

# THE COURTS

## Title 201—RULES OF JUDICIAL ADMINISTRATION

[201 PA. CODE CH. 7]

### Assignment of Judges

#### Rule 701. Assignment of judges to courts.

(a) *Certification of availability for assignment by former or retired judges.* A former or retired judge who consents to accept assignment on temporary judicial service shall file with the Administrative Office a statement of the period during which he is willing to be assigned to a court, and a certification that he has not, since his last judicial duty, engaged in the practice of law or in any activity incompatible with judicial office and does not intend to engage in the practice of law in the future. Excepting those in appellate senior judge status, senior judge status shall end at age seventy-five; however, those serving in senior judge status as of the effective date of this rule may continue to do so notwithstanding the age seventy-five limitation. In order to be qualified for assignment, such judge shall not have been defeated for reelection and shall have served as a judge (whether or not continuously or on the same court) by election or appointment for an aggregate of at least ten years, except that any duly elected justice or judge, having an aggregate of five years' judicial service or seniority, who is required to retire at age seventy, shall be eligible for assignment. Suitable facilities and adequate staff are to be provided for senior judges, the parameters of which are to be determined and promulgated by the Administrative Office.

**Directive:** In accordance with Rule of Judicial Administration 701(a), the Administrative Office of Pennsylvania Courts promulgates this directive establishing minimum standards for suitable facilities and adequate staff for the senior judges of the courts of common pleas.

The president judge of a judicial district, in consultation with the Court Administrator of Pennsylvania as needs may require, shall provide from available resources for each senior judge formerly of the judicial district who is regularly or periodically assigned in that district and for each visiting senior judge the following facilities and staff for matters arising under the appointment:

(a) the use of judicial chambers which shall be of adequate size and appropriately furnished, afford a measure of privacy, and include office equipment and supplies as are necessary to conduct judicial business;

(b) services of a law clerk who shall provide customary assistance including legal research and drafting of legal documents; and

(c) services of a secretary who shall provide customary assistance including typing correspon-

dence, orders and opinions, answering phone calls and taking messages, receiving and sending mail and deliveries.

\* \* \* \* \*

[Pa.B. Doc. No. 99-848. Filed for public inspection May 28, 1999, 9:00 a.m.]

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[210 PA. CODE CH. 3]

## Title 231—RULES OF CIVIL PROCEDURE

### PART II. ORPHANS' COURT RULES

[231 PA. CODE PART II]

#### Proposed Amendments to Pa.R.A.P. 341 and Orphans' Court Rule 7.1; Joint Recommendation 98-1

The Appellate Court Procedural Rules Committee proposes to amend Rule 341 of the Pennsylvania Rules of Appellate Procedure, together with Rule 7.1 of the Orphan's Court Rules. The proposed amendments are being submitted to the bench and bar for comments and suggestions prior to their submission to the Supreme Court.

1. NOTICE is hereby given that the comment period to Title 210—Appellate Procedure and Title 231—Rules of Civil Procedure RE: Proposed Amendments to Pa.R.A.P. 341 and Orphans' Court Rule 7.1; Joint Recommendation 98-1 which appeared in 29 Pa.B. 1709—1712 (April 3, 1999) has been extended from May 14, 1999 until July 15, 1999.

2. The Explanatory Comment to the Joint Recommendation 98-1 is amended at 29 Pa.B. 1711 under the sections entitled "The Waiver Problem" and "The Uniformity Problem" to include a citation to the following article written by Carmina Y. D'Aversa entitled: "The Orphans' Court Practitioner's Dilemma of Whether to File Exceptions," No. 42 Pennsylvania Bar Association's *Real Property, Probate and Trust Law Newsletter* (Fall, 1995), reprinted at Volume 7, No. 20 of *The Pennsylvania Bar News* (October 27, 1997).

3. Finally, at 29 Pa.B. 1712 issue of the Bulletin, the Official Note to Proposed Orphans' Court Rule 7.1 should read: "The 1999 amendment discontinues the prior practice [not] permitting local rules to govern whether exceptions are required after entry of an order, decree or adjudication."

[Pa.B. Doc. No. 99-849. Filed for public inspection May 28, 1999, 9:00 a.m.]

# Title 210—APPELLATE PROCEDURE

## PART I. RULES OF APPELLATE PROCEDURE [210 PA. CODE CH. 21]

[CORRECTION]

### Proposed Amendment to Pa.R.A.P. 2185; Recommendation 33

An error appeared in the proposed amendments to the Rules of Appellate Procedure as they appeared at 29 Pa.B. 2441, 2443 (May 8, 1999). In Rule 2185, the word "and" should have been printed in regular type. The correct version of Rule 2185 appears in Annex A, with ellipses referring to the existing text of the rule.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

## PART I. RULES OF APPELLATE PROCEDURE

### ARTICLE I. PRELIMINARY PROVISIONS

#### CHAPTER 21. BRIEFS AND REPRODUCED RECORD 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 and 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.

\* \* \* \* \*

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

# Title 231—RULES OF CIVIL PROCEDURE

## PART I. GENERAL

[231 PA. CODE CHS. 100, 200, 400, 1000, 1910, 1930, 2054, 2950, 2970, 3000 AND 4000]

Amendment of Rules Governing Service by a Competent Adult; No. 313 Civil Procedural Rules Doc. No. 5

### Order

*Per Curiam:*

And Now, this 14th day of May, 1999, the following Pennsylvania Rules of Civil Procedure are amended to read as follows hereto: Rules 76, 234.2, 405, 400.1, 404,

1075.1, 1910.13-1, 1910.13-2, 1910.21-1, 1910.22, 1930.4, 2054, 2958.1, 2973.2, 3129.2, 3140, 3283 and 4009.33.

Whereas prior distribution and publication of the amendments would otherwise be required, it has been determined that immediate promulgation of the amendments is required in the interest of justice and efficient administration.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective July 1, 1999.

#### Annex A

### TITLE 231. RULES OF CIVIL PROCEDURE

## PART I. GENERAL

### CHAPTER 100. RULES OF CONSTRUCTION

#### Rule 76. Definitions.

The following words and phrases when used in any rule promulgated by the Supreme Court under the authority of Article V, Section 10(c) of the Constitution of 1968, or of any Act of Assembly, shall have the following meanings, respectively, unless the context clearly indicates otherwise or the particular word or phrase is expressly defined in the chapter in which the particular rule is included:

\* \* \* \* \*

**Competent adult**—an individual eighteen years of age or older who is neither a party to the action nor an employee or a relative of a party.

