THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CHS. 20 AND 100]

Proposal to adopt new Rule 143; Amend Rule 23; and Revise the Comment to Rule 107

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt proposed new Rule 143 (Reinstituting Charges following Withdrawal or Dismissal), amend Rule 23 (Continuous Availability and Temporary Assignment of Issuing Authorities), and revise the Comment to Rule 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option). This proposal sets forth the procedures for an attorney for the Commonwealth to refile a complaint when it has been withdrawn or dismissed at, or prior to, a preliminary hearing, and, in certain cases, to request that a different issuing authority be assigned to conduct the preliminary hearing. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed rule changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901, no later than Wednesday, April 29, 1998.

By the Criminal Procedural Rules Committee:

FRANCIS BARRY MCCARTHY,
Chair

(*Editor's Note*: The following is a new rule. It is printed in regular type to enhance readability.)

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 100. PROCEDURE IN COURT CASES

Rule 143. Reinstituting Charges Following Withdrawal or Dismissal.

(A) When charges are dismissed or withdrawn at, or prior to, a preliminary hearing, the attorney for the Commonwealth may reinstitute the charges by refiling a complaint with the issuing authority who dismissed the charges.

(B) Following the refiling of a complaint pursuant to paragraph (A), if the attorney for the Commonwealth determines that the preliminary hearing should be conducted by a different issuing authority, the attorney shall file a Rule 23 motion with the clerk of courts requesting that the president judge assign a different issuing authority to conduct the preliminary hearing. The motion shall set forth the reasons for requesting a different issuing authority.

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 , 1998, effective , 1998. New Rule 143 adopted , 1998; effective , 1998.

Comment

This rule provides the procedures for reinstituting criminal charges following their withdrawal or dismissal at, or prior to, the preliminary hearing.

The authority of the attorney for the Commonwealth to reinstitute charges which have been dismissed at the preliminary hearing is well established by case law. See, e.g., *McNair's Petition*, 187 A. 498 (Pa. 1936); *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997). This authority, however, is not unlimited. First, the charges must be reinstituted prior to the expiration of the applicable statute(s) of limitations. See *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997). In addition, the courts have held that the reinstitution may be barred in a case in which the Commonwealth has repeatedly rearrested the defendant in order to harass him or her, or if the rearrest results in prejudice. See *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997); *Commonwealth v. Shoop*, 617 A.2d 351 (Pa.Super. 1992).

The decision to reinstitute charges must be made by the attorney for the Commonwealth. Therefore, in cases in which no attorney for the Commonwealth was present at the preliminary hearing, the police officer may not refile the complaint without the written authorization of the attorney for the Commonwealth. See Rule 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option) for procedures for prior approval of complaints.

Pursuant to paragraph (A), in the usual case, charges will be reinstituted by filing a complaint with the issuing authority who dismissed the charges. However, there may be cases in which the attorney for the Commonwealth determines that a different issuing authority should conduct the preliminary hearing, such as when an error of law is made by the issuing authority in finding that the Commonwealth did not sustain its burden to establish a prima facie case. Paragraph (B) requires that, in these cases, the attorney for the Commonwealth must file a petition with the court of common pleas requesting that the president judge assign a different issuing authority to conduct the preliminary hearing. For the procedure for requesting assignment of a different issuing authority, see Rule 23.

See Chapter 9000 for the procedures governing motions.

Committee Explanatory Reports:

Report explaining the , 1998 amendments concerning reinstitution of charges published with the Court's Order at 28 Pa.B. 1508 (March 28, 1998).

CHAPTER 20. ISSUING AUTHORITIES: VENUE, LOCATIONS, AND RECORDING OF PROCEEDINGS

Rule 23. Continuous Availability and Temporary Assignment of Issuing Authorities.

[(a)] (A) *Continuous Availability*

(1) The **[President Judge] president judge** of each judicial district shall be responsible for insuring the availability at all times within the judicial district of at least one issuing authority.

(2) The district justice assigned to be on duty after business hours shall set bail as provided in Chapter 4000, and shall accept deposits of bail in any case pending in any magisterial district within the judicial district.

[(b)] (B) *Temporary Assignment*

(1) The **[President Judge] president judge** may assign temporarily the issuing authority of any magisterial district to serve another magisterial district whenever such assignment is needed**:**

(a) to satisfy the requirements of paragraph **[(a)] (A)(1)[,];**

(b) to insure fair and impartial proceedings**[,];**

(c) to conduct a preliminary hearing pursuant to Rule 143(B); or

(d) otherwise for the efficient administration of justice.

One or more issuing authorities may be so assigned to serve one or more magisterial districts.

(2) Whenever a temporary assignment is made under this rule, notice of such assignment shall be filed with the clerk of courts where it shall be available for police agencies and other interested persons.

(3) A motion may be filed requesting a temporary assignment under paragraph **[(b)] (B)**(1) on the ground that the assignment is needed to insure fair and impartial proceedings. Reasonable notice and opportunity to respond shall be provided to the parties.

(4) A motion shall be filed requesting a temporary assignment under paragraph (B)(1)(c) whenever the attorney for the Commonwealth elects to proceed under Rule 143(B) following the refiling of a complaint.

Official Note: Formerly Rule 152, adopted January 16, 1970, effective immediately; amended and renumbered Rule 23 September 18, 1973, effective January 1, 1974; amended October 21, 1983, effective January 1, 1984; amended February 27, 1995, effective July 1, 1995**; amended , 1998, effective , 1998.**

Comment

This rule is intended to impose the responsibility on the president judge to prevent the violation of the rights of defendants caused by the lack of availability of the district justice.

Paragraph **[(a)](A)**(2) requires a district justice on duty after business hours to set bail, as provided by law, and to accept deposits of bail in any case pending in any magisterial district within the judicial district, so that a "defendant may be admitted to bail on any date and at any time." Rule 4001(b).

Nothing in this rule is intended to preclude judicial districts from continuing established procedures or establishing new procedures for the after-hours acceptance of deposits of bail by a representative of the clerk of courts' office.

