THE COURTS

Title 210—APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CHS. 5, 9, 15 AND 21]

Proposed Amendments to Pa.R.A.P. 511, 903, 1113, 1512, 2133, 2136 and 2185; Recommendation 33

The Appellate Court Procedural Rules Committee proposes to amend Rules 511, 903, 1113, 1512, 2133, 2136 and 2185 of the Pennsylvania Rules of Appellate Procedure. The amendments are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court.

All communications in reference to the proposed amendments should be sent not later than June 30, 1999 to the Appellate Court Procedural Rules Committee, P. O. Box 447, Ridley Park, PA 19078-0447.

The Explanatory Comment which appears in connection with the proposed amendments has been inserted by the Committee for the convenience of the bench and bar. It will not constitute part of the rules nor will it be officially adopted or promulgated by the Court.

By the Appellate Court Procedural Rules Committee

JOSEPH M. AUGELLO,
Chair

Annex A

TITLE 210. APPELLATE PROCEDURE

PART I. RULES OF APPELLATE PROCEDURE

ARTICLE I. PRELIMINARY PROVISIONS

CHAPTER 5. PERSONS WHO MAY TAKE OR PARTICIPATE IN APPEALS

MULTIPLE APPEALS

Rule 511. **[Cross] Multiple** Appeals.

The timely filing of an appeal shall extend the time for any other party to cross appeal as set forth in Rules 903(b)(cross appeals), 1113(b)(cross petitions for allowance of appeal) and 1512(a)(2)(cross petitions for review). The discontinuance of an appeal by a party shall not affect the right of appeal of any other party regardless of whether the parties are adverse.

Official Note: [Based on former Supreme Court Rule 20B, former Superior Court Rule 10B, and the last sentence of former Commonwealth Court Rule 28.]

The 1998 amendment clarifies the intent of the former rule that the filing of an appeal extends the time within which any party may cross appeal as set forth in Rules 903(b), 1113(b) and 1512(a)(2) and that a discontinuance of an appeal by any other party will not affect the right of any other party to file a timely cross appeal under Rules 903(b), 1113(b) or 1512(a)(2) or to otherwise pursue an appeal or cross appeal already filed at the time of the discontinuance. The discontinuance of the appeal at any time before or after a cross appeal is filed will not affect the right of any party to file or dismiss a cross appeal. The 1998 amendment supersedes In Re: Petition of the Board of School Directors of the Hampton Township School District, 698 A.2d 279 (Pa.Cmwlth. 1997), to the extent that decision requires that a party be adverse to the initial appellant in order to file a cross appeal.

See also: Rules 2113, 2136 and 2185 regarding briefs in cross-appeals and Rule 2322 regarding oral argument in multiple appeals.

ARTICLE II. APPELLATE PROCEDURE

CHAPTER 9. APPEALS FROM LOWER COURTS

Rule 903. Time for Appeal.

* * * * *

Official Note: 42 Pa.C.S. § 5571(a) (appeals generally) provides that the time for filing an appeal, a petition for allowance of appeal, a petition for permission to appeal or a petition for review of a quasi-judicial order, in the Supreme Court, the Superior Court or the Commonwealth Court shall be governed by general rules and that no other provision of 42 Pa.C.S. Ch. 55D shall be applicable to such matters. In order to prevent inadvertent legislative creation of nonuniform appeal times, 42 Pa.C.S. § 1722(c) (time limitations) expressly authorizes the suspension by general rule of nonuniform statutory appeal times. See also 42 Pa.C.S. § 5501(a) (scope of chapter), which makes Chapter 55 (limitation of time) of the Judicial Code subordinate to any other statute prescribing a different time in the case of an action or proceeding, but which does not so provide in the case of an appeal.

[Prior to enactment of the Judicial Code it had been established that the time within which a matter may move from one stage to another within the Unified Judicial System is a procedural matter similar to the deadline for responsive pleadings, etc., and is not a "statute of limitation or repose" as that phrase is used in Section 10(c) of the Judiciary Article. E.g., the Supreme Court had fixed the time for Supreme Court review on certiorari, had prescribed the time for seeking review of sheriffs' and district justices' determinations in execution matters, and of changes of venue in criminal matters, had fixed the time for appeal in certain PCHA matters and had fixed the time for appeal in certain arbitration matters. See former Supreme Court Rule 68 1/2 (416 Pa. xxv); Pa.R.Civ.P. 3206(b) and 3207(b); Pa.R.C.P.J.P. 1016; former Pa.R.Crim.P. 313(a) (471 Pa. XLIV); Pa.R.Crim.P. 325; former Pa.R.J.A. 2101 (451 Pa. lxxiii).]

Thus, on both a statutory and constitutional basis, this rule supersedes all inconsistent statutory provisions prescribing times for appeal.

[Subdivision (a) is patterned after 42 Pa.C.S. § 5571(b) (other courts). Where an appeal is taken under Rule 311 (interlocutory appeals as of right), unless an extension to plead is obtained it will as a practical matter continue to be necessary to take the appeal within the 20 day pleading period specified in Pa.R.Civ.P. 1026.]

As to Subdivision (b), compare 42 Pa.C.S. § 5571(f) (cross appeals). **A party filing a cross appeal pursuant to Subdivision (b) should identify it as a cross**

appeal in the Notice of Appeal to assure that the prothonotary will process the cross appeal with the initial appeal. See also Rule 511 (cross appeals), Rule 2113 (reply brief), Rule 2136 (briefs in cases of cross appeals), Rule 2185 (time for service and filing of briefs) and Rule 2322 (oral argument in cross and separate appeals).

Rule of Appellate Procedure 107 incorporates by reference the rules of construction of the Statutory Construction Act of 1972, 1 Pa.C.S. §§ 1901 through 1991. See 1 Pa.C.S. § 1908 relating to computation of time for the rule of construction relating to (1) the exclusion of the first day and inclusion of the last day of a time period and (2) the omission of the last day of a time period which falls on Saturday, Sunday or legal holiday.

CHAPTER 11. APPEALS FROM COMMONWEALTH COURT AND SUPERIOR COURT

PETITION FOR ALLOWANCE OF APPEAL

Rule 1113. Time for Petitioning for Allowance of Appeal.

