

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CHS. 20, 300 AND 1100]

Proposal to adopt new Rule 300 (Transfer of Proceedings); and Amend Rule 21 (Venue) and Rule 1100 (Prompt Trial)

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Rule of Criminal Procedure 300 (Transfer of Proceedings), and amend Rules 21 (Venue) and 1100 (Prompt Trial). The proposed rule changes provide uniform procedures for the institution or transfer of proceedings in cases in which there are multiple charges in more than one judicial district arising from a single criminal episode. 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 new rule and 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, February 18, 1998.

By the Criminal Procedural Rules Committee

FRANCIS BARRY MCCARTHY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

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

Rule 21. Venue.

All criminal proceedings shall be brought before the issuing authority for the magisterial district [**where**] in which the offense is alleged to have occurred or before an issuing authority on temporary assignment to serve such magisterial district, subject, however, to the following exceptions:

* * * * *

(b) When charges arising from the same criminal episode occur in more than one magisterial district within the same judicial district, the criminal proceeding on all the charges should be brought before one issuing authority in any of the magisterial districts in which the charges arising from the same criminal episode occurred.

(c) When charges arising from the same criminal episode occur in more than one judicial district, the

criminal proceeding on all the charges should be brought before one issuing authority in a magisterial district within any of the judicial districts in which the charges arising from the same criminal episode occurred.

[(b)] (d) * * *

[(c)] (e) [**Where**] **When** any offense is alleged to have occurred within 100 yards of the boundary between two or more magisterial districts of a judicial district, the proceeding may be brought in either or any of the magisterial districts without regard [**of**] **to** the boundary lines of any county.

[(d)] (f) [**Where**] **When** the President Judge designates a magisterial district or a location in that district in which certain classes of offenses, which occurred in other specified magisterial districts, may be heard.

Official Note: Formerly Rule 154, adopted January 16, 1970, effective immediately; section (a)(3) adopted July 1, 1970, effective immediately; renumbered **Rule 21** September 18, 1973, effective January 1, 1974; amended July 1, 1980, effective August 1, 1980; amended January 28, 1983, effective July 1, 1983; **amended** _____, **effective** _____.

Comment

Except as provided in paragraph (c), [This] this rule governs venue between magisterial districts within the same judicial district; *i.e.*, the matter of where a proceeding is to be brought within the judicial district having jurisdiction.

Paragraphs (b) and (c), which are exceptions to the general rule governing venue, were added in 1998 in view of *Commonwealth v. McPhail*, 692 A. 2d 139 (Pa. 1997), in which the Court held that "all charges stemming from a single criminal episode" must be joined in a single trial "despite the fact that some of the charges arose in a different county." Accordingly, when charges arising from a single criminal episode occur in more than one judicial district, the magisterial district in which the proceeding on all the charges is brought, *i.e.*, the one with venue, may be any one of the judicial districts in which the charges occurred.

Similarly, when charges arising from a single criminal episode occur in more than one magisterial district within one judicial district, the magisterial district in which the proceeding on all the charges is brought, *i.e.*, the one with venue, may be any one of the magisterial districts in which the charges occurred.

The decision of in which magisterial district in paragraph (b), or in which judicial district in paragraph (c), the proceedings are to be brought is to be made by the law enforcement officers or attorneys for the Commonwealth. In making the decision, the law enforcement officers or attorneys for the Commonwealth must consider in which magisterial district under paragraph (b), or in which judicial district under paragraph (c), it would be in the interests of justice to have the case proceed, based upon the convenience of the defendant and the witnesses, and the prompt administration of justice.

Committee Explanatory Reports:

Report explaining the _____, 1998 amendments concerning multiple charges arising from a single criminal episode published at 28 Pa.B. 478 (January 31, 1998).

CHAPTER 300. PRETRIAL PROCEEDINGS

[This is an entirely new rule.]

Rule 300. Transfer of Proceedings.

(A) Whenever charges arising from a single criminal episode occur in more than one judicial district, and proceedings have been instituted in more than one judicial district, at any time after the case is held for court, the proceedings shall be transferred to one of the judicial districts, and joined for trial.

(B) The judicial district to which the proceedings are to be transferred shall be determined, either:

(1) by written agreement of the parties, filed with the clerk(s) of courts of the judicial district(s) in which the charges are pending; or

(2) by written agreement of the attorneys for the Commonwealth, filed with the clerk(s) of courts of the judicial district(s) in which the charges are pending, with service upon the defendant or defendant's counsel, and an opportunity for the defendant to object.

(C) Upon the filing of the agreement of the parties in paragraph (B)(1), the court promptly shall order the transfer of the proceedings.

(D) Upon the filing of the agreement of the attorneys for the Commonwealth in paragraph (B)(2),

(1) absent an objection within 10 days of filing, the court promptly shall order the transfer of the proceedings.

(2) In those cases in which an objection is filed by the defendant, the court shall promptly dispose of the objection. If the objection is denied, the court immediately thereafter shall order the transfer of the proceedings.

(E) Upon the issuance of the transfer order pursuant to paragraphs (C), (D)(1), or (D)(2), the clerk(s) of courts of the transferring judicial district(s) shall promptly transmit to the clerk of courts of the judicial district to which the proceedings are being transferred a certified copy of all docket entries, together with all the original papers filed in the proceeding in the clerk's judicial district, a copy of the bail bond and any deposits in satisfaction of a monetary condition of bail, and a bill of the costs which have accrued but have not been collected prior to the transfer.

