

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 100, 200, 4000 AND 6000]

Procedure When Defendant Fails to Appear for
Preliminary Hearing: Arrest Warrants

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 109, 110, 112, 113, 140, 141, 142, 146, 6000, 6001, 6003, and 9024, and approve revisions of the Comments to Pa.Rs.Crim.P. 225, 231, 4008, and 4016. These rule changes establish one statewide, uniform procedure for handling court cases in which a defendant has failed to appear for the preliminary hearing: if a defendant fails to appear for the preliminary hearing after notice and without cause, the defendant's absence will be deemed a waiver of the defendant's right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights some additional changes that have been made to the proposal as the result of the Committee's review of the comments we received in response to the publication of the proposal at 29 Pa.B. 6454 (December 25, 1999). Please note that the Committee's Supplemental Report 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 additional proposed rule changes preceeds the Supplemental Report and is shown in small caps and bold, and is underlined.¹

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 18, 2000.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Secretary

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 100. PROCEDURE IN COURT CASES PART IV. PROCEEDINGS BEFORE ISSUING AUTHORITIES

Rule 142. Disposition of Case at Preliminary Hearing.²

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

¹ The other proposed changes shown just in bold and underlining and in bold and brackets are the proposed additions and deletions that are discussed in the Committee's explanatory Report published in December 1999.

² Rule 142 will be renumbered Rule 543 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

[(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) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 141(D).³

(2) If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. In these cases, the issuing authority shall:

(A) PROCEED WITH THE CASE IN THE SAME MANNER AS THOUGH THE DEFENDANT WERE PRESENT; AND

(B) IF THE CASE IS HELD FOR COURT OR IF THE PRELIMINARY HEARING IS CONTINUED, ISSUE A WARRANT FOR THE ARREST IF THE DEFENDANT.

(3) WHEN THE ISSUING AUTHORITY ISSUES A WARRANT PURSUANT TO PARAGRAPH (D)(2)(B), THE ISSUING AUTHORITY RETAINS JURISDICTION TO DISPOSE OF THE WARRANT UNTIL:

(A) THE FORMAL ARRAIGNMENT OCCURS; OR

(B) THE DEFENDANT FAILS TO APPEAR FOR THE FORMAL ARRAIGNMENT AND THE COMMON PLEAS COURT JUDGE ISSUES A BENCH WARRANT FOR THE DEFENDANT.

Official Note: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; **renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended _____, 2000, effective _____, 2000.**

Comment

Paragraph **[(b)] (C)** was amended in 1983 to reflect the fact that a bail determination will already have been made at the preliminary arraignment, except in those

³ Rule 141 will be renumbered Rule 542 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

cases [where] in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 109 and 110.⁴

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 140(E)(2) or in a summons served as provided in Rule 112, and (2) whether the defendant had good cause explaining the absence.⁵

If the issuing authority determines that the defendant did not receive notice or that there is good cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. See paragraph (D)(1). For the procedures when a preliminary hearing is continued, see Rule 141(D).⁶

If the issuing authority determines that the defendant received notice and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without cause, paragraph (D)(2)(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 141(A), (B), (C) and Rule 142(A), (B), and (C); or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 141(D); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain.⁷ When the case is continued, the issuing authority still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)(2)(b) requires the issuing authority to issue an arrest warrant if the case is held for court or when the preliminary hearing is continued.

IT IS EXPECTED PURSUANT TO PARAGRAPH (D)(3).

(A) IN THOSE CASES IN WHICH A DEFENDANT IS APPREHENDED ON THE ISSUING AUTHORITY'S WARRANT PRIOR TO THE FORMAL ARRAIGNMENT OR THE ISSUANCE OF A COMMON PLEAS JUDGE'S BENCH WARRANT, THE DEFENDANT WILL BE TAKEN BEFORE THE ISSUING AUTHORITY FOR RESOLUTION OF THE WARRANT, COUNSEL, AND BAIL, AND

(B) IMMEDIATELY FOLLOWING THE FORMAL ARRAIGNMENT OR THE ISSUANCE OF A COMMON PLEAS COURT

⁴ Rules 109 and 110 will be renumbered Rules 509 and 510 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

⁵ Rules 140 and 112 will be renumbered Rules 540 and 511 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

⁶ Rule 141 will be renumbered Rule 542 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

⁷ Rule 142 will be renumbered Rule 543 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

JUDGE'S BENCH WARRANT, THE CLERK OF COURTS OR COURT ADMINISTRATOR MUST NOTIFY THE ISSUING AUTHORITY, AND THE ISSUING AUTHORITY MUST RECALL AND CANCEL THE WARRANT.