(a) *General Rule.*—Except as otherwise prescribed by this rule, a petition for allowance of appeal shall be filed with the Prothonotary of the Supreme Court within 30 days **[after] of** the entry of the order of the Superior Court or the Commonwealth Court sought to be reviewed. If a timely application for reargument is filed in the Superior Court or Commonwealth Court by any party, the time for filing a petition for allowance of appeal for all parties shall run from the entry of the order denying reargument or from the entry of the decision on reargument, whether or not that decision amounts to a reaffirmation of the prior decision. Unless the Superior Court or the Commonwealth Court acts on the application for reargument within 60 days after it is filed the court shall no longer consider the application, it shall be deemed to have been denied and the prothonotary of the appellate court shall forthwith enter an order denying the application and shall immediately give written notice in person or by first class mail of entry of the order denying the application to each party who has appeared in the appellate court. A petition for allowance of appeal filed before the disposition of such an application for reargument shall have no effect. A new petition for allowance of appeal must be filed within the prescribed time measured from the entry of the order denying or otherwise disposing of such an application for reargument.

* * * * *

Official Note: See Note to Rule 903 (time for appeal).

A party filing a cross petition for allowance of appeal pursuant to Subdivision (b) should identify it as a cross petition to assure that the prothonotary will process the cross petition with the initial petition. See also Rule 511 (cross appeals), Rule 2136 (briefs in cases of cross appeals) and Rule 2322 (oral argument in cross and separate appeals).

CHAPTER 15. JUDICIAL REVIEW OF GOVERNMENTAL DETERMINATIONS

PETITION FOR REVIEW

Rule 1512. Time for Petitioning for Review.

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(b) *Special Provisions.*—A petition for review of:

(1) A determination of the Department of Community **[Affairs] and Economic Development** in any matter arising under the Local Government Unit Debt Act **[(53 P. S. § 8001, et seq.)]** shall be filed within 15 days after entry of the order or the date the determination is deemed to have been made, when no order has been entered.

* * * * *

Official Note: [See note to Rule 903 (time for appeal).] Rule 102 defines a "quasijudicial order" as "an order of a government unit, made after notice and opportunity for hearing, which is by law reviewable solely upon the record made before the government unit, and not upon a record made in whole or in part before the reviewing court."

See Note to Rule 903 (time for appeal.) A party filing a cross petition for review pursuant to Subdivision (a)(2) should identify it as a cross petition for review to assure that the prothonotary will process the cross petition for review with the initial petition for review. See also Rule 511 (cross appeals), Rule 2136 (briefs in cases of cross appeals) and Rule 2322 (oral argument in cross and separate appeals).

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CHAPTER 21. BRIEFS AND REPRODUCED RECORD

CONTENT OF BRIEFS

Rule 2113. Reply Brief.

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[(c) Cross Appeal.—A reply brief may be filed by the appellant as prescribed in Rule 2136 (briefs in cases involving cross appeals).]

[(d)] (c) *Other briefs.*—No further briefs may be filed except with leave of court.

Official Note: The 1987 amendment grants a general right to file a reply brief in every case to matters not previously raised in appellant's brief. Appellees may file a similarly limited reply brief to the response of the appellant to the issues presented by the cross-appeal. The length of a reply brief is provided in Rule 2135(b). **The 1998 amendment makes clear that the time for filing is set forth in Rule 2185(a).**

Rule 2136. Briefs in Cases Involving Cross Appeals.

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Official Note: [Ordinarily there will be three briefs in a case involving a cross appeal: appellant's main brief, appellee's main brief, and appellant's reply brief directed to the issues on the cross appeal. However, Rule 2113 permits a fourth brief; appellee's reply to appellant's answer on the cross appeal.]

When there are cross appeals, there may be up to four briefs: (1) the deemed or designated appellant's principal brief on the merits of the appeal; (2) the deemed or designated appellee's brief responding to appellant's arguments and presenting the merits of the cross appeal; (3) the appellant's second brief replying in support of the appeal and responding to the issues raised in the cross appeal; and (4) appellee's second brief replying in support of the cross appeal. See Pa.R.A.P. 2113(a).

In cross appeals, appellant's second brief shall be served within 30 days after service of the preceding brief. The appellee's second brief is due 14 days later. See Rule 2185(a).

[Explanatory Note—1979

The appellate prothonotary is directed to designate the party who shall file the first brief in cases involving cross appeals where the identity of the "moving party" below is not readily apparent.] Where the identity of the moving party below is not readily apparent, either party may notify the prothonotary by letter that the prothonotary must designate the appellant or that the parties have agreed which party shall be the appellant.

FILING AND SERVICE

Rule 2185. Time for Serving and Filing Briefs.

(a) *General Rule.*—The appellant shall serve appellant's brief not later than the date fixed pursuant to Subdivision (b) of this rule, or within 40 days after the date on which the record is filed, if no other date is so fixed. The appellee shall serve appellee's brief within 30 days after service of appellant's brief and reproduced record if proceeding under Rule 2154(a). A party may serve a reply brief permitted by these rules within 14 days after service of the preceding brief but, except for good cause shown, a reply brief must be served **an** filed so as to be received at least three days before argument. **In cross appeals, the brief of the appellee in the cross appeal shall be served within 30 days after service of the preceding brief.** Except as prescribed by Rule 2187(b) (advance text of briefs) each brief shall be filed not later than the last day fixed by or pursuant to this rule for its service.

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Explanatory Comment to Recommendation 33: Proposed Amendments to Pa.R.A.P. 511, 903, 1113, 1512, 2113 and 2136

Introduction: The Appellate Rules contemplate three "multiple appeal" situations in which more than one party may wish to challenge individually an order of a court. These are cross appeals; cross petitions for review; and cross petitions for allowance of appeal. The proposed amendments are intended to simplify and clarify the procedures in such cases. The proposed amendments do not create the right to file new briefs or affect the right to file briefs heretofore permitted by the Appellate Rules.

Rule 511. (Multiple Appeals)

The 1998 amendment clarifies the intent of the former rule that the filing of an appeal extends the time within which any party may cross appeal as set forth in Rule 903(b), 1113(b) and 1512(a)(2) and that a discontinuance of an appeal by any other party will not affect the right of any other party to file a timely cross appeal under rules 903 (b), 1113(b) or 1512(a)(2) or to otherwise pursue an appeal or cross appeal already filed at the time of the discontinuance. The discontinuance of the appeal at any time before or after a cross appeal is filed will not affect the right of any party to file or dismiss a cross appeal. The 1998 amendment supersedes *In Re: Petition of the Board of School Directors of the Hampton Township School District*, 698 A.2d 279 (Pa.Cmwlth. 1997) to the extent that decision requires that a party be adverse to the initial appellant in order to file a cross appeal.