(F) When a proceeding is transferred pursuant to this rule, the case shall proceed to trial and judgment in the same manner as if the proceeding had been instituted in the transfer judicial district.

(1) If the proceeding is transferred before an information has been filed in the transferring judicial district, the attorney for the Commonwealth in the transfer judicial district shall join the charges from the transferring judicial district with the charges in the transfer judicial district in the same information.

(2) If the proceeding is transferred after an information has been filed, the attorney for the Commonwealth in the transfer judicial district shall proceed pursuant to Rule 1127 (Joinder — Trial of Separate Indictments or Informations).

(3) The results of any pretrial proceedings that have been completed in the transferring judicial district shall be binding on the transfer judicial district proceedings.

(4) Costs, not previously collected, shall be collected in the transfer judicial district.

(G) If the defendant is in custody in a transferring judicial district, the order transferring the case shall provide that the defendant shall be delivered to the custody of the sheriff of the transfer judicial district.

Official Note: Former Rule 300 rescinded June 28, 1974, effective immediately; rescinded and number reserved June 29, 1977, and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; **new Rule 300 adopted _____, effective _____.**

Comment

The Supreme Court held in *Commonwealth v. McPhail*, 692 A.2d 139 (Pa. 1997), that the trial in one judicial district of some of the charges arising from a single criminal episode is a bar to the trial in another judicial district of the other charges arising from the same criminal episode. In view of this decision, it is incumbent upon law enforcement officers and prosecutors to be vigilant about instituting proceedings and proceeding to trial in cases in which there are multi-judicial district charges arising from a single criminal episode.

The *McPhail* decision has necessitated a clarification of procedures for the institution of criminal proceedings, and new procedures for the transfer of proceedings in cases in which there are multiple charges arising from a single criminal episode and the proceedings on the charges have been instituted in more than one judicial district.

In many cases, multiple charges arising from a single criminal episode will be known to the police officers and attorneys for the Commonwealth involved in the case, and will be joined in the first instance in one criminal complaint, and filed before one issuing authority in one judicial district. See Rule 21(c). However, there will be situations in which some of the charges are not known at the time the complaint is filed, and these charges have been filed in more than one judicial district. New Rule 300 establishes the procedures for the transfer of proceedings in these cases to one judicial district.

The procedures in this rule are distinct from the Rule 312 (Motion for Change of Venue or Change of Venire) procedures for a change of venue in cases in which it is determined at a hearing that a fair and impartial trial cannot be had in the county in which the case is pending.

It is expected that the parties will be able to agree on the judicial district in which the case should proceed. However, if they cannot agree, paragraph (B)(2) provides for the determination to be by the agreement of the attorneys for the Commonwealth. In determining the judicial district to which the proceedings are to be transferred, the parties must consider in which judicial district it would be in the interests of justice to have the case proceed, based upon the convenience of the defendant and the witnesses, and the prompt administration of justice.

Pursuant to paragraph (B)(2), upon the filing of the agreement of the attorneys for the Commonwealth, the defendant must be served a copy of the agreement, and be given an opportunity to object to the transfer or to the judicial district selected for the trial.

When an agreement is filed pursuant to this rule, the clerk of courts must promptly forward the agreement to

the appropriate judge for the issuance of an order transferring the proceedings. The appropriate judge would be the judge assigned to handle miscellaneous motions in criminal matters or the president judge, unless a judge has already been assigned to the case. Immediately upon receipt of the agreement from the clerk of courts, the judge must issue a transfer order, unless the defendant challenges the transfer or the judicial district to which the case would be transferred.

The decision to transfer a proceeding under this rule should be made at the earliest time after the case is held for court, so that most, if not all, of the pretrial proceedings can be accomplished in the transfer judicial district.

For venue between magisterial districts, see Rule 21.

For the procedures for the joinder of offenses in a complaint, see Rule 105.

For the procedures for the joinder of offenses in an information, see Rule 228.

For the procedures for the joinder or consolidation for trial of offenses charged in separate informations, see Rule 1127.

When proceedings are transferred pursuant to this rule, the case is to proceed in the same manner as if the charges had been instituted in the transfer judicial district. If any pretrial proceedings have been conducted in the transferring judicial district, the results of those proceedings will be binding on the proceedings in the transfer judicial district. For example, if discovery has been initiated, and the judge in the transferring judicial district has ordered or denied disclosure, this order would be binding on the judge and parties in the transfer judicial district. See *Commonwealth v. Starr*, 664 A.2d 1326 (Pa. 1995), concerning the coordinate jurisdiction rule and the law of the case doctrine.

Any costs collected before a proceeding is transferred will remain in the transferring judicial district.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published at 28 Pa.B. 478 (January 31, 1998).

CHAPTER 1100. TRIAL

Rule 1100. Prompt Trial.

[(a)] (A) (1) Trial in a court case in which a written complaint is filed against the defendant after June 30, 1973 but before July 1, 1974 shall commence no later than 270 days from the date on which the complaint is filed.

(2) Trial in a court case in which a written complaint is filed against the defendant, where the defendant is incarcerated on that case, shall commence no later than 180 days from the date on which the complaint is filed.

(3) Trial in a court case in which a written complaint is filed against the defendant, where the defendant is at liberty on bail, shall commence no later than 365 days from the date on which the complaint is filed.

(4) Trial in a court case which is transferred from the juvenile court to the trial or criminal division shall commence in accordance with the provision set out in subsections **[(a)] (A)(2)** and **[(a)] (A)(3)** except that the time is to run from the date of filing the transfer order.

