

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 4]

Amendments to Pa.Rs.Crim.P. 403, 409, 414, 424
and 454

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 403, 409, 414, 424, and 454 to (1) permit delay of sentencing in summary cases for determination of intermediate punishment status and (2) to provide procedures for entry of guilty pleas in summary cases involving sentences of imprisonment. 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 changes to the rules precedes the Report. Additions are shown in bold and; 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, June 16, 2006.

By the Criminal Procedural Rules Committee

NICHOLAS J. NASTASI,
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:
- (1) the name and address of the organization, and badge number, if any, of the law enforcement officer;
 - (2) the name and address of the defendant;
 - (3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);
 - (4) 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) the place where the offense is alleged to have been committed;

(6) 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) the date of issuance;

(8) a notation if criminal laboratory services are requested in the case;

(9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(B) The copy delivered to the defendant shall also contain a notice to the defendant:

(1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and

(2) that the defendant shall, within 10 days after issuance of the citation:

(a) plead not guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial; or

(ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require. If the defendant cannot afford to pay the collateral specified in the citation or the \$50, the defendant must appear before the issuing authority to enter a plea; or

(b) plead guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation **or when required to appear pursuant to Rule 409(B)(3), 414(B)(3), or 424(B)(3)**; or

(c) appear before the proper issuing authority to request consideration for inclusion in an accelerated [**dispositive**] rehabilitative **disposition** program;

(3) that all checks forwarded for fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;

(4) that failure to respond to the citation as provided above within the time specified:

(a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and

(b) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;

(5) that failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded; and

(6) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial de novo.

Comment

A law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously must give the defendant a paper copy of the citation containing all the information required by this rule. Nothing in this rule is intended to require the defendant to sign the citation.

Paragraph (A)(3) requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. See the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Paragraph (A)(8) requires the law enforcement officer who issues a citation to indicate on the citation whether criminal laboratory services are requested in the case. This information is necessary to inform the district justice that, in addition to any fines, restitution, or costs, the district justice may be required to sentence the defendant to pay a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 which requires that a defendant be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

[If the law enforcement officer specifies the fine and costs in the citation, the defendant may plead guilty by mail.] As provided in paragraph (D)(2)(b)(i), the defendant may plead guilty by mail only when fine and costs are set forth in the citation. The law enforcement officer may specify the fine and costs in the citation only when the penalty provided by law does not include a possible sentence of imprisonment and the statute or ordinance fixes the specific amount for the fine. [Consequently, if by statute a sentence of imprisonment is authorized for the offense(s) charged, such sentence may only be imposed if neither the fine nor costs is specified in the citation and the defendant therefore must personally appear before the issuing authority.]

Paragraph (B)(4)(a) provides for notice to the defendant who is under 18 years of age that a summons will be issued if the defendant fails to respond to the citation.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the fines and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 407.

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 460 (Notice of Appeal).

It is intended that the notice to the defendant, required by paragraph (B) to be on the copy of the citation delivered to the defendant, shall be simply worded so the plain meaning of the notice is easily understandable.

For consequences of defects in a citation, see Rule 109.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

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; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; **amended , 2006, effective , 2006.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

Report explaining the June 3, 1993 amendments published with the Court's Order at 23 Pa.B. 2809 (June 19, 1993).

Report explaining the July 25, 1994 amendments published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

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).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1509 (March 18, 2000).

Final Report explaining the February 6, 2003 Comment revisions cross-referencing Rule 401 concerning electronic transmission of parking citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Report explaining the proposed amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published at 36 Pa.B. 2511 (May 27, 2006).

PART B(1). Procedures When Citation is Issued to Defendant

Rule 409. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the citation **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail shall also be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, **or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment;** and

(5) provide for installment payments when a defendant who is sentenced to pay fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2006 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and **[(b)](B)**. The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2006 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea. Paragraph (D) would permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303. **[For procedure upon default in payment of fine or costs, see Rule 456.]**

For procedure upon default in payment of fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.

Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule **[430] 75**. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; **amended , 2006, effective , 2006.**

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Report explaining the proposed amendments to paragraphs (B)(3) and (C)(4) published at 36 Pa.B. 2511 (May 27, 2006).

Comment

PART B(2). Procedures When Citation Failed

Rule 414. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail shall also be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, **or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment;** and

(5) provide for installment payments when a defendant who is sentenced to pay fine and costs is without the financial means immediately to pay the fine and costs.

The rule was amended in 2006 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing [is] in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2006 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea. Paragraph (D) would permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For procedure upon default in payment of fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For arrest warrant procedures, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules [122 and 121] 121 and 122.

