensure that an adequate record is made of any dismissals under this rule.

For dismissal upon satisfaction or agreement in a court case charging a misdemeanor which is pending before an issuing authority, see Rule 145.

For dismissal upon satisfaction or agreement by a judge of the court of common pleas, see Rule 314.

*Committee Explanatory Reports:*

Final Report explaining the provisions of new Rule 88 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

CHAPTER 100. PROCEDURE IN COURT CASES

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

Rule 145. Dismissal Upon Satisfaction or Agreement.

When a defendant is charged with a misdemeanor [which is not alleged to have been committed by force or threat thereof], the issuing authority may dismiss the case upon a showing that:

(a) the public interest will not be adversely affected; [and]

(b) [either the aggrieved person or] the attorney for the Commonwealth, or in cases in which there is no attorney for the Commonwealth present, the affiant, consents to the dismissal; [and]

\* \* \* \* \*

*Official Note:* Formerly Rule 121, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended April 18, 1997, effective July 1, 1997.

Comment

[The 1973 amendment added the first sentence of former paragraph (b) and all of former paragraph (c).

Former paragraphs (a) and (b) were deleted in 1983 as unnecessary in view of the Judiciary Act Repealer Act, which repealed the statutes requiring the issuing authority to make an effort to effectuate a settlement. See 42 P.S. § 20002(a)(916) (Supp. 1982).

Former paragraph (c) was amended in 1983 to [Paragraphs (a) through (d) set forth [concisely]

those criteria that a defendant must satisfy before the issuing authority has the discretion to dismiss the case under this rule.

The requirement in paragraph (b), that when the attorney for the Commonwealth is present, he or she must consent to the dismissal, is one of the criteria [in every case was deleted as an unnecessary criterion at this stage of the proceedings. However, it is retained as an alternative criterion] which, along with the other enumerated criteria, [would give] gives the issuing authority discretion to dismiss, even when the affiant [aggrieved party] refuses to consent. [If the aggrieved person consents, the issuing authority may consider whether the attorney for the Commonwealth objects to the dismissal, but it is not bound by that objection.]

For dismissal upon satisfaction or agreement in summary cases, see Rule 88.

For court dismissal upon satisfaction or agreement, see Rule 314.

*Committee Explanatory Reports:*

Final Report explaining the April 18, 1997 amendments aligning the rule with Rule 88 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

FINAL REPORT

*New Pa.Rs. Crim.P. 87 and 88;*

*Amendments to Pa.R. Crim.P. 145; and*

*Revision of the Comment to Pa.R. Crim.P. 83*

*Withdrawal of Charges and Dismissal Upon*

*Satisfaction or Agreement in Summary Criminal Cases*

*Introduction*

On April 18, 1997, effective July 1, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted new Rules of Criminal Procedure 87 (Withdrawal of Charges in Summary Cases) and 88 (Dismissal in Summary Cases upon Satisfaction or Agreement), amended Rule 145 (Dismissal upon Satisfaction or Agreement), and approved the revision of the Comment to Rule 83 (Trial in Summary Cases). These new rules provide uniform procedures in summary criminal cases for the withdrawal of charges and for the dismissal of a case upon satisfaction being made to an aggrieved person or an agreement to make satisfaction, and are comparable to the procedures in court cases. This Final Report highlights the Committee's considerations in formulating these amendments.<sup>1</sup>

Recent inquiries with the Committee noted that there are no summary rules equivalent to Rules 151 (Withdrawal of Prosecution Before Issuing Authority) and 145 (Dismissal upon Satisfaction or Agreement) in court cases, and therefore asked whether withdrawals and dismissals upon agreement are permitted in summary cases, and if so, what procedures the minor judiciary should use. The correspondents pointed out that, although some district justices are permitting charges to be withdrawn in summary cases and are dismissing summary cases upon satisfaction or agreement, and some of them are following the procedures for court cases set forth in Rules 145 and 151, others have been reluctant to proceed in this manner in summary cases without specific authorization in the rules.