[(b)] (B) * * *

[(c)] (C) In determining the period for commencement of trial, there shall be excluded therefrom:

(1) the period of time between the filing of the written complaint and the defendant's arrest, provided that the defendant could not be apprehended because his or her whereabouts were unknown and could not be determined by due diligence;

(2) any period of time for which the defendant expressly waives Rule 1100;

(3) such period of delay at any stage of the proceedings as results from:

(i) the unavailability of the defendant or the defendant's attorney;

(ii) any continuance granted at the request of the defendant or the defendant's attorney.

(4) the period of time between the filing of an objection to the transfer of a case pursuant to Rule 300(B)(2) and the disposition of the objection.

[(d)] (D) * * *

[(e)] (E) No defendant shall be held in pre-trial incarceration on a given case for a period exceeding 180 days excluding time described in subsection **[(c)] (C)** above. Any defendant held in excess of 180 days is entitled upon petition to immediate release on nominal bail.

[(f)] (F) * * *

[(g)] (G) * * *

Official Note: Adopted June 8, 1973, effective prospectively as set forth in paragraphs **[(a)] (A)(1)** and **[(a)] (A)(2)** of this rule; paragraph **[(e)] (E)** amended December 9, 1974, effective immediately; paragraph **[(e)] (E)** re-amended June 28, 1976, effective July 1, 1976; amended October 22, 1981, effective January 1, 1982. (The amendment to paragraph **[(c)] (C)(3)(ii)** excluding defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982.) Amended December 31, 1987, effective immediately; amended and effective September 30, 1988; amended September 3, 1993, effective January 1, 1994; Comment revised 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; **amended** _____, **effective** _____.

Comment

Rule 1100 was adopted in 1973 pursuant to *Commonwealth v. Hamilton*, 297 A.2d 127 (Pa. 1972).

The time limits of this rule were amended on December 31, 1987, effective immediately. See *Commonwealth v. Palmer*, 558 A.2d 882 (Pa. Super. 1989).

In addition to amending the time limits of the rule, the Court deleted the provisions contained in former Rule 1100 **[(c)] (C)** concerning Commonwealth petitions to extend the time for commencement of trial. See Rule 1100 **[(e)] (E)** and **[(g)] (G)**.

Subsection **[(a)] (A)(2)** requires that the Commonwealth bring a defendant to trial within 180 days from the filing of the complaint if the defendant is incarcerated on the charges. Under section **[(e)] (E)**, subject to the exclusions provided in section **[(c)] (C)**, a defendant

who has been incarcerated on the charges pretrial for more than 180 days is entitled, upon petition, to immediate release on nominal bail.

If a defendant is at liberty on bail on the charges, subsection [(a)] (A)(3) requires that the Commonwealth bring the defendant to trial within 365 days from the filing of a complaint. Under section [(g)] (G), after 365 days and at any time before trial, a defendant released on bail or the defendant's counsel may apply to the court for an order dismissing the charges with prejudice on the ground that this rule has been violated. A copy of the motion must be served on the attorney for the Commonwealth, who has a right under this rule to be heard on the motion. If the court, upon hearing, determines that the Commonwealth exercised due diligence and that the circumstances causing the delay in the commencement of trial were beyond the Commonwealth's control, the court must deny the motion and list the case for trial on a date certain. If the court determines that the Commonwealth did not exercise due diligence, the court must dismiss the charges with prejudice and discharge the defendant.

When calculating the number of days set forth herein, see the Statutory Construction Act, 1 Pa.C.S. § 1908.

Pursuant to this rule, it is intended that "complaint" also includes special documents used in lieu of a complaint to initiate criminal proceedings in extraordinary circumstances such as criminal proceedings instituted by a medical examiner or coroner. See *Commonwealth v. Lopinson*, 234 A.2d 552 (Pa. 1967); *Commonwealth v. Smouse*, 594 A.2d 666 (Pa. Super. 1991).

A trial commences when the trial judge determines that the parties are present and directs them to proceed to voir dire or to opening argument, or to the hearing of any motions which had been reserved for the time of trial, or to the taking of testimony, or to some other such first step in the trial. It is not intended that preliminary calendar calls should constitute commencement of a trial. Concerning the hearing of motions reserved for the time of trial, see *Jones v. Commonwealth*, 434 A.2d 1197 (Pa. 1981).

For purposes of determining the time for commencement of trial, section [(c)] (C) contains the periods which must be excluded from that calculation. Under subsection [(c)] (C)(3)(1), in addition to any other circumstances precluding the availability of the defendant or the defendant's attorney, the defendant should be deemed unavailable for the period of time during which the defendant contested extradition, or a responding jurisdiction delayed or refused to grant extradition; or during which the defendant was physically incapacitated or mentally incompetent to proceed; or during which the defendant was absent under compulsory process requiring his or her appearance elsewhere in connection with other judicial proceedings. **Subsection (C)(4) was added in 1998 to ensure that the time period during which a judge is considering a defendant's objection to the transfer of a case pursuant to Rule 300(B)(2) is excluded from the calculations of Rule 1100.**

The provisions enumerating the excludable periods contained in section [(c)] (C) apply to the periods for commencing a trial under section [(d)] (D).

Subsections [(d)] (D)(1) and (2) provide the time limits for commencement of trial when a trial court has granted a new trial and no appeal has been perfected, or when an appellate court has remanded a case to the trial court, for whatever reason. Under subsection [(d)]

(D)(1), a trial must commence within 120 days of the trial court order granting a new trial, unless the defendant has been released on bail, in which event the trial must commence within 365 days.

