THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Assessment and Collection of Fees in Summary Cases on Appeal for a Trial De Novo

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania revise the Comment to Rule 462 (Trial de novo) to clarify how fees in summary cases are to be assessed. This revision would make it clear that fees and costs assessed in summary cases may be assessed only once, either by the district justice at the conclusion of the summary case or by the common pleas court at the trial de novo. 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.

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
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no later than Friday, January 23, 2004.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART F. Procedures in Summary Cases Under the Vehicle Code

Rule 462. Trial De Novo.

* * * * *

(G) At the time of sentencing, the trial judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs **and fees**, state the date on which payment is due. If the defendant is without the financial means to pay the amount in a single remittance, the trial judge may provide for installment payments and shall state the date on which each installment is due;

* * * * *

(H) After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs **and fees**.

Comment

* * * * *

Once sentence is imposed, paragraph (H) makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs **or fees in the case that were not collected by the district justice**, and the case may not be returned to the district justice. The execution of sentence includes the collection of any fines and restitution.

Costs and fees authorized by law are to be assessed against a defendant on a per case basis. When a defendant appeals a summary conviction for a trial de novo in the court of common pleas, this is the same case that was before the district justice. Therefore, any costs and fees in the case may be assessed and collected only once, either by the district justice at the conclusion of the summary trial or in the court of common pleas following a trial de novo.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended February 26, 2003, effective July 1, 2003**; amended _____, 2004, effective _____ , 2004**.

Committee Explanatory Reports:

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NEW RULE 462:

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Report explaining the proposed changes concerning fees and costs in summary cases appealed for a trial de novo published at 33 Pa.B. 6408 (December 27, 2003).

REPORT

Rule 462 Comment Revision

ASSESSMENT AND COLLECTION OF FEES IN SUMMARY CASES ON APPEAL FOR A TRIAL DE NOVO

The Criminal Procedural Rules Committee is proposing the Court make changes to Rule 462 (Trial de novo) to make it clear that fees and costs assessed against a defendant in a summary case may be assessed only once, either by the district justice at the conclusion of the summary case or by the common pleas court at the trial de novo. These changes clarify in the Rule 462 Comment the intent of the summary case rules that a summary case that is appealed for a trial de novo is the same case as the summary case before the district justice.

The Committee received an inquiry concerning whether the practice in some judicial districts of collecting two Judicial Computer Project (JCP) fees—one when a defendant is convicted by a district justice, and the second when the defendant is convicted following a trial de novo in the court of common pleas—conflicts with the Criminal Rules. In determining how to respond to the inquiry, the Committee looked at the Committee rule history and noted that the rules always have intended that the right to a trial de novo in the court of common pleas following a summary conviction is considered to be the same as though the defendant never had been tried and convicted at the district justice level; i.e., the case essentially starts over with the appeal, so there is only one case. We also reviewed 42 Pa.C.S. § 3733 (Deposits into account) (relating to the Judicial Computer Augmentation Account), and concluded this statute does not address nor sanction specifically the practice of twice assessing the fee when a summary case is appealed to the court of common pleas for a trial de novo.[1]

In view of the Committee's determination that when a summary case is appealed to the common pleas court for a trial de novo, the trial in common pleas is the same case and any fees and costs in the case should not be assessed against the defendant two times, and the fact that some judicial districts are assessing these costs and fees twice, we agreed the issue should be made clearer by adding language to the Rule 462 Comment encompassing the concept that the trial de novo is not a new case but is a continuation of the original case and consequently any costs and fees assessed to the case may be assessed one time only; therefore, any fees or costs that are charged to a case when it is at the district justice level may not be also charged at the court of common pleas level when the case is appealed for a trial de novo.

Accordingly, the Committee is proposing the addition of the following language as a new paragraph in the Rule 462 Comment:

> Costs and fees authorized by law are to be assessed against a defendant on a per case basis. When a defendant appeals a summary conviction for a trial de novo in the court of common pleas, this is the same case that was before the district justice. Therefore, any costs and fees in the case may be assessed and collected only once, either by the district justice at the conclusion of the summary trial or in the court of common pleas following a trial de novo.[2]

[Pa.B. Doc. No. 03-2442. Filed for public inspection December 26, 2003, 9:00 a.m.]