FOR THE PURPOSES OF SETTING BAIL ONCE BAIL HAS BEEN SET BY A COMMON PLEAS JUDGE, SEE RULES 4008 AND 4016.⁸

SEE RULE 303 (ARRAIGNMENT) FOR NOTICE OF FORMAL ARRAIGNMENT REQUIREMENTS.⁹

SEE RULE 6003 (PROCEDURE IN NON-SUMMARY MUNICIPAL COURT CASES) FOR THE PRELIMINARY HEARING PROCEDURES IN MUNICIPAL COURT.¹⁰

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Supplemental Report explaining the proposed changes concerning warrant procedures published at 30 Pa.B. 4547 (September 2, 2000).

**CHAPTER 200. INFORMATIONS AND INVESTIGATING GRAND JURIES
PART I. INFORMATIONS**

Rule 225. Information: Filing, Contents, Function.¹¹

* * * * *

Official Note: Rule 225 [Adopted] adopted February 15, 1974, effective immediately; Comment revised January 28, 1983, effective July 1, 1983; amended August 14, 1995, effective January 1, 1996; **renumbered Rule 560 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.**

Comment

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SEE RULE 142(D) FOR THE PROCEDURES WHEN A DEFENDANT FAILS TO APPEAR FOR THE PRELIMINARY HEARING.¹² WHEN THE PRELIMINARY HEARING IS HELD IN THE DEFENDANT'S ABSENCE AND THE CASE IS HELD FOR COURT, THE ATTORNEY FOR THE COMMONWEALTH SHOULD PROCEED AS PROVIDED IN THIS RULE.

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Supplemental Report explaining the proposed Comment revision concerning failure to appear for preliminary hearing published at 30 Pa.B. 4547 (September 2, 2000).

⁸ Rules 4008 and 4016 will be renumbered Rules 529 and 536 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

⁹ Rule 303 will be renumbered Rule 571 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

¹⁰ Rule 6003 will be renumbered Rule 1003 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

¹¹ Rule 225 will be renumbered Rule 560 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

¹² Rule 142 will be renumbered Rule 543 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

Rule 231. Presentation of Information Without Preliminary Hearing.¹³

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Official Note: Rule 231 [Adopted] adopted February 15, 1974, effective immediately; amended April 26, 1979, effective July 1, 1979; amended August 12, 1993, effective September 1, 1993; renumbered Rule 565 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.

Comment

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NOTHING IN THIS RULE IS INTENDED TO PRECLUDE THE ATTORNEY FOR THE COMMONWEALTH FROM FILING AN INFORMATION OR FROM HAVING THE DATE FOR THE FORMAL ARRAIGNMENT SCHEDULED IN THOSE CASES IN WHICH THE ISSUING AUTHORITY HAS CONDUCTED THE PRELIMINARY HEARING IN THE DEFENDANT'S ABSENCE AS PROVIDED IN RULE 142(D).¹⁴

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Supplemental Report explaining the proposed Comment revision concerning preliminary hearing in defendant's absence published at 30 Pa.B. 4547 (September 2, 2000).

CHAPTER 4000. BAIL

PART I. PROCEDURES FOR PRE-VERDICT RELEASE

Rule 4008. Modification of Bail Order Prior to Verdict.¹⁵

* * * * *

Official Note: Former Rule 4008, adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4010. Present Rule 4008 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 529 and amended March 1, 2000, effective April 1, 2001; Comment revised _____, 2000, effective _____, 2000.

Comment

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In Municipal Court cases, the Municipal Court judge may modify bail in the same manner as a common pleas court judge may under this rule. See Rule 6011.¹⁶

ONCE BAIL HAS BEEN MODIFIED BY A COMMON PLEAS JUDGE, ONLY THE COMMON PLEAS JUDGE SUBSEQUENTLY

¹³ Rule 231 will be renumbered Rule 565 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

¹⁴ Rule 142 will be renumbered Rule 543 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

¹⁵ Rule 4008 will be renumbered Rule 529 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

¹⁶ Rule 6011 will be renumbered Rule 1011 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

MAY MODIFY BAIL, EVEN IN CASES THAT ARE PENDING BEFORE A DISTRICT JUSTICE. SEE RULES 142 AND 4016.¹⁷

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Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Supplemental Report explaining the proposed Comment revision published at 30 Pa.B. 4547 (September 2, 2000).

