THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 1000]

Proposed Recommendation No. 178; Request for Comment upon Proposal of the Pennsylvania Bar Association for Amendment of Rule 1023

The Civil Procedural Rules Committee is requesting comment upon a proposal of the Pennsylvania Bar Association for the amendment of Rule of Civil Procedure 1023 as set forth herein. The Committee will consider the proposed amendment and any comments to the proposal at its March 2002 meeting prior to making any recommendation to the Supreme Court of Pennsylvania.

All communications in reference to the proposal of the Pennsylvania Bar Association should be sent not later than March 8, 2002 to:

Harold K. Don, Jr., Esquire
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055
or E-Mail to
civil.rules@supreme.court.state.pa.us

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 1000. ACTIONS AT LAW

Subchapter A. CIVIL ACTION

PLEADINGS

(*Editor's Note*: As part of this proposed rulemaking, Rule 1023 is proposed to be replaced. It currently appears in 231 Pa. Code pages 1000-11—1000-12, serial pages (255203)—(255204).)

Rule 1023. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions.

(a) *Signature*. Every pleading, written motion, and other paper directed to the court shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. This rule shall not be construed to suspend or modify the provisions of Rule 1024 or Rule 1029(e).

(b) *Representations to Court*. The signature of an attorney or pro se party constitutes a certificate that the signatory has read the pleading, motion, or other paper. By signing, filing, submitting, or later advocating such a document, the attorney or pro se party certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation,

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law,

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual allegations are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) *Sanctions.* If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) *How Initiated*.

(A) *By Motion*. An application for sanctions under this subdivision shall be made by motion, shall be made separately from other applications and shall describe the specific conduct alleged to violate subdivision (b). No such motion shall be filed unless it includes a certification that the applicant served written notice and demand to the attorney or pro se party who signed or filed the challenged pleading, motion or other paper. The certification shall have annexed a copy of that notice and demand, which shall identify with specificity each portion of the document which is believed to violate the provisions of this rule, set forth the basis for that belief with specificity, include a demand that the document or portion of the document, be withdrawn or appropriately corrected. An application for sanctions may be filed if the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected within 28 days after service of the written demand. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. A motion requesting sanctions under this rule shall be filed in the trial court before the entry of final judgment.

(B) *On Court's Initiative*. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) *Nature of Sanction; Limitations*. A sanction imposed for violation of this rule shall be limited to that which is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, (i) directives of a nonmonetary nature, including the striking of the offensive litigation document or portion of the litigation document, (ii) an order to pay a penalty into court, or, (iii) if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation. Except in exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates and employees.

(A) Monetary sanctions may not be awarded against a represented party for violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) *Order*. When imposing sanctions, the court shall describe the conduct determined to be a violation of this subdivision and explain the basis for the sanction imposed.

(d) *Inapplicability to Discovery*. Subdivisions (a) through (c) do not apply to disclosures and discovery requests, responses, objections and discovery motions that are subject to the provisions of general rules.

Official Note: The court in its discretion at any stage of the proceedings may deny a motion for sanctions without hearing or argument.

The grant or denial of relief (e.g., grant or denial of preliminary objections, motion for summary judgment or discovery application) does not, of itself, ordinarily warrant the imposition of sanctions against the party opposing or seeking the relief.

The inclusion in the rule of a provision for "an appropriate sanction" is designed to prevent the abuse of litigation. The rule is not a fee shifting rule per se although the award of reasonable attorney's fees may be an appropriate sanction in a particular case.

The provision requiring that a motion under this rule be filed before the entry of final judgment in the trial court is intended to carry out the objective of expeditious disposition and to eliminate piecemeal appeals. Where appropriate, such motions should be filed as soon as practicable after discovery of the violation.

The following provisions of the Judicial Code, 42 Pa.C.S., provide additional relief from dilatory or frivolous proceedings: (1) Section 2503 relating to the right of participants to receive counsel fees and (2) Section 8351 et seq. relating to wrongful use of civil proceedings.