\* \* \* \* \*

### CHAPTER 200. BUSINESS OF COURTS

#### Rule 234.2. Subpoena. Issuance. Service. Compliance. Fees. Prisoners.

\* \* \* \* \*

(b) A copy of the subpoena may be served upon any person within the Commonwealth by [ a competent ] an adult.

\* \* \* \* \*

### CHAPTER 400. SERVICE OF ORIGINAL PROCESS SERVICE GENERALLY

#### Rule 400. Person to Make Service.

\* \* \* \* \*

(b) In addition to service by the sheriff, original process may be served also by a competent adult [ who is not a party ] in the following actions: equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought.

**Official Note: See Rule 76 for the definition of "competent adult."**

Service of original process in domestic relations matters is governed by Rule 1930.4.

\* \* \* \* \*

#### Rule 400.1. Provisions for All Courts of the First Judicial District.

(a) In an action commenced in [ Philadelphia County ] the First Judicial District, original process may be served

(1) within the county by the sheriff or a competent adult [ who is not a party to the action ], or

\* \* \* \* \*

**Official Note: See Rule 76 for the definition of "competent adult."**

**The First Judicial District is comprised of Philadelphia County.**

(b) In an action commenced in any other county, original process may be served in Philadelphia County by deputized service as provided by Rule 400(d) or by a competent adult [ **who is not a party to the action** ].

**Official Note: See Rule 76 for the definition of "competent adult."**

(c) [ **In an action for protection from abuse, service may be made by any competent adult** ] **Rescinded.**

**Official Note: For service in an action for protection from abuse, see Rule 1930.4(b).**

**Rule 404. Service Outside the Commonwealth.**

Original process shall be served outside the Commonwealth within ninety days of the issuance of the writ or the filing of the complaint or the reissuance or the reinstatement thereof:

**Official Note:** For reissuance and reinstatement of original process, see Rule 401(b).

(1) by a competent adult [ **who is not a party** ] in the manner provided by Rule 402(a);

**Official Note: See Rule 76 for the definition of "competent adult."**

(2) [ **by any competent adult** ] by mail in the manner provided by Rule 403;

\* \* \* \* \*

**CHAPTER 1000. ACTIONS AT LAW**

**Subchapter E. ACTION IN REPLEVIN**

**Rule 1075.1. Writ of Seizure Upon Notice and Hearing.**

\* \* \* \* \*

(d) The motion and notice of the hearing may be served by [ **any competent** ] an adult by leaving a copy at the address endorsed on an appearance or prior pleading, but if there is no such endorsement, then in the manner provided by Rule 402(a) for the service of original process or, if that is not possible, then by any other means reasonably calculated to give notice. The return of service shall be governed by Rule 405.

\* \* \* \* \*

**CHAPTER 1910. ACTIONS FOR SUPPORT**

**Rule 1910.13-1. Failure or Refusal to Appear Pursuant to Order of Court. Bench Warrant.**

(a) If a party fails to appear at a conference and/or hearing as directed by order of court, the court may issue a bench warrant for the arrest of the party if it finds

\* \* \* \* \*

(2) upon the affidavit of a hearing officer or conference officer that

\* \* \* \* \*

(iv) a competent adult [ **who is not a party to the action** ] handed a copy of the court order to the party, and filed an affidavit of service.

**Official Note: See Rule 76 for the definition of "competent adult."**

\* \* \* \* \*

**Rule 1910.13-2. Form of Request for Bench Warrant and Supporting Affidavit. Form of Bench Warrant.**

(a) Request for a bench warrant pursuant to Rule 1910.13-1 shall be in substantially the following form and shall be attached to the Bench Warrant form set forth in subdivision (b) of this rule:

[CAPTION]

REQUEST FOR BENCH WARRANT AND SUPPORTING AFFIDAVIT

\* \* \* \* \*

2. The party received the order of court scheduling the conference and/or hearing in the following manner:

\* \* \* \* \*

(d) A competent adult [ **who is not a party to this action** ] handed a copy of the court order to the party. The adult's affidavit of service is attached.

\* \* \* \* \*

**Rule 1910.21-1. Civil Contempt. Petition. Service. No Answer Required.**

\* \* \* \* \*

(d) The petition shall be served upon the respondent

\* \* \* \* \*

(3) by a competent adult [ **who is not a party to the action** ]; or

**Official Note: See Rule 76 for the definition of "competent adult."**

\* \* \* \* \*

**Rule 1910.22. Attachment of Income.**

\* \* \* \* \*

(d)(1) The order of attachment shall be substantially in the form prescribed by Rule 1910.31 and shall be served upon the obligor's employer by [ **a competent** ] an adult in the manner prescribed by Rule 402(a) governing service of original process or by registered mail, return receipt requested. Service by mail is complete upon the return of the registered mail receipt personally signed by the employer or other evidence of service satisfactory to the court.

\* \* \* \* \*

**CHAPTER 1930. RULES RELATING TO DOMESTIC RELATIONS MATTERS GENERALLY**

**Rule 1930.4. Service of Original Process in Domestic Relations Matters.**

(1) *Persons Who May Serve.* Original process in all domestic relations matters may be served by the sheriff or [ **any** ] a competent adult [ **who is not a party to the action** ]:

\* \* \* \* \*

**Official Note: See Rule 76 for the definition of "competent adult."**

(b) *Service in Protection From Abuse Matters.* In Protection from Abuse matters only, original process may be served by [ **any competent** ] an adult.

\* \* \* \* \*

**CHAPTER 2050. INCAPACITATED PERSONS AS PARTIES**

**Rule 2054. Actions by and Against Incapacitated Persons. Averments in Plaintiff's Pleadings.**

\* \* \* \* \*

(c) An action in which a defendant is an incapacitated person shall be commenced against the defendant by name in the manner in which a like action is commenced against [ a competent ] an adult who is not incapacitated.