[234 PA. CODE CH. 5]

Application of Bail Deposit to Fines, Costs, Restitution

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 535 (Receipt for Deposit; Return of Deposit) to make it clear that the court official who accepts a deposit of bail may not inquire of the depositor whether he or she consents to have the deposit retained to be applied toward the defendant's fines, costs, or restitution, if any. 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 Comment to the rule. 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 amendment 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
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no later than Friday, January 23, 2004.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(2). General Procedures In All Bail Cases

Rule 535. Receipt for Deposit; Return of Deposit.

(A) The issuing authority or the clerk of courts who accepts a deposit of cash in satisfaction of a monetary condition of bail shall give the depositor an itemized receipt, and shall note on the transcript or docket and the bail bond the amount deposited and the name of the person who made the deposit.

(1) When the issuing authority accepts such a deposit, the deposit, the docket transcript, and a copy of the bail bond shall be delivered to the clerk of courts.

(2) The individual accepting a bail deposit shall not inquire of the depositor whether he or she consents to have the deposit retained to be applied toward the defendant's fines, costs, or restitution, if any.

* * * * *

Comment

[This rule is not intended to change current practice.

A] Paragraph (A) was amended in 2004 to make it clear that the clerk of courts or other official accepting a deposit of cash bail is not permitted to request that the depositor agree to have the cash bail deposit retained after the full and final disposition of the case to be applied toward the payment of the defendant's fines, costs, or restitution, if any. See, e.g., *Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978), which held that a deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be

[1] During the course of our consideration, the Committee realized that the issue is broader than the assessment of only the JCP fee and applies to any costs and fees that are assessed.

[2] We also are proposing that "and fees" be added following "costs" in paragraphs (G) and (H) of the rule.

retained to pay for the defendant's court costs and/or fines. **[See *Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978).]**

* * * * *

Official Note: Former Rule 4015, previously Rule 4009, adopted November 22, 1965, effective June 1, 1966; renumbered Rule 4015, former paragraph (b) integrated into paragraph (a) and new paragraph (b) adopted July 23, 1973, effective 60 days hence; rescinded September 13, 1995, effective January 1, 1996, and replaced by present Rule 4015. Present Rule 4015 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 535 and amended March 1, 2000, effective April 1, 2001; amended April 20, 2000, effective July 1, 2000**; amended ______, 2004, effective ______, 2004**.

Committee Explanatory Reports:

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Report explaining the proposed changes to paragraph (A) of the rule published at 33 Pa.B. 6409 (December 27, 2003).

REPORT

Proposed Amendment to Pa.R.Crim.P. 535

APPLICATION OF BAIL DEPOSIT TO FINES, COSTS, RESTITUTION

I. Introduction

The Criminal Procedural Rules Committee is proposing that Pa.R.Crim.P. 535 (Receipt for Deposit; Return of Deposit) be amended to provide in the text of the rule the specific prohibition that the court official who accepts a deposit of bail may not inquire of the depositor whether the depositor consents to have the cash bail deposit retained to be applied toward the defendant's fines, costs, or restitution, if any. This proposed amendment is not a change in the current law concerning the use of bail money deposits, but rather is a clarification of the provision in the Rule 535 Comment cross-referencing *Commonwealth v. McDonald*, 382 A.2d 124 (Pa. 1978), in which the Court held that "a deposit of cash to satisfy a defendant's monetary bail condition that is made by a person acting as a surety for the defendant may not be retained to pay for the defendant's court costs and/or fines."[1]

The Committee undertook a review of the issue of using monetary bail deposits to pay a defendant's court costs and fines following an inquiry from the Common Pleas Court Management System (CPCMS) staff whether the monetary bail deposit may be retained to offset the defendant's fines, costs, restitution, and attorney's fees. The CPCMS staff noted monetary bail deposits are being retained for this purpose in some judicial districts notwithstanding the language in the Rule 535 Comment, and these judicial districts asked that the CPCMS be designed to accommodate the practice.

II. Discussion

The Committee approached the issue from two perspectives: (1) whether the practice in some judicial districts of using bail deposits to offset fines, costs, and restitution is permissible under the rules and (2) if not, whether the rules should be amended to permit the practice. From a review of the Criminal Rules and law, the members concluded that the practice is contrary to the purpose of bail, which is to ensure a defendant's appearance at all court proceedings, and conflicts with Rule 535(D), which provides that the deposit shall be returned to the depositor, less any bail-related fees or commissions authorized by law, and the reasonable costs, if any, of administering the percentage cash bail program.