(d) Section 8355 of the Judicial Code, 42 Pa.C.S. § 8355, is suspended absolutely, in accordance with the provisions of the Constitution of 1968, Article V, Section 10(c).

Section 8355 of the Judicial Code provides for the certification of pleadings, motions and other papers.

See also Order of January 17, 1997, Civil Procedural Rules Docket No. 5, No. 269, suspending the following sections of the Health Care Services Malpractice Act, added by Act No. 1996-135; Section 813-A, 40 P. S. § 1301.813-A, providing for the signing and certification of pleadings, motions and other papers and Section 821-A, 40 P. S. § 1301.821-A, providing for the signing and certification of a complaint.

Source

The provisions of this Rule 1023 adopted June 25, 1946, effective January 1, 1947; amended March 11, 1991, effective July 1, 1991, 21 Pa.B. 1274; amended August 11, 1997, effective December 1, 1997, 27 Pa.B. 4426. Immediately preceding text appears at serial page (212298).

[Pa.B. Doc. No. 02-292. Filed for public inspection February 22, 2002, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Filing of Appointment Order Enters Appearance; Contents and Service of Appointment Order

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.Rs.Crim.P. 120 (Attorneys—Appearances and Withdrawals) and 122 (Assignment of Counsel). These proposed rule changes would (1) provide the filing of the order appointing counsel to represent a defendant would enter appointed counsel's appearance in the case, (2) set forth the minimum contents for the appointment order, and (3) set forth the requirements for the service of the appointment order. 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 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 proposed rule changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, 5035 Ritter Road, Suite 800, Mechanicsburg, PA 17055, fax: (717) 795-2106, e-mail: criminal.rules@supreme.court.state.pa.us, no later than Monday, March 25, 2002.

JOSEPH P. CONTI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART B. Counsel

Rule 120. Attorneys—Appearances and Withdrawals.

(A) Counsel for defendant shall enter an appearance in writing with the clerk of courts promptly after being retained **[or appointed]** and serve a copy **[thereof] of the entry of appearance** on the attorney for the Commonwealth. If a **[firm] firm's** name is entered, the name of an individual lawyer shall be designated as being responsible for the conduct of the case.

(B) When counsel has been appointed pursuant to Rule 122 (Appointment of Counsel), the filing of the appointment order shall enter the appearance of appointed counsel.

[(B)] (C) * * *

[(C)] (D) * * *

Comment

* * * * *

Paragraph (B) was added in 2002 to make it clear that the filing of an order appointing counsel to represent a defendant enters the appearance of appointed counsel. Appointed counsel does not have to file a separate entry of appearance. Rule 122 (Appointment of Counsel) requires the judge to include in the appointment order the name, address, and phone number of appointed counsel, and serve the order on the defendant, appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Notice and Docketing of Orders).

Under paragraph **[(C)] (D)**, the court should make a determination of the status of a case before permitting counsel to withdraw.

* * * * *

Official Note: Adopted June 30, 1964, effective January 1, 1965; formerly Rule 303, renumbered Rule 302 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended March 22, 1993, effective January 1, 1994; renumbered Rule 120 and amended March 1, 2000, effective April 1, 2001; **amended ____________ , 2002, effective ____________ , 2002**.

Committee Explanatory Reports:

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Final Report explaining the February 23, 2002 amendments concerning the filing of an appointment order as entry of appearance for appointed counsel published with the Court's Order at 32 Pa.B. 1041 (February 23, 2002).

Rule 122. **[Assignment] Appointment** of Counsel.

[(A) IN SUMMARY CASES.]

(A) Counsel shall be **[assigned] appointed:**

(1) in all summary cases**, [to] for** all defendants who are without financial resources or who are otherwise unable to employ counsel when there is a likelihood that imprisonment will be imposed**[.] ;**

[(B) IN COURT CASES.]

(2) [In] in all court cases **[counsel shall be assigned],** prior to the preliminary hearing **[to] for** all defendants who are without financial resources or who are otherwise unable to employ counsel**[.] ;**

[(C) IN ALL CASES.