PART III. GENERAL PROCEDURES IN ALL BAIL CASES

Rule 4016. Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture: Bail Pieces; Exoneration of Surety.¹⁸

* * * * *

Official Note: Former Rule 4016 [,] adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; Comment revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 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; renumbered Rule 536 and Comment revised March 1, 2000, effective April 1, 2001 ; Comment revised _____, 2000, effective _____, 2000.

Comment

* * * * *

ONCE BAIL HAS BEEN MODIFIED BY A COMMON PLEAS JUDGE PURSUANT TO RULE 4008, ONLY THE COMMON PLEAS JUDGE SUBSEQUENTLY MAY CHANGE THE CONDITIONS OF RELEASE, EVEN IN CASES THAT ARE PENDING BEFORE A DISTRICT JUSTICE. SEE RULES 142 AND 4008.¹⁹

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

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Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Supplemental Report explaining the proposed Comment revision published at 30 Pa.B. 4547 (September 2, 2000).

¹⁷ Rules 142 and 4016 will be renumbered Rule 543 and 536 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

¹⁸ Rule 4016 will be renumbered Rule 536 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

¹⁹ Rules 142 and 4008 will be renumbered Rule 543 and 529 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

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

* * * * *

Rule 6003. Procedure in Non-Summary Municipal Court Cases.²⁰

A. INITIATION OF CRIMINAL PROCEEDINGS

(1) Criminal proceedings in court cases [which charge any misdemeanor under the Crimes Code or other statutory criminal offenses, other than a summary offense, for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years] shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a felony or misdemeanor is committed in the presence of the police officer making the arrest; or

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law [.] ; or

(c) an arrest without a warrant upon probable cause when the offense is a felony.

* * * * *

B. CERTIFICATION OF COMPLAINT

Before a Municipal Court judge may issue process or order further proceedings [in a Municipal Court case], the judge shall ascertain and certify on the complaint that:

* * * * *

(C) SUMMONS AND ARREST WARRANT PROCEDURES

When a Municipal Court judge finds grounds to issue process based on a complaint, the judge shall:

* * * * *

(2) issue a warrant of arrest when:

* * * * *

(e) the identity of the defendant is unknown; [or]

(f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or

* * * * *

D. PRELIMINARY ARRAIGNMENT

(1) When a defendant has been arrested within Philadelphia County [in a Municipal Court case], with or without a warrant, the defendant shall be afforded a preliminary arraignment by a Municipal Court judge without unnecessary delay. If the defendant was arrested without a warrant pursuant to paragraph (A)(1)(a) or (b), unless the Municipal Court judge makes a determination of probable cause, the defendant shall not be detained.

(2) At the preliminary arraignment, the Municipal Court judge:

* * * * *

(d) shall also inform the defendant:

(ii) in a Municipal Court case, of the day, date, hour, and place for trial, which shall not be less than 20 days after the preliminary arraignment unless the [issuing authority] Municipal Court judge fixes an earlier date upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth; [and]

(iii) in a case charging a felony, of the date, time, and place of the preliminary hearing, which shall not be less than 3 nor more than 10 days after the preliminary arraignment unless extended for cause or the Municipal Court judge fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and

[(iii)] (iv) * * *

* * * * *

E. PRELIMINARY HEARING IN CASES CHARGING A FELONY

(1) In cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 141 (Preliminary Hearing; Continuances) and Rule 142 (Disposition of Case at Preliminary Hearing).²¹

(2) In any case in which the defendant fails to appear for the preliminary hearing, if the Municipal Court judge finds that:

(a) the defendant did not receive notice, or finds that there was good cause explaining the defendant's failure to appear, the judge shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 141(D); or

(b) the defendant's absence is without cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the Municipal Court judge. In these cases, the judge shall:

(i) PROCEED WITH THE CASE IN THE SAME MANNER AS THOUGH THE DEFENDANT WAS PRESENT; AND

(ii) IF THE CASE IS HELD FOR COURT OR THE PRELIMINARY HEARING CONTINUED, ISSUE A WARRANT FOR THE ARREST OF THE DEFENDANT.

