

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CHS. 400, 1000, 1300, 1910, 2300, 2950, 2970 AND 3000]

Amendment of Rules Governing Service of Original Process and Other Legal Papers; No. 316 Civil Procedural Rules Doc. No. 5

Order

Per Curiam:

And Now, this 30th day of August, 1999, the effective date of the Order entered in the above matter on June 14, 1999, is hereby suspended until further Order of this Court.

[Pa.B. Doc. No. 99-1567. Filed for public inspection September 17, 1999, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 50]

Waiver of Stays of Execution of Sentence in Summary Cases

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule of Criminal Procedure 86 (Appeals), and approve the revision of the Comment to Rule 83 (Trial in Summary Cases). These changes establish a procedure for the waiver of the stay of execution of sentence in summary cases by a defendant who is represented by counsel, or who has waived counsel. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

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

The text of the proposed rule changes precedes the Report.

We request that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901, no later than Monday, September 20, 1999.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Chair

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 83. Trial in Summary Cases.

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Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998[.]; **Comment revised 1999, effective _____, 1999.**

Comment

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When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 86(B), the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, would still be able to pursue an appeal under Rule 86.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

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Committee Explanatory Reports:

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Report explaining the proposed Comment revision concerning waiver of stay of execution of sentence in summary cases published at 29 Pa.B. 4860 (September 18, 1999).

Rule 86. Appeals.

* * * * *

(B) Stays.

* * * * *

(3) A defendant who is represented by counsel, or a defendant who has waived counsel as provided in Rule 318, may waive the stay. The waiver must be in writing, signed by the defendant and defendant's counsel, if any, and made a part of the record.

[(3)] (4) ***

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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 25, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998;

amended May 14, 1999, effective July 1, 1999[.]; amended _____ 1999, effective _____, 1999.

Comment

* * * * *

The stay of the sentence of imprisonment in summary cases recognizes the limited length of the terms of imprisonment. However, there may be situations when the defendant would want the sentence to begin to run immediately following the conviction, and forego the benefits of the stay. To accommodate these extraordinary cases, paragraph (B) was amended in 1999 to permit a defendant who is represented by counsel, or who has waived counsel, to waive the stay of the execution of sentence. The waiver of the stay in no way is to be construed as a waiver of the right to appeal.

Under paragraph (B)(2), the stay applies to all "sentences" imposed after conviction, including sentences of imprisonment, fines and costs, or restitution, and sentences of imprisonment for defaults in payment pursuant to Rule 85.

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Committee Explanatory Reports:

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Final Report explaining the October 1, 1997 amendments to paragraphs (B), (D)(7), and (I) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

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Report explaining the proposed amendments to paragraph (B) adding the provision for waiver of stay of execution of sentence published at 29 Pa.B. 4860 (September 18, 1999).

REPORT

Proposed Amendments to Pa.R.Crim.P. 86 (Appeals),

Revision of the Rule 83 Comment

Waiver of Stays of Execution of Sentence in Summary Cases

The Committee is proposing that Rule 86 (Appeals) be amended, and the Comment to Rule 83 (Trial in Summary Cases) be revised, to establish procedures for permitting a defendant, who is represented by counsel or who has waived counsel, to waive the stay of the execution of sentence in a summary case.

The Committee undertook a review of the stay of execution of sentence provisions in Rule 86(B) in response to correspondence from members of the minor judiciary.¹ The correspondents pointed out that there may be situations when a defendant, who has been sentenced to imprisonment, would want to waive the 30-day stay of execution of that sentence in order to start serving the sentence of imprisonment immediately upon conviction. They noted that this situation arises when, for example, a defendant is currently incarcerated on other charges. If the defendant is able to waive the stay, the new sentence could run concurrently with the other sentence. Because the summary cases rules do not permit a waiver of the stay, and because the Administrative Offices of Pennsylvania Courts' District Justice Computer System, in implementing the stay provisions, sets the date for the execu-

¹ The correspondence was forwarded to the Committee from District Justice Fred Pierantoni, Chair of the Minor Court Rules Committee.

tion of sentence to occur after the expiration of the 30-day appeal period, the correspondents requested that the rules be amended to permit a defendant to waive the 30-day stay in Rule 86(B).