(1) The] (3) in all cases, by the court, **[of] on** its own motion, **[shall assign counsel to represent a defendant] [whenever] when** the interests of justice require it.

[(2) A motion for change of counsel by a defendant to whom counsel has been assigned shall not be granted except for substantial reasons.

(3) Where] (B) When counsel has been **[assigned] appointed**,

(1) the judge shall enter an order indicating the name, address, and phone number of the appointed counsel, and the order shall be served on the defendant, the appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth pursuant to Rule 114 (Notice and Docketing of Orders), and

(2) [such] the [assignment] appointment shall be effective until final judgment, including any proceedings upon direct appeal.

(C) A motion for change of counsel by a defendant for whom counsel has been appointed shall not be granted except for substantial reasons.

Comment

* * * * *

[Assignment] Appointment of counsel can be waived, if such waiver is knowing, intelligent, and voluntary. See *Faretta v. California*, 422 U.S. 806 (1975). Concerning the appointment of standby counsel for the defendant who elects to proceed pro se, see Rule 121.

In both summary and court cases, the **[assignment] appointment** of counsel to **represent** indigent defendants remains in effect until all appeals on direct review have been completed.

Ideally, counsel should be **[assigned to] appointed to represent** indigent defendants immediately after they are brought before the issuing authority in all summary cases in which a jail sentence is possible, and immediately after preliminary arraignment in all court cases. This rule strives to accommodate the requirements of the Supreme Court of the United States to the practical problems of implementation. Thus, in summary cases, paragraph (A)**(1)** requires a pretrial determination by the issuing authority as to whether a jail sentence would be likely in the event of a finding of guilt in order to determine whether trial counsel should be **[assigned to] appointed for** indigent defendants. It is expected that the issuing authorities will in most instances be guided by their experience with the particular offense with which defendants are charged. This is the procedure recommended by the ABA Standards Relating to Providing Defense Services § 4.1 (Approved Draft 1968) and cited in the United States Supreme Court's opinion in Argersinger, supra. If there is any doubt, the issuing authority can seek the advice of the attorney for the Commonwealth, if one is prosecuting the case, as to whether the Commonwealth intends to recommend a jail sentence in case of conviction.

In court cases, paragraph **[(B)] (A)(2)** requires counsel to be **[assigned] appointed** at least in time to represent the defendant at preliminary hearing. Although difficulty may be experienced in some judicial districts in meeting the Coleman requirement, it is believed that this is somewhat offset by the prevention of many post-conviction proceedings which would otherwise be brought based on the denial of the right to counsel. However, there may be cases in which counsel has not been **[assigned] appointed** prior to the preliminary hearing stage of the proceedings; e.g., counsel for the preliminary hearing has been waived, or a then-ineligible defendant subsequently becomes eligible for **[assigned] appointed** counsel. In such cases it is expected that the defendant's right to **[assigned] appointed** counsel will be effectuated at the earliest appropriate time.

[Subparagraph (C)(1)] Paragraph (A)(3) retains in the issuing authority or judge the power to **[assign]**

appoint counsel regardless of indigency or other factors when, in **the** issuing authority's or **the** judge's opinion, the interests of justice require it.

Paragraph **[(C)(3)] (B)(2)** implements the decisions of *Douglas v. California*, 372 U.S. 353 (1963), and *Commonwealth v. Hickox*, 249 A.2d 777 (Pa. 1969), by providing that counsel appointed originally shall retain his or her **[assignment] appointment** until final judgment, which includes appellate procedure.

For suspension of Acts of Assembly, see Rule 1101.

Official Note: Rule 318 adopted November 29, 1972, effective 10 days hence; replacing prior rule; amended September 18, 1973, effective immediately; renumbered Rule 316 and amended June 29, 1977, and October 21, 1977, effective January 1, 1978; renumbered Rule 122 and amended March 1, 2000, effective April 1, 2001**; amended ____________ , 2002, effective ____________ , 2002**.