Rule 903. (Time for Appeal)

The proposed amendment to the note to Rule 903 includes a suggestion, for the aid of the appellate court filing office, that a party identify a cross-appeal in its notice of appeal. This will assure that the appeals are linked for processing purposes. The proposed amendment to the note also cross-references Rule 511 (cross appeals), Rule 2136 (briefs in cases of cross appeals) and Rule 2322 (oral argument in cross and separate appeals). This is for the convenience of counsel and the parties to alert them to the unique aspects of cross appeal or petition practice. *See* also proposed conforming amendments to the Notes to Rules 1113 and 1512. The proposed Recommendation also deletes a portion of the Note which may be misleading insofar as it may be construed to imply that an aggrieved party has less than 20 days to appeal under Pa.R.A.P. 311 where there has been no extension to plead.

Rule 1113. (Time for Petitioning for Allowance of Appeal)

See explanatory comment to Rule 903.

Rule 1512. (Time for Petitioning for Review)

See explanatory comment to Rule 903.

Rule 2113. (Reply Brief)

The proposed amendment deletes subdivision (c), an obsolete cross reference to a reply brief in cross-appeals. The briefs permitted and proper sequence in cases involving cross appeals are explained in the Note to Rule 2136.

Rule 2136. (Briefs in Cases Involving Cross Appeals)

In a single party appeal or petition situation, there are three briefs: appellant's principal brief on the merits, appellee's principal brief on the merits, and appellant's reply brief. In a cross appeal or petition situation, there are four briefs, because the designated appellant's second brief must serve two purposes, that is, it is the appellant's reply brief (a brief limited in scope by Rule 2113) and, simultaneously, the appellant's principal brief on the merits of the cross appeal or petition. The appellee may then file a "reply" brief on the merits of the cross appeal, that is, a reply brief in the appeal filed by the appellee. This procedure is explained in the proposed amendment to the Note as follows:

> When there are cross appeals, there may be up to four briefs: (1) the deemed or designated appellant's principal brief on the merits of the appeal; (2) the deemed or designated appellee's brief responding to appellant's arguments and presenting the merits of the cross appeal; (3) the appellant's second brief replying in support of the appeal and responding to the merits of the cross appeal; and (4) appellee's reply brief in the cross appeal, *see* Pa.R.A.P. 2113(a).

Rule 2185. (Time for Serving and Filing Briefs)

The existing rule is unclear as to the due date for the filing of the cross-appellee's first brief in response to the merits of the cross appeal and second brief in support of the original appeal. (Brief No. 3 as described above). Under the proposed amendment that brief is due thirty days after the deemed appellee's brief (Brief No. 2) as described above.

[Pa.B. Doc. No. 99-745. Filed for public inspection May 7, 1999, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

PART II. LOCAL AND MINOR RULES

[234 PA. CODE CHS. 100, 200, 300, 1100 AND 6000]

Procedures in Cases in Which Summary Offense is Joined with Misdemeanor or Felony Charges

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania adopt new Pa.R.Crim.P. 309 (Pretrial Disposition of Summary Offenses Joined with Misdemeanor or Felony Charges), and amend Pa.R.Crim.P. 101, 104, 141, 143, 145, 151, 179, 225, 313, 314, 315, 1120, 1122, and 6010. These rule changes clarify the procedures for handling cases in which a summary offense is joined with misdemeanor or felony charges both when the case is before the issuing authority and after the case is held for court. 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, Committee on Rules of Evidence, 5035 Ritter Road, Mechanicsburg, PA 17055 no later than Monday, June 21, 1999.

By the Criminal Procedural Rules Committee:

FRANCIS BARRY MCCARTHY,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 100. PROCEDURE IN COURT CASES

PART I. INSTITUTING PROCEEDINGS

Rule 101. Means of Instituting Proceedings in Court Cases.

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Official Note: Original Rule 102(1), (2), and (3), adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 102 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 101, and made applicable to court cases only, September 18, 1973, effective January 1, 1974; Comment revised February 15, 1974, effective immediately; amended June 30, 1975, effective September 1, 1975; Comment amended January 4, 1979, effective January 9, 1979; paragraph (1) amended October 22, 1981, effective January 1, 1982; Comment revised July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; Comment revised August 12, 1993, effective September 1, 1993; amended August 9, 1994, effective January 1, 1995; Comment revised January 16, 1996, effective immediately; Comment revised _____, effective _____.

Comment:

* * * * *

There are only a few exceptions to this rule regarding the instituting of criminal proceedings in court cases. There are, for example, special proceedings involving a coroner or medical examiner. See *Commonwealth v. Lopinson*, 234 A.2d 552 (Pa. 1967), and *Commonwealth v. Smouse*, 594 A.2d 666 (Pa. Super. 1991).

Except in cases in which a summary offense is a summary motor vehicle offense within the jurisdiction of a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, [Whenever] whenever a misdemeanor or felony is charged, even if **[a] the** summary offense is also charged in the same complaint, the case should proceed as a court case under Chapter 100. See *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973). **In cases in which the summary traffic offense is within the jurisdiction of a traffic court, these summary traffic offenses should not be charged in the same complaint as the misdemeanors or felonies. Traffic Court has exclusive jurisdiction over summary traffic offenses. See 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 418 A.2d 664 (Pa. Super. 1980).**

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Committee Explanatory Reports:

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Report explaining the January 16, 1996 Comment revisions published with the Court's Order at 26 Pa.B. 437 (February 3, 1996).

Report explaining the proposed Comment revisions concerning joinder of summary offenses and misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

PART II. COMPLAINT PROCEDURES

Rule 104. Contents of Complaint.

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Official Note: Original Rule 104, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and Comment revised August 9, 1994, effective January 1, 1995**; Comment revised _____, effective _____.**

Comment:

This rule sets forth the required contents of all complaints whether the affiant is a law enforcement officer, a police officer, or a private citizen. When the affiant is a private citizen, the complaint must be submitted to an attorney for the Commonwealth for approval. See Rule 106. When the district attorney elects to proceed under Rule 107 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth),

the police officer must likewise submit the complaint for approval by an attorney for the Commonwealth.

Except in cases in which a summary offense is a summary motor vehicle offense within the jurisdiction of a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, whenever a misdemeanor or felony is charged, the summary offense should be charged in the same complaint, and the case should proceed as a court case under Chapter 100. See *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973). In cases in which the summary traffic offense is within the jurisdiction of a traffic court, these summary traffic offenses should not be charged in the same complaint as the misdemeanors or felonies. Traffic Court has exclusive jurisdiction over summary traffic offenses. See 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 418 A.2d 664 (Pa. Super. 1980).

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Committee Explanatory Reports:

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Report explaining the August 9, 1994 **renumbering rule and making** Comment revisions 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 proposed Comment revisions concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

Rule 141. Preliminary Hearing.

* * * * *

[(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.]