In view of the lack of uniformity and the confusion about the appropriate procedures, and recognizing that these procedures are beneficial to the criminal justice system, the Committee agreed that the summary case rules should address the withdrawal of charges in summary cases pending before issuing authorities and the dismissal of summary cases when there has been satisfaction or an agreement for satisfaction.

*Discussion of Rule Changes*

*New Rule 87 (Withdrawal of Charges in Summary Cases)*

Paragraph (A) authorizes an issuing authority to permit an affiant or the affiant's designee to withdraw one or more charges at any time before the completion of the summary trial or the acceptance of a guilty plea, and is comparable to the procedures for court cases under Rule 151 (Withdrawal of Prosecution Before Issuing Authority). Aware that an attorney for the Commonwealth is rarely assigned to summary criminal cases, the Committee considered whether Rule 87 should require that the attorney for the Commonwealth approve the withdrawal of charges. In view of the minor nature of summary cases, we agreed that it would be unnecessarily burdensome to require either that only the attorney for the Commonwealth may withdraw the charges or that the attorney for the Commonwealth must approve the withdrawal, and therefore have provided that the affiant may withdraw the charges.

Following publication of the proposal, the Committee received comment asking us to consider permitting withdrawals by the affiant's designee, similar to what is provided in Rule 151 for court cases. The correspondents pointed out that there may be times when the affiant wants to withdraw the charges, but was unavailable for some reason. Recognizing the benefits of permitting the affiant to designate someone else to act in his or her place and withdraw the charges, paragraph (A) permits the affiant's designee to withdraw charges.

Paragraph (B) requires the issuing authority to record on the transcript any withdrawals he or she permits. This requirement provides a record and a means of monitoring these cases. The district justice also must promptly notify the defendant in writing that the charges have been withdrawn.

The Comment cross-references Rule 151 for similar procedures in court cases.

*Proposed New Rule 88 (Dismissal In Summary Cases Upon Satisfaction or Agreement)*

New Rule 88 provides the procedures for the dismissal of a summary case when a defendant has settled with the aggrieved person or has made an agreement to settle, and is comparable to Rule 145 (Dismissal Upon Satisfaction or Agreement), which provides for the dismissal of misdemeanors pending before an issuing authority.

Paragraph (A) sets forth the criteria that must be met before an issuing authority has the discretion to dismiss a summary case under this rule. Because we agreed that summary case dismissals upon agreement should be handled in the same way as court cases under Rule 145, we included the same criteria contained in Rule 145. As explained in the Comment, all the criteria must be satisfied before an issuing authority may dismiss a case.

Paragraph (B) requires that the issuing authority record on the transcript any dismissal under this rule. This requirement creates a record of the dismissal and a means of monitoring these cases.

The Comment cross-references Rule 145. It also cross-references Rule 314 for similar procedures in court cases pending before a judge of the court of common pleas.

*Amendments to Rule 145 (Dismissal Upon Satisfaction or Agreement)*

When the Committee developed new Rule 88, we also reviewed Rule 145, which applies to dismissals of misdemeanors pending before an issuing authority. Because we agreed that Rules 88 and 145 should provide comparable procedures, Rule 145 has been amended as follows.

(1) In the introductory paragraph, the limitation that dismissals upon satisfaction are only authorized in cases in which the misdemeanor is "not alleged to have been committed by force or threat thereof" has been deleted. Several members noted that many of the cases which come before district justices for dismissal upon agreement typically involve misdemeanors arising out of drunken brawls or arguments between friends or neighbors that deteriorated into shoving matches or punches. Although these cases involve "force" or a "threat of force," the incidents are relatively minor, and, after a cooling-off period, the parties prefer to have the matters dismissed if the damages are paid. Based on these considerations, the Committee agreed that all cases involving force or the threat of force should not be automatically excluded from the possibility of a dismissal upon satisfaction, particularly since Rule 145 is limited to misdemeanors.