(3) WHEN THE ISSUING AUTHORITY ISSUES A WARRANT PURSUANT TO PARAGRAPH (E)(2)(B)(II), THE MUNICIPAL COURT JUDGE RETAINS JURISDICTION TO DISPOSE OF THE WARRANT UNTIL;

(a) THE FORMAL ARRAIGNMENT OCCURS; OR

(b) THE DEFENDANT FAILS TO APPEAR FOR THE FORMAL ARRAIGNMENT AND THE COMMON PLEAS COURT JUDGE ISSUES A BENCH WARRANT FOR THE DEFENDANT.

[(E)] (F). ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Quarter Sessions shall accept bail at any time prior to the Municipal Court trial.

Official Note: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective

²⁰ Rule 6003 will be renumbered Rule 1003 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

²¹ Rules 141 and 142 will be renumbered Rules 542 and 543 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted 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; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended _____, 2000, effective _____, 2000.

Comment

[Former Rule 6003 was rescinded and replaced by new Rule 6003 in 1994. Although Rule 6003 has been extensively reorganized, only subsections (D)(1) and (D)(2)(c) reflect changes in the procedures contained in the former rule.]

The 2000 amendments make it clear that Rule 6003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 6001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.²²

See Chapter 100 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.²³

The 2000 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 101 (Means of Instituting Proceedings in Court Cases).²⁴

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary cases in Municipal Court [cases] with the statewide procedures for private complaints in Rule 106 (Approval of Private Complaints).²⁵ In all cases [where] in which the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

* * * * *

Under paragraph D(3), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post

²² Rules 6003 and 6001 will be renumbered Rules 1003 and 1001 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

²³ Chapter 100 will be renumbered Chapter 5 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

²⁴ Rule 101 will be renumbered Rule 502 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

²⁵ Rule 106 will be renumbered Rule 506 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

As provided in paragraph (E)(2)(b), a defendant who is absent without cause and after notice will be deemed to have waived his or her right to be present for subsequent proceedings before the Municipal Court judge. The duration of this waiver only extends through those proceedings that the defendant is absent.

When a defendant is absent without cause after notice, the case will proceed in the same manner as if the defendant were present. The judge should proceed with the preliminary hearing as provided in Rule 141(A), (B), and (C) and Rule 142(A), (B), and (C); or, if the judge determines it necessary, continue the case to a date certain as provided in Rule 141(D); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the judge still should send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.²⁶

If the case is held for court following a preliminary hearing in the defendant's absence or the preliminary hearing is continued, the Municipal Court judge must issue an arrest warrant as provided in paragraph (E)(2)(b)(ii).

SEE RULE 303 (ARRAIGNMENT) FOR NOTICE OF ARRAIGNMENT REQUIREMENTS.²⁷

Committee Explanatory Reports:

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Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Supplemental Report explaining the proposed changes concerning warrant procedures published at 30 Pa.B. 4547 (September 2, 2000).

SUPPLEMENTAL REPORT

Proposed Amendments to Pa.Rs.Crim.P. 142 and 6003, and Correlative Revisions of the Comments to Pa.Rs.Crim.P. 225, 231, 4008, and 4016

PROCEDURE WHEN DEFENDANT FAILS TO APPEAR FOR PRELIMINARY HEARING: ARREST WARRANTS

I. Background²⁸

The Committee published a proposal for statewide, uniform rules establishing the procedures governing cases in which a defendant fails to appear for a preliminary hearing. The proposal, published at 29 Pa.B. 6454 (December 25, 1999), provides when the defendant's absence is without cause that the district justice is to issue an arrest warrant, and the defendant's absence will be deemed a waiver of his or her presence at all proceedings

²⁶ Rules 141 and 142 will be renumbered Rules 542 and 543 respectively as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

²⁷ Rule 303 will be renumbered Rule 571 as part of the renumbering and reorganization of the Rules of Criminal Procedure the Court adopted on March 1, 2000, effective April 1, 2001.

²⁸ For purposes of this Supplemental Report, we only discuss the post-publication changes to Rules 142, 225, 231, 4008, 4016, and 6003. The remainder of the proposed changes to Rules 142 and 6003, as well as all the proposed changes to Rules 109, 110, 113, 140, 141, 6000, 6001, and 9024 have not been modified since publication.

that arise during the defendant's absence. The published proposal did not include specific procedures concerning the arrest warrant. In response to the publication of the proposal, the Committee received a number of letters that questioned how the warrant would be handled, particularly in those cases in which the preliminary hearing is held in the defendant's absence. For example:

(1) If the case is held for court, following the issuance of the warrant, would the defendant be returned to the district justice who issued the warrant, or should the defendant be taken to the court of common pleas?