**CHAPTER 2950. CONFESSION OF JUDGMENT FOR MONEY**

**Rule 2958.1. Notice Served Prior to Execution.**

\* \* \* \* \*

(b) The notice shall be served

(1) upon a defendant in the judgment who has not entered an appearance

(i) by the sheriff or by a competent adult [ who is not a party to the action ] in the manner prescribed by Rule 402(a) for the service of original process upon a defendant, or

**Official Note: See Rule 76 for the definition of "competent adult."**

\* \* \* \* \*

**CHAPTER 2970. CONFESSION OF JUDGMENT FOR POSSESSION OF REAL PROPERTY**

**Rule 2973.2. Notice Served Prior to Execution.**

\* \* \* \* \*

(b) The notice shall be served

(1) upon a defendant in the judgment who has not entered an appearance

(i) by the sheriff or by a competent adult [ who is not a party to the action ] in the manner prescribed by Rule 402(a) for the service of original process upon a defendant, or

**Official Note: See Rule 76 for the definition of "competent adult."**

\* \* \* \* \*

**CHAPTER 3000. JUDGMENTS**

**Subchapter D. ENFORCEMENT OF MONEY JUDGMENTS FOR THE PAYMENT OF MONEY**

**Rule 3129.2. Notice of Sale. Handbills. Written Notice. Publication.**

\* \* \* \* \*

(c) The written notice shall be prepared by the plaintiff, shall contain the same information as the handbills or may consist of the handbill and shall be served at least thirty days before the sale on all persons whose names and addresses are set forth in the affidavit required by Rule 3129.1.

(1) Service of the notice shall be made

(i) upon a defendant in the judgment who has not entered an appearance and upon the owner of the property

(A) by the sheriff or by a competent adult [ who is not a party to the action ] in the manner prescribed by Rule 402(a) for the service of original process upon a defendant, or

**Official Note: See Rule 76 for the definition of "competent adult."**

\* \* \* \* \*

**Rule 3140. Notice by garnishee.**

\* \* \* \* \*

(c) A copy is forwarded within the requirement of this rule when it is delivered to the defendant by [ a competent ] an adult at any place within or without the Commonwealth in the manner prescribed by Rule 402(a) for service of original process or when it is mailed to the defendant by registered mail directed to [ his ] the defendant's last known address.

\* \* \* \* \*

**Subchapter E. ENFORCEMENT OF JUDGMENTS IN SPECIAL ACTIONS**

**PROCEEDINGS UNDER SECTION 8103(A) TO FIX FAIR MARKET VALUE OF REAL PROPERTY SOLD**

**Rule 3283. Service.**

(a) The petition shall be served

\* \* \* \* \*

(2) upon any other respondent

(i) by the sheriff or a competent adult [ who is not a party to the action ] in the manner prescribed by Rule 402(a) for service of original process, or

**Official Note: See Rule 76 for the definition of "competent adult."**

\* \* \* \* \*

**CHAPTER 4000. DEPOSITIONS AND DISCOVERY ENTRY UPON PROPERTY FOR INSPECTION AND OTHER ACTIVITIES**

**Rule 4009.33. Motion for Entry upon Property of a Person not a Party.**

(a) A motion to permit entry upon property of a person not a party shall begin with the notice prescribed by subdivision (c) and shall describe with reasonable particularity the property to be entered and the activities to be performed. The motion shall be served personally by [ a competent ] an adult in the same manner as original process. A copy of the motion shall also be served upon all other parties to the action pursuant to Rule 440.

\* \* \* \* \*

**Explanatory Comment**

The rules of civil procedure governing service of original process and other legal papers have used the term "competent adult." In certain instances, the term has been used with the restrictive language "who is not a party to the action."

The Supreme Court of Pennsylvania has amended Definition Rule 76 by adding the following definition: "'competent adult' means an individual eighteen years of age or older who is neither a party to the action or an employee or a relative of a party." In view of this new

definition, the rules of civil procedure which used the term "competent adult who is not a party to the action" have been amended by deleting as unnecessary the restrictive language "who is not a party to the action." These rules using the term "competent adult" will be governed by the new definition. The rules which used the term "competent adult" without the restrictive language have been amended by deleting the word "competent," thus continuing to permit service by an adult without further restriction.

By the Civil Procedural Rules Committee

EDWIN L. KLETT,  
Chairman

[Pa.B. Doc. No. 99-850. Filed for public inspection May 28, 1999, 9:00 a.m.]

# Title 234—RULES OF CRIMINAL PROCEDURES

## PART I. GENERAL

### [234 PA. CODE CH. 50]

#### Proceedings in Summary Cases

##### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 51 (Means of Instituting Proceedings in Summary Cases), 61 (Procedures Following Filing of Citation — Issuance of Summons), 86 (Appeals), and 95 (Proceedings In Summary Cases Charging Parking Violations), and approve the revision of the Comment to Rule of Criminal Procedure 53 (Contents of Citation). These rule changes would clarify the procedures for electronically filing parking violation information in cases in which a defendant has failed to respond to a parking ticket. 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. Deletions appear in bold and brackets, and additions appear in bold and are underlined.

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, June 23, 1999.

By the Criminal Procedural Rules Committee

FRANCIS BARRY MCCARTHY,  
Chair

## Annex A

### TITLE 234. RULES OF CRIMINAL PROCEDURE

#### PART I. GENERAL

##### CHAPTER 50. PROCEDURE IN SUMMARY CASES

###### PART I. INSTITUTING PROCEEDINGS

###### Rule 51. Means of Instituting Proceedings in Summary Cases.

Criminal proceedings in summary cases shall be instituted either by:

- (a) issuing a citation to the defendant; or
- (b) filing a citation; or
- (c) filing a complaint; or
- (d) arresting without a warrant when arrest is specifically authorized by law [ . ]; or
- (e) **electronic filing of parking ticket information.**

**Official Note:** Previous Rule 51, adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; **amended \_\_\_\_\_, effective \_\_\_\_\_.**

#### Comment

\* \* \* \* \*

For the procedures in summary cases charging parking violations, see Part VII, Rule 95. Although a criminal proceeding may be instituted in these cases by issuing a citation either by handing it to a defendant or placing it on a vehicle windshield, it is expected that many parking cases will be disposed of without a criminal proceeding under these rules. A parking ticket, which is not a citation, is used by a political subdivision and the defendant pays the amount specified on the ticket within the time specified. **Paragraph (e) and Rule 95(a) authorize the electronic filing of the parking ticket information in those cases in which a defendant fails to respond to the political subdivision's parking ticket.**

\* \* \* \* \*

#### Committee Explanatory Reports:

\* \* \* \* \*

Report explaining the June 6, 1997 Comment revision published with the Court's Order at 25 Pa.B. 2923 (June 21, 1997).