Paragraphs **[(b)] (B)**(1)**(b)** and (3) make explicit the authority of president judges to assign issuing authorities when necessary to insure fair and impartial proceedings, and to provide a procedure for a party to request such an assignment. Temporary assignment in this situation is intended to cover what might otherwise be referred to as "change of venue" at the district justice level. See, e.g., *Sufrich v. Commonwealth*, 447 A.2d 1124 (Pa.Cmwlth. 1982).

The motion procedure of paragraph **[(b)](B)**(3) is intended **[only]** to apply when a party requests temporary assignment to insure fair and impartial proceedings. The president judge may, of course, order a response and schedule a hearing with regard to such a motion. **However, this paragraph is not intended to require "formal hearing . . . beyond the narrow context of a motion for temporary assignment of issuing authority to insure fair and impartial proceedings predicated upon allegations which impugn the character or competence of the assigned issuing authority and which seek the recusal of the assigned issuing authority." See *Commonwealth v. Allem*, 532 A.2d 845 (Pa.Super. 1987) (filing and service of the written motion and answer, and allowance of oral argument were more than adequate to meet the rule's requirements).**

Paragraphs (B)(1)(c) and (4) govern those situations in which the attorney for the Commonwealth, after refiling the complaint following the withdrawal or dismissal of any criminal charges at, or prior to, a preliminary hearing, determines that the preliminary hearing should be conducted by a different issuing authority. See also Rule 143 (Reinstituting Charges following Withdrawal or Dismissal).

The motion procedure is not intended to apply in any of the many other situations in which president judges make temporary assignments of issuing authorities; in all these other situations the president judges may make temporary assignments on their own without any motion, notice, response, or hearing.

Committee Explanatory Reports:

Final Report explaining the February 27, 1995 amendment published with the Court's Order at 25 Pa.B. 936 (March 18, 1995).

Report explaining the , 1998 amendments concerning assignment of an issuing authority to conduct a preliminary hearing published at 28 Pa.B. 1508 (March 28, 1998).

CHAPTER 100. PROCEDURE IN COURT CASES

PART II. COMPLAINT PROCEDURES

Rule 107. Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—Local Option.

* * * * *

Official Note: 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 , 1998, effective , 1998**.

Comment

* * * * *

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.

See Rule 2002A for a similar option as to search warrant applications.

See Rule 143 for the procedures for refiling of the complaint, which requires approval by the attorney for the Commonwealth.

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).

Report explaining the , 1998 revision concerning refiling of complaints published at 28 Pa.B. 1508 (March 28, 1998).

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

Rule 141. Preliminary Hearing. [Rescinded].

Official Note: Formerly Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998**; rescinded , effective , and replaced by new Rule 141**.

[Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.]

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Report explaining the , 1998 rescission and consolidation of Rules 141 and 142 published at 28 Pa.B. 1508 (March 28, 1998).

Rule 142. Continuance of a Premiminary Hearing. [Rescinded].

Official Note: Formerly Rule 124 adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986**; rescinded , 1998, effective , 1998, and replaced by new rule 141.**

[Comment: For the contents of the transcript, see Rule 26.]

Committee Explanatory Reports:

Report explaining the , 1998 rescission and consolidation of Rules 141 and 142 published at 28 Pa.B. 1508 (March 28, 1998).

(*Editor's Note*: The following is a new rule. It is printed in regular type to enhance readability.)

Rule 141. Preliminary Hearing; Continuances.

(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

(1) assume charge of the prosecution; and

(2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

(1) be represented by counsel;

(2) cross-examine witnesses and inspect physical evidence offered against the defendant;

(3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;

(4) offer evidence on the defendant's own behalf, and testify; and

(5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) If a prima facie case of the defendant's guilt is not established at the preliminary hearing, and no application for a continuance, supported by reasonable grounds, is made by an interested person, and no reason for a continuance otherwise appears, the issuing authority shall discharge the defendant.

(E) Continuances

The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

(1) the grounds for granting each continuance;

(2) the identity of the party requesting such continuance; and

(3) the new date and the reasons that the particular date was chosen.

Official Note: Formerly Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded , 1998, effective , 1998. New Rule 141 adopted , 1998, effective , 1998.

Comment

As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a prima facie case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 333 A.2d 755 (Pa. 1975). This amendment was made to preserve the limited function of a preliminary hearing.

For the contents of the transcript, see Rule 26.

Committee Explanatory Reports:

Final Report explaining the February 13, 1998 amendments concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

Report explaining the , 1998 rescission and consolidation of Rules 141 and 142 published at 28 Pa.B. 1508 (March 28, 1998).

Rule [143] 142. Disposition of Case at Preliminary Hearing.

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Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996**; renumbered Rule 142 , 1998, effective , 1998.**

Comment

Paragraph (b) was amended in 1983 to reflect the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases where, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 109 and 110.

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 September 13, 1995 amendments published at 25 Pa.B. 4116 (September 30, 1995).

Report explaining the , 1998 renumbering of rule published with the Court's Order at 28 Pa.B. 1508 (March 28, 1998).

REPORT

Proposed New Pa.R.Crim.P. 143;
Amendments to Rule 23, Revision of the Rule 107 Comment;
Joinder of Rules 141 and 142 as New Rule 141;
and Renumbering of Present Rule 143

Reinstitution of Charges Following Withdrawal or Dismissal

A. *Background*

Several correspondents have requested that the Committee consider amending the Criminal Rules to provide the procedures for reinstituting a criminal case following a dismissal at the preliminary hearing. They pointed out that there is no uniformity in the manner in which these cases are handled in Pennsylvania. Some of the correspondents also expressed concern that, without some controls in the Criminal Rules, some defendants will be unnecessarily subjected to multiple rearrests for the same offense. After discussing this correspondence, which confirmed their own experiences that there are no uniform procedures statewide for handling the reinstitution of charges, the members agreed to review the matter.