(D) In any case in which a summary offense is joined with a misdemeanor or felony charge, the issuing authority shall not proceed on the summary offense except as provided in Rule 143(E).

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**; amended _____, effective _____.**

Comment:

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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.

In cases in which summary offenses are joined with misdemeanor or felony charges, pursuant to paragraph (D), during the preliminary hearing, the issuing authority is prohibited from proceeding on the summary offenses, including the taking of evidence on the summary offenses, or adjudicating or disposing of the summary offenses except as provided in Rule 143(E).

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 proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

Rule 143. Disposition of Case at Preliminary Hearing.

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

[(a)] (B) If the Commonwealth establishes a prima facie case of the defendant's guilt, the issuing authority shall hold the defendant for court. **[Otherwise, the defendant shall be discharged. In either event, the decision of the issuing authority shall be publicly pronounced.]**

[(b)] (C) ***

(D) If the Commonwealth does not establish a prima facie case of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the issuing authority shall dismiss the complaint.

(E) In any case in which a summary offense is joined with misdemeanor or felony charges:

(1) If the Commonwealth establishes a prima facie case pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

(2) If the Commonwealth does not establish a prima facie case pursuant to paragraph (C), upon the request of the Commonwealth, the issuing authority shall dispose of the summary offense as provided in Rule 83 (Trial In Summary Cases).

(3) If the Commonwealth withdraws all the misdemeanor and felony charges, the issuing authority shall dispose of the summary offense as provided in Rule 83 (Trial In Summary Cases).

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**; amended _____, effective _____.**

Comment:

Paragraph **[(b)] (D)** 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] in which,** pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 109 and 110.

Rule 141(D) specifically prohibits an issuing authority at a preliminary hearing from proceeding on any summary offenses that are joined with misdemeanor or felony charges, except as provided in Rule 143(E). Paragraph (E) sets forth the procedures for the issuing authority to handle these summary offenses at the preliminary hearing. These procedures include the issuing authority (1) forwarding the summary offenses together with the misdemeanor or felony charges held for court to the court of common pleas, or (2) disposing of the summary offenses as provided in Rule 83 by accepting a guilty plea or conducting a trial whenever (a) the misdemeanor and felony charges are withdrawn or (b) a prima facie case is not established at the preliminary hearing and the Commonwealth requests that the issuing authority proceed on the summary offenses.

Under paragraph (E)(2), in those cases in which the Commonwealth does not intend to refile the misdemeanor or felony charges, the Commonwealth may request that the issuing authority dispose of the summary offenses.

In those cases in which a prima facie case is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the defendant unless there are outstanding detainers against the defendant that would prevent the defendant's release.

Nothing in this rule would preclude the refiling of one or more of the charges, as provided in these rules.

The requirements in paragraph (E) do not apply to summary motor vehicle offenses within the jurisdiction of a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342. Ordinarily, these offenses would not be joined with misdemeanor or felony charges, but would be filed separately.

See Rule 179 for the disposition of any summary offenses joined with misdemeanor or felony charges when the defendant is accepted into an ARD program on the misdemeanor or felony charges.

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 with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

Rule 145. Dismissal Upon Satisfaction or Agreement.

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

Comment:

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The requirement in paragraph (b), that when the attorney for the Commonwealth is present, he or she must consent to the dismissal, is one of the criteria which, along with the other enumerated criteria, gives the issuing authority discretion to dismiss, even when the affiant refuses to consent.

If a summary offense has been joined with a misdemeanor charge, and therefore is part of the court case, a dismissal of the case pursuant to this rule may include a dismissal of the summary offense. See the Comment to Rule 101 (Means of Instituting Proceedings in Court Cases).

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Committee Explanatory Reports:

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

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

PART V. MISCELLANEOUS

Rule 151. Withdrawal of Prosecution **Before Issuing Authority.**

In any court case pending before an issuing authority, the attorney for the Commonwealth, or his or her designee, may withdraw **[the prosecution] one or more of the charges.** The withdrawal shall be in writing.

Official Note: Adopted September 18, 1973, effective January 1, 1974; amended August 14, 1995, effective January 1, 1996**; amended _____, effective _____.**

Comment:

This rule was amended in 1995 to make it clear that only the attorney for the Commonwealth or a designee has the authority to withdraw a prosecution.

In any case in which a summary offense is joined with the misdemeanor or felony charges, if all misdemeanor and felony charges are withdrawn pursuant to this rule, the issuing authority must dispose of the summary offense as provided in Rule 83 (Trial in Summary Cases). See Rule 143(E).

Committee Explanatory Reports:

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 1995).

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

PART VII. ACCELERATED REHABILITATIVE DISPOSITION COURT CASES

Rule 179. Hearing, Manner of Proceeding.

[(a)] (A) ***

[(b)] (B) ***

[(c)] (C) ***

[(d)] (D) ***

[(e)] (E) ***

Official Note: Approved May 24, 1972, effective immediately; amended April 10, 1989, effective July 1, 1989; 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 **; amended _____, effective _____.**

Comment:

The phrase "or civil" was deleted from paragraph (b) in the 1989 general revision of the ARD rules. Whether a defendant's statement may be used in a noncriminal proceeding is a matter of substantive law.

In any case in which a summary offense has been joined with the misdemeanor or felony charges that have been disposed of by the defendant's acceptance into an ARD program, if the summary offense has not been disposed of prior to the ARD hearing, the trial judge may not remand the summary offense to the issuing authority for disposition, but must dispose of the summary offense at the ARD hearing. The Crimes Code § 110, 18 Pa.C.S. § 110, *Commonwealth v. Caufman,* 662 A.2d 1050 (Pa. 1995), and *Commonwealth v. Campana,* 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974), may require in a particular case that the trial judge have the defendant execute a "*Campana*" waiver prior to disposing of the summary offense at the ARD hearing.

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Committee Explanatory Reports:

Final Report explaining the September 13, 1995 amendments published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

CHAPTER 200. INFORMATIONS AND INVESTIGATING GRAND JURIES

PART I. INFORMATIONS

Rule 225. Information: Filing, Contents, Function.

[(a)] (A) ***

[(b)] (B) ***

[(c)] (C) ***

[(d)] (D) ***

Official Note: Adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996**; amended _____, 1999, effective _____, 1999.**

Comment:

Before an information is filed, the attorney for the Commonwealth may withdraw one or more of the charges by filing a notice of withdrawal with the clerk of courts. See Rule 224(a). Upon the filing of an information, any charge not listed on the information will be deemed withdrawn by the attorney for the Commonwealth. See Rule 224(b). After the information is filed, court approval is required before a nolle prosequi may be entered on a charge listed therein. See Rule 313.