**Report explaining the proposed amendments published at 29 Pa.B. 2772 (May 29, 1999).**

#### PART II. CITATION PROCEDURES

##### Rule 53. Contents of Citation.

\* \* \* \* \*

**Official Note:** Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered as Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended

January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present rule adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995 ; **Comment revised \_\_\_\_\_ , effective \_\_\_\_\_ .**

**Comment**

\* \* \* \* \*

With regard to the "proper" issuing authority as used in these rules, see Rule 21.

**See Rule 95 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically filed as permitted by Rule 95(a), only a summons is issued as provided in Rule 61.**

*Committee Explanatory Reports:*

\* \* \* \* \*

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

**Report explaining the proposed Comment revisions published at 29 Pa.B. 2772 (May 29, 1999).**

**PART IIB. PROCEDURES WHEN CITATION FILED**

**Rule 61. Procedures Following Filing of Citation— Issuance of Summons.**

(A) Upon the filing of the citation, **or receipt of electronically filed parking violation information**, the issuing authority shall issue a summons commanding the defendant to respond within 10 days of receipt of the summons, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons in which case an arrest warrant shall be issued. The summons shall be served as provided in these rules.

(B) Except in cases charging parking violations when the **[ citation ] parking violation information** is electronically filed, a copy of the citation shall be served with the summons.

(C) In cases charging parking violations when the **[ citation ] parking violation information** is electronically filed, the summons shall also include:

- (1) the date, time, and location of the parking violation;
- (2) a description of the vehicle and the license number; and
- (3) a description of the parking violation.

**Official Note:** Previous Rule 117, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 76. Present Rule 61, adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective

dates all are extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; **amended \_\_\_\_\_ , effective \_\_\_\_\_ .**

**Comment**

\* \* \* \* \*

This rule **[ was amended in 1996 to facilitate ] facilitates** the electronic filing of **[ citations charging ] parking [ violations ] violation information by (1) eliminating the requirement that a copy of the citation be served with the summons in cases in which the parking violation information is electronically filed pursuant to Rule 95(a), and (2) requiring additional information be added to the summons.** See Rule 95 (Proceedings in Summary Cases Charging Parking Violations).

*Committee Explanatory Reports:*

Final Report explaining the July 17, 1996 amendments published with the Court's Order at 26 Pa.B. 3629 (August 3, 1996).

**Report explaining the proposed amendments published at 29 Pa.B. 2772 (May 29, 1999).**

**PART VI. GENERAL PROCEDURES IN SUMMARY CASES**

**Rule 86. Appeals.**

\* \* \* \* \*

(F) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

- (1) the transcript of the proceedings;
- (2) the original complaint or citation, **if any**;
- (3) the summons or warrant of arrest, if any; and
- (4) the bail bond, if any.

\* \* \* \* \*

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; **amended \_\_\_\_\_ 1999, effective \_\_\_\_\_ , 1999.**

**Comment**

\* \* \* \* \*

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 85, the matter must be heard de novo by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

**Paragraph (F) was amended in 1999 to align this rule with Rule 95(A), which permits the electronic filing of parking violation information in lieu of filing a citation. Therefore, in electronically filed parking violation cases only, because there is no**

**original citation, the issuing authority would file the summons with the clerk of courts pursuant to paragraph (F).**

Certiorari was abolished by former Rule 67 in 1973, pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The abolition of certiorari, of course, continues.

Bail, when set in a summary case, must be set in accordance with the bail rules, Chapter 4000.

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

**Report explaining the proposed amendments published at 29 Pa.B. 2772 (May 29, 1999).**

**PART VIII. PROCEDURES IN SUMMARY CASES CHARGING PARKING VIOLATIONS**

**Rule 95. Proceedings in Summary Cases Charging Parking Violations.**

**[ (a) ] (A)** Political subdivisions may use parking tickets to inform defendants of parking violations and to offer defendants an opportunity to avoid criminal proceedings by paying an amount specified on the ticket within the time specified on the ticket.

**(1)** When a political subdivision does use parking tickets and a ticket has been handed to a defendant or placed on a vehicle windshield, a criminal proceeding shall be instituted only if the defendant fails to respond as requested on the ticket.

**(2) [ In that event, ] When a defendant fails to respond to a parking ticket,** the criminal proceeding shall be instituted **either**

**(a)** by a law enforcement officer filing a citation with the proper issuing authority, **or**

**(b)** by **having the parking violation information electronically filed and verified with the proper issuing authority.**

Upon **[ the filing of the citation, ] receipt of the citation or the electronically filed information, the issuing authority shall proceed as provided in Rule 61, and the case shall proceed [ in the same manner as other summary cases instituted by filing a citation, ]** in accordance with Rules **[ 61 ] 62—64.**

**[ (b) ] (B)** When a parking ticket has not been used, a criminal proceeding in a summary case charging a parking violation shall be instituted by a law enforcement officer issuing a citation either by handing it to a defendant or by placing it on a vehicle windshield.

**(1)** Upon the issuance of a citation, the case shall ordinarily proceed in the same manner as other summary cases instituted by issuing a citation to the defendant, in accordance with Rules 55—59.

**(2)** If the defendant fails to respond to the citation, the issuing authority shall issue a summons and the case shall then proceed in accordance with Rules 61—64 as if the proceedings were instituted by filing a citation, unless the issuing authority has reasonable grounds to believe

that the defendant will not obey a summons, in which case an arrest warrant shall be issued and the case shall proceed in accordance with Rule 76.

**[ (c) The filing of a citation charging a parking violation may be accomplished by electronic filing. ]**

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; **amended \_\_\_\_\_, effective \_\_\_\_\_.**

**Comment**

If the defendant pays the amount specified on the parking ticket within the time specified on the ticket, the case will be concluded without the institution of a criminal proceeding. If the defendant makes no response within the suggested time, or if the defendant indicates a desire to plead not guilty, and the subdivision desires to proceed with the case, a law enforcement officer must determine the identity of the vehicle owner from the Department of Transportation and then institute a criminal proceeding by **either** filing a citation directly with the proper issuing authority, **or having the parking violation information electronically filed** under paragraph **[ (a) ] (A)** of this rule.