In considering whether Rule 535 should be amended to permit a court official to ask a bail depositor to agree to the use of the bail deposit to offset fines, costs, and restitution, the members identified a number of practical concerns about such a practice:

(1) using bail as an offset is contrary to the purpose of bail;

(2) requesting the depositor to agree may be coercive on and confusing to the bail depositor, who frequently will not fully understand the nature and consequences of the agreement he or she is being asked to make;

(3) requesting the defendant's agreement easily could become an improper condition of release on bail;

(4) permitting the practice could lead to the unintended and unacceptable collateral consequences of police officers no longer exercising their discretion to release defendants pursuant to Rule 519(B) or bail authorities no longer utilizing ROR or conditional release in order to ensure the collection of fines and costs; and

(5) such a practice is inequitable and unfair because, for example, some defendants are given ROR and others are required to post a monetary condition of bail for the same offenses, such as when you have a resident defendant and a non-resident defendant.

In view of these considerations, the Committee agreed the rules should not be amended to permit the practice; rather, the rules should be amended to include a specific prohibition against the practice. The Committee further agreed the amendment should be incorporated into the text of Rule 535 and should be limited to a prohibition on the request for consent to use the bail deposit to offset fines, costs, and restitution at the time the monetary bail deposit is made,[2] leaving the questions about when, if ever, the bail deposits may be used to offset fines, costs, and restitution to the courts.[3]

The proposed new language being added is new paragraph (A)(2), with a correlative explanatory paragraph added to the current provision in the Comment citing *Commonwealth v. McDonald*. In addition, although the new provision is not a change in the intent of the rules, because it is a change in what is the current practice in some judicial districts, the Committee agreed the first sentence of the Comment that provides "this rule is not intended to change current practice" should be deleted.

[Pa.B. Doc. No. 03-2443. Filed for public inspection December 26, 2003, 9:00 a.m.]

[1] This provision was added to the bail rules in 1995 as part of the general reorganization and revision of the bail rules. See Committee explanatory Final Report, 35 Pa.B. 4116 (September 30, 1995).

[2] The Committee also agreed to advise the Administrative Offices of Pennsylvania Courts (AOPC) that, to ensure compliance with the rules concerning using bail to offset fines, costs, and restitution, there should not be any type of form either sanctioned by the rules or AOPC or produced by the CPCMS that could be used to obtain the consent of the depositor.

[3] The members also discussed the practice of some attorneys entering into an agreement with their client for the use of the bail deposit for attorneys' fees. Because this is an agreement between the attorney and the defendant, the Committee did not think the practice should be addressed in the rules.

[234 PA. CODE CH. 5]

Modification of Bail By Issuing Authority Prior to Preliminary Hearing

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 529 (Modification of Bail Order Prior to Verdict) to provide that an issuing authority may modify a bail order at anytime following the preliminary arraignment through the preliminary hearing. 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,

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no later than Friday, January 23, 2004.

By the Criminal Procedural Rules Committee

JOHN J. DRISCOLL,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART C(1). Release Procedures

Rule 529. Modification of Bail Order Prior to Verdict.

(A) **[A bail order may be modified by an issuing authority at any time before the preliminary hearing upon the request of the defendant with the consent of an attorney for the Commonwealth, or at the preliminary hearing upon the request of either party.] The proper issuing authority, upon request of the defendant or the attorney for the Commonwealth, or upon the issuing authority's own motion, and after notice to the defendant and the attorney for the Commonwealth and an opportunity to be heard, may modify a bail order at anytime before the preliminary hearing.**

(B) **A bail order may be modified by an issuing authority at the preliminary hearing.**

(C) The existing bail order may be modified by a judge of the court of common pleas:

* * * * *

[(C)] (D) * * *

* * * * *

[(D)] (E) * * *

Comment

* * * * *

The procedures for modification of a bail order by the issuing authority were amended in 2004 to permit the issuing authority to modify bail at any time before the preliminary hearing on the issuing authority's own motion or request of a party when, for example, new information becomes available concerning the defendant that would affect the issuing authority's decision concerning the type of release and the conditions of release imposed at the preliminary arraignment.

Pursuant to this rule, the motion, notice, and hearing requirements in paragraphs **[(B)](C)**(1) and **[(C)](D)**(2) must be followed in all cases before a common pleas court judge may modify a bail order unless the modification is made on the record in open court either when all parties are present at a pretrial hearing—such as a suppression hearing—or during trial.