In any case in which there are summary offenses joined with the misdemeanor or felony charges that are held for court, the attorney for the Commonwealth must include the summary offenses in the information. See *Commonwealth v. Hoffman,* 594 A.2d 772 (Pa. Super. 1991).

When there is an omission or error of the type referred to in paragraph (c), the information should be amended pursuant to Rule 229.

Committee Explanatory Reports:

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 1995).

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

CHAPTER 300. PRETRIAL PROCEEDINGS

[This is an entirely new rule.]

Rule 309. Pretrial Disposition of Summary Offenses Joined with Misdemeanor or Felony Charges.

(A) In any case in which a summary offense is joined with a misdemeanor or felony charge, and therefore is part of the court case, when there is a dismissal or a nolle prosequi of all misdemeanor and felony charges, unless the Commonwealth appeals the disposition, the trial judge shall dispose of the summary offense.

(B) In no event shall the trial judge remand the summary offense to the issuing authority for disposition.

Official Note: Adopted _____, effective _____.

Comment:

In any case in which a summary offense is joined with a misdemeanor or felony charge, and therefore is part of the court case, when an appeal of a pretrial disposition of the misdemeanor and felony charge is taken, disposition of the summary offense should be delayed pending the appeal. See Pa.R.A.P. 1701 (Effect of Appeal Generally).

Notwithstanding the provisions of this rule, a dismissal of the prosecution pursuant to Rule 314 (Court Dismissal Upon Satisfaction or Agreement) may include the dismissal of the summary offense.

For the procedures for nolle prosequi see Rule 313 (Nolle Prosequi).

Committee Explanatory Reports:

Report explaining the proposed new rule published at 29 Pa.B. 2450 (May 8, 1999).

Rule 313. Nolle Prosequi.

[(a)] (A) ***

[(b)] (B) ***

Official Note: Formerly Rule 314, adopted June 30, 1964, effective January 1, 1965; Comment amended February 15,1974, effective immediately; renumbered Rule 313 and Comment amended 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; Comment revised January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993; amended August 14, 1995, effective January 1, 1996**; amended _____, effective _____.**

Comment:

* * * * *

Before an information is filed, the attorney for the Commonwealth may withdraw one or more of the charges by filing a notice of withdrawal with the clerk of courts. See Rule 224(a). Upon the filing of an information, any charge not listed on the information will be deemed withdrawn by the attorney for the Commonwealth. See Rule 224(b). After the information is filed, court approval is required before a nolle prosequi may be entered on a charge listed therein. 42 Pa.C.S. § 8932.

In any case in which a summary offense is joined with a misdemeanor or felony charge: (1) the judge may order a nolle prosequi on all the charges including the summary offense; and (2) if the judge has ordered a nolle prosequi on all the misdemeanors or felonies pursuant to this rule, the judge may not remand the summary offense to the issuing authority for disposition, but must dispose of the summary offense in the court of common pleas as required by Rule 309 (Pretrial Disposition of Summary Offenses Joined With Misdemeanor or Felony Charges).

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the August 14, 1995 amendments published with the Court's Order at 25 Pa.B. 3468 (August 26, 1995).

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

Rule 314. Court Dismissal Upon Satisfaction or Agreement.

* * * * *

Official Note: Adopted June 30, 1964, effective January 1, 1965; amended September 18, 1973, effective January 1, 1974; formerly Rule 315, renumbered 314 and amended June 29, 1977, effective January 1, 1978; amended January 28, 1983, effective July 1, 1983**; Comment revised _____, effective _____.**

Comment:

This rule applies only to courts of common pleas. Neither justices of the peace, Philadelphia Municipal Court judges, Pittsburgh Police Magistrates, nor any other issuing authority may dismiss a case under this rule, but rather only as provided in Rule 145. This rule was amended in 1983 to set forth concisely the criteria a defendant must satisfy before the Court has the discretion to order dismissal under this rule.

If a summary offense is joined with a misdemeanor or felony charge, and therefore is part of the court case, a dismissal of the case pursuant to this rule may include a dismissal of the summary offense. See the Comment to Rule 101 (Means of Instituting Proceedings in Court Cases).

Committee Explanatory Reports:

Report explaining the proposed Comment revisions concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

Rule 315. Motion for Dismissal.

[(a)] (A) ***

[(b)] (B) ***

Official Note: Formerly Rule 316, adopted June 30, 1964, effective January 1, 1965; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; renumbered Rule 315 and amended 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; Comment revised January 28, 1983, effective July 1, 1983; amended August 12, 1993, effective September 1, 1993**; Comment revised _____, effective _____.**

Comment:

Cf. Pa.R.J.A. 1901 concerning termination of inactive cases.

In any case in which a summary offense is joined with a misdemeanor or felony charge, and therefore is part of the court case, a dismissal of the prosecution pursuant to paragraph (A) would include the dismissal of the summary offense. See the Comment to Rule 101 (Means of Instituting Proceedings in Court Cases).

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

CHAPTER 1100. TRIAL

Rule 1120. Verdicts.

[(a)] (A) ***

[(b)] (B) ***

[(c)] (C) ***

[(d)] (D) ***

[(e)] (E) ***

(F) If there is a summary offense joined with the misdemeanor or felony charge that was tried before the jury, the trial judge shall not remand the summary offense to the issuing authority. The summary offense shall be disposed of in the court of common pleas, and the verdict with respect to the summary offense shall be recorded in the same manner as the verdict with respect to the other charges.

[(f)] (G) ***

Official Note: Adopted January 24, 1968, effective August 1, 1968; amended February 13, 1974, effective immediately; paragraph (e) amended to correct printing error June 28, 1976, effective immediately; **paragraph**

(G), formerly paragraph (f)**,** amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993**; amended _____, effective _____.**

Comment:

[Section (a)] Paragraph (A) of the rule replaces the practice of automatically appointing the first juror chosen as foreman of the jury. **[Sections (c), (d), and (e)] Paragraphs (C), (D), and (E)** serve only to codify the procedure where conviction or acquittal of one offense operates as a bar to a later trial on a necessarily included offense. Similarly, the rule applies to situations of merger and autrefois convict or **autrefois** acquit. No attempt is made to change the substantive law which would operate to determine when merger or any of the other situations arise. See, e.g., *Commonwealth v. Comber*, **[374 Pa. 570,]** 97 A.2d 343 (**Pa.** 1953).

Paragraph (F) provides for the disposition in the court of common pleas of any summary offense that is joined with the misdemeanor or felony charges that were tried before the jury. Under no circumstances may the trial judge remand the summary offense to the issuing authority, even in cases in which the defendant is found not guilty by the jury. See also Rule 143 (Disposition of Case at Preliminary Hearing).