**When the parking violation information is electronically filed pursuant to paragraph (A)(2)(b), the individual who electronically transmits the information must verify with the issuing authority that the information transmitted accurately reflects the information on the subject parking tickets.**

**[ Paragraph (c) was added in 1996 to specifically authorize that a citation charging a parking violation may be filed electronically. ]**

When a parking ticket is not used and a criminal proceeding is instituted under paragraph **[ (b) ] (B)** of this rule by issuing a citation to a defendant, if the defendant does not properly respond to the citation, the issuing authority must notify the law enforcement officer, who should obtain from the Department of Transportation the name of the owner of the vehicle. The law enforcement officer should immediately furnish this information to the issuing authority, who must then issue a summons or a warrant.

See Rule 21 for the "proper" issuing authority as used in these rules.

*Committee Explanatory Reports:*

Final Report explaining the July 17, 1996 amendments **permitting parking citations to be electronically transmitted** published with the Court's Order at 26 Pa.B. 3629 (August 3, 1996).

**Report explaining the proposed amendments clarifying the procedures for electronically transmitting parking ticket information published at 29 Pa.B. 2772 (May 29, 1999).**

**REPORT**

*Proposed Amendments to Pa.Rs.Crim.P. 51, 61, 86, and 95; Revision of the Comment to Pa.R.Crim.P. 53*

*Electronic Filing of Parking Violation Information*

The Committee is proposing a number of clarifying amendments that are intended to fill in gaps in the procedures that permit the electronic filing of parking violation information. These changes do not substantively

alter the present procedures under Rules 61 and 95, but merely provide further elaboration on these procedures as an aid to the bench and bar.<sup>1</sup>

### *Background*

The Committee undertook its review of the procedures for electronically filing parking violation information after receiving several inquiries concerning the interplay between the electronic filing provisions of Rules 61 (Procedures Following Filing of Citation—Issuance of Summons) and 95 (Proceedings In Summary Cases Charging Parking Violations) and the procedures for citations in Rule 53 (Contents of Citation) and appeals in Rule 86 (Appeals). The inquiries questioned whether, when a parking citation is electronically filed, there had to be a paper copy of the citation; whether there had to be a verification of the information electronically filed; and when the information has been electronically filed, what documentation must be transmitted from the issuing authority to the clerk of courts when an appeal is filed.

The Committee's examination of the matter started with the rules. Rule 95 presently provides that, in those limited cases in which a defendant fails to respond to a parking ticket, the political subdivision may institute a criminal proceeding by filing a citation with the proper issuing authority, see paragraph (a), and that the filing of such a citation may be accomplished by electronic filing, see paragraph (c) (emphasis added). Rule 61 presently provides for the expansion of the contents of the summons to include the information that ordinarily appears on the citation in cases charging a parking violation when the citation is electronically filed.

The Committee also reviewed the history of the electronic filing provisions. One point that had been made when the initial changes were made was that the provision for electronic filing was a first step toward integrating the technology for advanced communication into the Criminal Rules. The changes also were intended to (1) provide a cost-effective and efficient means for municipalities and issuing authorities to transmit documents, and (2) reduce the amount of paperwork that flowed between the respective offices. See Committee Final Report at 26 Pa.B. 3629 (August 3, 1996). A final consideration supporting the changes was that the use of electronic filing for parking violations would have little impact on defendants—a parking violation is never filed unless the defendant fails to respond to a parking ticket; and the summons a defendant receives provides the defendant with all the relevant information concerning the parking violation charged.

After reviewing the history of the rule changes permitting electronic filing and the rule provisions providing for electronic filing, and based on the members' experience with electronic filings, the Committee agreed that some rule changes should be proposed to alleviate the concerns addressed to the Committee, but that the changes need only elucidate the earlier amendments providing for the utilization of electronic filing for parking violation information.

### *Discussion of Rule Changes*

#### *1. Rule 95 (Proceedings in Summary Cases Charging Parking Violations)*

The concerns addressed to the Committee centered on a basic issue with regard to the use of advance communication technology—whether there should be a paper copy of

the documentation electronically transmitted. The Committee had agreed at the time of the original proposal, and reaffirmed as we reconsidered the matter, that, because a parking ticket will have already been issued to a defendant and a summons setting forth all the relevant information about the parking violation will be issued to institute the criminal proceeding in cases in which the defendant has failed to respond to the parking ticket, there is no need for an actual citation to be prepared. Rather, only the parking violation information is necessary. The Committee noted further that, when the original recommendation had been developed in 1995, we had little practical experience with advanced communication technology in the context of criminal proceedings, so the amendments to Rules 61 and 95 merely applied the existing concept of filing a parking citation to the electronic filing provisions. In view of these considerations, the Committee concluded that Rule 95 should be amended to more clearly incorporate advanced communication technology principles by removing the citation concept from the electronic filing provisions within the context of parking tickets. To accomplish this, paragraph (A) would be divided into subparagraphs, and paragraph (c) would be deleted.<sup>2</sup> Paragraph (A)(2) covers the cases in which a defendant has failed to respond to a parking ticket, and distinctly provides for the two methods of providing the issuing authority with the necessary information to issue a summons under Rule 61—filing the citation with the issuing authority or having the parking violation information electronically transmitted to the issuing authority. This change makes it clear that what is electronically filed is the information, not a citation.

The Comment would be revised to caution that the individual who electronically transmits the parking violation information must verify in some manner that the information transmitted accurately reflects the information on the subject parking tickets. This "verification" is not the same as the verification required in Rule 53 for citations, and because there is no citation when there is a Rule 95 electronic filing, the Rule 53 verification requirement would not apply.

#### *2. Rule 61 (Procedures Following Filing of Citation—Issuance of Summons)*

The Committee is proposing some conforming amendments to Rule 61 that underscore in the rule that, when there is electronic filing, what is transmitted is the parking violation information. The proposed changes also make it clear that both when a citation is filed and the parking violation information is electronically transmitted, the issuing authority is to issue a summons. The Comment would be revised to include a caveat that, when information is electronically filed, a copy of the citation does not have to be served with the summons.