Committee Explanatory Reports:

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Report explaining the proposed changes concerning the contents of the appointment order published at 32 Pa.B. 1041 (February 23, 2002).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 120 and 122

FILING OF APPOINTMENT ORDER ENTERS APPEARANCE; CONTENTS AND SERVICE OF APPOINTMENT ORDER

The Committee was asked by the Supreme Court's Common Pleas Project[1] Staff whether the filing of an order appointing counsel pursuant to Rule 122 (Assignment of Counsel)[2] satisfies the entry of appearance requirements of Rule 120 (Attorneys—Appearances and Withdrawals). During the Committee's consideration of this issue, we also noted there are no requirements concerning the appointment order. Accordingly, we are proposing the following changes to Rules 120 and 122.

1) Rule 120 (Attorneys—Appearances and Withdrawals)

The issue of whether the filing of an order appointing counsel enters appointed counsel's appearance arose during one of the sessions of the Common Pleas Project. The project members had learned that in a number of judicial districts, appointed counsel is not required to file a formal entry of appearance; these judicial districts consider the filing of the appointment order to be tantamount to the entry of appearance. Because Rule 120 requires appointed counsel to file an entry of appearance, the project members requested a clarification.

During the Committee's consideration of the issue, a few Committee members expressed concerns about changing the rule. First, they questioned whether providing for the filing of the order to enter appointed counsel's appearance would create difficulties in the situation in which the appointed attorney does not want the appointment or has a conflict and cannot accept the appointment. The members concluded (1) this was not a problem because counsel would communicate with the judge and the judge would appoint a different attorney, which would satisfy the requirements of Rule 120; (2) the change would be beneficial in situations in which the defendant is trying to hire counsel but has not done so; and (3) appointed counsel, being counsel of record, is available to represent the defendant if a critical stage, such as a request for a handwriting exemplar or a line up, arises.

The other concern was with the timeliness of the notice to counsel of the appointment. These members suggested permitting the filing of the order to also enter the appearance would cause problems for the appointed attorney who does not know that he or she has been appointed and his or her appearance entered. Again, the members did not think this would be a significant problem with automation because once the attorney's name, address, and phone number is entered into the automated system for the case, which would occur when either the appointment order or an entry of appearance is filed, the notices would be sent to that attorney.

Satisfied the members' concerns are addressed; agreeing that an entry of appearance that is filed as early as possible in a case is a benefit to the defendant, the attorneys, and the court; and recognizing that by having the filing of the appointment order enter appointed counsel's appearance, the prompt entry of appearance in these cases is ensured, the Committee is proposing that Rule 120 be amended by adding a new paragraph (B) specifically providing that the filing of the appointment order enters the appearance of appointed counsel. We also have added a paragraph to the Rule 120 Comment reiterating that appointed counsel does not have to file a separate entry of appearance, and cross-referencing Rule 122 (Assignment of Counsel) with regard to the contents and service of the appointment order.

2) Rule 122 (Assignment of Counsel)

During the Committee's consideration of Rule 120, several members noted the difficulty they have experienced obtaining the name and address of appointed counsel, and expressed concern this would be exacerbated without a formal entry of appearance. The Committee agreed this could be a problem, and concluded the rules should require the appointment order include the name, address, and phone number of the appointed attorney. In addition, to ensure proper notice to not only appointed counsel and the attorney for the Commonwealth, but also the defendant and any previous counsel of record, the Committee agreed the rules should require service of the appointment order on these additional people.

Rule 122 currently only sets forth the procedures for the appointment of counsel; it does not address the appointment order. Accordingly, the Committee is proposing Rule 122 be amended by adding a paragraph requiring (1) the judge to include in the appointment order the name, address, and phone number of the appointed counsel, and (2) the order be served on the defendant, appointed counsel, the previous attorney of record, if any, and the attorney for the Commonwealth.