We first examined the case law. The research revealed that the Pennsylvania courts have consistently held that the attorney for the Commonwealth has unlimited discretion to reinstitute a criminal case after it has been withdrawn or dismissed prior to the conclusion of the preliminary hearing, unless there is a showing of unreasonable intrusion, coercion, or harassment of the defendant by the government, or the process of reinstituting criminal charges results in prejudice to the defendant. See *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997); *Commonwealth v. Shoop*, 617 A.2d 351 (Pa.Super. 1992). The courts have also held that, if the attorney for the Commonwealth wants the case to proceed, then the attorney must reinstitute the charges, rather than appeal the decision of the district justice or seek a writ of certiorari. See, e.g., *Liciaga v. Court of Common Pleas*, 566 A.2d 246 (Pa. 1989).

While agreeing on the foregoing, the courts have nevertheless declined to mandate one procedure for handling these cases, and have addressed the matter on a case-by-case basis. This fact, together with the varying postures in which these cases have reached the courts, has resulted in a confusing and perceptibly unmanageable body of law concerning the procedures to reinstitute proceedings following a dismissal at the preliminary hearing. See, e.g., *McNair's Petition*, 187 A. 498 (Pa. 1936); *Commonwealth v. Thorpe*, 701 A.2d 488 (Pa. 1997); *Commonwealth v. Shoop*, 617 A.2d 351 (Pa.Super. 1992)).

In view of the revelations in the case law, and the suggestions from the correspondents that there is no uniformity, the Committee also conducted a survey of all the District Attorneys in Pennsylvania to determine how, in fact, these cases are being handled statewide. We received 43 responses, which were representative of the entire state. The responses revealed that although some District Attorneys refile the complaint with a different issuing authority, the majority of District Attorneys refile the complaint with the same issuing authority, and if they determine that the issuing authority should not conduct the preliminary hearing, then they request reassignment through the court of common pleas. Although in some counties, the District Attorney must seek permission from the president judge to refile a complaint, in most magisterial districts, the decision whether to refile is entirely within the discretion of the District Attorney. In one county, however, the president judge has limited the District Attorney to one refiling. A few District Attorneys reported that, in refiling situations, no notice is provided to the defendant when they request assignment of a different issuing authority to conduct the preliminary hearing. In some counties, the complaint is refiled, and the burden is upon the issuing authority to request that the case be transferred to another issuing authority. Several District Attorneys indicated that the procedures they use are "informal," and used only on a "case-by-case" basis. In addition, a number of District Attorneys commented that they rarely encounter the situation.

Based on the research, the findings of the survey, and the members' own experiences, and recognizing the Court's interest in fostering a uniform, statewide judicial system,[1] the Committee agreed that the Criminal Rules should be amended to provide a uniform procedure for the reinstitution of criminal proceedings following a withdrawal or dismissal at, or prior to, the conclusion of the preliminary hearing.

B. *Discussion of Rule Changes*

1. *Introduction*

Once the Committee agreed that the Criminal Rules governing the reinstitution of criminal charges when a case has been withdrawn or dismissed, at or prior to, the preliminary hearing, should be recommended to the Court, the members reexamined the procedures approved by the courts, as well as the procedures indicated in the survey, the federal courts, and other state courts. As a result, and so that the proposed changes may take effect without a significant disruption of procedures most often used in the several counties, the Committee is proposing rules which mirror the most common procedures reported by the District Attorneys in the survey, and account for the case law which has developed in this area.

2. *New Rule 143 (Reinstituting Charges following Withdrawal or Dismissal)*

New Rule 143 establishes the specific procedures for reinstituting criminal charges following the withdrawal or dismissal at, or prior to, the preliminary hearing. The Committee discussed at length how to handle the various situations in which these cases arise, recognizing, for example, that for any number of reasons, cases may be withdrawn before the preliminary hearing, cases may be dismissed at the beginning of the preliminary hearing because a witness has failed to appear, or cases may be dismissed at the conclusion of the preliminary hearing because the issuing authority makes a finding that the prosecution failed to make out a prima facie case. The Committee also was aware that, although the attorney for the Commonwealth has discretion whether to reinstitute criminal charges, there are some restrictions on that discretion, such as when the statute of limitations has run, or the attorney is rearresting the defendant for purposes of harassment, or the rearrest results in prejudice to the defendant, and that, in these cases, there should be a mechanism for the defendant to raise the issue and for the court to review the case.

Initially, the Committee considered providing that, in the usual case when it was determined that the same issuing authority should handle the case, the attorney for the Commonwealth would refile the complaint with the same issuing authority, but when a different issuing authority was wanted, before refiling the complaint, the attorney would have to file a motion with the court of common pleas requesting the assignment of a different issuing authority with whom the complaint was to be refiled. We were concerned, however, by the potential for the statute of limitations to run if the common pleas judge delayed in the disposition of the motion. In addition, at the time of the filing of a motion for reassignment of an issuing authority, there was the administrative problem of there being no case listing in the docketing system since the complaint was not refiled prior to the filing of the motion. In view of these concerns, the Committee reconsidered its approach to the new procedures.

Ultimately, the Committee agreed that the structure of the rule should provide a procedure which incorporated a simple, logical approach to reinstituting criminal charges, while accounting for the limitations on the authority of the attorney for the Commonwealth to reinstitute charges. Specifically, the Committee concluded, as explained in the Rule 143 Comment, that the attorneys for the Commonwealth should be permitted to reinstitute criminal charges in all cases, as long as the statute of limitations has not expired, and as long as the action of the attorney for the Commonwealth does not harass or prejudice the defendant. Paragraph (A) states that when criminal charges are dismissed at, or prior to, a preliminary hearing, the attorney for the Commonwealth may reinstitute the charges by refiling a complaint with the issuing authority who dismissed the charges. This paragraph recognizes the charging function of the attorneys for the Commonwealth by stating the basic "substantive" premise, consistent with the case law, that the attorney for the Commonwealth, in his or her discretion, may reinstitute criminal charges by refiling a complaint with the issuing authority who dismissed the charges. This requirement applies to all cases in which the attorney for the Commonwealth decides to reinstitute criminal charges, regardless of whether the attorney determines that the preliminary hearing should be conducted by another issuing authority.