(2) If the charges are dismissed, must the district justice issue a warrant?

(3) How long would the district justice's warrant be effective?

The correspondents suggested that this issue should be resolved to provide the uniformity in practice that the Committee is trying to accomplish with the proposal.

The Committee agreed with the correspondents that the proposal should address the particulars concerning the issuance and execution of arrest warrants in failure to appear cases. Accordingly, the Committee is proposing several additional changes to Rules 142 (Disposition of Case at Preliminary Hearing) and 6003 (Procedure in Non-summary Municipal Court Cases).

In addition, as a result of our post-publication review, the Committee agreed to make some correlative changes. First, we are proposing revisions of the Comments to Rules 225 (Information: Filing, Contents, Function) and 231 (Presentation of Information Without Preliminary Hearing) that would remind the bench and bar that cases in which the preliminary hearing is held in the defendants' absence are to be treated in the same manner as any other case held for court following a preliminary hearing. Second, the Committee is proposing revisions of the Comments to Rules 4008 (Modification of Bail Order Prior to Verdict) and 4016 (Procedures Upon Violation of Conditions: Revocation of Release and Forfeiture; Bail Pieces; Exoneration of Surety) that would clarify in those cases in which a common pleas judge has modified bail before the preliminary hearing, the issuing authority may not modify bail when a defendant fails to appear for the preliminary hearing.

II. Discussion of Rule Changes

A. Arrest Warrant Procedures: Rules 142 and 6003

The Committee considered that there are two options for handling arrest warrants issued by a district justice following a defendant's failure to appear for the preliminary hearing—jurisdiction over the warrant could stay with the issuing authority or move with the case to the court of common pleas. We settled on a procedure in which the jurisdiction of the warrant stays with the issuing authority because, in most cases, the issuing authority will have set the bail and will be the most familiar with the case for purposes of making a post-arrest bail decision. By having the issuing authority retain jurisdiction in these cases, there is a greater likelihood that the defendant will be located quickly and processed in a timely manner without the delay that would occur with the case moving to the common pleas court. In addition, the Committee was sensitive to the fact that common pleas judges would not want the additional burden of handling these warrant cases prior to the arraignment.

The Committee recognized that there had to be an outside limit for the issuing authority's jurisdiction, and

approved the concept that the issuing authority retains jurisdiction over the warrant until either the formal arraignment occurs or the common pleas judge issues a bench warrant when the defendant fails to appear for the formal arraignment—either of these "events" extinguishes the warrant. Once either event occurs, it is expected that the clerk of courts or the court administrator will notify the issuing authority so he or she may recall and cancel the warrant.²⁹ Both Rules 142(D)(3) and 6003(E)(3) set forth this jurisdictional concept. In view of the reference to the common pleas judge issuing a bench warrant following a failure to appear for the formal arraignment, the Committee agreed to include in the Comments to Rules 142 and 6003 a cross-reference to Rule 303 to emphasize the notice of formal arraignment procedures.

The last paragraph of the Rule 142 Comment provides a gloss on the Rule 142 changes. First, the Comment explains when the defendant is apprehended while the case is still within the issuing authority's jurisdiction, the defendant is taken to the issuing authority for "resolution of the warrant, counsel, and bail." It is expected the district justice will follow Rule 4016 concerning bail, and will advise the defendant concerning his or her right to counsel if the defendant is not represented. Second, the Comment provision explains that either the clerk of courts or the court administrator should advise the issuing authority when his or her jurisdiction over the warrant has ended, and in that event, "the issuing authority must recall and cancel the warrant."

Finally, the Committee agreed that both Rules 142 and 6003 should be modified to clarify that in those cases in which a preliminary hearing is held in the defendant's absence and the case is dismissed, no warrant would be issued. To accomplish this, in Rule 142(D)(2), paragraphs (a) and (b) have been reversed from the way they were published so the "proceed with the case . . ." clause is first and "issue a warrant . . ." clause is second. In addition, the following introductory phrase has been added to the warrant provision: "if the case is held for court or the preliminary hearing is continued." Comparable changes have been made to Rule 6003(E)(2)(b)(i) and (ii).

