

THE COURTS

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 100]

Amendment to Rule 76 Governing Definitions; No. 438 Civil Procedural Rules; Doc. No. 5

Order

Per Curiam:

And Now, this 19th day of August, 2005, Pennsylvania Rule of Civil Procedure 76 is amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective October 1, 2005.

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 100. RULES OF CONSTRUCTION

Rule 76. Definitions.

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

* * * * *

“signature”—Includes

(1) mark when the individual cannot write, the individual’s name being written near it, and witnessed by another who writes his or her own name,

(2) when used in reference to documents produced by a court of the Unified Judicial System, a handwritten signature, a copy of a handwritten signature, a computer generated signature or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer’s authorization unless otherwise provided in these rules;

* * * * *

Explanatory Comment

The Administrative Office of Pennsylvania Courts is implementing a statewide system of automated court management. That system generates documents which may contain computer generated signatures. Prior to the present amendment, the rule defined the term “signature” to include “a mark when the individual cannot write” and gave no guidance with respect to computer generated signatures.

Rule 76 has been amended to facilitate the filing of documents generated by the courts of the Unified Judicial System by authorizing the signature on such documents to be an original signature, a copy of a signature, a

computer generated signature or an electronic signature. The rule incorporates the definition of signature in Rule of Criminal Procedure 103.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,
Chair

[Pa.B. Doc. No. 05-1631. Filed for public inspection September 2, 2005, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 4 AND 10]

Order Rescinding Rule 1002; Promulgating Rule 1002; and Amending Rules 455 and 1003; No. 326 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the August 15, 2005 rescission of current Rule of Criminal Procedure 1002 (Procedure in Summary Cases); promulgation of new Rule of Criminal Procedure 1002 (Procedure in Summary Cases); and amendments to Rules of Criminal Procedure 455 (Trial in Defendant’s Absence) and 1003 (Procedure in Non-Summary Municipal Court Cases). New Rule 1002 provides exceptions to the statewide summary case rules which are necessary for Municipal Court to efficiently and judiciously handle its case load while providing defendants with a fair and expeditious disposition of their cases. The Final Report follows the Court’s Order.

Order

Per Curiam:

Now, this 15th day of August, 2005, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been submitted without publication pursuant to Pa.R.J.A. 103(a)(3) in the interests of justice and efficient administration, and a Final Report to be published with this *Order*:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

- (1) Rule of Criminal Procedure 1002 is rescinded;
- (2) new Rule of Criminal Procedure 1002 is promulgated; and
- (3) Rules of Criminal Procedure 455 and 1003 are amended,

all in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective February 1, 2006.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART E. General Procedures in Summary Cases

Rule 455. Trial in Defendant’s Absence.

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(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall give notice **by first class mail** to the defendant of the conviction and sentence [**by first class mail**], and of the right to file an appeal within 30 days for a trial de novo. In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within 10 days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due may result in the issuance of an arrest warrant.

* * * * *

Official Note: Rule 84 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; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; **amended August 15, 2005, effective February 1, 2006.**

Committee Explanatory Reports:

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Final Report explaining the August 15, 2005 amendments to paragraph (D) concerning notice of right to appeal published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT

Rule 1002. [Procedure in Summary Cases] (Rescinded).

[(A) In all criminal proceedings in which a person is accused only of one or more non-traffic summary offenses or violations of municipal criminal ordinances, proceedings shall be instituted by:

(1) A Citation Issued to the Defendant.

Except as provided in paragraph (A)(3) below, the police officer shall take the accused into custody and transport him or her to the appropriate district police station, where without unnecessary delay the police officer or a superior officer may issue a citation and summons notifying the defendant to appear for trial within 30 days or order the defendant's release. If a citation and summons are issued, the defendant shall not be slated, fingerprinted, or photographed. Within 10 days after issuance, the original shall be filed with a Municipal Court judge. The case shall proceed as provided in the Rules of Criminal Procedure. The defendant may plead guilty by mail within 10 days prior to the date set for trial provided a fine or costs or both are specified in the citation.

(2) A Citation (Rather Than a Complaint) Filed Directly With A Municipal Court Judge.