Paragraph (B) sets forth the procedures for the temporary assignment of a different issuing authority to conduct a preliminary hearing. It requires that the attorney for the Commonwealth file a Rule 23 motion with the clerk of courts requesting the temporary assignment of a different issuing authority to conduct the preliminary hearing, rather than requesting permission to refile the criminal charges. This requirement also provides a mechanism for an "on the record" review of the original issuing authority's decision to dismiss the criminal charges.

[1] See, e.g., "Interim Report of the Master on the Transition to State Funding of the Unified Judicial System." The Honorable Frank J. Montemuro, Jr., Master.

Paragraph (B) also requires that the attorney for the Commonwealth include in the Rule 23 motion the reasons for requesting that a different issuing authority conduct the hearing, such as, the issuing authority's decision was contrary to the laws of the Commonwealth, or because a prima facie case was established at the preliminary hearing. The defendant must be served a copy of the motion, see Rule 9023, because if the procedure were permitted to continue ex parte, then the defendant could lose the opportunity to challenge the rearrest. The motion procedure affords the defendant an opportunity to raise harassment, prejudice, or statute of limitations at the time the common pleas court is determining whether to assign a different issuing authority to conduct the preliminary hearing.

The Committee determined that it was important to emphasize that the authority to reinstitute criminal charges rest with the attorney for the Commonwealth, and therefore, the explanatory Comment indicates that a police officer may not refile the complaint, unless the attorney for the Commonwealth has provided written authorization. The Comment refers to Rule 23 for the procedure for requesting assignment of a different issuing authority. A cross-reference to Chapter 9000, governing motions, has been included to emphasize that the defendant must be served a copy of the motion. Finally, the Comment includes a reference to Rule 107 to distinguish the procedures for prior approval of complaints.

3. *Rule 23 (Continuous Availability and Temporary Assignment of Issuing Authorities)*

Rule 23 provides the mechanism for the president judge to assign a different issuing authority to handle a case in the specific situations set forth in the rule. According to the District Attorneys who responded to the survey, Rule 23 frequently has been used as the vehicle for the assignment of a different issuing authority to conduct a preliminary hearing in cases in which criminal charges have been withdrawn or dismissed at, or prior to, the preliminary hearing. In view of this, the Committee agreed that the Rule 23 motion procedure was the most logical place to specifically address the reassignment of an issuing authority in the new Rule 143 context. Initially, the Committee considered merely adding a Comment provision which would cross-reference new Rule 143. However, after reviewing the history of Rule 23, we were concerned that the rule could be narrowly construed to exclude the situation in which criminal charges are refiled, and agreed that Rule 23 should be amended to specifically encompass reassignment of issuing authorities in Rule 143(B) cases. See Rule 23(B)(1)(c) and (4).

In addition, the Comment to Rule 23 has been revised to explain that: 1) the notice and opportunity requirements of paragraph (B)(3) are not intended to require a formal hearing except in the narrow context of a motion for temporary assignment of an issuing authority in a recusal-type situation consistent with case law (see, e.g., *Commonwealth v. Allem*, 532 A.2d 845 (Pa.Super. 1987)); and

2) paragraph (B)(4) includes those cases involving the reinstitution of criminal charges, as provided in new Rule 143.

4. *Rule 107 (Approval of Police Complaints and Arrest Warrants by Attorney for the Commonwealth—Local Option)*

Rule 107 provides that the district attorney of any county may require that criminal complaints and/or arrest warrant affidavits have the approval of an attorney for the Commonwealth prior to filing. Because Rule 107 only requires approval by the district attorney prior to filing a criminal complaint in those cases in which the district attorney has filed a local option, the Committee agreed that a cross-reference to new Rule 143 should be added to the Rule 107 Comment to make it clear that, unlike Rule 107, approval by the attorney for the Commonwealth is required in all cases in which criminal charges are reinstituted by refiling a complaint, whether or not there is a local option.

5. *Rules 141, 142, and 143: Placement of New Procedures*

The Committee discussed at length the most logical, and least confusing, placement of the new procedures for the reinstitution of criminal charges. Because the reinstitution will occur within the time frame of the preliminary hearing, the Committee decided that the new procedures belonged near the rules involving the disposition of cases at the preliminary hearing. We considered, but rejected as too confusing, both adding the procedures to either Rule 141 or Rule 143 and creating a new Rule 143.

Ultimately, the Committee concluded that present Rules 141 and 142 could be consolidated into one rule because their subject matter is closely related, and present Rule 143 could be renumbered Rule 142, thereby making room for a new Rule 143 to govern the reinstitution of proceedings. Thus, Rules 141 and 142 have been combined into new Rule 141 (Preliminary Hearing; Continuances), and Rule 143 has been renumbered Rule 142 (Disposition of Case at Preliminary Hearing).

[Pa.B. Doc. No. 98-474. Filed for public inspection March 27, 1998, 9:00 a.m.]

[234 PA. CODE CH. 50]

Proposed Amendments to Clarify Summary Procedures for Cases in which the Offense Charged Includes a Mandatory Sentence of Imprisonment

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 53 (Contents of Citation), and Rules 59, 64, and 69—guilty pleas in summary cases. The proposed amendments clarify summary procedures for the cases in which the offense(s) charged includes a mandatory sentence of imprisonment. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to Rules 53, 59, 64, and 69 precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Proce-

dural Rules Committee, P. O. Box 1325, Doylestown, PA 18901, no later than Wednesday, April 29, 1998.

By the Criminal Procedural Rules Committee

FRANCIS BARRY MCCARTHY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 50. PROCEDURE IN SUMMARY CASES

PART II. CITATION PROCEDURES

Rule 53. Contents of Citation.

(A) Every citation shall contain:

* * * * *

(7) a notation that the charge on the citation includes a mandatory sentence of imprisonment;

[(7)] (8) * * *

[(8)] (9) * * *

[(9)] (10) * * *

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

* * * * *

(2) that the defendant shall, within 10 days after issuance of the citation:

* * * * *

(b) plead guilty by:

(i) appearing before the proper issuing authority for the entry of the plea and imposition of sentence in all cases in which the penalty for the offense charged includes a mandatory sentence of imprisonment; or

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation; or

[(i)] (iii) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

* * * * *

Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered as Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present rule adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995**; amended _____, 1998, effective _____, 1998**.