#### *3. Conforming and Correlative Rule Changes*

The Committee is proposing conforming and correlative changes to several other rules to further emphasize that a citation would not be filed when parking violation information is electronically filed. First, Rule 51 (Means of Instituting Proceedings in Summary Cases) would be amended by the addition of a new paragraph (e) providing that electronic filing of parking ticket information is another means of instituting proceedings in summary cases, albeit in the very limited situation of cases in which the defendant has failed to respond to a parking ticket. Second, the Comment to Rule 53 (Contents of Citation) would be revised to include a cross-reference to

<sup>1</sup>Rules 61 and 95 were amended in 1996 to permit the electronic filing of parking citations. See Committee explanatory Final Report at 26 Pa. B. 3629 (August 3, 1996).

<sup>2</sup>Paragraph (B) also would be divided into subparagraphs to more clearly set forth the procedures covered by paragraph (B).



Rule 95, and make it clear that only a summons is issued pursuant to Rule 61 when parking violation information is electronically filed. Finally, Rule 86 (Appeals) would be amended by the addition of "if any" following "citation" at the end of paragraph (F)(2) to accommodate cases in which the parking violation information has been electronically filed and there is no citation.

[Pa.B. Doc. No. 99-851. Filed for public inspection May 28, 1999, 9:00 a.m.]

PART I. GENERAL  
[234 PA. CODE CH. 50]

**Rule 71, Procedure Following Arrest Without Warrant; Rule 81, Collateral; No. 243; Criminal Procedural Rules; Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the May 14, 1999 changes to Rules of Criminal Procedure 71 and 81 concerning trials after arrests without a warrant and collateral in summary cases. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 14th day of May, 1999, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 26 Pa.B. 4892 (October 12, 1996), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 681/682), 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 Pa.R.Crim.P. 71 is hereby amended and the revision of the Comment to Pa.R.Crim.P. 81 is approved, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1999.

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 50. PROCEDURE IN SUMMARY CASES**

**PART IV. PROCEDURES IN SUMMARY CASES  
WHEN DEFENDANT IS ARRESTED WITHOUT  
WARRANT**

**Rule 71. Procedure Following Arrest Without Warrant.**

[ (a ) (A) When a defendant has been arrested without a warrant, the defendant shall be either released from custody pursuant to paragraph [ (b ) (B) or taken before the proper issuing authority under paragraph [ (c ) (C).

[ (b ) (B) When a defendant has been arrested without a warrant, the arresting officer may, when the officer deems it appropriate, promptly release the defendant from custody when the following conditions have been met:

\* \* \* \* \*

[ (c ) (C) When the defendant has not been released from custody under paragraph [ (b ) (B), the defendant shall be taken without unnecessary delay before the

issuing authority where a citation shall be filed against the defendant. The defendant shall be given an immediate trial unless:

(1) the Commonwealth is not ready to proceed, or the defendant requests a postponement **or is not capable of proceeding**, and in [ **either event** ] **any of these circumstances**, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, or

\* \* \* \* \*

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective [ **date** ] **dates** extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995; **amended May 14, 1999, effective July 1, 1999.**

**Comment**

[ **This rule replaces previous Rule 62. ]**

\* \* \* \* \*

*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 May 14, 1999 amendments to paragraph (c)(1) and the Comment published with the Court's Order at 29 Pa.B. (May 29, 1999).**

**PART VI. GENERAL PROCEDURES IN SUMMARY  
CASES**

**Rule 81. Collateral.**

[ (a ) (A) \*\*\*

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

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

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; **Comment revised May 14, 1999, effective July 1, 1999.**

**Comment**

[ **This rule is substantially new. It is, in part, derived from the bail or security provisions of previous Rules 52A.2.(b), 55.2, 57(b)(1), and 64.4. ]**

**The term "collateral" is intended to convey the dual purpose of the amount of money that is deposited. First, the amount deposited is used as bail to secure the defendant's appearance at the summary trial. Second, the amount deposited is used as security, and may be forfeited in the event of a conviction to satisfy any fine and costs.**

**A defendant may not be penalized or denied a hearing because he or she cannot pay the full amount of the fine and costs as collateral.**

Although this rule permits an issuing authority to fix collateral in an amount up to the full amount of fine and costs, the issuing authority is not required to fix collateral or any particular amount of collateral, and may set an amount less than the fine and costs. The issuing authority may also release the defendant on recognizance when the issuing authority has reasonable grounds to believe that the defendant will appear or the defendant is without adequate resources to deposit collateral. To request a lower amount of collateral or to be released on recognizance, the defendant must appear personally before the issuing authority to enter a plea, as provided in Rules 58, 63, and 68.

For the purpose of paragraph (b), any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 (1959) would constitute a "cash equivalent."

**Committee Explanatory Reports:**

**Final Report explaining the May 14, 1999 Comment revisions published with the Court's Order at 29 Pa.B. 2775 (May 29, 1999).**

**FINAL REPORT<sup>1</sup>**

**Amendments to Pa.R.Crim.P. 71 (Procedure Following Arrest Without Warrant and Revision of the Comment to Pa.R.Crim.P. 81 (Collateral))**

**PROCEDURE FOLLOWING ARREST WITHOUT WARRANT**

On May 14, 1999, effective July 1, 1999, the Supreme Court, upon the recommendation of the Criminal Procedural Rules Committee, amended Pa.R.Crim.P. 71 to clarify that the rule does not require an immediate trial following an arrest without a warrant when a defendant is not capable of proceeding, and approved the revision of the Comment to Pa.R.Crim.P. 81 to clarify that the term "collateral" serves a dual purpose—bail, to insure the defendant's appearance at trial, and security, so the money deposited can be forfeited at the conclusion of the case if necessary and applied to any fine and costs.

*Background*

The Committee received several inquiries concerning the pretrial detention of individuals who are arrested for public drunkenness and are a danger to themselves. From communications with members of the minor judiciary, the Committee learned that this matter has been a recurring problem for the local municipalities. The correspondents noted that a contributing factor to the overall problem is the immediate trial requirement in paragraph (C) of Rule 71 (Procedure Following Arrest Without Warrant), which, if strictly construed, provides only two exceptions to holding an immediate trial—when the defendant or the Commonwealth requests a postponement, or when the defendant's criminal record has to be ascertained. The correspondents questioned whether an issuing authority could delay the immediate trial in situations in which the defendant is not capable of proceeding, such as when an individual is arrested for public drunkenness and is too intoxicated to understand the nature of the proceedings. The correspondents also commented that there was a great deal of confusion concerning the authority to incarcerate a defendant who is unable to post collateral.