The withdrawal of, rejection of, or successful challenge to a guilty plea should be considered the granting of a new trial for purposes of this rule. Subsection [(d)] (D)(1) also applies to the period for commencing a new trial following the declaration of a mistrial.

Under subsection [(d)] (D)(2), when an appellate court has remanded a case to the trial court, for whatever reason, trial must commence within 120 days after the remand, unless the defendant has been released on bail, in which event trial must commence within 365 days after the remand. The date of remand is the date as it appears in the appellate court docket. **[Where] When** remand of the record is stayed, the period for commencement of trial does not begin to run until the record is remanded as provided in this rule.

Although a defendant's removal from the ARD program does not result in a "new trial" under subsection [(d)] (D)(3), termination of the defendant's ARD program pursuant to Rule 184 commences a new trial period for the purpose of this rule.

When a judge grants a continuance requested by the defendant, trial should be rescheduled for a date certain consistent with the continuance request and the court's business, and the entire period of such continuance may be excluded under section [(c)] (C).

When admitted to nominal bail pursuant to this rule, the defendant must execute a bail bond. See Rules 4004 and 4005.

In addition to requesting that the defendant waive Rule 1100 for the period of enrollment in the ARD program (see Rule 178, paragraph (3)), the attorney for the Commonwealth may request that the defendant waive Rule 1100 for the period of time spent in processing and considering the defendant's inclusion into the ARD program.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published with the Court's Order at 23 Pa.B. 4492 (September 25, 1993).

Final Report explaining the September 13, 1995 Comment revision of **the Bail Rule citations** published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Report explaining the _____, 1998 amendments concerning multiple charges arising from a single criminal episode published at 28 Pa.B. 478 (January 31, 1998).

REPORT

Proposed New Pa.R.Crim.P. 300; Amendments to Pa.Rs.Crim.P. 21 and 1100

Procedures in Cases Involving Multiple Charges Arising From a Single Criminal Episode Occurring in More Than One Judicial District

Introduction

The Committee is recommending the adoption of new Rule of Criminal Procedure 300 (Transfer of Proceedings), and amendments to Rules 21 (Venue) and 1100 (Prompt Trial) to provide procedures for the institution or transfer of cases involving multiple charges arising from a single criminal episode occurring in more than one judicial

district. The new procedures are necessitated by *Commonwealth v. McPhail*, 692 A. 2d 139, 144 (Pa. 1997), in which the Supreme Court determined that "the place of trial, whether within or without the county where the alleged crime occurred, is a matter of venue, not jurisdiction." Thus, under 18 Pa.C.S. § 110, when all the charges are within the jurisdiction of a single court, and, therefore, must be joined in a single trial, the trial in one judicial district of some of the charges arising from a single criminal episode is a bar to the trial in another judicial district of the other charges arising from the same criminal episode.

Discussion

A. Pa.R.Crim.P. 21 (Venue)

In considering the implications of *Commonwealth v. McPhail*, supra, the Committee agreed that Rule 21 (Venue) would have to be amended to make it clear that a case falling within the parameters of *McPhail*, that is, a case in which there are multiple charges arising from a single criminal episode, which are alleged to have been committed in more than one judicial district, would be an exception to the general rule that "all criminal proceedings shall be brought before the issuing authority for the magisterial district in which the offense is alleged to have occurred." New paragraph (c) addresses this situation. Under paragraph (c), it is expected that, when the law enforcement officers or the attorneys for the Commonwealth in the respective judicial districts are aware that there are multiple charges arising from a single criminal episode, all the charges should be filed together before one issuing authority in any of the judicial districts in which the charges occurred.

The Committee also discussed the comparable situation in which there are multiple charges arising from a single criminal episode which arise in more than one magisterial district but within the same judicial district. We agreed that these charges should be brought before one issuing authority in one of the magisterial districts in which some of the charges arose, and that Rule 21 should be amended to provide that this situation is another exception to the general venue rule. See new paragraph (b).

The Comment has been revised to include a citation to *Commonwealth v. McPhail*, and to provide guidance concerning in which judicial district or magisterial district the proceedings should be brought. The last paragraph explains that the decision should be based upon the convenience of the defendant and witnesses, and the prompt administration of justice.

B. New Rule 300 (Transfer of Proceedings)

Although, ordinarily, charges arising from a single criminal episode which occur in more than one judicial district will be instituted together under Rule 21(c), the Committee agreed that the rules should establish procedures governing those cases in which the proceedings are instituted in more than one judicial district. New Rule 300 provides the mechanism for transferring the different proceedings to one judicial district, and for the proceedings to be joined for trial, which would apply only after a case is held for court.

Paragraph (A) is an introductory paragraph, and requires that proceedings in cases in which charges arising from a single criminal episode have been instituted in more than one judicial district must be transferred to one judicial district and joined for trial. The first three paragraphs of the Comment explain the need for the new rule, and the interrelationship between Rule 21 and Rule 300. The first paragraph of the Comment also cautions

police officers and prosecutors to be vigilant about instituting proceedings and proceeding to trial in cases in which there are multi-judicial district charges arising from a single criminal episode.

Paragraph (B) sets forth the procedures for determining to which judicial district the proceedings should be transferred. The Comment points out that, in determining the judicial district to which the proceedings are to be transferred, "the parties must consider in which judicial district it would be in the interests of justice to have the case proceed, based upon the convenience of the defendant and the witnesses, and the prompt administration of justice."¹ It is further explained in the Comment that the decision to transfer should be made at the earliest possible time, so that as many of the pretrial proceedings as possible may be conducted in the transfer judicial district.