Comment

Paragraph (A)(3) requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. See the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

* * * * *

[If the law enforcement officer specifies the fine and costs in the citation, the defendant may plead guilty by mail. The officer may specify the fine and costs only when the penalty provided by law does not include imprisonment and the statute or ordinance fixes the specific amount for the fine. Consequently, if by statute a sentence of imprisonment is authorized for the offense(s) charged, such sentence may only be imposed if neither the fine nor costs is specified in the citation and the defendant therefore must personally appear before the issuing authority.]

The law enforcement officer may specify the fine and costs in the citation only when the penalty provided by law does not include a mandatory sentence of imprisonment and the statute or ordinance fixes a specific amount for the fine. Except in cases in which there is a mandatory sentence of imprisonment, when the law enforcement officer specifies the fine and costs in a citation, the defendant may plead guilty by mail. When the law enforcement officer specifies a fine on the citation, and a sentence of imprisonment is authorized by statute but is not mandatory, then imprisonment may not be imposed.

When the law enforcement officer does not specify the fine and costs, or there is a mandatory sentence of imprisonment, the defendant must appear before the issuing authority to plead guilty. See Rules 59, 64, and 69.

When there is a mandatory sentence of imprisonment for the offense charged, the issuing authority may not accept a guilty plea by mail. For the procedure for returning guilty pleas mailed to the issuing authority when there is a mandatory sentence of imprisonment, see Rules 59, 64, and 69.

Paragraph (B)(2)(b)(i) provides notice to the defendant that he or she must appear before the issuing authority when the penalty for the offense charged mandates incarceration.

* * * * *

Committee Explanatory Reports:

* * * * *

Report explaining the July 25, 1994 amendments published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

Report explaining the, 1998 amendments published at 28 Pa.B. 1514 (March 28, 1988).

PART IIA. PROCEDURES WHEN CITATION IS ISSUED TO DEFENDANT

Rule 59. Guilty Pleas.

[(a)] (A) A defendant may plead guilty by:

(1) appearing before the proper issuing authority for the entry of the plea and imposition of sentence when the penalty for the offense charged includes a mandatory sentence of imprisonment; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the citation; or

[(1)] (3) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation**[; or].**

[(b)] (B) When the defendant pleads guilty pursuant to paragraph **[(a)(1)] (A)(3):**

* * * * *

[(c)] (C) When the defendant **[is required to]** personally appears before the issuing authority to plead guilty pursuant to **[paragraph (a)] paragraphs (A)(1) or** (2), the issuing authority shall:

(1) **[advise] inform** the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

* * * * *

(4) impose sentence; **[and]**

(5) provide for installment payments when a defendant who is sentenced to pay fine and costs is without the financial means immediately to pay the fine and costs**[.];**

(6) inform the defendant of the right, pursuant to Rule 86, to appeal the sentence within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed, then;

(a) execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the trial de novo or the appeal may be dismissed;

(7) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of the sentence on a date certain unless the defendant files a notice of appeal during the 30-day appeal period; and

(8) issue a written order imposing sentence, signed by the issuing authority, including the information specified in paragraphs (C)(1)—(C)(7), and give a copy of the order to the defendant.

(D) When the defendant is required to appear personally before the issuing authority to plead guilty pursuant to paragraph (A)(1) or (A)(2), but the defendant improperly mails the plea of guilty to the issuing authority, the issuing authority shall:

(1) accept as collateral any sums forwarded by the defendant as payment of the fine and costs;

(2) notify the defendant, in person or by first class mail, that the defendant cannot plead guilty by mail, and that he or she must appear in person before the issuing authority within 10 days of the date of the notice. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address;

(3) notify the defendant of the right to counsel; and

(4) notify the defendant that failure to respond to the notice within the 10-day period may result in the issuance of an arrest warrant.

Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991 **; amended _____, 1998, effective _____, 1998.**

Comment

[Paragraph (a) of this rule is derived from previous Rules 52A2.(b)(ii) and 54. Paragraph (b) of this rule is derived from previous Rule 65(e). Paragraph (c) of this rule is derived from previous Rule 56.]

Nothing is this rule is intended to require that an issuing authority should proceed as provided in paragraph **[(c)] (C)** when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs **[(a)(1)] (A)(3)** and **[(b)] (B).** The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (A)(1) requires the defendant to appear before the issuing authority to plead guilty in those cases in which mandatory imprisonment is a penalty for the offense charged.

Paragraph (D) establishes procedures for those cases in which the defendant improperly mails a plea of guilty to the issuing authority. Because some offenses carry mandatory sentences, paragraph (D) requires that the issuing authority send this notice to the defendant who improperly mails a guilty plea to the issuing authority, even in cases in which the defendant does not forward any monies.

For procedure upon default in payment of fine or costs, see Rule 85.

For appeal procedures in summary cases, see Rule 86.

For procedures regarding arrest warrants, see Rules 75 and 76.

With regard to the defendant's right to counsel and waiver of counsel, see Rules 316 and 318.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the , 1998 amendments published at 28 Pa.B. 1514 (March 28, 1998).

PART IIB. PROCEDURES WHEN CITATION FILED

Rule 64. Guilty Pleas.