When it is not feasible to issue a citation to the defendant as provided in paragraph (A)(1), or when evidence is discovered after the issuance of a citation which gives rise to additional summary charges against the defendant resulting from the same incident, the police officer may file a citation with a Municipal Court judge, who shall issue a

summons and not a warrant of arrest except as provided in paragraph (C) of this rule. If a summons is issued the case shall proceed as provided in Rules 411, 412, 413, 414, and 430.

(3) Arrest Without Warrant.

The police officer may arrest the defendant without a warrant if the offense is a summary offense or violation of a municipal criminal ordinance, but only when

(a) such arrest is necessary in the judgment of the officer, and

(b) such arrest is authorized by law.

The defendant shall be taken without unnecessary delay before a Municipal Court judge before whom the police officer shall swear to a citation, and trial shall be held as provided in Rules 441 and 454 of the Rules of Criminal Procedure.

(4) Complaint.

If the affiant is not a police officer, he or she shall file a complaint with a Municipal Court judge. If a complaint is submitted to the office of the district attorney for review, and is thereafter disapproved or not acted upon within a reasonable time, the affiant may file the complaint with a judge of the Municipal Court, who may take any action that a common pleas judge is authorized to take under Rule 506. If the Municipal Court judge decides to issue process, he or she shall issue a summons and not a warrant of arrest except as provided in paragraph (C) of this rule.

(B) When the same conduct is proscribed under an Act of Assembly and a municipal criminal ordinance, the charge shall be brought under the Act of Assembly and not under the ordinance.

(C) A warrant of arrest shall be issued only if:

(1) a citation or summons has been served upon and disobeyed by the defendant;

(2) a citation or summons has been returned undelivered; or

(3) a complaint has been filed and the defendant is unknown, or a non-resident, or not known to be a resident and the Municipal Court judge has reasonable grounds to believe that the defendant will not obey a summons.

(D) Unless otherwise provided in this rule or elsewhere in Chapter 10, summary cases shall thereafter proceed as prescribed in Chapter 4 of the Pennsylvania Rules of Criminal Procedure.

Comment

The procedure set forth in this rule differs somewhat from that provided in Chapter 4. First, the rule mandates the use of a citation in summary cases only when the affiant is a member of the Philadelphia Police Department. In Chapter 4, by contrast, a law enforcement officer, which is defined in Rule 103 and would include a police officer and any other person who is by law given the power to enforce the law, would institute summary proceedings by citation. Second, the rule excludes summary traffic and parking cases; all summary offenses under the motor vehicle laws are under the jurisdiction of the Philadelphia Traffic Court. See 42 Pa.C.S. §§ 1301—1303, 1321.

The procedure to be followed by police is set forth in greater detail here than in Chapter 4, although it is not inconsistent with that Chapter.

As under Rule 421, the district attorney may in his or her discretion require review by his or her office of private complaints charging summary cases before such complaints are submitted to an issuing authority, i.e., a Municipal Court judge. It is expected that the district attorney will formally notify the judges of the Municipal Court through its president judge as to which categories of summary cases, if any, will be subject to such review.

The contents of the citation or complaint must comply with the requirements of Rules 403 and 504, respectively.

Paragraph (A)(1) was amended in 1980 to extend the period for attestation to and filing of the citation and to permit the "station house release" citation procedure. Paragraph (A)(3) was amended at the same time to parallel earlier changes in Chapter 4 concerning the authority to arrest without a warrant. See Rules 440 and 441. In 1989, the requirement in paragraph (A)(1) that the police officer attest under oath, i.e., before a judge, was deleted as unnecessary because all citations must now be verified. See Rule 403(A)(9).]

Official Note: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended 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; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001; **rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002.**

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. [1477] 1478 (March 18, 2000).

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Final Report explaining the August 15, 2005 rescission of Rule 1002 and new Rule 1002 published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Rule 1002. Procedure in Summary Cases.

(A) Except as provided in this rule or by local rule authorized by this rule, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused only of one or more non-traffic summary offenses or violations of municipal criminal ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

(B) Non-traffic summary proceedings shall be instituted by a citation issued to the defendant:

(1) Except as provided in paragraph (B)(2), the law enforcement officer shall take the defendant into custody and transport him or her to the appropriate district police station, where without unnecessary delay the law enforcement officer or a superior officer shall prepare and issue to the defendant a citation and a notice to appear. The defendant shall not be slated, fingerprinted, or photographed, except as provided by law.