Finally, while the Committee was "tinkering" with Rule 122, the members agreed to reorganize the rule by deleting the paragraph headings, and (1) moving paragraphs (A), (B), and (C) with regard to when counsel should be appointed into new paragraphs (A)(1), (2), and (3); (2) adding the new language concerning the content and service of the appointment order as new paragraph (B)(1); (3) moving current paragraph (C)(3) to paragraph (B)(2); and (4) making paragraph (C)(2) paragraph (C). In addition, because the terms "assignment" and "appointment" are used interchangeably throughout Rules 120

[1] The Common Pleas Project is developing a statewide automated case management system for the common pleas criminal courts.

[2] As part of this proposal, the title to Rule 122 is being changed to "Appointment of Counsel." This change is explained below in Part (2).

and 122, we agreed one term should be used, and are proposing "appointment" replace "assignment" in both Rules 120 and 122.

[Pa.B. Doc. No. 02-293. Filed for public inspection February 22, 2002, 9:00 a.m.]

[234 PA. CODE CHS. 4 AND 5]

Multiple Summary Offenses Charged on One Citation

Introduction

The Criminal Procedural Rules Committee is planning to recommend the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 403 (Contents of Citation), 453 (Joinder of Offenses and Defendants), and 505 (Complaints: Joinder of Offenses and Defendants). The changes would 1) make it clear that all summary offenses arising from the same conduct or arising from one criminal episode known at the time of issuance must be included on one citation, and 2) conform Rules 453 and 505 with the language in 18 Pa.C.S. §§ 109 and 110. 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 the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed Comment revisions precedes the Report. Deletions are in bold and brackets, and additions are bold.

We request 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, fax: (717) 795-2106, e-mail: criminal.rules@supreme.court.state.pa.us no later than Monday, March 25, 2002.

JOSEPH P. CONTI,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART B. Citation Procedures

Rule 403. Contents of Citation.

(A) Every citation shall contain:

* * * * *

(4) **for each offense:**

(a) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;

[(5)] (b) the place where the offense is alleged to have been committed; **and**

[(6)] (c) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;

[(7)] (5) * * *

[(8)] (6) * * *

[(9)] (7) * * *

* * * * *

Comment

* * * * *

Paragraph (B)(6) was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a guilty plea. See Rule **[86] 460** (**Notice of [Appeals] Appeal**).

* * * * *

Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered 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 53 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; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; **amended ____________ , 2002, effective ____________ , 2002**.

Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph (A) published at 32 Pa.B. 1043 (February 23, 2002).

PART E. General Procedures in Summary Cases

Rule 453. Joinder of Offenses and Defendants.

* * * * *

(B) When more than one summary offense is alleged to have been committed by one person arising from the same **[incident] conduct or arising from the same criminal episode**,

(1) the issuing authority shall accept only one citation,

(2) the matter shall proceed as a single case, and

(3) the issuing authority shall receive only one set of costs.

Comment

* * * * *

Paragraph (B) was amended in 2002 to make it clear that all summary offenses arising from the same conduct or same criminal episode known at the time of issuance must be included on one citation.

Official Note: Rule 82 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 453 and amended March 1, 2000, effective April 1, 2001; **amended ____________ , 2002, effective ____________ , 2002**.

Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph (B) published at 32 Pa.B. 1043 (February 23, 2002).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART B(1). Complaint Procedures

Rule 505. Complaints: Joinder of Offenses and Defendants.

* * * * *

(B) When more than one offense is alleged to have been committed by one person arising from the same **[incident] conduct or arising from the same criminal episode**, the issuing authority shall accept only one complaint, and shall docket the matter as a single case.

* * * * *

Comment

For criteria as to cases in which joinder is required prior to trial, see *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973)**, and 18 Pa.C.S. §§ 109 and 110**.

Official Note: Original Rule 103, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 103 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 131 and amended September 18, 1973, effective January 1, 1974; renumbered Rule 105 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 505 and amended March 1, 2000, effective April 1, 2001**; amended _________ , 2002, effective _________ , 2002**.