[(a)] (A) A defendant may plead guilty by:

(1) appearing before the proper issuing authority for the entry of the plea and imposition of sentence when the penalty for the offense charged includes a mandatory sentence of imprisonment; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons**[.]; or**

[(1)] (3) notifying the issuing authority in writing of the plea and forwarding an amount equal to the fine and costs specified in the summons **[; or] .**

[(b)] (B) When the defendant pleads guilty pursuant to paragraph **[(a)(1)] (A) (3):**

* * * * *

[(c)] (C) When the defendant **[is required to]** personally **[appear] appears** before the issuing authority to plead guilty pursuant to **[paragraph (a)] paragraphs (A)(1) or** (2), the issuing authority shall:

(1) **[advise] inform** the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

* * * * *

(4) impose sentence; **[and]**

(5) provide for installment payments when a defendant who is sentenced to pay fine and costs is without the financial means immediately to pay the fine and costs**[.];**

(6) inform the defendant of the right, pursuant to Rule 86, to appeal the sentence within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed, then;

(a) execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the trial de novo or the appeal may be dismissed;

(7) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of the sentence on a date certain unless the defendant files a notice of appeal during the 30-day appeal period; and

(8) issue a written order imposing sentence, signed by the issuing authority, including the information specified in paragraphs (C)(1)—(C)(7), and give a copy of the order to the defendant.

(D) When the defendant is required to appear personally before the issuing authority to plead guilty pursuant to paragraph (A)(1) or (A)(2), but the defendant improperly mails the plea of guilty to the issuing authority, the issuing authority shall:

(1) accept as collateral any sums forwarded by the defendant as payment of the fine and costs;

(2) notify the defendant, in person or by first class mail, that the defendant cannot plead guilty by mail, and that he or she must appear in person before the issuing authority within 10 days of the date of the notice. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address;

(3) notify the defendant of the right to counsel; and

(4) notify the defendant that failure to respond to the notice within the 10-day period may result in the issuance of an arrest warrant.

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; **amended _____, 1998, effective _____, 1998.**

Comment

[Paragraph (a) of this rule, together with paragraph (a) of Rule 69 replaces previous Rule 57(b)(2). Paragraphs (b) and (c) of this rule are derived from previous Rule 65(e) and previous Rule 56, respectively.]

Nothing is this rule is intended to require that an issuing authority should proceed as provided in paragraph **[(c)] (C)** when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs **[(a)(1)](A)(3)** and **[(b)] (B)**. The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (A)(1) requires the defendant to appear before the issuing authority to plead guilty in those cases in which mandatory imprisonment is a penalty for the offense charged.

Paragraph (D) establishes procedures for those cases in which the defendant improperly mails a plea of guilty to the issuing authority. Because some offenses carry mandatory sentences, paragraph (D) requires that the issuing authority send this notice to the defendant who improperly mails a guilty plea to the issuing authority, even in cases in which the defendant does not forward any monies.

* * * * *

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the, 1998 amendments published at 28 Pa.B. 1514 (March 28, 1998).

PART III. PROCEDURES IN SUMMARY CASES WHEN COMPLAINT FILED

Rule 69. GUILTY PLEAS.

[(a)] (A) A defendant may plead guilty by:

(1) appearing before the proper issuing authority for the entry of the plea and imposition of sentence when the penalty for the offense charged includes a mandatory sentence of imprisonment; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the summons; or

[(1)] (3) notifying the issuing authority in writing of the plea and forwarding an amount equal to the fine and costs specified in the summons**[; or].**

[(b)] (B) When the defendant pleads guilty pursuant to paragraph **[(a)(1)] (A) (3):**

* * * * *

[(c)] (C) When the defendant **[is required to]** personally **[appear] appears** before the issuing authority to plead guilty pursuant to **[paragraph (a)] paragraphs (A)(1)** or (2), the issuing authority shall:

(1) **[advise] inform** the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

* * * * *

(4) impose sentence; **[and]**

(5) provide for installment payments when a defendant who is sentenced to pay fine and costs is without the financial means immediately to pay the fine and costs**[.];**

(6) inform the defendant of the right, pursuant to Rule 86, to appeal the sentence within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed, then;

(a) execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the trial de novo or the appeal may be dismissed;

(7) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of the sentence on a date certain unless the defendant files a notice of appeal during the 30-day appeal period; and

(8) issue a written order imposing sentence, signed by the issuing authority, including the information specified in paragraphs (C)(1)—(C)(7), and give a copy of the order to the defendant.

(D) When the defendant is required to appear personally before the issuing authority to plead guilty pursuant to paragraph (A)(1) or (A)(2), but the defendant improperly mails the plea of guilty to the issuing authority, the issuing authority shall:

(1) accept as collateral any sums forwarded by the defendant as payment of the fine and costs;

(2) notify the defendant, in person or by first class mail, that the defendant cannot plead guilty by mail, and that he or she must appear in person before the issuing authority within 10 days of the date of the notice. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address;

(3) notify the defendant of the right to counsel; and

(4) notify the defendant that failure to respond to the notice within the 10-day period may result in the issuance of an arrest warrant.

Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; **amended _____, 1998, effective _____, 1998.**

Comment

[Paragraph (a) of this rule, together with paragraph (a) of Rule 64, replaces previous Rule 57(b)(2). Paragraphs (b) and (c) of this rule are derived from previous Rule 65(e) and previous Rule 56, respectively.]

Nothing is this rule is intended to require that an issuing authority should proceed as provided in paragraph **[(c)] (C)** when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs **[(a)(1)](A)(3)** and **[(b)] (B)**. The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (A)(1) requires the defendant to appear before the issuing authority to plead guilty in those cases in which mandatory imprisonment is a penalty for the offense charged.

Paragraph (D) establishes procedures for those cases in which the defendant improperly mails a plea of guilty to the issuing authority. Because some offenses carry mandatory sentences, paragraph (D) requires that the issuing authority send this notice to the defendant who improperly mails a guilty plea to the issuing authority, even in cases in which the defendant does not forward any monies.

* * * * *

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the , 1998 amendments published at 28 Pa.B. 1514 (March 28, 1998).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 53, 59, 64, 69

GUILTY PLEAS IN SUMMARY CASES INVOLVING SENTENCES OF MANDATORY IMPRISONMENT

A. *Background*

The Committee has been reexamining the summary guilty plea procedures in general, and the procedures for pleas by mail in particular. Because of the relatively minor nature of most of the summary offenses, many of which only have a penalty of a fine and costs, the summary case rules permit a defendant to plead guilty by mail, but only when the fine and costs are listed on the citation. This procedure was included in the new rules adopted in 1985, and the following language : if by statute a sentence of imprisonment is authorized for the offense(s) charged, such sentence may only be imposed if neither the fine nor costs is specified in the citation and the defendant therefore must personally appear before the issuing authority, was added to the Rule 53 Comment to emphasize the intent of the rule that the law enforcement officer must not include fines and costs on the citation when the penalty authorizes a sentence of imprisonment or when the statute does not fix an amount of fine and costs. See 13 Pa.B. 2948, 2964 (10/1/83).