(2) When authorized by local rule promulgated pursuant to Rule 105 (Local Rules), in lieu of taking the defendant into custody as provided in paragraph (B)(1), the law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule 403 (Contents of Citation) and a notice to appear.

(3) Except as provided in paragraph (B)(5), in all cases, the law enforcement officer shall release the defendant on the defendant's own recognizance. The notice to appear shall direct the defendant to appear before a trial commissioner in a specified court room.

(4) Within 5 days after issuance of the citation and notice to appear, the citation shall be filed with the clerk of Municipal Court.

(5) When required by local rule promulgated pursuant to Rule 105 (Local Rules), rather than releasing the defendant pursuant to paragraph (B)(3), a law enforcement officer without unnecessary delay shall transport the defendant to the Municipal Court for proceedings before a Municipal Court judge.

(C) Procedures Following Institution of Summary Proceedings

(1) When the defendant is taken before a Municipal Court judge pursuant to paragraph (B)(5), the case shall proceed as provided by local rule promulgated pursuant to Rule 105 (Local Rules).

(2) When the defendant appears before a trial commissioner, the trial commissioner shall explain the process to the defendant.

(a) If the defendant enters a guilty plea, the trial commissioner shall impose the fines and costs.

(b) If the defendant requests a trial before a Municipal Court judge, the trial commissioner shall set a date for trial and issue a subpoena to the defendant.

(c) If applicable, after paying any fee imposed, the defendant may be accepted into the Municipal Court's summary case diversionary program, or any other diversionary program offered pursuant to local rule promulgated pursuant to Rule 105 (Local Rules). When the defendant successfully completes the Municipal Court's summary case diversionary program, the defendant's arrest record automatically will be expunged.

(D) If the defendant fails to appear pursuant to the notice to appear or a subpoena, a bench warrant shall be issued.

(E) When the same conduct is proscribed under an Act of Assembly and a municipal criminal ordinance, the charge shall be brought under the Act of Assembly and not under the ordinance.

Comment

This rule, which replaced former Rule 1002 in 2005, was developed to accommodate the procedures Philadelphia Municipal Court has implemented to address the issues in non-traffic summary cases unique to Philadelphia to more efficiently handle the vast number of non-traffic summary cases, to protect the defendants' rights to a fair and prompt disposition of their cases, and, when appropriate, to provide the necessary rehabilitation or social services. Municipal Court is required to implement local rules pursuant to Rule 105 (Local Rules) enumerating the details of the summary proceedings following the issuance of a citation or a summons. For

purposes of this rule, "local rule" includes all memoranda of understanding and administrative orders that affect non-traffic summary case procedures.

Although defendants in summary cases ordinarily are not slated, photographed, or fingerprinted, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. See, e.g., 18 Pa.C.S. § 3929(g) concerning fingerprinting in retail theft cases.

The contents of the citation must comply with the requirements of Rule 403.

All summary offenses under the motor vehicle laws and parking violations are under the jurisdiction of the Philadelphia Traffic Court. See 42 Pa.C.S. §§ 1301—1303, 1321.

Official Note: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended 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; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Rule 1003. Procedure in Non-Summary Municipal Court Cases.

(A) INITIATION OF CRIMINAL PROCEEDINGS

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(2) Private Complaints

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(b) If the attorney for the Commonwealth:

* * * * *

(ii) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the [**court of common pleas**] **President Judge of Municipal Court, or the President Judge's designee**, for review of the decision. **Appeal of the decision of the Municipal Court shall be to the Court of Common Pleas.**

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(D) PRELIMINARY ARRAIGNMENT

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(3) At the preliminary arraignment, the issuing authority:

* * * * *

(b) shall give the **defendant's attorney, or if unrepresented the defendant**, a copy of the certified complaint;

(c) if the defendant was arrested with a warrant, **the issuing authority** shall provide the **defendant's attorney, or if unrepresented the defendant**, with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the **defendant's attorney, or if unrepresented the defendant**, shall be given copies no later than the first business day after the preliminary arraignment; and

(d) shall also inform the defendant:

* * * * *

(ii) of the day, date, hour, and place for **the trial**, which shall not be less than 20 days after the preliminary arraignment **or for the preliminary hearing, which shall be given a first listing of not less than 3 days nor more than 10 days after the preliminary arraignment**, unless the issuing authority fixes an earlier date **for the trial or the preliminary hearing** upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth;

* * * * *

Comment

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Under paragraphs (A) and (D), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before the defendant may be detained. See *Riverside v. McLaughlin*, 500 U. S. 44, **111 S. Ct. 1661, 114 L.Ed.2d 49** (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

* * * * *

Paragraph (D)(3)(c) requires that the **defendant's attorney, or if unrepresented the defendant**, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 540(B). See also Rules **208(A) and 513(A) [and 208(A)]**.

* * * * *

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, **515 Pa. 501, 530 A.2d 414** ([**Pa.**] 1987).

* * * * *

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 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 May 10, 2002, effective September 1, 2002; amended

August 24, 2004, effective August 1, 2005; **amended August 15, 2005, effective February 1, 2006.**

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. 4918 [1477] 1478 (March 18, 2000).

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Final Report explaining the August 15, 2005 amendments to paragraphs (A)(2)(b)(ii) and (D)(3)(d)(ii) published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

FINAL REPORT¹

New Rule of Criminal Procedure 1002 (Procedure in Summary Cases), Amendments to Rules 455 (Trial in Defendant's Absence) and 1003 (Procedure in Non-Summary Municipal Court Cases), and Rescission of Former Rule of Criminal Procedure 1002

Philadelphia Municipal Court Procedures in Non-Traffic Summary Cases

On August 15, 2005, effective February 1, 2006, upon the recommendation of the Criminal Procedural Rules Committee, the Court rescinded current Pa.R.Cim.P. 1002 and adopted new Pa.R.Crim.P. 1002 (Procedure in Summary Cases) that provide exceptions to the statewide summary case rules which are necessary for Municipal Court to efficiently and judiciously handle its case load while providing defendants with a fair and expeditious disposition of their cases. The Court also has made some housekeeping changes to Pa.Rs.Crim.P. 455 (Trial in Defendant's Absence) and 1003 (Procedure in Non-Summary Municipal Court Cases).

I. INTRODUCTION

Rule of Criminal Procedure 1002 sets forth the procedures for non-traffic summary cases in Philadelphia, cases that are within the jurisdiction of the Philadelphia Municipal Court. As provided in this rule and in Rule 1000, except as provided in Chapter 10, the Rules of Criminal Procedure are to be followed in Philadelphia Municipal Court cases. During the development of the Common Pleas Case Management System, it came to light that Philadelphia Municipal Court has designed and is using a form of citation different from the statewide form, and has developed procedures for instituting and processing non-traffic summary cases that are different from the procedures set forth in current Rule 1002 and in Chapter 4. Because of the volume and types of cases within the Municipal Court system, Municipal Court developed this set of procedures that work well for them, thereby assuring cases are moving promptly and fairly to disposition. These divergent practices include a "community court"² with a number of innovations to deal, in particular, with quality of life crimes by providing community service and behavioral treatment programs in lieu of fines and imprisonment.

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

² "Community Court" is the general term Municipal Court has used to identify their special courts program. It is the Committee's understanding that this is not a "community court" in the context of community courts under 42 Pa.C.S. §§ 1101—1106.

After meeting with the Municipal Court officials at the Supreme Court's behest,³ and reviewing the procedures Municipal Court has implemented, the Committee recommended, and the Court has adopted, a complete revamping of Rule 1002 that accommodates the procedures Municipal Court maintains are vital to the efficient, expeditious, and just disposition of non-traffic summary cases in Philadelphia.

II. DISCUSSION OF RULE CHANGES

A. Rule 1002

Current Rule 1002 has been rescinded and new Rule 1002 adopted because the changes to Rule 1002 necessary to validate the current procedures in non-traffic summary cases in the Philadelphia Municipal Court are quite extensive.