(2) Prior to the 1997 amendments, paragraph (b) required a showing that "either the aggrieved person or the attorney for the Commonwealth consents to the dismissal." The question arose about what happens when the attorney for the Commonwealth disagrees with the dismissal but the aggrieved party consents. Although the present Comment suggests that the attorney for the Commonwealth's disagreement would be a consideration for the district justice in determining whether to dismiss a case, some members expressed the view that, if the "force or threat thereof" language would be deleted from the introductory paragraph, the rule should not permit a dismissal if the attorney for the Commonwealth did not agree. Other members observed, however, that requiring the consent of both the attorney for the Commonwealth and the aggrieved party, or requiring the consent of the attorney for the Commonwealth in every case, would unduly complicate the procedure, particularly in those judicial districts which rarely have a district attorney present at proceedings before the district justice because of limited resources. The Committee also considered that in some cases, the aggrieved party and the affiant would be different individuals, and while the aggrieved party may agree to a dismissal once he or she has received restitution, the affiant may not agree because there are other interests to be protected. As pointed out in some of the publication responses, in these cases, the affiant should have a say in whether the case is dismissed.

In view of these considerations and the concerns raised in the publication responses, Rule 145(b) has been amended to provide that, if the attorney for the Commonwealth is present at the proceeding, the attorney for the Commonwealth's consent is one of the four criteria that must be met before the district justice may dismiss the case. If the attorney for the Commonwealth is not present, then the affiant must consent to the dismissal.

The Comment has been revised to reflect these changes, and cross-references new Rule 88 for the procedures in summary cases.

*Revision of the Comment to Rule 83 (Trial in Summary Cases)*

One publication response suggested that new Rule 87 is unnecessary in view of the paragraph in the Rule 83 Comment which provides:

The affiant may withdraw a prosecution pending before the issuing authority.

The Committee did not agree with this assessment, concluding that a separate rule addressing withdrawals would better resolve the confusion and result in more uniformity. However, to make it clear to anyone reading the Rule 83 Comment that Rule 87 governs withdrawal of charges in summary cases, a cross-reference to new Rule 87 has been at the end of this paragraph.

<sup>1</sup> The Committee's Final 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 Committee's explanatory Final Reports.

[Pa.B. Doc. No. 97-673. Filed for public inspection May 2, 1997, 9:00 a.m.]

[234 PA. CODE CH. 1400]

Order Approving Comment Revisions to Rules 1403 and 1405; No. 221; Doc. No. 2

Order

Per Curiam:

Now, this 18th day of April, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the proposal having been submitted to the Court without publication pursuant to Pa.R.J.A. 103(a)(3), and a Report to be published with this Order;

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Comment revisions to Rules of Criminal Procedure 1403 and 1405 are hereby approved, in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective immediately.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 1400. SENTENCING

Rule 1403. Aids in Imposing Sentence.

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**Official Note:** Adopted July 23, 1973, effective 90 days hence [ , ]; amended June 28, 1976, effective January 1, 1977; amended November 1, 1991, effective January 1, 1992; amended March 22, 1993, effective January 1, 1994; **Comment revised April 18, 1997, effective immediately.**

Comment

For purposes of subparagraph A(2)(c), whether the defendant has a prior juvenile adjudication is immaterial. Subparagraph A(3) indicates in general terms what the contents of the pre-sentence investigation report must include. With respect to the particularized contents of such reports, see *Commonwealth v. Martin*, [ 466 Pa. 118, ] 351 A.2d 650 (Pa. 1976).

\* \* \* \* \*

When an incarcerated defendant has undergone any period of voluntary or involuntary confinement for the purpose of examination pursuant to this rule, credit for the period of confinement should be given toward the sentence ultimately imposed. See, e.g., 50 P. S. §§ 7401(b) and 7407(f).