Committee Explanatory Reports:

* * * * *

Report explaining the proposed amendments to paragraph (B) published at 32 Pa.B. 1043 (February 23, 2002).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 403, 453, and 505

MULTIPLE SUMMARY OFFENSES CHARGED ON ONE CITATION

I. BACKGROUND

The Committee undertook its review of the summary citation procedures after receiving correspondence from Merle H. Phillips, Majority Caucus Administrator for the House of Representatives. Mr. Phillips asked the Committee to redesign the traffic citations by adding a checkbox, which would indicate to the issuing authority whether the defendant also was violating "Pennsylvania seat belt laws." See 75 Pa.C.S. § 4581 (Restraint systems). He commented "this would reduce the percentage of people in Pennsylvania that are killed in automobile accidents as a result of not wearing a seat belt" and many "police chiefs . . . believe that adding a seat belt violation checkbox would allow officers to enforce seat belt laws more efficiently because they would not be required to fill out an additional citation." In subsequent correspondence, Mr. Phillips included copies of letters from several police chiefs expressing their interest in a "modification of the present traffic citation to allow for multiple violations to be cited on a single form, including the ability to cite for seat belt violations as a secondary offense."[3] This correspondence also pointed out that Section 4581 often is not enforced because, *inter alia*, the Criminal Rules are interpreted to permit only one charge per citation.[4]

Agreeing with the correspondents that the issue of charging more than one summary offense on a citation should be examined, the Committee looked at Rule 453 (Joinder of Offenses and Defendants), the summary case rule, and Rule 505 (Complaints: Joinder of Offenses and Defendants), the correlative court case rule. Although these rules address the joinder of offenses and defendants, Rule 453(B) provides "when more than one summary offense is alleged to have been committed by one person arising from the same incident, the matter shall proceed as a single case and the issuing authority shall receive only one set of costs," and Rule 505(B) provides "when more than one summary offense is alleged to have been committed by one person arising from the same incident, the issuing authority shall accept only one complaint, and shall docket the matter as a single case." It appears that this difference in wording of these correlative provisions has led to the interpretation of Rule 453(B) that there can only be one offense charged on a citation.

The Committee reviewed the history of Rule 453, spoke with the District Justice System staff and former Committee members and staff, and reviewed case law. We found nothing definitive to explain why the rules have been interpreted as requiring a separate citation for each offense, although one individual we contacted suggested the concept may have had something to with accommodating the small size of the citation form.

Failing to uncover a clear source of the one offense/one citation requirement, the Committee considered the feasibility of changing the summary case requirement to conform with the multiple offenses/one complaint requirement in court cases set forth in Rule 505(B). We noted having all the offenses on one citation minimizes the tracking problems that can occur with multiple citations, and is more efficient because the law enforcement officer only needs to complete one citation. We also recognized that, with continued progress toward automation, the possibility of electronically transmitting the citation information is on the horizon, making the one offense/one citation requirement outdated. In view of these considerations, the Committee agreed it makes sense for the rules to be amended to make it clear that all summary offenses arising from the same conduct or arising from the criminal episode known at the time of issuance of the citation must be included on one citation. In reaching this decision, the Committee discussed the "checkbox" option, but agreed that aligning the summary case rules and the court case rules would cause the least confusion and is a better solution.

[1] Section 4581(a)(2) provides in part, "A conviction under this paragraph by State or local law enforcement agencies shall occur only as a secondary action when a driver of a motor vehicle has been convicted of any other provision of this title."

[2] In addition, the correspondence noted that greater enforcement of Section 4581 would alert "the motoring public" that law enforcement personnel are serious in addressing seat belt violations, and result in a decrease of injury, death, and monetary loss.

II. DISCUSSION OF PROPOSED RULE CHANGES

A. Rules 453 and 505

Rule 453 presently provides the procedures for joinder of offenses and defendants in a summary case, and Rule 505 provides the procedures for joinder of offenses and defendants in a court case. The Committee is proposing Rules 453(B) and 505(B) be amended by replacing the term "incident" with the phrase "conduct or arising from the same criminal episode." This proposed change is intended to align the rules with the language in 18 Pa.C.S. §§ 109 (When prosecution barred by former prosecution for the same offense) and 110 (When prosecution barred by former prosecution for different offense).