New paragraph (A) sets forth the scope of the rule, and incorporates the provisions of current Rule 1002(D). In addition, to encourage Municipal Court to properly implement local criminal practices and promulgate local rules by following the requirements of Rule 105, new paragraph (A) makes specific reference to local rules, and there is further emphasis of this point in the Comment.⁴

New paragraph (B) sets forth the procedures for instituting the non-traffic summary proceedings. Paragraph (B)(1) incorporates the current Rule 1002(A)(1) general procedure for taking the defendant to the police station where the citation is prepared and given to the defendant.⁵ During the discussion of this section of current Rule 1002 with the representatives from Municipal Court and others, there were strong views expressed about the existing prohibition on slating, fingerprinting, or photographing these summary case defendants. The Committee reviewed the Rule 1002 history and the rationale for including this language. When Rule 1002 originally was adopted in 1974, the Committee and Court did not want summary case defendants in Philadelphia treated differently from all other summary case defendants concerning these administrative and identification procedures even though the rule was providing that the police would take the summary defendant to the police station for processing. This "detention" procedure was not to be tantamount to an arrest. In view of the discussion and the rule history, the general prohibition language has been retained with the addition of "except as provided by law." The Comment retains the current reference to the statutory requirement for fingerprinting in retail theft cases as an example of what is meant by the new "except" clause.

Paragraph (B)(2) is new, and is comparable to the 2003 changes to the citation rules in Chapter 4 that recognize the ability of police to electronically prepare, verify, and transmit the citation. Because of the Municipal Court community court program in which some summary trials are held immediately following the processing of the defendant, paragraph (B)(2) requires that the Municipal

³ These rule changes were developed by the Committee in conjunction with a Municipal Court Ad Hoc Committee that had been formed with the mandate from the Supreme Court to formulate changes to the Rules of Criminal Procedure (Chapter 10) that conform the statewide rules' procedures to the procedures in place in Philadelphia for handling non-traffic summary cases procedures. Representatives from the Philadelphia Municipal Court, the Philadelphia District Attorney's office and the Public Defender's office, and the Administrative Office of Pennsylvania Courts, in addition to Committee members and staff, participated on the Ad Hoc Committee.

⁴ Ensuring that there are local rules promulgated pursuant to Rule 105 when there are local procedures different from or in addition to the statewide rule procedures is vital to the Committee's and Court's ability to monitor local procedures to ensure that attorneys with practices in more than one judicial district, including, for example, counsel from the State Police and the Attorney General's office, are not hampered in their ability to practice in multiple judicial districts.

⁵ Ordinarily, when a defendant is stopped for a summary offense, the law enforcement officer will prepare the citation at the location and give the defendant a copy of the citation at that time. See Rule 405 (Issuance of Citation).

Court President Judge promulgate a local rule to provide in which cases the electronic citation procedure will be permitted.

Paragraphs (B)(3) and (4) are taken from current Rule 1002(A)(1). Pursuant to paragraph (B)(3), and consistent with the current practice in Municipal Court, except for those cases that qualify for the community court program, the defendant must be released on his or her own recognizance, and must receive a notice to appear for an arraignment-type procedure before a trial commissioner.⁶ The court room is predetermined by Municipal Court, and notice of this court room is given to the police.

The ten-day time for filing the citation in current Rule 1002(A)(1) has been changed to five days in paragraph (B)(4). Municipal Court indicated that this shorter time limit, which is consistent with the time for filing citations in all other magisterial districts provided in Rule 406, would not be a problem for Philadelphia.

Paragraph (B)(5) is new, and provides for the transportation to community court without unnecessary delay of defendants who are qualified for disposition in community court. Because of the continuing evolution of the Philadelphia Municipal Court community court program, rather than having to go through the time consuming rule-making process with the Criminal Procedural Rules Committee and the Court, paragraph (B)(5) permits Municipal Court to elaborate the details of the community court procedures in a local rule promulgated pursuant to Rule 105. The local rule process also permits the Committee to monitor all changes to the procedures implemented by Municipal Court.

Paragraph (C) is new, and sets forth the procedures following the institution of the summary proceedings. Paragraph (C)(1) is broadly worded to accommodate the community court program. As with the local rule requirement in paragraph (B)(5), paragraph (C) requires the Municipal Court President Judge to promulgate a local rule to provide the details of the trial procedures in community court.