The Committee agreed that, in many cases, the determination of the transfer judicial district will be by agreement of the defendant and the attorneys for the Commonwealth. In these cases, the parties should prepare a written agreement which is filed in the judicial district in which the charges are pending.² See paragraph (B)(1).

The Committee also recognized that there may be cases in which the defendant will not agree on the judicial district that the attorneys for the Commonwealth have chosen, or the attorneys for the Commonwealth have reached an agreement on their own. In these cases, paragraph (B)(2) provides that the attorneys for the Commonwealth must file a written agreement with the clerk of courts in the judicial district in which the charges are pending. In addition, the rule requires that the agreement be served on the defendant or defendant's attorney, and that the defendant have an opportunity to object to the transfer or to the judicial district selected for the trial.

When the agreement has been filed, as explained in the Comment, it is expected that the clerk of courts will promptly forward the agreement to the appropriate judge, who is required to order the transfer of the proceedings. See paragraphs (C) and (D). The Comment explains that the appropriate judge would be the president judge, or the judge assigned to handle motions, or the judge assigned to handle the case, whichever applies in the given judicial district. In cases involving the agreement of the attorneys for the Commonwealth, the court is required to wait ten days before ordering the transfer to allow for the defendant's objection. See paragraph (D)(1). When a defendant files an objection, paragraph (D)(2) requires that the court promptly dispose of the objection, and if the objection is denied, immediately order the transfer.

Once an order transferring a proceeding is issued, paragraph (E) directs the clerk of courts of the transferring judicial district to promptly transmit to the clerk of courts of the transfer judicial district all of the following:

1. a certified copy of all docket entries;
2. all the original papers filed in the proceeding in the clerk's judicial district;

¹ It should be noted that there cannot be a transfer to a judicial district in which no charges have been filed even though one or more of the offenses was committed in that judicial district, i.e., a district attorney who has exercised his or her charging function and decided not to institute charges cannot be forced to try the case.

² Any references to procedurers to be followed by the transferring judicial district would apply to all transferring judicial districts in those cases in which there are charges pending in more than one judicial district. For example, pursuant to paragraph (B), the agreement would have to be filed in all judicial districts in which charges are pending.

3. a copy of the bail bond and any deposits in satisfaction of a monetary condition of bail; and

4. a bill of the costs that have accrued but have not been collected prior to transfer.

Paragraph (F) establishes the procedures once the case is transferred, noting that the case is to proceed in the same manner as if the proceeding had been instituted in the transfer judicial district. If the case is transferred before an information has been filed, then the charges are to be joined in the same information. See paragraph (F)(1). If the case is transferred after an information has been filed, then the case is to proceed pursuant to Rule 1127, and the informations should be joined for trial. See paragraph (F)(2). Paragraph (F)(3) makes it clear that the results of any pretrial proceedings completed in the transferring judicial district are binding on the transfer judicial district. This point is reiterated in the second to last paragraph of the Comment, with a citation to *Commonwealth v. Starr*, 664 A.2d 1326 (Pa. 1995) concerning the coordinate jurisdiction rule and the law of the case doctrine. The last provision of paragraph (F) directs that costs which have not been collected previously are to be collected in the transfer judicial district.

Finally, when the defendant in the case is in custody in a transferring judicial district, paragraph (G) requires that the order transferring the case include a provision for the delivery of the defendant to the custody of the sheriff of the transfer judicial district.

3. *Rule 1100 (Prompt Trial)*

The Committee discussed the implications of new Rule 300 on Rule 1100. We agreed that, if the defendant objects to the transfer pursuant to Rule 300(B)(2), the time during which the court is considering the objection should be excluded from the Rule 1100 calculations. Accordingly, a new paragraph (C)(4) has been added to Rule 1100 specifically excluding this time period from the determination of the period for commencement of trial.

[Pa.B. Doc. No. 98-160. Filed for public inspection January 30, 1998, 9:00 a.m.]

[234 PA. CODE CH. 1400]

Order Approving the Revision of the Comment to Rule 1405

The Criminal Procedural Rules Committee has prepared a Final Report explaining the revisions of the Comment to Pa.R.Crim.P. 1405 (Procedure at Time of Sentencing), which were approved by the Supreme Court on January 9, 1998, effective immediately. These Comment revisions 1) clarify that after a trial de novo in a summary case, the sentencing judge should advise the defendant of the right to appeal, and 2) emphasize that a Guideline Sentence Form must be completed in all court cases. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 9th day of January, 1998, upon the recommendation of the Criminal Procedural Rules Committee; this Recommendation having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the revision of the Comment to Pa.R.Crim.P. 1405 in the following form is approved.

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

Rule 1405. Procedure at Time of Sentencing.

* * * * *

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 revised January 9, 1998, effective immediately.**

Comment:

This rule is derived in part from previous Rule 1405.

* * * * *

Sentencing Procedures

* * * * *

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.

After sentencing, following a conviction in a trial de novo in a summary case, the judge should advise the defendant of the right to appeal and the time limits within which to exercise that right, the right to proceed in forma pauperis and with assigned counsel to the extent provided in Rule 316(a), and of the qualified right to bail under Rule 4009(b). See paragraphs C(3)(a), (b), and (e). See also Rule 1410.D (no post-sentence motion after a trial de novo).