**Additional pre-sentence procedures may be required by statute. For example, see 42 Pa.C.S. §§ 9791—9799.5 (concerning persons convicted of sexually violent offenses) for pre-sentence assessment and hearing procedures. See also 42 Pa.C.S. § 9714(c) for hearing to determine high risk dangerous offender status.**

Under the provisions of Rule 1404 (Disclosure of Pre-Sentence Reports), full disclosure of reports to defense counsel and the Commonwealth is required. See Rule 1404(a)(2). Reports may also be disclosed under Rule 1404 to other designated persons or agencies, unless the sentencing judge otherwise orders. See Rule 1404(c), (d), and (e).

Committee Explanatory Reports:

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Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

**Report explaining the April 18, 1997 Comment revision published with the Court's Order at 27 Pa.B. 2122 (May 3, 1997).**

**Rule 1405. Procedure at Time of Sentencing.**

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**Official Note:** Previous Rule 1405 approved July 23, 1973, effective 90 days hence; Comment amended June 30, 1975, effective immediately; Comment amended and paragraphs (c) and (d) added June 29, 1977, effective September 1, 1977; amended May 22, 1978, effective as to cases in which sentence is imposed on or after July 1, 1978; Comment amended April 24, 1981, effective July 1, 1981; Comment amended November 1, 1991, effective January 1 1992; rescinded March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994, and replaced by present Rule 1405. Present Rule 1405 adopted March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; amended January 3, 1995, effective immediately; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996. Comment revised December 22, 1995, effective February 1, 1996. The April 1, 1996 effective date extended to July 1, 1996. Comment revised September 26, 1996, effective January 1, 1997; **Comment revised April 18, 1997, effective immediately.**

Comment

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Time for Sentencing

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Paragraph A(2) is not intended to sanction pro forma requests for continuances. Rather, it permits the judge to extend the time limit for sentencing under extraordinary circumstances only. **For example, additional pre-sentence procedures may be required by statute. See 42 Pa.C.S. §§ 9791—9799.5 for pre-sentence assessment and hearing procedures for persons convicted of sexually violent offenses. See also 42 Pa.C.S. § 9714(c) for hearing to determine high risk dangerous offender status.**

extension has been granted, however, some provision should be made to monitor the extended time period to insure prompt sentencing when the extension period expires.

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#### *Sentencing Procedures*

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The rule permits the use of a written colloquy that is read, completed, signed by the defendant, and made part of the record of the sentencing proceeding. This written colloquy must be supplemented by an on-the-record oral examination to determine that the defendant has been advised of the applicable rights enumerated in paragraph C(3) and that the defendant has signed the form.

**Other, additional procedures are required by statute. See, e.g., 42 Pa.C.S. § 9795(b), which requires the judge to inform certain offenders of the duty to register.**

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#### *Committee Explanatory Reports:*

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Final Report explaining the September 26, 1996 Comment revision on Rule 1409 procedures published with the Court's Order at 26 Pa.B. 4900 (October 12, 1996).

**Report explaining the April 18, 1997 Comment revisions published with the Court's Order at 27 Pa.B. 2122 (May 3, 1997).**

### REPORT

Recent Enactments related to Sentencing:  
Comment Revisions to Rules 1403 and 1405

On April 18, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania approved Comment revisions to Pa.R.Crim.P. 1403 (Aids in Imposing Sentence) and Pa.R.Crim.P. 1405 (Procedure at Time of Sentencing). The Comment revisions alert the bench and bar to statutory enactments containing additional pre-sentencing and sentencing procedures for special classes of offenders. Act 1995-21 (Special Session No. 1) amended 42 Pa.C.S. § 9714(c) to require that a hearing be held for an offender presumed to be a "high risk dangerous offender." Act 1995-24 (Special Session No. 1), 42 Pa.C.S. §§ 9791—9799.5, provides for a pre-sentence assessment and hearing to determine whether an offender is a "sexually violent predator."