[Section (f)] Paragraph (G) provides for the polling of the jury and requires the judge to send the jury back for deliberations in accordance with *Commonwealth v. Martin*, **[379 Pa. 587,]** 109 A.2d 325 (**Pa.** 1954). With respect to the procedure upon nonconcurrence with a sealed verdict, see Rule 1121(c).

* * * * *

Committee Explanatory Reports:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

Rule 1122. Time for Court Action Following Non-Jury Trial.

(A) A verdict shall be rendered in all non-jury cases within 7 days after trial.

(B) In any case in which a summary offense is joined with the misdemeanor or felony charges that were tried before the trial judge, the trial judge shall render a verdict on the summary offense, and impose sentence if the judge finds the defendant guilty of the summary offense, even in cases in which the judge has dismissed or found the defendant not guilty on the misdemeanors or felonies.

Official Note: Formerly Rule 302, adopted June 30, 1964, effective January 1, 1965; renumbered and moved to Chapter 1100, 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; amended January 28, 1983, effective July 1, 1983; amended March 22, 1993, effective as to cases in which trial commences on or after January 1, 1994**; amended _____, effective _____.**

Comment:

The 1993 amendment to this rule was prompted by the general revision of post-trial procedures reflected in large part by Rule 1410 (Post-Sentence Procedures; Appeal). Before this amendment, Rule 1122 was a hybrid. It contained time limits for decisions on several types of motions, and also contained a time limit for verdict in non-jury trials. As a result of the adoption of Rule 1410, post-verdict motions for a new trial, for judgment of acquittal, and motions in arrest of judgment were moved to post-sentence under Rule 1410. The procedures for a motion for judgment of acquittal after the jury is discharged without agreeing on a verdict were amended in 1993 and moved to Rule 1125. Rule 1122, as amended, only provides the time limit for verdict in a non-jury case.

Pursuant to Rule 143 (Disposition of Case at Preliminary Hearing), in cases in which there are summary offenses that are joined with the misdemeanor or felony charges, the issuing authority is prohibited from adjudicating or disposing of the summary offenses, and must forward the summary offenses to the court of common pleas for disposition with the charges held for court. Therefore, when a judge is the trier of fact as to the misdemeanors or felonies pursuant to this rule, the judge may not remand the summary offense to the issuing authority, but must dispose of the summary offense together with the misdemeanor and felony.

Committee Explanatory Reports:

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

Report explaining the proposed amendments concerning summary offenses joined with misdemeanor or felony charges published at 29 Pa.B. 2450 (May 8, 1999).

PART II. LOCAL AND MINOR RULES

CHAPTER 6000. RULES OF CRIMINAL PROCEDURE FOR THE MUNICIPAL COURT OF PHILADELPHIA

Rule 6010. Procedure on Appeal.

* * * * *

Comment:

In any case in which there are summary offenses joined with the misdemeanor charges that are the subject of the appeal, the attorney for the Commonwealth must include the summary offenses in the information. See *Commonwealth v. Speller*, 458 A.2d 198 (Pa. Super. 1983).

Committee Explanatory Reports:

Final Report explaining the August 28, 1998 amendment published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

Report explaining the proposed Comment revision concerning summary offenses joined with misdemeanor charges published at 29 Pa.B. 2450 (May 8, 1999).

REPORT

Proposed new Pa.R.Crim.P. 309 (Pretrial Disposition of Summary Offenses Joined with Misdemeanor or Felony Charges), and amendments to Pa.Rs.Crim.P. 101, 104, 141, 143, 145, 151, 179, 225, 313, 314, 315, 1120, 1122, and 6010.

Joinder of Summary Offenses with Misdemeanor or Felony Charges

Background

The question of how to handle cases in which a summary offense is joined with misdemeanor or felony charges ("joined summary offense") has been raised from time to time with the Committee in correspondence from members of the bench and bar. The correspondents have indicated that there is a great deal of diversity statewide, and even among judges and district justices within judicial districts, in the procedures employed for handling summary offenses that are joined with misdemeanor or felony charges, and that this lack of uniformity is confusing for members of the bench and bar. According to the correspondents, the diversity problems arise throughout the criminal justice system—in the ARD context; when a case is within the jurisdiction of the minor judiciary, both at and following the preliminary hearing; and after a case is held for court in pretrial and trial proceedings. The correspondents have asked the Committee to consider specifically (1) the impact that the joined summary offenses might have on the defendant's eligibility for ARD, and (2) whether there should be one uniform procedure for handling the summaries (a) when a defendant is accepted into an ARD program; (b) at the preliminary hearing; and (c) when the case is held for court.

The Committee reviewed the rules, the various procedures being used statewide, and the case law. The Committee's research, as well as the members' experiences, confirmed what the correspondents had noted—there is widespread diversity in the procedures from judicial district to judicial district, and even from judge to judge within judicial districts, and this diversity is creating a great deal of confusion for members of the minor judiciary, the judges and clerks in the courts of common pleas, members of the bar, and defendants. Furthermore, the obvious cause of this lack of uniformity is that there are no statewide rules establishing procedures, and the case law offers little guidance. In view of these considerations, the Committee agreed that the criminal justice system would be benefitted by rules that establish a uniform procedure for handling these joined cases.

The issue we next faced was which of the various procedures should be developed into a statewide procedure, or should the Committee develop a new procedure. Recognizing that, as provided in the Rule 3 definition of "court case," once the summary offense has been joined with misdemeanor or felony charges, the joined summary offense becomes part of the court case, we concluded that the joined summary offense should remain, and be treated as, part of the court case. In addition, we agreed that to promote judicial economy and the efficient administration of justice, when the case is before the minor judiciary and the circumstances warrant the disposition of the summary offense alone, the issuing authority should be responsible for the disposition. On the other hand, we recognized that once the case has been held for court and has been forwarded to the court of common pleas, when the circumstances warrant the disposition of the summary offense alone, it makes no sense to send the summary to the minor judiciary, and therefore the judge in the court of common pleas should dispose of the summary offense. These conclusions became the Committee's guiding principles as we worked through the rules.

Discussion of Rule Changes

The Committee approached this project by examining the rules in groupings consistent with the "chapter" organization of the rules: ARD, preliminary proceedings when the case is before the minor judiciary, pretrial proceedings after the case is held for court, trial procedures in the court of common pleas, and procedures in Philadelphia Municipal Court.