Paragraph (C)(2) sets forth the arraignment-type procedures following the defendant's release pursuant to paragraph (B)(3) when the defendant appears before the trial commissioner. Consistent with the current practice in Municipal Court, the trial commissioner is required to explain the proceedings to the defendant. The defendant is given the option to plead guilty and pay the fines and costs set in the case, or to plead not guilty, in which case, the trial commissioner sets the date for the trial before a Municipal Court judge and issues a subpoena to the defendant. In addition, in specified cases, the defendant also may be given the option to participate in the Municipal Court's current summary case diversionary program, or another diversionary program that may be implemented by local rule. In these cases, if the defendant successfully completes the program, the defendant's arrest record is automatically expunged.

Paragraph (D) implements the current practice in Municipal Court of issuing bench warrants when a defendant in a summary case fails to appear pursuant to the notice to appear or a subpoena. Paragraph (E) is identical to current Rule 1002(B).

The provisions in current Rule 1002 concerning procedures for filing the citation, paragraph (A)(2), arrests

without warrant, paragraph (A)(3), private complaints, paragraph (A)(4), and warrants of arrest, paragraph (C), have not been carried over into the new rule. In addition, defendants in non-traffic summary cases are not permitted to enter a plea by mail.⁷ The representatives of Municipal Court told us these procedures are never used, and asked that these provisions be deleted from the new rule.

B. Rules 455 and 1003

While the Ad Hoc Municipal Court Committee was convened and reviewing the Rule 1002 procedures, the members also reviewed the other rules in Chapter 10 and the rules in Chapter 4 to identify any other rule procedures that are divergent from the current practices in Municipal Court. The Municipal Court representatives suggested changes to Rules 455 and 1003, and indicated the other Chapter 4 and 10 rules and the practices in Municipal Court are consistent.

Rule 455

Rule 455(D) has been modified to include notice of the defendant's right to appeal for a trial de novo in the notice that goes out following a trial in the defendant's absence.

Rule 1003⁸

Rule 1003(A)(2) sets forth the procedures for private criminal cases. The Municipal Court representatives explained that the procedure for review of the attorney for the Commonwealth's disapproval of a complaint is by petition to the President Judge of Municipal Court, or a designee, not, as in the current rule, to Common Pleas Court. The affiant may appeal the Municipal Court decision to Common Pleas Court. Paragraph (A)(2) has been amended accordingly.

In paragraph (D)(3), the Municipal Court representatives suggested adding "or defendant's attorney" in each place there is a reference to providing a copy of some court document to the defendant because defendants frequently are represented at the preliminary arraignment stage of the proceedings and the defendant's attorney should be receiving these copies. Accordingly, consistent with comparable references in other statewide rules, the provision has been amended to read "defendant's attorney, or if unrepresented the defendant."⁹

Finally, Municipal Court has jurisdiction of all misdemeanors, so the notice of the next proceeding date given the defendant at the time of the preliminary arraignment in current Rule 1003 is of the time for the trial in a misdemeanor case. Municipal Court also serves as an issuing authority when the case is a felony case, so the next proceeding after the preliminary arraignment in these cases is a preliminary hearing before a Municipal Court judge. Because current Rule 1003(D)(3)(d)(ii) does not include preliminary hearing notices, this provision of the rule has been amended to include the requirement that, at the preliminary arraignment, the defendant receive notice of the time for the preliminary hearing.

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⁷ See, e.g., Rules 403(B), 408, and 409.

⁸ In addition, pursuant to the recent Court directive, the string citations have been added to the cases referenced in the Comment.

⁹ See, e.g., Rule 576.

⁶ The position of "trial commissioner" is unique to Philadelphia.

Title 255—LOCAL COURT RULES

NORTHUMBERLAND COUNTY

Adoption of Local Rules—NCV-1915.3-1 and 1920.12; Misc. No. CV-86-1958

Order

And Now, this 10th day of August, 2005, the Court hereby adopts the following Northumberland County Local Rules of Civil Procedure, to be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

It is further *Ordered* that the Court Administrator shall file seven certified copies of these rules with the AOPC; two certified copies and a computer diskette containing the text to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*; one certified copy with the Domestic Relations Procedural Rules Committee; and one certified copy to the *Northumberland County Legal Journal* for publication thereof.