As noted above, Rule 453 has been interpreted to mean that only one charge may be included on a citation. To make it clear that all charges known at the time of issuance must be included on one citation, the Committee is proposing that paragraph (B) be amended to conform with Rule 505(B) by the addition of the language "the issuing authority shall accept only one citation." To highlight this change, Rule 453(B) also would be divided into subparagraphs to more clearly set forth the procedures covered by this paragraph. Finally, the Committee is proposing the revision of the Comments to Rules 453 and 505 to make them consistent with the proposed new language in the text of the rules.

B. Rule 403

Rule 403 provides the requirements for the contents of the citation. Paragraph (A) enumerates the information to be entered by the law enforcement officer. The Committee is proposing the reorganization of paragraph (A) to make it clear that the law enforcement officer must include for each offense the information concerning: the date and time when the offense is alleged to have been committed, see proposed paragraph (A)(4)(a); the place where the offense is alleged to have been committed, see proposed paragraph (A)(4)(b); and a citation of the specific section and subsection of the statute or ordinance allegedly violated, see proposed paragraph (A)(4)(c). The remaining paragraphs in (A) would be renumbered accordingly.

[Pa.B. Doc. No. 02-294. Filed for public inspection February 22, 2002, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Adoption of Local Rule of Civil Procedure—Rule 205.4*—Electronic Filing and Service of Legal Papers; No. 02 00001

Order

And Now, this 18th day of January, 2002, the Court hereby adopts Montgomery County Local Rule of Civil Procedure, Rule 205.4*. Electronic Filing and Service of Legal Papers.

This Rule shall become effective immediately.

The Court Administrator is directed to publish this Order once in the *Montgomery County Law Reporter* and in the *Legal Intelligencer*. In conformity with Pa.R.C.P. 239, seven (7) certified copies of the within Order shall be filed by the Court Administrator with the Administrative Office of Pennsylvania Courts. Two (2) certified copies shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. One (1) certified copy shall be filed with the Civil Procedural Rules Committee. One (1) copy shall be filed with the Prothonotary, one (1) copy with the Clerk of Courts, (1) copy with the Court Administrator of Montgomery County, one (1) copy with the Law Library of Montgomery County and one (1) copy with each Judge of this Court.

By the Court

S. GERALD CORSO,
President Judge

Rule 205.4*. Electronic Filing and Service of Legal Papers.

(i) The Montgomery County Court of Common Pleas hereby decrees that it will accept the electronic filing of legal papers and the electronic service of such papers, under the terms described in this Local Rule.

(1) The electronic filing initiative will begin with a pilot program. The Prothonotary's Office may select attorneys and/or law firms to participate in electronic filing during the pilot period. The Court will determine an appropriate length for the pilot period. At the conclusion of the pilot period, the Prothonotary's Office and the Court will jointly determine the appropriate steps to be taken with respect to electronic filing, in light of the experience gained during the pilot period.

(2) During the pilot period, electronic filing is permitted only in general civil cases for filings that:

a. do not initiate a case;

b. do not trigger a Court filing fee of any sort;

c. are matters of public record, so that, for example, documents filed under seal may not be electronically filed, and

d. are filed by attorneys (i.e. pro se electronic filing is not permitted at this time).

(3) Electronic filing shall be effectuated through an electronic filing system provided by Verilaw Technologies, Inc. Verilaw shall coordinate its efforts to provide an electronic filing system with the Prothonotary's Office, the Court, and with electronic filing attorneys.

(4) Electronic filing shall not be mandated, even for pilot participants. Accordingly, attorneys will retain the option to file documents through traditional means.

(5) The Verilaw system shall provide filing attorneys with electronic notification of the Prothonotary's Office's acceptance of electronically filed documents.

(6) A document that is electronically filed shall not be also filed by traditional paper means. The Prothonotary's Office, however, until further notice shall print hard copy versions of electronically filed documents and process the hard copy versions (for purposes of record retention and Court workflow) in the same manner as paper-filed documents.