1. ARD Cases: Rule 179

A number of the questions posed to the Committee concern the handling of joined summary offenses in court cases in which the defendant is potentially eligible for ARD, and seem to fall into two broad categories. First, if the defendant is going to be admitted into ARD on the misdemeanor or felony charge, how should the summary offense be handled? Second, what is the effect of the joined summary offense on ARD eligibility if the defendant pleads guilty to the summary offense or if the judge finds the defendant guilty of the summary offense. Would these "convictions" be considered by the district attorney as a bar to admitting the defendant into ARD? We also considered whether these "convictions" would be a bar to future prosecution if the defendant failed to complete the ARD program.

Proceeding with the Committee's basic premise that cases with joined summary offenses are court cases, the Committee reached the following conclusions. First, there would be no reason why a judge could not include the summary offense in the ARD disposition. Second, if the summary offense is not included in the ARD disposition, and the summary offense has not been disposed of prior to the ARD hearing, the judge may not remand the summary offense to the issuing authority for disposition, but must dispose of the summary offense at the ARD hearing. Third, by virtue of the charging function and the broad discretion given to district attorneys in deciding ARD eligibility, see, e.g., *Commonwealth v. Benn*, 675 A.2d 261 (Pa. 1996), the district attorney has discretion to determine which offenses may be considered for ARD, to nolle pros or withdraw the summary offense, or to recommend the inclusion of the summary offense in the ARD program. Fourth, if the summary offense is disposed of by a guilty plea or a guilty verdict, there may be a *Campana* or Crimes Code Section 110 issue that should be addressed.

Based on these considerations, the Committee ultimately agreed that the ARD issue could be addressed by adding a provision to the Comment to Rule 179 (Hearing, Manner of Proceeding) that would make it clear that if the summary offense has not been disposed of by the time of the ARD hearing, then the judge may not remand the summary offense to the issuing authority, but must dispose of the summary offense at the ARD hearing, and that it may be necessary for the judge to have the defendant execute a "*Campana*" waiver prior to disposing of the summary offense to avoid any problems should the defendant fail to complete the ARD program on the misdemeanor or felony charge.

2. Proceedings Before Issuing Authority

a. Preliminary Hearings: Rules 141 and 143

The second consideration for the Committee concerned how the joined summary offenses should be handled at

the preliminary hearing. The Committee examined Rules 141 (Preliminary Hearing) and 143 (Disposition of Case at Preliminary Hearing) and agreed that the rules should be amended to provide a uniform procedure for the handling of the joined summary offenses. As the members worked through the various permutations of preliminary hearing dispositions, they concluded that before trying to address the joined summary offense issue, Rules 141 and 143 should be amended to more distinctly address their respective subjects. Rule 141 should clearly only apply to the procedures for the conduct of the preliminary hearing, and Rule 143 should distinctly cover the disposition of the case at the preliminary hearing. Accordingly, to accomplish this, we are proposing that Rule 141(D) be moved to Rule 143 as new paragraph (D), and amended to provide that the issuing authority must dismiss the complaint when no prima facie case is established.

Resuming consideration of the joined summary offense issues, the Committee agreed that to further the "court case" premise, the issuing authority should only proceed in any way with the joined summary when the Commonwealth fails to establish a prima facie case and the Commonwealth requests that the issuing authority dispose of the summary offense, for example when the Commonwealth does not intend to refile the misdemeanor or felony charge; or the Commonwealth withdraws all the misdemeanor and felony charges. To accomplish this, the Committee is proposing that a new paragraph (D) be added to Rule 141 that provides:

> In any case in which a summary offense is joined with a misdemeanor or felony charge, the issuing authority shall not proceed on the summary offense except as provided in Rule 143(E).

Correlatively with the new Rule 141(D) provision, the Committee is proposing the addition of a new paragraph (E) to Rule 143. Paragraphs (E)(2) and (E)(3) set forth the two exceptions noted above. Paragraph (E)(1) implements the joined summary offense policy by providing that in any case in which the Commonwealth establishes a prima facie case, the issuing authority is to forward the summary offense to the court of common pleas with the charges held for court. The Rule 143 Comment would be revised to amplify these changes.

In addition, as previously discussed, a new paragraph (D) would be added to Rule 143 to address cases in which the Commonwealth does not establish a prima facie case. A new Comment provision makes it clear that, when the complaint is dismissed, (1) the issuing authority should discharge the defendant unless there are outstanding detainers preventing the defendant's release, and (2) the Commonwealth may refile some or all of the charges, including the summary offense.

b. Dismissal or Withdrawal of Charges: Rules 145 and 151

Two other issues arose concerning the joined summary offenses when the case is before the issuing authority. First, how should the joined summary be handled when the case is going to be dismissed pursuant to Rule 145 (Dismissal Upon Satisfaction or Agreement). The Committee agreed that, in this situation, the joined summary offense is part of the case and should be dismissed with the misdemeanor. Although this reasoning seemed apparent on the face of the rule, in view of the ongoing confusion in this area, the Committee agreed that an explanation in the Rule 145 Comment would be helpful.

Rule 151 (Withdrawal of Prosecution Before Issuing Authority), which provides for the withdrawal of the prosecution, presents a slightly different issue. As several members pointed out, the Commonwealth has the option to withdraw some or all of the charges. The Committee agreed that, if only some of the charges are withdrawn, and the remainder are held for court, the joined summary offense, unless withdrawn, would be forwarded to the court of common pleas as required by Rule 143(E). However, if all the misdemeanor and felony charges are withdrawn and only the summary offense remains, the Committee did not see any utility in requiring the summary to be forwarded, and agreed that the issuing authority should dispose of the summary offense in the same manner that any summary offense is disposed of pursuant to Rule 83 (Trial in Summary Cases). To make this concept clear, the Committee proposes a revision of the Rule 151 Comment that explains the process and cross-references Rule 143(E).

As part of the discussion of Rule 151, some members commented that the provisions "may withdraw the prosecution" in the text of the rule could be confusing since the Commonwealth is permitted to withdraw less than all the charges. To remedy this concern, the Committee agreed to replace "the prosecution" with "one or more of the charges" in the text of the rule.