The Committee, persuaded by the correspondents' reasoning, agreed that it makes sense to permit the minor judiciary to exercise some discretion in the area of commencement of sentences, and that a waiver provision would give them a certain amount of flexibility. At the same time, the Committee was concerned about possible abuses, such as unwary defendants being pressured into waiving the 30-day stay, so the defendants end up serving their sentences of imprisonment before they have an opportunity to appeal, thereby abrogating the purpose of the stay provisions. The Committee also was concerned that, if the rules permit a waiver of the stay, this might be interpreted as a waiver of the right to appeal. We agreed that any procedure proposed that would permit the waiver of the stay would have to address these issues too.

Accordingly, to provide for a waiver and to address these issues, the Committee has settled on the following proposed changes:

1. Rule 86(B) would be amended by adding a waiver of the stay provision. See paragraph (B)(3). As a means of protecting against abuses, the waiver provision would be limited to those defendants who are represented by counsel, or who have waived counsel pursuant to Rule 318. The Committee feels strongly that the waiver should only be by defendants who are represented, but recognizes the realities of summary case proceedings in which many defendants elect to proceed without counsel, even when there is a likelihood of a sentence of imprisonment. We, therefore, agreed that these pro se defendants should be given the same benefits of a waiver as represented defendants.

2. The amendment would require that the waiver of the stay be in writing, signed by the defendant and defendant's counsel, if any, and made a part of the record. The Committee is proposing this requirement because the minor judiciary courts are courts not of record, and we agreed that it is important to have a written record of all waivers to provide a means to monitor waivers.

3. The Rule 86 Comment would elaborate on the situations when it would be appropriate for a defendant to waive the stay, and would make it clear that the waiver of the stay in no way affects the defendant's right to appeal.

4. The Rule 83 Comment would be revised to alert the minor judiciary to the waiver of stay of execution of sentence provisions in Rule 86, and that they may fix the commencement date of the sentence of imprisonment to be the date of conviction when there is a waiver. The provision also clarifies that the waiver does not preclude the defendant from appealing the conviction.

[Pa.B. Doc. No. 99-1568. Filed for public inspection September 17, 1999, 9:00 a.m.]

[234 PA. CODE CH. 4000]

Order Amending Rule 4002 and Revising the Comment to Rule 4001; No. 253, Criminal Procedural Rules Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the September 3, 1999

amendment to Rule of Criminal Procedure 4002 (Release Criteria), and revision of the Comment to Rule 4001 (Bail Before Verdict). These changes align the Criminal Rules with the 1998 amendment to article I, § 14 of the Pennsylvania Constitution. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this third day of September, 1999, upon the recommendation of the Criminal Procedural Rules Committee, this proposal having been submitted without publication pursuant to Pa.R.J.A. 103 (a)(3), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule of Criminal Procedure 4002 is amended, and the Comment to Rule 4001 is revised, all in the following form.

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

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 4000. BAIL

PART I. PROCEDURES FOR PRE-VERDICT RELEASE

Rule 4001. Bail Before Verdict.

[(a)] (A) Bail before verdict shall be set in all cases as permitted by law. Whenever bail is refused, the bail authority shall state in writing or on the record the reasons for that determination.

[(b)] (B) A defendant may be admitted to bail on any day and at any time.

Official Note: Former Rule 4001 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4002; amended January 28, 1983, effective July 1, 1983; Comment revised September 23, 1985, effective January 1, 1986; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4001. Present Rule 4001 adopted 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; **Comment revised September 3, 1999, effective immediately.**

Comment

This rule carries over the provisions of former Rule 4001 (Bail Before Verdict).

Article I, § 14 of the Pennsylvania Constitution was amended in 1998 to read: "All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it."

For the minor judiciary's authority to set bail, see the Judicial Code, 42 Pa.C.S. §§ 1123(a)(5), 1143(a)(1), and 1515(a)(4).