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

Although the Committee was sympathetic to the correspondents' concerns about the problems they are encountering with public drunkenness, the members did not think that the resolution should be by the Criminal Rules governing summary cases providing for pretrial detention of defendants charged with public drunkenness. We did, however, conclude that the questions concerning immediate trials and collateral needed to be addressed.

*Discussion of Rule Changes*

*(1) Rule 71 (Procedure Following Arrest Without Warrant)*

The Committee reviewed the Rule 71 history. The history was clear that the rule was intended to encourage immediate trials in summary cases because, given the relatively minor nature of the infractions and sentences, defendants should not be unnecessarily detained before trial. However, we found nothing in the history that addressed the issue of whether summary trials should be held in cases in which a defendant is not capable of proceeding.

The Committee discussed the matter, and applying general criminal law principles, concluded that the obvious answer is that no criminal trial should ever be held when a defendant is incompetent and unable to proceed. In view of this, the members were troubled that some members of the minor judiciary are under the impression that Rule 71 precludes them from postponing the summary trial in those cases in which the defendant was incapable of proceeding. Turning to Rule 71, the Committee noted that paragraphs (C)(1) and (C)(2) seemed to be the source of the confusion by setting forth only two situations as exceptions to the immediate trial requirement, and that the problem could be easily resolved by an expansion of the rule.

In view of these considerations, the following clarifying changes have been made to Rule 71. First, paragraph (C)(1) has been amended to include, as one of the exceptions to the immediate trial requirement, the situation in which the defendant is not capable of proceeding. In addition, paragraph (C)(1) has been amended to make it clear that, in any of the situations enumerated in the paragraph, the defendant must be given the opportunity to deposit collateral for his or her appearance at trial.

*(2) Collateral*

The Committee also reviewed the Rule 81 history concerning collateral, which is summarized in the Committee's 1983 explanatory Report describing the proposed amendments to Chapter 50. This proposal included the addition of the term "collateral" to the rules. See 13 Pa.B. 2948 (10/1/83). As explained in the Report, the term "collateral" replaced the terms "bail" and "security" in summary cases because it conveyed the dual purpose of the amount of money that is deposited: "First, the amount posted is used as bail to secure the defendant's appearance at the summary trial. Second, the amount posted is used as security when it is forfeited after conviction to satisfy any fine and costs." *Id.* at 2963.

In view of this published rule history, which distinctly articulates the scope and application of collateral in summary cases, the Committee did not think an amendment to Rule 81 was necessary. Furthermore, for the same reasons that Rule 71 requires an immediate trial in the ordinary summary case—the minor nature of the infractions and sentences, the members did not want to encourage pretrial detentions in summary cases, and agreed that Rule 81 should not provide that a defendant may be detained for failing to deposit collateral. However,

in view of the obvious confusion among members of the minor judiciary concerning detention and collateral, the Rule 81 Comment has been revised by the inclusion of the historical explanation concerning the meaning and application of collateral in summary cases.

[Pa.B. Doc. No. 99-852. Filed for public inspection May 28, 1999, 9:00 a.m.]

**PART I. GENERAL**  
**[234 PA. CODE CH. 50]**

**Rule 86, Police Officer's Presence at Summary Trial De Novo; No. 242; Criminal Procedural Rules Doc. No. 2**

The Criminal Procedural Rules Committee has prepared a Final Report explaining the May 14, 1999 amendments to Rule of Criminal Procedure 86 concerning the police officer's presence at the summary trial de novo. The Final Report follows the Court's Order.

**Order**

*Per Curiam:*

Now, this 14th day of May, 1999, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 26 Pa.B. 2166 (May 11, 1996), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 674), 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 Pa.R.Crim.P. 86 is hereby amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 1999.

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

**PART I. GENERAL**

**CHAPTER 50. PROCEDURE IN SUMMARY CASES**

**PART VI. GENERAL PROCEDURES IN SUMMARY CASES**

**Rule 86. Appeals.**

\* \* \* \* \*

(G) When a defendant appeals after conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard de novo by the appropriate division of the court of common pleas as the president judge shall direct. In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. **[ Unless the presence of the law enforcement officer is waived in open court by the defendant, the failure of the officer to appear and testify shall result in a dismissal of the charges. ]** The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

- (1) the defendant waives the presence of the law enforcement officer in open court on the record;
- (2) the defendant waives the presence of the law enforcement officer by filing a written waiver

**signed by the defendant and defense counsel, or the defendant if proceeding pro se, with the clerk of courts; or**

**(3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.**

\* \* \* \* \*

**Official Note:** Adopted July 12, 1985, effective January 1, 1986; **[ Comment ]** revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; **amended May 14, 1999, effective July 1, 1999.**

**Comment**

\* \* \* \* \*

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 85, the matter must be heard de novo by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

**The 1999 amendment of paragraph (G), made in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995), permits the court to continue the case if there is good cause for the officer's unavailability.**

\* \* \* \* \*

*Committee Explanatory Reports:*

\* \* \* \* \*

Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

**Final Report explaining the May 14, 1999 amendments to paragraph (G) concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2776 (May 29, 1999).**

**FINAL REPORT<sup>1</sup>**

**Amendment to Pa.R.Crim.P. 86 (Appeals)**

**Presence of Law Enforcement Officer at Trial De Novo**

On May 14, 1999, effective July 1, 1999, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended paragraph (G) of Pa.R.Crim.P. 86 (Appeals). This amendment expands on the exceptions to the dismissal sanction prescribed in paragraph (G) when a police officer fails to appear to include those situations when there is good cause for the absence and the trial judge grants a continuance.

*Discussion*

Rule 86(G) requires that in appeals from summary proceedings under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

officer who observed the offense must appear and testify. Paragraph (G) also provides that the failure of the officer to appear and testify must result in a dismissal of the charges unless the defendant, in open court, waives the law enforcement officer's presence. The Committee undertook a review of the Rule 86(G) dismissal provisions in view of *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995), appeal denied, 665 A.2d 467 (Pa. 1995), the first case to interpret the "dismissal" requirement of Rule 86(G) as being absolute.