* * * * *

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 **[530] 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**; amended _____ , 2004, effective _____ , 2004**.

Committee Explanatory Reports:

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Report explaining the proposed changes concerning "pre-preliminary hearing" modification of bail by the issuing authority published at 33 Pa.B. 6410 (December 27, 2003).

REPORT

Amendments to Pa.R.Crim.P. 529

MODIFICATION OF BAIL BY ISSUING AUTHORITY PRIOR TO PRELIMINARY HEARING

Introduction

The Criminal Procedural Rules Committee is proposing the Court amend Rule 529 (Modification of Bail Order Prior to Verdict) to provide that an issuing authority may modify a bail order at anytime following the preliminary arraignment through the preliminary hearing. These changes address what the Committee learned is a systemic problem caused by the unavailability at the preliminary arraignment of the relevant information an issuing authority must have in making a bail decision and determining the appropriate type of release.

The Committee's initial discussions were prompted by correspondence and inquiries we received from several individuals concerning a tragic case in which a police officer, during a routine traffic stop, was shot and killed by an individual who had a criminal record, was on parole, and who had been released on $1,000/10% bail in a "recent" weapons case because the district justice setting the bail in that case was not provided with the defendant's criminal history nor did the district justice have any other access to the defendant's criminal history.

One of the correspondents, Mike Schwoyer, Chief Counsel for the House Judiciary Committee, asked the Committee to consider a modification of the complaint form to provide a check off box for the police to indicate that they had done a criminal history check and had provided/would provide the information to the district justice. During the Committee's consideration of Mr. Schwoyer's suggestion, we also explored the possibility of requiring the bail authority to complete a form indicating the release criteria considered in determining the type of release under Rule 523. During our discussion of these two possible rule changes, the Committee agreed the problem that needed to be addressed is the unavailability of adequate bail-related information at the preliminary arraignment when the issuing authority is making a bail determination and that simply requiring a box be checked or the completion of a form would not resolve the problem. We also thought the rules cannot mandate which agency is to provide the relevant bail information at the preliminary arraignment, and, therefore, considered other means of addressing this problem. We agreed providing the issuing authority the opportunity to modify bail following the preliminary arraignment and before the preliminary hearing, when for example, information that could affect the defendant's bail status becomes known to the issuing authority, would provide a reasonable, equitable resolution to the problem. Because Rule 529(A) only permits an issuing authority to modify bail between the preliminary arraignment and the preliminary hearing when there is a request from the defendant and the consent of an attorney for the Commonwealth, the Committee turned its attention to modifying Rule 529.

The Committee reviewed the history of Rule 529[1] and found that when the rule originally was adopted in 1973 it provided, "Bail may be modified by the issuing authority at the preliminary hearing when counsel for either party makes known to him facts relating to the standards set forth in Rule 4004 (current Rule 523) which were not known or which were misrepresented when bail was originally set, or which have changed since the setting of bail."[2] In spite of the literal wording of the rule, however, district justices were resetting bail at a time before the preliminary hearing, which raised concerns of "district justice shopping" and that the "non-sanctioned practice" provided a means for collusion between a bondsman and a district justice or for a bondsman to obtain a bail reduction unbeknownst to a defendant and charge a premium based on the higher bail amount. This noncompliance with the rules and the concerns about the abuses led to the 1983 amendment that prohibited the pre-preliminary hearing modification of bail by an issuing authority except when requested by the defendant with the consent of the district attorney. See the Committee Explanatory Report 13 Pa.B. 125 (January 8, 1983).

In discussing the rule history, the Committee noted there existed, and exist today, legitimate reasons why an issuing authority might want to modify bail between the preliminary arraignment and preliminary hearing: for example, there often are cases in which a defendant, who would be considered "a good bail risk," has a high bail set because of the lack of adequate information about the defendant, or a "duty" magistrate who is not familiar with the defendant sets a high monetary condition of bail and the "proper" issuing authority who knows the defendant would have set a lower monetary condition of bail. In these situations, the present "defendant request/Commonwealth consent" requirement is an inadequate provision for allowing the issuing authority to modify the amount of bail because it results in unnecessary detention until 1) the defendant makes the request to modify bail and the attorney for the Commonwealth gives consent, 2) a motion is heard in the court of common pleas, or 3) the time of the preliminary hearing. Similarly, there may be equally important and compelling reasons the issuing authority would want to increase the amount of bail, such as in the case that triggered the Committee's discussions.