As part of our review, it has come to our attention that the addition of mandatory sentences, specifically manda-

tory sentences of imprisonment, see, e.g., 75 Pa.C.S. § 1543(b), in summary cases is causing confusion in cases in which the defendant pleads guilty by mail. According to recent correspondence, it is the preceding Rule 53 Comment language which is causing confusion in practice, particularly when the sentence includes mandatory imprisonment. According to the correspondents, notwithstanding the language in Rule 53, law enforcement officers continue to put the fines and costs on citations in these cases, and this practice is creating problems for the minor judiciary who do not know what to do, particularly when, in mandatory imprisonment cases, the defendants mail in the fine and costs with a guilty plea. In some cases, the issuing authorities continue to accept the plea and the fine and costs, and do not impose imprisonment. In other cases, the issuing authorities accept the fine and costs as collateral for the defendant's appearance for a sentencing hearing. Still other issuing authorities return the citation and direct the defendant to appear in person to plead guilty.

The Committee, agreeing that the procedures for handling mandatory sentences in summary cases should be clarified, looked at the issue both from the perspective of the problems generated by the Rule 53 Comment language, and whether there should be different summary guilty plea procedures from the procedures in Rules 59, 64, and 69 (the guilty plea rules) when the penalty includes mandatory imprisonment. The Committee concluded that the Rule 53 Comment should be revised to more clearly state the intent of the rules with regard to pleas by mail, and that Rules 53, 59, 64, and 69 should be amended to provide special procedures when the penalty includes a mandatory sentence of imprisonment. We agreed that the rules should require that a defendant appear before the issuing authority to enter a guilty plea in all cases which involve a mandatory sentence of imprisonment, whether or not the police include the fine and costs on the citation, should prohibit the issuing authority from accepting such pleas by mail, and should provide the procedures for handling cases in which a defendant mails in a plea.

B. *Discussion of Rule Changes*

1. Rule 53 (Contents of Citation)

Rule 53 sets forth the contents of the citation. The Committee agreed that paragraph (B), which sets forth the notice provisions required on the citation, including how to enter a plea, should be amended to include a notice to the defendant that in cases involving a mandatory sentence of imprisonment, the defendant must appear in person to enter a plea. To accomplish this, the Committee agreed to add a new paragraph (B)(2)(b)(i), which would require that the citation give notice to the defendant that, if the defendant wants to plead guilty when there is a mandatory sentence of imprisonment, he or she must appear before the issuing authority to enter the plea. The new provision would precede the present provisions for pleading guilty to emphasize its requirements and to highlight its differences from the other two provisions.

To insure that the defendant understands that there is a mandatory sentence of imprisonment for the offense charged, the Committee agreed that Rule 53(A) should be amended by the addition of new paragraph (7), which would require that the citation form include a notation when the penalty for the offense charged includes a mandatory sentence of imprisonment. We anticipate that this requirement will be fulfilled by the addition of a box on the face of the citation, which the police officer must check when the offense charged includes a mandatory sentence of imprisonment, and that the notice to the defendant required by paragraph (B)(2)(b)(i) will include an instruction that if the box is checked, the defendant must appear before the issuing authority to enter a plea.

The Rule 53 Comment would be revised in several ways. The third paragraph, which has caused the confusion referred to in the Background section, would be rewritten to more clearly explain that a law enforcement officer may specify the fine and costs on the citation only when the penalty provided by law does not include a mandatory sentence of imprisonment and the statute fixes a specific amount for the fine. Recognizing that law enforcement officers may continue to enter a fine and costs on the citation, contrary to the requirements of the rules, the Comment further explains that, except in cases in which the penalty includes a mandatory sentence of imprisonment, the defendant may plead guilty by mail when a law enforcement officer specifies a fine on the citation, even if a sentence of imprisonment is authorized. In such cases, as long as the sentence of imprisonment is not mandatory, the issuing authority must accept the fine and costs and may not impose a sentence of imprisonment. Two additional provisions make it clear (1) that a defendant must appear before the issuing authority to plead guilty in any cases in which there is a mandatory sentence of imprisonment required for the offense charged, or in which the fine and costs are not specified, and (2) that an issuing authority cannot accept a guilty plea by mail in any case in which the offense charged requires mandatory imprisonment as a penalty. These provisions make it clear that, if a defendant is charged by citation with an offense which has mandatory imprisonment as part of its penalty, the defendant cannot circumvent the mandatory sentence by pleading guilty by mail. Finally, the Comment includes a cross-reference to the summary rules for guilty pleas (Rules 59, 64, and 69) for the procedures when there is a mandatory sentence of imprisonment.

2. Rules 59, 64, and 69: Guilty Pleas in Summary Cases

The summary guilty plea rules, Rules 59, 64, and 69, set forth the procedures for pleading guilty by mail or in person.[1] Paragraph (A) has been reorganized, and new paragraph (A)(1) would require that, in mandatory imprisonment cases, the defendant must appear in person to plead guilty and for imposition of sentence.

New paragraph (C) would establish the procedures for the issuing authority to follow in all cases when a defendant appears to plead guilty in person. It would provide that the issuing authority must:

1) inform the defendant of the right to appeal;

2) inform the defendant when the sentence commences; and

3) provide the defendant with a signed copy of the written order imposing sentence.

New paragraph (D) would establish the procedures for the issuing authority to follow when a defendant improperly mails in the plea of guilty in a mandatory imprisonment case. The issuing authority is required to accept, as collateral, any sums forwarded by the defendant as payment of fines and costs, and to notify the defendant that:

1) the guilty plea must be entered in person;

[1] The rules are identical in form and substance. For purposes of the discussion, we have only referred to the paragraph designations, which apply to all three rules.