In *Hightower*, the trial court granted two continuances of the trial de novo, one due to the officer's wife's sudden illness and hospitalization, and the other to accommodate the officer's scheduled vacation. The defendant contended that the trial court abused its discretion by granting a continuance when a dismissal was required. The Superior Court agreed, holding that under Pa.R.Crim.P. 86(G), when "an officer fails to appear to testify, the charges must be dismissed unless the defendant waives the officer's presence in open court. No other exception to this rule is provided." *Id.* at 873-874.

Although the Committee felt that the *Hightower* opinion was a fair reading of present Rule 86(G), we also agreed that the language of paragraph (G) was not intended to preclude a court from granting a continuance when a valid reason exists for the officer's unavailability. Accordingly, paragraph (G) has been amended by adding a "good cause" exception, and by separating into subparagraphs the waiver and good cause exceptions to the dismissal requirement. The amendment to paragraph (G) also makes it clear that the defendant may waive the officer's presence either in open court on the record or by filing with the clerk of courts a written waiver that is signed by the defendant and defense counsel, if any. In addition, the Comment has been revised to include an explanation that the new language was added in response to the *Hightower* opinion.

[Pa.B. Doc. No. 99-853. Filed for public inspection May 28, 1999, 9:00 a.m.]

## PART I. GENERAL

### [234 PA. CODE CH. 1100]

#### Rule 1104, Juror Qualification Form and Challenge to the Array; No. 241; Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the May 14, 1999 amendments to Rule of Criminal Procedure 1104 (Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array) that make it clear that the rule provides for two distinct, but related, concepts concerning the selection of jurors for service: (1) the procedures for the officials designated by law to select persons for jury service; and (2) the procedures to challenge the array of jurors. The Final Report follows the Court's Order.

#### Order

*Per Curiam:*

Now, this 14th day of May 1999, 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), with a Final Report to be published with this Order;

*It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1104 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103 (b), and shall be effective July 1, 1999.

#### Annex A

### TITLE 234. RULES AND CRIMINAL PROCEDURE

#### PART I. GENERAL

#### CHAPTER 1100. TRIAL

#### Rule 1104. Juror Qualification Form, Lists of Trial Jurors, and Challenge to the Array.

##### (A) *Juror Qualification Form and Lists of Trial Jurors.*

The officials designated by law to select persons for jury service shall:

- (1) devise, distribute, and maintain juror qualification forms as provided by law;
- (2) prepare, publish, and post lists of the names of persons to serve as jurors as provided by law; and
- (3) upon the request of the attorney for the Commonwealth or the defendant's attorney, furnish a list containing the names of prospective jurors summoned to try the case together with copies of the juror qualification forms returned by such prospective jurors.

##### (B) *Challenge to the Array.*

(1) Unless opportunity did not exist prior thereto, a challenge to the array shall be made not later than 5 days before the first day of the week the case is listed for trial of criminal cases for which the jurors have been summoned and not thereafter, and shall be in writing, specifying the facts constituting the ground for the challenge.

[ (C) ] (2) A challenge to the array may be made only on the ground that the jurors were not selected, drawn, or summoned substantially in accordance with law.

**Official Note:** Adopted January 24, 1968, effective August 1, 1968; Comment revised January 28, 1983, effective July 1, 1983; amended September 15, 1993, effective January 1, 1994; the September 15, 1993 amendments suspended December 17, 1993 until further Order of the Court; the September 15, 1993 Order amending Rule 1104 is superseded by the September 18, 1998 Order, and Rule 1104 is amended September 18, 1998, effective July 1, 1999; **amended May 14, 1999, effective July 1, 1999.**

#### Comment

The qualification, selection, and summoning of prospective jurors, as well as related matters, are generally dealt with in Chapter 45, Subchapters A—C, of the Judicial Code, 42 Pa.C.S. §§ 4501—4503, 4521—4526, 4531—4532. "Law" as used in paragraph [ (C) ] (B)(2) of this rule is intended to include these Judicial Code provisions. However, paragraphs (B)(1) and [ (C) ] (2) of this rule are intended to supersede the procedures set forth in Section 4526(a) of the Judicial Code and that provision is suspended as being inconsistent with this rule. See PA. CONST. art. V, § 10; 42 Pa.C.S. § 4526(c). Sections 4526(b) and (d)—(f) of the Judicial Code are not affected by this rule.

\* \* \* \* \*

*Committee Explanatory Reports:*

Report explaining the September 15, 1993 amendments published at 21 Pa.B. 150 (January 12, 1991). Order suspending, until further Order of the Court, the September 15, 1993 amendments concerning juror information questionnaires published at 24 Pa.B. 333 (January 15, 1994).

Final Report explaining the September 18, 1998 amendments concerning juror information questionnaires published with the Court's Order at 28 Pa.B. 4887 (October 3, 1998).

**Final Report explaining the May 14, 1999 amendments placing titles in paragraphs (A) and (B) published with the Court's Order at 29 Pa.B. 2778 (May 29, 1999).**

**FINAL REPORT<sup>1</sup>****Amendments to Pa.R.Crim.P. 1104****EDITORIAL CHANGES AND TECHNICAL CORRECTIONS**

On May 14, 1999, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court adopted changes to Pa.R.Crim.P. 1104 (Juror Quali-

<sup>1</sup> The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

fication Form, Lists of Trial Jurors, and Challenge to the Array), effective July 1, 1999.<sup>2</sup> These changes make it clear that the rule provides for two distinct, but related, concepts concerning the selection of jurors for service: (1) the procedures for the officials designated by law to select persons for jury service; and (2) the procedures to challenge the array of jurors.

Rule 1104 provides the procedures for selecting persons for jury service and challenging the array. Following the adoption on September 18, 1998 of the amendments to Rule 1104 concerning juror qualification forms, the Committee has become aware of some confusion concerning the construction of the rule. The Committee attributed the confusion to the format of the rule, and agreed that the simplest resolution would be to insert captions into the rule thereby dividing the rule into two sections. Accordingly, the rule has been modified so that paragraph (A) is titled, "Juror Qualification Forms and Lists of Trial Jurors" and new paragraph (B) is titled "Challenge to the Array," and applies to present paragraphs (b) and (c), now paragraphs (B)(1) and (B)(2).

[Pa.B. Doc. No. 99-854. Filed for public inspection May 28, 1999, 9:00 a.m.]

<sup>2</sup> These editorial changes and technical corrections are directly related to the Court's September 18, 1998 Order amending, inter alia, Rule 1104, which will become effective on July 1, 1999, and are, therefore, effective simultaneously.