In view of the rule's history, the procedures in other jurisdictions that permit their courts to modify bail "on their own motion," the problems concerning the lack of opportunity for the issuing authorities to modify bail, and the Committee's position that the issuing authorities should be able to modify bail during the time period between the preliminary arraignment and the preliminary hearing, the Committee agreed to propose an amendment to Rule 529.

Discussion of Proposed Changes to Rule 529

The Committee agreed that to emphasize the changes, the new provision should be set forth as a separate paragraph, new paragraph (A), that would apply to the time period subsequent to the preliminary arraignment and prior to the preliminary hearing.

The Committee considered including in the proposal an "additional information" requirement; that is, the issuing authority's authority to modify the bail before the preliminary arraignment would be limited to when he or she receives additional information about the defendant that would affect the defendant's bail status. And we contemplated that there are a variety of ways in which the additional information could be made known to the issuing authority: from the Commonwealth, the defense attorney, a third party, the court system, other judges, or other people in the system, electronically, or from the newspapers. Upon reconsideration, however, the Committee agreed such a limitation should not be proposed because it would create other problems such as when bail is set by a "duty" or "on-call" issuing authority who does not know the defendant, but when the "proper issuing authority" is made aware of the case, he or she could modify bail accordingly. We also agreed that there should be the requirement of notice to the defendant[3] and the attorney for the Commonwealth, and provide them with an opportunity to be heard. In this way, a formal motion procedure, which could lead to unnecessary delays, would not be required, but the "opportunity to be heard" would allow the defendant or attorney for the Commonwealth who opposes the change to "state his or her reasons." Thus under this new procedure the modification issue could be originated by the defendant, or the attorney for the Commonwealth, or even the issuing authority, as long as there is notice to the other parties, and an opportunity for them to be heard. Although the specific consent requirement would be deleted as no longer necessary, new paragraph (A) encompasses the consent situation. In addition, a new paragraph would be added to the Comment that would further explain the new procedures modify existing practice to permit the issuing authority to

[1] Rule 529 originally was numbered Rule 4005, was renumbered Rule 4008 in 1995, and renumbered Rule 529 in 2000.

[2] The Committee also reviewed statutes and rules in other jurisdictions to find out whether they address similar procedures in their criminal procedures. We found that some jurisdictions allow the court sua sponte to modify bail, see, e.g., Arizona Rule of Criminal Procedure 7.4(b) and Ohio Rule of Criminal Procedure 46(E), but that most jurisdictions require a motion by the defendant or prosecuting attorney, see, e.g., Connecticut Rule of Criminal Procedure 38-14 and New Jersey Rule of Criminal Procedure 46.1(b)(2).

[3] We did not add a requirement for the attorney for the defendant to receive notice because oftentimes at this stage of the proceedings, the defendant does not have counsel.

modify bail before the preliminary hearing upon the issuing authority's "own motion" or the request of one of the parties.

New paragraph (B) would retain, as a separate provision, the current paragraph (A) provision that a bail order may be modified by the issuing authority at the preliminary hearing. However, the requirement that modification occur "upon the request of either party" would be deleted as no longer necessary. The Committee believes the issuing authority has the authority to modify bail without the request being made by a party.

[Pa.B. Doc. No. 03-2444. Filed for public inspection December 26, 2003, 9:00 a.m.]

[234 PA. CODE CH. 7]

Concurrent Sentences and Credit for Time Served

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 705 (Imposition of Sentence). These changes would require the sentencing judge to state the date the sentence is to commence and to address credit for time served, and provide that a concurrent sentence commences on the date of imposition. 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,

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JOHN J. DRISCOLL,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES

PART A. Sentencing Procedures

Rule 705. Imposition of Sentence.

(A) When imposing a sentence to imprisonment, the judge shall state the date the sentence is to commence, and shall address credit for time served as provided by law.