After sentencing, the judge should inquire whether the defendant intends to file a post-sentence motion or to appeal, and if so, should determine the defendant's bail status pursuant to subparagraph C(3)(e) and Rule 4009. It is recommended, when a state sentence has been imposed, that the judge permit a defendant who cannot make bail to remain incarcerated locally, at least for the 10-day period during which counsel may file the post-sentence motion. When new counsel has been appointed or entered an appearance for the purpose of pursuing a post-sentence motion or appeal, the judge should consider permitting the defendant to remain incarcerated locally for a longer period to allow new counsel time to confer with the defendant and become familiar with the case. See also Rule 302 (Attorneys-Appearances and Withdrawals).

* * * * *

In cases in which a mandatory sentence is provided by law, when the judge decides not to impose a sentence greater than the mandatory sentence, regardless of the number of charges on which the defendant could be sentenced consecutively, and when no psychiatric or psychological examination is required under Rule 1403.B, the judge may immediately impose that sentence. But see Rule 1403.A(2), which requires that the court state on the record the reasons for dispensing with a pre-sentence report under the circumstances enumerated therein. See also 42 Pa.C.S. § 9721 et seq.

No later than 30 days after the date of sentencing, a Pennsylvania Commission on Sentencing Guideline Sentence Form must be completed at the judge's direction and made a part of the record. In addition, a copy of the form must be forwarded to the Commission on Sentencing, 204 Pa. Code § 303.1(e), effective July 13, 1997. See 27 Pa.B. 1254 (March 15, 1997).

With respect to the recording and transcribing of court proceedings, including sentencing, see Rule 9030.

Committee Explanatory Reports:

* * * * *

Final Report explaining the January 9, 1998 Comment revisions concerning Guideline Sentence Forms, and summary case appeal notice, published with the Court's Order at 28 Pa.B. 481 (January 31, 1998).

Final Report¹

Procedure at Time of Sentencing; Revisions of the Comment to Pa.R.Crim.P. 1405

On January 9, 1998, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania approved revisions of the Comment to Rule 1405 (Procedure at Time of Sentencing), effective immediately. The revisions clarify that after a trial de novo in a summary case, the sentencing judge must advise defendants of their appeal rights, and emphasize that a Guideline Sentence Form must be completed in all court cases.

Discussion

1. *Notice of Appeal Rights*

Several common pleas court judges questioned whether, pursuant to Rule 1405, following a summary case trial de novo, a defendant had to be advised of his or her appeal rights. The Committee agreed that the requirements of Rule 1405 concerning advising defendants of the right to appeal apply to summary cases following a trial de novo, and that this should be clarified in the rule. We concluded that this could best be accomplished by a Comment provision emphasizing that summary case defendants should be advised of their appeal rights after sentencing, following a summary case trial de novo. The revision appears in the "Sentencing Procedures" section of the Comment, and explains that the judge should advise the defendant of the right to appeal and the time limits within which to exercise that right, the right to proceed in forma pauperis and with assigned counsel to the extent provided in Rule 316(a), and the qualified right to bail under Rule 4009(b).

2. *Guideline Sentence Form*

¹ 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.

The second revision was developed after the Committee considered correspondence from the Sentencing Commission, through its chairman, Judge David W. Heckler. The Committee was asked to consider a rule change to require that judges complete the Guideline Sentence Form upon sentencing in all cases in which the conviction involves either felonies or misdemeanors. The Committee noted that the Sentencing Code, 204 Pa. code § 303.1(e) (1997), requires judges to complete the forms, and concluded that it is not necessary to create a new rule. However, the Committee did agree that it is appropriate to refer to this Code provision in the Comment to emphasize the requirement, and has revised the Comment accordingly.

[Pa.B. Doc. No. 98-161. Filed for public inspection January 30, 1998, 9:00 a.m.]

Title 255—LOCAL COURT RULES

DAUPHIN COUNTY

Promulgation of Local Rules; No. 1793 S 1989

Order

And Now, this 15th day of January, 1998, it is hereby ordered that Dauphin County Local Rule of Civil Procedure 212 is rescinded. Rules 212.1, 212.2, and 212.3 are promulgated as follows:

Rule 212.1. Notice of Earliest Trial Date. Filing of Pre-Trial Statements.

(a) Notice of civil jury trial dates required by Pa.R.C.P. 212.1(a) shall be effectuated by publication of the annual civil court calendar in the Dauphin County Reporter no later than November 1 of the year prior to the calendar's effective date. Cases shall be listed for trial in accordance with Dauphin County R.C.P. 215.1.

(b) Each party to an action which has been listed for civil jury trial shall file a pre-trial statement pursuant to Pa.R.C.P. 212.2 no later than seven days prior to the date set for the pre-trial conference. The original statement shall be filed with the Prothonotary and a copy shall be served on the pre-trial conference judge.

COMMENT: Pursuant to Pa.R.C.P. 212.1(c)(2), Dauphin County has altered the time frames for filing a pre-trial statement set forth in Pa.R.C.P. 212.1(b).

Rule 212.2. Contents of Pre-Trial Statements.

In addition to the requirements of Pa.R.C.P. 212.2, the pre-trial statement shall include:

- (a) the estimated length of trial;
- (b) any scheduling problems;
- (c) any special evidentiary issues;
- (d) a realistic settlement offer or demand.

Rule 212.3. Pre-Trial Conferences in Jury Trial Cases.