3. Pretrial Proceedings After Case Held for Court

a. Filing Information: Rule 225

Once the case is held for court and the case includes a joined summary offense, the Committee noted that the summary offense should be charged in the information. Although there is case law on point, see *Commonwealth v. Hoffman*, 594 A.2d 772 (Pa. Super. 1991), some members suggested that because the rule does not specifically require this procedure, even though paragraph (5) requires a statement of the elements of the offense charged, it is not uniformly being done. To eliminate any question, the Committee agreed that a short cautionary explanation with a citation to *Hoffman*, supra,should be added to the Rule 225 Comment.

b. Pretrial Disposition of Joined Summary: New Rule 309, Rules 313, 314, and 315

The Committee next considered the handling of the joined summary offense in the context of the pretrial proceedings under Chapter 300. The handling of the joined summary offense only becomes an issue when there is a dismissal or a nolle prosequi of all the misdemeanor and felony charges. We agreed that, consistent with the "court case" concept, and to promote judicial economy, the common pleas court judge must dispose of the remaining joined summary offense, and may not return the summary offense to the issuing authority for disposition. In discussing this matter, several members expressed concern about the potential for double jeopardy issues or conflicts with the Appellate Rules if the summary offense is disposed of in cases in which the Commonwealth appeals the pretrial disposition of any of the misdemeanor or felony charges. We reviewed the relevant Appellate Rule, Rule 1701 (Effect of Appeal Generally), and agreed that when there is an appeal in these circumstances, the disposition of the summary offense should be delayed pending the appeal, and this should be made clear in the rules.

As the Committee considered the issue, we realized that none of the present rules provided an adequate place for clarifying the pretrial handling of joined summary offenses. We, therefore, are proposing a new rule to specifically address this matter. The new rule will be Rule 309 (Pretrial Disposition of Summary Offenses Joined

with Misdemeanor or Felony Charges), and will be divided into two paragraphs. Paragraph (A) provides that "when there is a dismissal or nolle prosequi of all the misdemeanor and felony charges, unless the Commonwealth appeals the disposition, the trial judge shall dispose of the summary offense." Paragraph (B) makes it clear that the judge may not remand the summary offense. In addition, the Comment explains about the delay pending appeal, cites Appellate Rule 1701, and includes cross-references to Rules 313 (Nolle Prosequi) and 314 (Court Dismissal Upon Satisfaction or Agreement).

The Committee is also proposing correlative revisions of the Comments to Rules 313, 314, and 315 (Motion for Dismissal) that provide clarifications about the handling of the joined summary offense under the circumstances of each rule. The Rule 313 Comment revision explains that (1) the judge may order a nolle prosequi on all the charges including the joined summary offense, and (2) when the nolle prosequi is of all the misdemeanor and felony charges, the judge must dispose of the joined summary offense. The Rule 314 Comment revision explains that the dismissal of the case may include a dismissal of the joined summary offense. Finally, the Rule 315 Comment revision explains that a dismissal of the prosecution includes a dismissal of the joined summary offense.

3. Trial Procedures: Rules 1120 and 1122

The last procedural area concerning joined summary offenses the Committee discussed was trials in the court of common pleas. The issue of handling the joined summaries had to be considered both when there is a jury and when the judge is the trier of fact. Again reaffirming the principle that the joined summary should be handled by the judge consistent with the "court case" concept, the Committee looked at Rules 1120 (Verdicts) and 1122 (Time for Court Action Following Non-Jury Trial). Although neither rule specifically addresses the handling of the joined summary offense, the Committee thought that the rules were the best place in Chapter 1100 to clarify the procedure. Accordingly, we are proposing that Rule 1120 be amended by adding a new paragraph (f) that specifically prohibits the judge from remanding the joined summary offense to the issuing authority, no matter what the disposition of the misdemeanor or felony charges are, and requires that the summary offense be disposed of in the court of common pleas. Similarly, Rule 1122 would be amended by adding a new paragraph (B) that would require the judge to dispose of the joined summary offense. Finally, the Committee has included a cross-reference to Rule 143 in both Comments.

4. Summary Motor Vehicle Offenses: Rules 101 and 104

As the Committee was considering the issue of joined summary offenses, several members questioned whether summary motor vehicle offenses would be treated in the same manner as other summary offenses. These members pointed out that, at least in Philadelphia and Allegheny Counties, there are Traffic Courts that have jurisdiction of these offenses. The Committee agreed that these offenses might be different, and looked at the jurisdictional provisions for all traffic courts. See 42 Pa.C.S. §§ 1301—1342. Section 1302 provides that the jurisdiction of a traffic court is exclusive of the courts of common pleas and district justices. We also found that there are some cases that address this issue. The courts have determined that a disposition in the Philadelphia Traffic Court is not a bar to a subsequent prosecution on a related misdemeanor or felony in common pleas court because, relying on the exclusive jurisdiction, there is no single court which could try both offenses. See, e.g., *Commonwealth v. Masterson*, 418 A.2d 664 (Pa.Super. 1980). Although the case law we reviewed addresses the issue in the context of Philadelphia Traffic Court, the Committee agreed that the exclusion also would apply to Pittsburgh Traffic Court, as well as any other Traffic Courts created pursuant to Section 1341. Base on this information, the Committee agreed to add language to the Comments to Rules 101 (Means of Instituting Proceedings in Court Cases) and 104 (Contents of Complaint) that would make it clear that summary traffic offenses that are within the jurisdiction of a traffic court should not be charged in the same complaint as the misdemeanor or felony charges, and would include a citation to 42 Pa.C.S. §§ 1301—1342 and to *Masterson*, supra. For purposes of clarity, we have also added a correlative provision to the Rule 143 Comment.

5. Philadelphia Municipal Court: Rule 6010

As a result of the Committee's research, we noted that the Superior Court in *Commonwealth v. Speller*, 458 A.2d 198 (Pa.Super. 1983) held that when, in a Philadelphia case, there is a summary offense joined with a misdemeanor, upon appeal of the disposition in the Municipal Court, the district attorney is required to include the summary offense in the information that the district attorney is required to prepare pursuant to Rule 6010 (Procedure on Appeal). Because the joined summary is coming to the Court of Common Pleas in a slightly different manner than the joined summaries in other court cases, the Committee agreed that the Rule 6010 Comment should be revised to include a cross-reference to *Speller*, supra, to acknowledge this variation.

[Pa.B. Doc. No. 99-746. Filed for public inspection May 7, 1999, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Charles A. Victor, II, having been disbarred from the practice of law in the Commonwealth of Massachusetts, the Supreme Court of Pennsylvania issued an Order dated April 23, 1999 disbarring Charles A. Victor, II from the practice of law in this Commonwealth. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 99-747. Filed for public inspection May 7, 1999, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Christopher Lee Pearson, having been suspended from the practice of law in the State of California by Order of the Supreme Court of the State of California filed on July 1, 1998, the Supreme Court of Pennsylvania issued an Order dated April 21, 1999, Christopher Lee Pearson is suspended from the practice of law in this Commonwealth consistent with the Order of the Supreme Court of the State of California filed on July 1, 1998. In accordance with the Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,
Executive Director & Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 99-748. Filed for public inspection May 7, 1999, 9:00 a.m.]