(B) Whenever more than one sentence is imposed at the same time on a defendant, or whenever a sentence is imposed on a defendant who is sentenced for another offense, the judge shall state whether the sentences shall run concurrently or consecutively. **If the sentence is to run concurrently, the sentence shall commence from the date of imposition unless otherwise ordered by the court.**

Comment

[In] This rule was amended in 1996, **[paragraph (a) was amended and paragraph (c) was deleted]** to eliminate language that created a presumption that certain sentences run concurrently unless the judge states otherwise. The rule now requires the judge to state whether sentences run concurrently or consecutively**, and by deleting former paragraph (B) as unnecessary**. **[Paragraph (b) was deleted as unnecessary.]**

The 2004 amendments adding new paragraph (A) and adding language to paragraph (B) clarifies the procedures for determining the date of commencement of sentences of imprisonment.

The computation of sentences and credit for time served **also** are **[governed by] addressed in** the Sentencing Code. See 42 Pa.C.S. §§ 9760 and 9761.

Official Note: Rule 1406 adopted July 23, 1973, effective 90 days hence; amended March 21, 1975, effective March 31, 1975, amended November 7, 1996, effective January 1, 1997; renumbered Rule 705 and Comment revised March 1, 2000, effective April 1, 2001**; amended ____ , 2004, effective ____, 2004**.

Committee Explanatory Reports:

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Report explaining the proposed amendments concerning concurrent sentences and credit for time served published with the Court's Order at 33 Pa.B. 6412 (December 27, 2003).

REPORT

Amendments to Pa.R.Crim.P. 705

CONCURRENT SENTENCES AND CREDIT FOR TIME SERVED

Introduction

The Criminal Procedural Rules Committee is proposing the Court amend Rule 705 (Imposition of Sentence) to provide that when a judge is imposing a sentence to imprisonment, the judge shall state the date of the commencement of sentence and address the credit for time served as provided by law. The Committee also is proposing a clarification that, when the sentence imposed is a concurrent sentence, the sentence commences from the date of imposition unless otherwise ordered by the court. These changes are intended to fill in the gaps in procedures that were created in 1996 when then paragraphs (b) and (c) of the rule (then Rule 1406) were deleted.[1]

The Committee received correspondence pointing out that since Rule 1406 (now 705) was amended in 1996 "there is no statute or Rule providing that sentences ordered to run concurrently with sentences imposed on a prior date must run from the date of imposition," even though the Report explaining the 1996 changes indicated this area of sentencing procedure is governed by statute.

[1] See Committee Explanatory Final Report at 23 Pa.B. 5694 (November 23, 1996) explaining the 1996 changes to then-Rule 1406.

The correspondent noted that, because there is no guidance anywhere concerning these sentencing issues, there is a good deal of confusion among members of the bench and bar, and defendants who are sentenced. The Committee was asked to consider adding to the rule language similar to the language that was deleted from then Rule 1406 in 1996 concerning 1) the time when a concurrent sentence commences, and 2) the defendant receiving credit for time served.

In view of this correspondence, the Committee took a look at the Sentencing Code and the rules and confirmed there are no other provisions that sentences ordered to run concurrently with sentences imposed on a prior date must run from the date of imposition. Because we agree that these sentencing issues are confusing, the Committee concluded an amendment to Rule 705 would be helpful to the bench, bar, and defendants.

Discussion of Rule 705 Changes

During our discussions, the Committee considered changing Rule 705 by adding language that 1) if a sentence imposed is concurrent with another of the defendant's sentences, the sentence shall commence from the date of imposition and 2) the judge shall address credit for time served as provided for by law. We noted, however, that the language concerning commencement of sentences that had been in the rule prior to the 1996 changes addressed all sentences, not just concurrent sentences. We agreed, therefore, that the changes concerning commencement of the sentence should apply to all sentences, and incorporated into new paragraph (A) the concept from former Rule 1406(b) that the judge must state the date a sentence to imprisonment commences. The Committee also has added at the end of paragraph (A) the language "and shall address credit for time served as provided by law" to make it clear that when a judge imposes a sentence or sentences that are concurrent and states that the defendant is to receive credit for time served, the "credit time" is calculated as provided by law.

Paragraph (B) would retain the present Rule 705 language, with the additional provision "If the sentence is to run concurrently, the sentence shall commence from the date of imposition unless otherwise ordered by the court." This language makes it clear that the "starting date" for the sentence is the date of imposition, and from that point forward the sentence runs concurrently.

[Pa.B. Doc. No. 03-2445. Filed for public inspection December 26, 2003, 9:00 a.m.]