(1)(a) For each term of court, a pre-trial conference for all cases on the civil jury trial list shall be held on a date specially fixed by the Court and published in the court calendar. Assignments designating the judge and the time of the conference shall be noted on the final trial list. Copies of the trial list will be available at the Court Administrator's Office and the Prothonotary's Office.

(b) Each party shall be represented at the conference by counsel who will try the case or an authorized representative.

(2) Counsel attending the pre-trial conference must have complete authority to stipulate on items of evidence and admissions as well as authority to settle. Counsel shall have the client available for consultation regarding settlement.

(3) At the pre-trial conference, efforts shall be made to narrow legal issues, to reach stipulations as to facts not in controversy, to shorten the time and expense of trial, and to discuss the prospects of settlement. The Court, at its option, may enter a pre-trial order to become part of the record of the case, embracing all stipulations, admissions and other matters which have come before it.

(4) If counsel fails to appear, the Court may impose appropriate sanctions.

In addition, Rules 215.1 and 215.2 are amended as follows:

Rule 215.1. Jury Trials.

(1) LISTING—At least [**four (4)**] **six** weeks prior to the first day of a session of civil jury trials, any case which is at issue may be listed for trial by the filing of a certificate of readiness with the Prothonotary. . .

Rule 215.2. Non-Jury Trials and Other Proceedings.

(1) Non-jury proceedings include, but are not limited to, Non-Jury Civil Actions, Equity, Discovery Motions, Change of Name Petitions, Special Relief in Divorce Petitions, Minor Settlement Petitions, Appeals from License Suspension, Exceptions to Divorce Master's Report, Tax Sale Exceptions, Preliminary Objections to Jurisdiction or Venue in Actions under the Domestic Relations Code, **Zoning Appeals**, and Class Actions.

These amendments shall take effect 30 days after publication in the *Pennsylvania Bulletin*.

By the Court

CLARENCE C. MORRISON,
President Judge

[Pa.B. Doc. No. 98-162. Filed for public inspection January 30, 1998, 9:00 a.m.]

SOMERSET COUNTY

**Consolidated Rules of Court; No. 9 Miscellaneous
1998**

Order

Now, this 15th day of January, 1998, it is hereby *Ordered*:

1. The following designated Somerset County Rules of Criminal Procedure (Som.R.Crim.P.), are hereby amended to read in their entirety as reflected in the revised Rules, as follows, effective 30 days after publication in the *Pennsylvania Bulletin*:

Som. R.Crim.P. 303. Arraignment.

Som. R.Crim.P. 303.1. Form of Notice Of Arraignment And Trial.

Som. R.Crim.P. 303.4. Form of Appearance Of Counsel And Waiver Of Arraignment.

2. The Somerset County Court Administrator shall:

A. File ten (10) certified copies of this Order with the Administrative Office of Pennsylvania Courts;

B. Distribute two certified copies of this Order to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

C. File one certified copy of this Order with the Pennsylvania Criminal Procedural Rules Committee; and

D. File proof of compliance with this Order in the docket for these Rules, which shall include a copy of each transmittal letter.

By the Court

EUGENE E. FIKE, II,
President Judge

Rules of Court

Arraignment And Notice

Som. R. Crim. P. 303. Arraignment.

A. Arraignment shall be scheduled not later than twenty (20) days after the information is filed, except that later arraignment may be scheduled for cause.

NOTE: For general scheduling procedures, see Som. R.J.A. 1030 et seq.

(Formerly R50-302).

B. The purposes of arraignment are to assure that defendant is advised of the charges against him; to have counsel enter an appearance, or, if defendant has no counsel, to consider defendant's right to counsel; to commence the period of time within which to initiate pretrial discovery and to file other pretrial requests and motions; to insure defendant has been provided a copy of the information; and to afford defendant an opportunity to plead to the information.

(Formerly R50-303).

C. After filing the information, the District Attorney shall notify defendant and defense counsel of arraignment and trial in the manner specified by Pa. R.Crim.P. 9024. A copy of the information shall accompany the notice. The notice of arraignment and trial shall be in substantially the form prescribed in Som. R.Crim.P. 303.1.

In addition, however, the District Attorney shall in all cases mail a copy of the information and notice to defendant, by first class mail. The District Attorney shall also mail a copy of the notice to the bondsman, at least ten (10) days before the arraignment date.

(Formerly R50-304).

D. Defendant shall appear personally before the court at arraignment and plead to the information, unless defendant or his attorney at or before arraignment, files with the Clerk of Courts and delivers a copy to the District Attorney, a written formal appearance, waiver and agreement to appear, signed by both defendant and defense counsel, in substantially the form specified in Som. R. Crim. P. 303.4.

(Formerly R50-305).

E. When a case is continued to another term after the notice of arraignment and trial has been given, said notice need not again be given unless it appears that the notice was not received by defendant and the Commonwealth has obtained another address for defendant. In-

stead, the Commonwealth may notify defendant as follows:

1. If defendant has not pleaded to all charges, notification to appear on the first day of any argument week as selected by the District Attorney which occurs at least ten days after such notice is mailed, (but not later than the next regular call of the criminal trial list) to plead to the information and stating the date, time and place of trial, in substantially the form set forth in Som. R. Crim. P. 303.2.

2. If defendant has pleaded not guilty to all charges, notification to appear on the specified date, time and place for trial, in substantially the form specified in Som. R. Crim. P. 303.3.

(Formerly R50-313).

F. The District Attorney shall keep an appropriate office record of the names and addresses of persons notified, the date of mailing and text of the notice.

(Formerly R50-316).