2) the defendant has a right to counsel; and

3) the failure of the defendant to respond to the notice may result in the issuance of an arrest warrant.

[Pa.B. Doc. No. 98-475. Filed for public inspection March 27, 1998, 9:00 a.m.]

Title 249—PHILADELPHIA RULES

PHILADELPHIA COUNTY

Protocol for Trial Pools in the Day Backward and Day Forward Programs; Administrative Doc. No. 1 of 1998

Order

And Now, this 10th day of March, 1998, to assure the expeditious scheduling of trials for Day Backward and Day Forward cases, the Court adopts the following protocol for the assignment of certain cases to trial pools.

1. Type of Case Appropriate for Placement in a Trial Pool—Cases that require relatively short trials and that involve straightforward issues are eligible for assignment to the trial pool. Cases involving Medical Malpractice, Products Liability, Out of State Experts or Pro Se Parties would not be appropriate for assignment to a trial pool.

2. Length of Trial and Placement in a Trial Pool—Trials with an expected duration of 1 to 4 days are eligible for assignment to a trial pool. Cases involving trials that would last more than 5 days are inappropriate for a trial pool.

3. Continuances—All continuances of trials for cases in the pool may be granted only by the assigning Team Leader. Requests for a continuance should be submitted in writing to the appropriate Team Leader prior to the start of the trial pool. A continuance request will be granted only for a sufficient reason such as a prepaid vacation or a prior scheduled date certain trial. Competing trial pool assignments will not be a sufficient reason for a continuance unless the attorney is actually on trial.

If a Team Leader sends a case to another team, the assigned Judge is expected to complete the trial within the week or five days assigned. If the assigned Judge concludes that the trial cannot be completed within a week or five days, the assigned Judge is expected to notify the assigning Judge.

4. Publication—The trial pool list will not be published.

5. Notice—Cases will be assigned on a "next day minimum" notice basis. Cases will not be assigned later than 3:00 p.m. on the day prior to Jury Selection. Cases in the monthly pool may be called in any order. Counsel are expected to be trial ready for the duration of the monthly pool.

This General Court Regulation is promulgated in accordance with the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55, Judicial Administration No. 1, Phila.Civ.R. *51 and Pa.R.C.P. 239, and shall become effective immediately. As required by Pa.R.C.P. 239, the original regulation shall be filed with the Prothonotary in a docket maintained for General Court Regulations issued by the Administrative Judge of the Trial Division; 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 regulation shall also be submitted to Legal Communications, Ltd., *The Legal Intelligencer*, Jenkins Memorial Law Library and the Law Library for the First Judicial District.

JOHN W. HERRON,
Administrative Judge
Trial Division

[Pa.B. Doc. No. 98-476. Filed for public inspection March 27, 1998, 9:00 a.m.]

Title 255—LOCAL COURT RULES

CLEARFIELD COUNTY

Amendment to Rules of Civil Procedure; No. Misc. 11 Page 463

Order

Now, this 13th day of March, 1998, upon Motion of the Clearfield County Civil Rules Committee, it is the *Order* of this Court that the following amendment be and is hereby adopted as an amendment to the Court of Common Pleas of Clearfield County, 46th Judicial District, Rules of Civil Procedure:

212.2A Status Conference Upon Praecipe for Trial

1. Upon a praecipe for trial, where the trial is to be by jury, the Court will schedule a status conference within thirty (30) days of the filing of the praecipe in order to establish a schedule for the filing of pretrial memoranda, exchange of expert reports, and to establish the term in which the case will be tried.

2. This local rule is to establish the earliest trial date and the dates for filing of pretrial statements required by Pa.R.C.P. 212.1.

Said Rule shall become effective May 1, 1998.

It is the further *Order* of this Court that said Rule is hereby directed to be distributed in accordance with Pa.R.C.P. Rule 239.

By the Court

JOHN K. REILLY, Jr.,
President Judge

[Pa.B. Doc. No. 98-477. Filed for public inspection March 27, 1998, 9:00 a.m.]

WESTMORELAND COUNTY

Rule of Judicial Administration WJ1901; Civil Division

Order of Court

And Now, to-wit this 16th day of March, 1998, it is *Hereby Ordered, Adjudged and Decreed* that Westmoreland County Rule of Judicial Administration WJ1901 is

rescinded, and that new Rule of Judicial Administration WJ1901 is adopted.

By the Court

BERNARD F. SCHERER,
President Judge

Rule WJ1901. Prompt Disposition of Matters; Termination of Inactive Cases.

(a) Civil Cases

(1) The court administrator shall, in conjunction with the 18 month review provided by Rule W200.3, and from time to time as directed by the court, designate civil cases to be terminated for inactivity.

(2) Notice may be by person, by mail, or by publication.

A. Notice by mail shall be conducted by sending the notice to the last address of record of the parties or their legal counsel.

B. Notice by publication shall include an advertisement substantially in the following form:

Purge of Civil Cases

Unless otherwise directed by order of court, pursuant to Pa.R.J.A. 1901, the following civil cases will be dismissed on the first Monday of _____ for inactivity. To remove a case, a petition must be presented to the court administrator at least 10 days prior to the first Monday of _____ , and must state good cause for the unreasonable delay and a firm commitment for prompt disposition. All orders removing a case shall be filed in the prothonotary's office forthwith and a copy shall be presented to the court administrator.

(List of Cases)

(3) Even though a case appears on the "Purge List," the following are not terminated by the purging process:

A. custody cases

B. cases affecting title to real estate

C. cases which have a final judicial disposition, and

D. cases which have an injunctive order in effect

(4) The reinstatement of any case terminated for inactivity shall be assessed an administrative fee of $25.

(b) Criminal Cases shall be purged as directed by the court.

(c) Divorce Cases shall be purged as directed by the court.

[Pa.B. Doc. No. 98-478. Filed for public inspection March 27, 1998, 9:00 a.m.]