Title 255—LOCAL COURT RULES

MONTGOMERY COUNTY

Offender Supervision Fee; No. MS 875 Oct. 03

Administrative Order

And Now, this 4th day of December, 2003, pursuant to 18 P. S. § 11.1102, the Court hereby increases the Offender Supervision Fee from twenty-five ($25) dollars per month to thirty ($30) dollars per month, assessed against all offenders placed on probation, parole, accelerated rehabilitative disposition, probation without verdict or intermediate punishment. Said increase is to be effective January 1, 2004, for those offenders sentenced on or after January 1, 2004. Offenders sentenced prior to the effective date of this increase will continue to be assessed a twenty-five ($25) dollar per month Offender Supervision Fee.

The fee is being charged in accordance with the following Guidelines.

By the Court

S. GERALD CORSO,
President Judge

Guidelines for the Collection of Offender Supervision Fees

1. All offenders placed on probation, parole, intermediate punishment, ARD or Section 17 Probation without verdict shall be assessed $30 for every month on probation, parole or intermediate punishment (I.P.) as a condition to be paid on a monthly basis, unless otherwise ordered. The $30 fee will be assessed against offenders sentenced on or after January 1, 2004. Offenders sentenced prior to January 1, 2004 will continue to be assessed a $25 per month offender supervision fee, pursuant to the Court's prior directive.

2. At time of sentencing, current legal residence shall be established and made part of the sentence sheet and/or record.

3. The Clerk of Courts shall establish a supervision fee collection account for all Montgomery County residents pursuant to 18 P. S. § 11.1102.

4. Out-of-county/state residents will be required to submit fines, costs and/or restitution payments to the Clerk of Courts on a monthly basis. Supervision fees shall be collected by the county/state of supervision.

5. When an offender is transferred into Montgomery County from another jurisdiction for supervision purposes, or has been an out-of-county case and moves into the county, supervision fees shall be established from the date the case is accepted for supervision.

6. Any cases placed under the supervision of the Pennsylvania Board of Probation and Parole shall pay the supervision fee to the Board in accordance with the Act. Any fines, costs or restitution ordered shall be paid through the Clerk of Courts.

7. Where an offender has multiple cases, supervision fees shall be assessed on each offender only once. The fee shall be assessed on the case with the longest period of supervision or the case which extends furthest into the future.

8. Any offender who enters inpatient drug, alcohol, medical or psychiatric treatment shall have their fees deferred until their release.

9. Any offenders committed to prison for probation, parole or I.P. violation shall have their supervision fees accrue until such time as the Court revokes said probation or parole. Upon reparole, supervision fees shall be re-computed and collected by the appropriate department.

10. Petitions of Hardship (inability to pay) shall be considered by the Chief Adult Probation Officer or his designee upon the offender's submission of supporting documentation and compliance with 18 P. S. § 11.1102(e)(2). Any recommendation of fee reduction or waiver shall be submitted to the Court for approval.

11. Failure to pay supervision fees as a condition of probation and/or parole, intermediate punishment, ARD or Section 17 probation without verdict shall be consid-

ered a technical violation of the conditions of sentence/ order and may result in the revocation of said sentence/ order.

[Pa.B. Doc. No. 03-2446. Filed for public inspection December 26, 2003, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Disbarment

Notice is hereby given that Mark A. Rock having been disbarred from the practice of law in the State of Ohio by Order dated June 16, 2003, the Supreme Court of Pennsylvania issued an Order on December 10, 2003, disbarring Mark A. Rock from the Bar of this Commonwealth, effective January 9, 2003. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

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

[Pa.B. Doc. No. 03-2447. Filed for public inspection December 26, 2003, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that on December 10, 2003, Francis X. Gavin, who was suspended from the practice of law in the state of New Jersey for a period of three months, by Order dated May 20, 2003, was Suspended by the Supreme Court of Pennsylvania for a period of three months, to run consecutive to the suspensions imposed by this Court by Orders dated August 1, 2002, and October 31, 2002. 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 and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 03-2448. Filed for public inspection December 26, 2003, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that on December 10, 2003, James Samuel Debosh, who was suspended from the practice of law in the state of New Jersey for a period of three months, by Order dated June 2, 2003, was Suspended by the Supreme Court of Pennsylvania for a period of three months, to run consecutive to the suspension imposed by this Court by Order dated April 29, 2002. 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 and Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

[Pa.B. Doc. No. 03-2449. Filed for public inspection December 26, 2003, 9:00 a.m.]