B. Correlative Comment Revisions

1. Rules 225 and 231

Following the publication of the proposal, concern was expressed that the application of Rules 225 and 231 to the proposed procedure for proceeding with the preliminary hearing in the defendant's absence might be confusing. Acknowledging the intent of the proposed procedure is that a case that is bound over following a preliminary hearing in a defendant's absence is to be treated in the same manner as any other case that is bound over for court, the Committee agreed the Comments to Rules 225 and 231 should include a brief explanation that the attorney for the Commonwealth should prepare the information and proceed in the same manner with these cases as with any other case that is held for court.

2. Bail: Rules 142, 4008, and 4016

Another issue that was raised following publication concerned the interplay between Rule 4008, which prohibits a district justice from modifying bail after bail has been modified by a common pleas judge, and Rule 4016, which permits the bail authority to change the conditions of release when a person violates a condition of the bail bond—if the modification by the common pleas judge occurs while the case is pending with the district justice

²⁹ The terms "recall" and "cancel" are taken from the district justices' computer manual for the procedures of handling warrants.

and conditions change following the modification, such as the defendant fails to appear for a preliminary hearing and the district justice issues a warrant, would the district justice be authorized to modify the bail pursuant to Rule 4016? After reviewing the Committee's rule history, the members concluded that Rule 4008 "trumps" Rule 4016: once a common pleas judge modifies bail, only the common pleas judge subsequently may modify bail, even in cases that still are pending before the district justice. In the failure to appear warrant context, once the defendant is apprehended, the decision to change the conditions of bail would have to be made by the common pleas judge, although the district justice would be authorized to hold the defendant pending this decision pursuant to Rule 4016(d).

The Committee noted that, although this scenario will not occur frequently, the issue is one that could create confusion. We agreed that something should be included in the rules to clarify this interplay. Accordingly, we are proposing revisions of the Comments to Rules 142, 4008, and 4016. The Rule 142 Comment revision would cross-reference Rules 4008 and 4016. The revision of the Comments to Rules 4008 and 4016 would explain the interplay between the two rules: once bail has been set by a common pleas judge pursuant to Rule 4008, only the common pleas judge may change the conditions as provided in Rule 4016(A) even when the case is pending before a district justice.

[Pa.B. Doc. No. 00-1497. Filed for public inspection September 1, 2000, 9:00 a.m.]

Title 255—LOCAL RULES OF COURT

BRADFORD COUNTY

Rules of Civil Procedure Nos. 1018 and 1018.1; Caption and Notice to Defend Form

Order

And now, this 15th day of August, 2000, the Court hereby adopts the attached Bradford 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 *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

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

By the Court

JEFFREY A. SMITH,
President Judge

Rule 1018. Caption.

Every pleading shall contain a caption setting forth the name of the court, the number of the action and the name of the pleading. The caption of any agreement, stipulation, exception, discontinuance, praecipe to withdraw or order relating to support, custody, alimony, alimony pendente lite or divorce shall include the following: the right-hand side of the caption shall contain information specifically identifying what issues are or will be resolved thereby, along with the date of filing of the pleading which raised the issue.

The caption shall be in substantially the following form:

(PLAINTIFF)	:	IN THE COURT OF COMMON PLEAS
VS.	:	OF BRADFORD COUNTY, PENNSYLVANIA
(DEFENDANT)	:	NO.
	:	(SUPPORT ISSUE) FILED: (Date)
	:	(CUSTODY ISSUE) FILED: (Date)
	:	(DIVORCE ISSUE) FILED: (Date)

Rule 1018.1. Notice to Defend. Form.

The following shall be designated in the Notice to Defend form as the office that parties may contact to find where they can get legal help.

PROTHONOTARY
Bradford County Courthouse
301 Main Street
Towanda, PA 18848
(570) 265-1705

[Pa.B. Doc. No. 00-1498. Filed for public inspection September 1, 2000, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that William G. Dade, having been disbarred from the practice of law in the Commonwealth of Virginia, the Supreme Court of Pennsylvania issued an Order dated August 18, 2000 disbarring William G. Dade from the practice of law in this Commonwealth, to become effective September 17, 2000. 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

[Pa.B. Doc. No. 00-1499. Filed for public inspection September 1, 2000, 9:00 a.m.]