See *Commonwealth v. Truesdale*, 296 A.2d 829 (Pa. 1972), concerning the bail authority's discretion to refuse bail under paragraph **[(a)] (A)**.

Under paragraph **[(a)] (A)**, whenever the bail authority is a judicial officer in a court not of record, that officer must set forth in writing his or her reasons for refusing bail, and the written reasons must be included with the docket transcript.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the 1999 Comment revision concerning the 1998 constitutional amendment providing for preventive detention published with the Court's Order at 29 Pa.B. 4862 (September 18, 1999).

Rule 4002. Release Criteria.

[(a)] (A) To determine whether to release a defendant, and what conditions, if any, to impose, the bail authority shall consider all available information, **[but only]** as that information is relevant to the defendant's appearance or nonappearance at subsequent proceedings, or compliance or noncompliance with the conditions of the bail bond, including information about:

- (1) the nature of the offense charged and any mitigating or aggravating factors that may bear upon the likelihood of conviction and possible penalty;
- (2) the defendant's employment status and history, and financial condition;
- (3) the nature of the defendant's family relationships;
- (4) the length and nature of the defendant's residence in the community, and any past residences;
- (5) the defendant's age, character, reputation, mental condition, and whether addicted to alcohol or drugs;
- (6) if the defendant has previously been released on bail, whether he or she appeared as required and complied with the conditions of the bail bond;
- (7) whether the defendant has any record of flight to avoid arrest or prosecution, or of escape or attempted escape;
- (8) the defendant's prior criminal record;
- (9) any use of false identification; and
- (10) any other factors relevant to whether the defendant will appear as required and comply with the conditions of the bail bond.

[(b)] (B) The decision of a defendant not to admit culpability or not to assist in an investigation shall not be a reason to impose additional or more restrictive conditions of bail on the defendant.

Official Note: Previous Rule 4002, formerly Rule 4003, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4002 and amended July 23, 1973, effective 60 days hence; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and not replaced. Present

Rule 4002 adopted 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 September 3, 1999, effective immediately.**

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Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the 1999 amendment concerning the 1998 constitutional amendment providing for preventive detention and deleting "but only" published with the Court's Order at 29 Pa.B. 4862 (September 18, 1999).

FINAL REPORT¹

Amendment to Pa.R.Crim.P. 4002 (Release Criteria);
Revision of the Comment to Rule 4001 (Bail Before Verdict)

Preventive Detention

On September 3, 1999, upon recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania adopted the amendments to Rule 4002 (Release Criteria), and approved the revision of the Comment to Rule 4001 (Bail Before Verdict). These changes, which are effective immediately, align the Criminal Rules with the 1998 amendment to article I, § 14 of the Pennsylvania Constitution.

The Committee reviewed the new provisions of article I, § 14, and agreed that some changes to Chapter 4000 (Bail) were necessary. We contemplated providing procedures in the Criminal Rules for making bail determinations under the amendment similar to the procedures in the Federal Rules, see Fed. R. Crim. P. 43. The members pointed out, however, that (1) the Pennsylvania Constitutional provisions concerning bail differ from the bail provisions in the 8th amendment to the U. S. Constitution, and (2) since the Pennsylvania constitutional amendment was approved, several individuals are questioning its interpretation. In view of these concerns, we agreed that, until the courts address these questions, the Criminal Rules should be changed only to acknowledge the amendment. Accordingly, the Court amended Rule 4002 by deleting the language "but only" in paragraph (A) to make it clear that in making the determination to release the defendant, the bail authority may consider whether conditions exist that would reasonably assure the safety of any person and the community when the proof is evident or the presumption great. The court also approved a correlative revision of the Rule 4001 Comment that recognizes the 1998 amendment to article I, § 14 of the Pennsylvania Constitution by setting forth the language of the amendment.

[Pa.B. Doc. No. 99-1569. Filed for public inspection September 17, 1999, 9:00 a.m.]