[Pa.B. Doc. No. 97-674. Filed for public inspection May 2, 1997, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Transfer of Attorneys to Inactive Status

Notice is hereby given that the following attorneys have been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 19, 1997, pursuant to Rule 111(b), Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 18, 1997 for Compliance Group 2 due August 31, 1996.

Notice with respect to attorneys having Pennsylvania registration addresses, who have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

MARK JAMES AMRHEIN  
New York, NY

ROBERTO A. ANDREOS  
Sacramento, CA

MICHAEL GRANT AVRICK  
La Canada, CA

GWENDOLYN RAY BENNETT  
Suitland, MD

MITCHELL ANDREW BERGER  
Washington, DC

JOSHUA PAUL BOGIN  
New York, NY

DONALD S. BURAK  
Trenton, NJ

MAURICE I. BURSTEIN  
Washington, DC

VIOLET ALLYSON CHANDLER  
Brooklyn, NY

LAWRENCE D. CIRIGNANO  
Washington, DC

SUSAN JIN DAVIS  
Washington, DC

ADIB E. FERZLI  
Washington, DC

KAREN YVONNE FULLUM  
Washington, DC

MATTHEW ROBERT GABRIELSON  
Trenton, NJ

MICHAEL PATRICK GAUGHAN  
New York, NY

ANTHONY N. GEMMA  
Youngstown, OH

VANESSA INGRID GREEN  
Washington, DC

MICHAEL P. GUIDO  
Cherry Hill, NJ

JAMES O. GUY  
Garden City, NY

SEAN WARRICK HOLLEY  
Charlotte, NC

STEPHEN J. HOLROYD  
Newark, NJ

KRISTINE ANN JUDGE  
Takoma Park, MD

WILLIAM H. KARP  
Hollywood, FL

DEBRA LEE KING  
Alexandria, VA

JOHN R. KLOTZ  
Rutherford, NJ

GEORGE C. LACY, JR.  
Washington, DC

LAWRENCE C. LEE  
Taiwan

KEVIN H. MAIN  
Trenton, NJ

DAVID J. MARCHITELLI  
Rochester, NY

WILLIAM D. MERRITT, JR.  
Elizabeth, NJ

CARL VINCENT PAYNE II  
Silver Spring, MD

WILLIAM PAYNE  
Washington, DC

RICHARD D. PICINI  
Verona, NJ

RHONDA J. S. PILGRIM  
Chester, VA

SHARON C. PRATICO  
Toms River, NJ

ROBERT A. REED  
Greensboro, NC

RANDY G. ROSNER  
New York, NY

SCOTT DAVID SAMLIN  
Montvale, NJ

BARBARA L. SANCHEZ-SALAZAR  
Jacksonville, FL

DANIEL G. SERGIACOMI  
Albertson, NY

MARY ANN SERINO  
Union City, NJ

WILLIAM HENRY SHAWN  
Washington, DC

GEORGE A. SIEGHARDT  
Staten Island, NY

MICHAEL S. SOPHOCLES  
Boston, MA

DAVID A. STEFANKIEWICZ  
Wildwood, NJ

MICHAEL G. STINGONE  
Old Tappan, NJ

LISA HIBNER TAVANI  
Berlin, NJ

RICHARD KENNETH TAVANI  
Mt. Laurel, NJ

CHRISTOPHER DWAYNE TAYLOR  
Willingboro, NJ

CATHERINE GENEVA VAN WAY  
Washington, DC

ALEXANDER G. VIERHEILIG  
Nutley, NJ

MARK ANTHONY WALTHER  
Gaithersburg, MD

CHANGHONG WANG  
Hong Kong

GILBERT P. WEINER  
East Hills, NY

MARILYN D. WILLIAMS  
Willingboro, NJ

EUGENE S. WISHNIC  
New Brunswick, NJ

PATRICK JOHN YURKO  
Edgewater Park, NJ

ELAINE M. BIXLER,  
*Secretary*

*The Disciplinary Board of the  
Supreme Court of Pennsylvania*

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