It is further *Ordered* that copies shall be kept continuously available for public inspection and copying in the office of the Prothonotary of Northumberland County.

By the Court

ROBERT B. SACAVAGE,
President Judge

Rule NCV 1920.12 Family Transitions Program (an educational seminar) Mandatory

A. In all divorce proceedings where there are any children of the marriage under age 18, the parties shall within 60 days of the date the Complaint is filed, attend a two (2) hour mandatory educational group program entitled "Family Transitions Program" at the Northumberland County Family Center.

B. The Divorce Complaint shall contain one of the following averments:

(1) Plaintiff avers there are no children under the age of 18 years born of the marriage;

(2) Plaintiff avers there are children under the age of 18 years born of the marriage, namely (list names and dates of birth).

C. If there are children under the age of 18 years born of the marriage, the complaint shall include one of the following averments:

(1) Plaintiff has been advised of the requirement to attend the Family Transitions Program; or

(2) The parties have previously attended either the "Family Transitions Program" or the more comprehensive "Custody Conflict Resolution Program" (specify the program attended) as evidenced by certificates of attendance attached or contained in the official court file to the following docket number (list case number).

D. In the event there are children under the age of 18 born of the marriage, and there is no averment the parties previously attended either of the aforementioned programs, the divorce complaint shall have attached thereto an order in substantially the following form:

(CAPTION)

ORDER OF COURT

AND NOW, this ____ day of _____, 200 __, the Court hereby ORDERS that within sixty (60) days of the

date hereof, both parties shall register for and attend the "Family Transitions Program."

FAILURE TO COMPLY MAY RESULT IN THE IMPOSITION OF SANCTIONS (DISMISSAL OF ACTION, NO FINAL HEARING) OR A FINDING OF CONTEMPT.

BY THE COURT:

J.

pc: Plaintiff
Defendant
Court Administrator
Court

E. The Plaintiff shall serve the foregoing Order at the time the divorce complaint is served, along with a registration form. The registration forms are available from the Court Administrator's office.

F. Any affidavit of service shall include a statement that the defendant was served the foregoing order and the registration form.

G. The completed registration forms, along with a registration fee of \$25.00 per registrant, are to be forwarded to the Court Administrator's office. Note: No personal checks (except from an attorney's escrow account) will be accepted. Payment should be by certified check, money order or cash.

H. Any request for waiver of the fee shall be accompanied by a verified request for in forma pauperis status pursuant to Pa.R.C.P. 240.

I. Should a party fail to attend the program, the party or the Court sua sponte may initiate contempt proceedings.

J. If there has been domestic violence, by designation on the registration form, the parties will be scheduled for separate program sessions.

K. Certificates of attendance are to be filed of record, with a copy forwarded to the Court Administrator.

L. Court approval is required for an extension of time to complete the program or for any other request to waive any of the requirements hereof for good cause.

Rule NCV-1915.3-1 Custody Conflict Resolution Program

A. Upon the recommendation of a Child Custody Hearing Officer/Special Master, by petition of an authorized representative of Children and Youth Services or sua sponte by the Court, the Court directs that the parties in any custody, divorce or PFA proceedings shall attend the "Custody Conflict Resolution Program," consisting of four sessions at the Northumberland County Family Center, to be completed within 60 days of the order.

B. Within 7 days after entry of the order directing the parties to attend the "Custody Conflict Resolution Program," both parties are required to register for the seminar by delivery or mail of the completed registration form to the Court Administrator's office; along with the required fee of \$25.00 per registrant. Note: No personal checks (except from an attorney's escrow account) will be accepted. Payment shall be by certified check, money order or cash.

C. Any request for waiver of the fee shall be accompanied by a verified request for in forma pauperis status pursuant to Pa.R.C.P. 240.

D. If there has been domestic violence, by designation on the registration form, the parties will be scheduled for separate program session.

E. Should a party fail to attend the program, the party or the Court sua sponte may initiate contempt proceedings.

F. Certificates of attendance are to be filed of record, with a copy forwarded to the Court Administrator.

G. The course must be completed only once, and prior attendance at the "Family Transitions Program" is not a substitute for required attendance at the "Custody Conflict Resolution Program."

H. Court approval is required for an extension of time to complete the program or for any other request to waive any of the requirements hereof for good cause.

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