Title 25—LOCAL COURT RULES

DELAWARE COUNTY

Fee Increases; 99-80338

Order

And Now, this 17th day of August, 1999, it is hereby *Ordered and Decreed* as follows:

The cost of all evaluations ordered by the Court is the responsibility of each defendant. These fees are to be assessed to the defendant's cost-sheet. The fees listed below, which have not been increased in 12 years, are to be increased effective October 1, 1999:

Drug and Alcohol Evaluation from \$60.00 to \$75.00

Psychological Evaluation from \$150.00 to \$185.00

Psychological/D & A Evaluation from \$185.00 to \$220.00

Psychiatric Evaluation from \$75.00 to \$150.00

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 99-1570. Filed for public inspection September 17, 1999, 9:00 a.m.]

LANCASTER COUNTY

Pa.R.C.P. No. 400.1(b)(1); Administrative Order; Administrative Docket Book 1, Page 25; Trust Book No. 50; Page 435A

Order

And Now, August 25, 1999, pursuant to Pa. R.C.P. No. 400.1(b)(1), as recently amended by the Supreme Court of Pennsylvania to take effect on September 1, 1999, it is hereby ordered that original process shall be served within Lancaster County:

(1) by the Sheriff or competent adult in actions in equity, in partition, to prevent waste and for declaratory judgment when declaratory relief is the only relief sought and

(2) by the Sheriff in all other actions.

This Order shall remain in effect until an addendum to the Lancaster County Rules of Civil Procedure is adopted to so provide.

By the Court

MICHAEL A. GEORGELIS,
Acting President Judge

Rule No. 400.1(b)(1)

Original process shall be served within Lancaster County: (1) by the Sheriff or a competent adult in actions in equity, in partition, to prevent waste and for declaratory judgment when declaratory relief is the only relief sought and (2) by the Sheriff in all other actions.

[Pa.B. Doc. No. 99-1571. Filed for public inspection September 17, 1999, 9:00 a.m.]

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

LEHIGH COUNTY

Adoption of Local Rule of Civil Procedure 400.1, Person to Make Service; 99-J-14

Now, this 31st day of August, 1999,

It Is Ordered, that the following Lehigh County Local Rule of Civil Procedure, Person to Make Service, is hereby adopted, to become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

The Court Administrator of Lehigh County is directed to:

1. File seven (7) certified copies of this order with the Administrative Office of Pennsylvania Courts.
2. File two (2) certified copies and one disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
3. File one (1) certified copy with the Pennsylvania Civil Procedural Rules Committee.
4. File one (1) copy with the Clerk of Courts of the Lehigh County Court of Common Pleas.
5. Forward one (1) copy for publication in the *Lehigh County Law Journal*.

By the Court

JAMES KNOLL GARDNER,
President Judge

Rule 400.1. Person to Make Service.

Except for domestic relations matters as provided in Pa.R.C.P. No. 1930.4, original process shall be served within the Commonwealth

- (a) by the sheriff or competent adult in actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and
- (b) by the sheriff in all other actions.

[Pa.B. Doc. No. 99-1572. Filed for public inspection September 17, 1999, 9:00 a.m.]

LYCOMING COUNTY

Rule of Civil Procedure No. 400.1(b)

Order

And Now, this 31st day of August, 1999, the Court hereby adopts the following Lycoming County Rule of Civil Procedure, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2)

certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee and one (1) copy to the *Lycoming Reporter* for publication in the next issue of the *Lycoming Reporter*.

It is further ordered that the local rule shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

By the Court

CLINTON W. SMITH,
President Judge

Rule 400.1(b)

Original process shall be served within the Commonwealth

(i) by the sheriff or a competent adult in all actions in equity, in partition, to prevent waste, and for declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the sheriff in all other actions.

[Pa.B. Doc. No. 99-1573. Filed for public inspection September 17, 1999, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that on August 25, 1999 pursuant to Rule 208(f), Pa.R.D.E., the Supreme Court of Pennsylvania ordered that Marc Joseph Malfara be placed on Temporary Suspension until further definitive action by this Court, to be effective September 24, 1999. 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. 99-1574. Filed for public inspection September 17, 1999, 9:00 a.m.]