Som. R. Crim. P. 303.1. Form of Notice of Arraignment And Trial.

COMMONWEALTH OF PENNSYLVANIA) IN THE COURT OF COMMON PLEAS OF SOMERSET COUNTY, PENNSYLVANIA) NO. CRIMINAL 19 ____)
V.)
_____) (Defendant)

NOTICE OF ARRAIGNMENT AND TRIAL

To the defendant above named:

1. You have been formally charged with committing the criminal offense or offenses described in the Information which has been filed against you, copy of which is enclosed.

2. The date, time and place of arraignment on said criminal charges are as follows: _____, the ____ day of _____, 19____, at 9:30 a.m. at the Courthouse, Somerset, Pennsylvania.

3. You must personally appear before the Court at the date, time and place above stated in paragraph 2 of this Notice unless: (1) you and your attorney sign a waiver of appearance at arraignment in the form specified in Som. R.C.P. 303.4, and (2) you agree to appear personally instead at the Call Of The Criminal Trial List on _____, the ____ day of _____, 19____, at 9:30 o'clock a.m. at the Courthouse in Somerset, Pennsylvania, to plead guilty or not guilty to the charges.

4. You have a right to the assistance of an attorney at all stages of these proceedings; if you cannot afford an attorney, one will be appointed for you without cost if you file an application for counsel. You may obtain an application form from the Clerk of Courts, District Attorney, Sheriff, or any District Justice of Somerset County, Pennsylvania. It is important that you obtain an attorney promptly to assist you in these proceedings, if you do not already have one.

5. You may request pretrial discovery of information, and inspection of articles or documents, in the possession

of the District Attorney pertaining to your case, if you file a written request of the Court within **fourteen (14) days** after the arraignment date specified above in paragraph 2 of this Notice.

6. You may file an omnibus motion for pretrial relief for any of the following purposes: continuance (postponement) of the trial date, severance (separate trial) of one or more of the charges against you, suppression of evidence illegally obtained, psychiatric examination, quashing (dismissing) the information for legal defects, disqualification of a Judge, pretrial conference with the Court, approval of settlement of the charges, or any other appropriate pretrial relief or assistance, **if** the motion is filed in the Court within **thirty (30) days** after the arraignment date specified above in paragraph 2 of this Notice.

7. You will lose your rights to file a request for pretrial discovery and inspection, and to file an omnibus motion for pretrial relief, **unless** a written request or motion is filed within the required period of time stated above in paragraphs 5 and 6 of this Notice, calculated from the arraignment date specified above in paragraph 2 of this Notice, or **unless** the period of time is extended by special Court Order for good cause.

8. If you plead not guilty to any of the charges against you, your trial will be scheduled for _____, the day of _____, 19____, at 9:30 o'clock a.m., at the Courthouse in Somerset, Pennsylvania, when and where you must appear with your attorney and your witnesses prepared for trial, and must remain until the trial is completed.

9. If you fail to appear when required, a warrant will be issued for your arrest.

District Attorney

Notices

Som. R. Crim. P. 303.4. Form Of Appearance And Waiver Of Arraignment.

COMMONWEALTH OF PENNSYLVANIA) IN THE COURT OF COMMON PLEAS OF SOMERSET COUNTY, PENNSYLVANIA) NO. CRIMINAL 19 ____)
V.)
_____) (Defendant)

APPEARANCE OF COUNSEL AND WAIVER OF APPEARANCE AT ARRAIGNMENT

1. The undersigned attorney enters an appearance for defendant in the above captioned case.

2. Defendant acknowledges receipt of the Notice of Arraignment (for the ____ day of _____, 19 ____), and Trial (for the ____ day of _____, 19 ____), and receipt of a copy of the Information(s) in the above captioned case(s).

3. Defendant understands the nature of the charges, the rights and duties of defendant pertaining to arraignment as stated in said Notice and particularly in Rules of Criminal Procedure 304 (Bill Of Particulars), 305 (Pretrial Discovery and Inspection), and 306-307 (Omnibus Pretrial Motion). Defense counsel has discussed these

rights and duties with defendant, and believes defendant sufficiently understands them.

4. Defendant waives appearance at arraignment and agrees to appear at the next scheduled Call of the List on the ____ day of _____, 19 ____, to plead to the Information(s).

Printed Name of Attorney Attorney for Defendant

Defendant

[Pa.B. Doc. No. 98-163. Filed for public inspection January 30, 1998, 9:00 a.m.]

SUPERIOR COURT

Notice to the Bar

The Judges of the Superior Court of Pennsylvania have discontinued publication of the Pennsylvania Superior Court Reports. Volume 456 of the Superior Court Reports is the last one, which will be published.

Therefore, effective January 7, 1998, citations to Superior Court opinions should be expressed as follows:

Jones v. Smith, 692 A.2d XXX (Pa. Super. 1998)

KATHRYN M. BANN,
Recorder
Superior Court of Pennsylvania

[Pa.B. Doc. No. 98-164. Filed for public inspection January 30, 1998, 9:00 a.m.]

Opinions on the Internet

The Superior Court of Pennsylvania is pleased to inform you that the court's published opinions, filed on or after December 5, 1997, will be posted daily on the INTERNET. They can be found on the home page of the Administrative Office of the Pennsylvania Courts at: <http://www.cerf.net/penna-courts>.

KATHRYN M. BANN,
Recorder
Superior Court of Pennsylvania

[Pa.B. Doc. No. 98-165. Filed for public inspection January 30, 1998, 9:00 a.m.]