(7) The electronic filing of a legal paper without a signature utilizing such attorney's unique user name and password assigned by Verilaw system shall constitute effective filing with the Court and a certification by the filing attorney that the original hard copy was properly signed, and, where applicable, verified. The filing attorney shall maintain the original hard copy of the original, inclusive of all signatures, in such attorney's files. Any party may require the filing attorney to produce the

original hard copy of the legal paper by serving notice thereof upon such attorney. The filing attorney must respond by producing the original hard copy of the legal paper within 14 days of receipt of such notice.

(8) Not withstanding all applicable rules promulgated by the Supreme Court of Pennsylvania, Montgomery County or the Court governing service, the electronic service of legal paper via the Verilaw system shall be deemed complete and proper notice upon submission by the filing attorney and distribution thereof via the Verilaw system; provided, however, the receiving party must agree to accept service via electronic mail in writing, by inclusion of an electronic mail address on a notice of appearance or prior legal paper filed with the Court in the applicable action, or by becoming a registered user of the Verilaw system.

(9) Once a party has become a registered user of Verilaw's system and/or has agreed to accept service by inclusion of an e-mail address on legal paper filed with the Court in the applicable action, a party may only withdraw from the system by filing with the Prothonotary and giving written notice to all other parties to the action, a written document evidencing their withdraw from the electronic filing program. Upon filing such a document, withdrawing attorneys must immediately deactivate their accounts on the Verilaw system. Withdrawal shall be deemed effective upon deactivation of the account.

(10) Verilaw shall provide electronic access at all times. On days that the Prothonotary is open any paper filed electronically with Verilaw prior to 4:45 p.m. Eastern Time, shall be deemed filed with the Prothonotary as of the date the document was sent to Verilaw. Any document filed electronically with Verilaw after 4:45 p.m. Eastern Time shall be deemed filed with the Prothonotary as of the next business day that the Prothonotary is open.

(11) In all other respects, all electronic filing shall be in accordance with Pa.R.C.P. 205.4, which governs the electronic filing of legal papers.

[Pa.B. Doc. No. 02-295. Filed for public inspection February 22, 2002, 9:00 a.m.]

SCHUYLKILL COUNTY

Amended Criminal Rules of Procedure; M02-71

Order of Court

And Now, this 7th day of February, 2002, at 2:15 p.m., Schuylkill County Criminal Rule of Procedure No. 120 is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Clerk of Courts of Schuylkill County is Ordered and Directed to do the following:

1) File seven (7) certified copies of this Order and Rules with the Administrative Office of Pennsylvania Courts.

2) File two (2) certified copies of this Order and Rule with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin* together with a diskette reflecting the text in the hard copy version.

3) File one (1) certified copy of this Order and Rules with the Pennsylvania Criminal Procedural Rules.

4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.

5) Keep continuously available for public inspection copies of this Order and Rule.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

WILLIAM E. BALDWIN,
President Judge

Rule 120. Duties of Counsel.

Every counsel of record in a criminal case shall be timely present for each hearing, conference or other court proceeding involving his or her client as scheduled pursuant to the provisions of these rules, or as the Court may otherwise direct. It shall further be the duty of counsel to promptly notify the client of the date, time, place and duty to be present at each proceeding involving the client's case until such time as the case has been completed. Counsel who fail to comply with this rule may be subject to sanctions, including a finding of contempt.

Unless otherwise relived by Order of Court, counsel of record in a criminal proceeding shall be responsible for representing the defendant to the conclusion of the case including post-sentence motions and the filing of a direct appeal if requested to do so by the defendant. A motion to withdraw representation may be filed simultaneously with the filing of a direct appeal, but the filing of such motion does not relieve counsel from continuing to diligently represent the defendant's interests until relieved of representation by Order of Court.

[Pa.B. Doc. No. 02-296. Filed for public inspection February 22, 2002, 9:00 a.m.]