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule [455] 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; **amended** , **2006 effective** , **2006**.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 [(9/15/90)] (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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).

Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Report explaining the proposed amendments to paragraphs (B)(3) and (C)(4) published at 36 Pa.B. 2511 (May 27, 2006).

PART C. Procedures in Summary Cases When Complaint Filed

Rule 424. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons **or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).**

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail shall also be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, **or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment;** and

(5) provide for installment payments when a defendant who is sentenced to pay fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2006 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2006 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea. Paragraph (D) would permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For procedure upon default in payment of fine or costs, see Rule 456.

For appeal procedures in summary cases, see Rules 460, 461, and 462.

For procedures regarding arrest warrants, see Rules 430 and 431.

With regard to the defendant's right to counsel and waiver of counsel, see Rules [122 and 121] 121 and 122.

Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; 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 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; **amended** , **2006 effective** , **2006**.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Report explaining the proposed amendments to paragraphs (B)(3) and (C)(4) published at 36 Pa.B. 2511 (May 27, 2006).

PART E. General Procedures in Summary Cases

Rule 454. Trial in Summary Cases.

(A) Immediately prior to trial in a summary case:

(1) the defendant shall be advised of the charges in the citation or complaint;

(2) if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and

(a) upon request, the defendant shall be given a reasonable opportunity to secure counsel; or

(b) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

(3) the defendant shall enter a plea.

(B) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

(C) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, **except as provided in paragraph (E).**

(E) If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.

(F) At the time of sentencing, the issuing authority shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, 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 issuing authority may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the de novo trial or the appeal may be dismissed;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

(4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (E)(1) through (E)(3), and a copy of the order shall be given to the defendant.

Comment

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U. S. 654 (2002), *Scott v. Illinois*, 440 U. S. 367 (1979), and *Argersinger v. Hamlin*, 407 U. S. 25 (1972). See Rules 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 457 (Withdrawal of Charges in Summary Cases).

Paragraph [**(E)**]**(F)**(2)(b) is included in the rule in light of *North v. Russell*, 427 U. S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

Under paragraph **[(E)](F)(2)(a)**, the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph **[(E)](F)(3)**, the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461, the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would be able to pursue an appeal under Rules 460-462.

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

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iv), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Paragraph (E) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule 456(A).

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; **amended** , **2006, effective** , **2006.**

Committee Explanatory Reports:

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

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).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at **[32] 33** Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the March 26, 2004 changes concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1929 (April 10, 2004).

Report explaining the proposed amendments adding paragraph (E) concerning intermediate punishment published at 36 Pa.B. 2511 (May 27, 2006).

REPORT

Amendments to Pa.Rs.Crim.P. 403, 409, 414, 424, and 454

Summary Guilty Pleas

BACKGROUND

The proposed amendments Pa.Rs.Crim.P. 403 (Contents of Citation), 409 (Guilty Pleas), 414 (Guilty Pleas), 424 (Guilty Pleas), and 454 (Trial in Summary Cases) are intended to address two issues regarding the entry of guilty pleas in summary cases: (1) the timing of sentencing in order to determine a defendant's eligibility for intermediate punishment; and (2) procedures for the entry of guilty pleas in cases in which there is a likelihood of a sentence of imprisonment or a mandatory sentence of imprisonment.

Intermediate Punishment

The first issue is whether the Criminal Rules should provide that sentencing may be delayed to determine whether or not a defendant is eligible for intermediate punishment (IP). Specifically, under 42 Pa.C.S. § 9804 and § 9763, defendants may be sentenced to intermediate punishment for certain offenses, including violation of 75 Pa.C.S. § 1543(b) (driving with a license under a DUI-related suspension), but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment.¹ Often this information will not be available

¹ Under 42 Pa.C.S. § 9804 (County Intermediate Punishment Programs), a defendant punished under 75 Pa.C.S. § 1543(b) may only be admitted to an intermediate punishment program if he or she undergoes a drug or alcohol assessment and is determined to be in need of drug or alcohol treatment. This restriction is also contained in 42 Pa.C.S. § 9763 (Sentence of County Intermediate Punishment), which states that a defendant who is to be sentenced for a Section 1543(b) offense "may only

to the issuing authority at sentencing, especially when the defendant appears personally to enter a guilty plea.

Presently, Rules 409(C)(4), 414(C)(4), and 424(C)(4) require the sentence to be imposed at the time that the plea is entered with no provision for delaying imposition of sentence to determine eligibility for intermediate punishment.

The Committee believes that the rules should permit the issuing authority the flexibility in the timing of sentencing to determine eligibility.

Pleading Guilty by Mail in Cases with Sentences of Imprisonment

The second issue regards the situation that arises when a police officer cites a defendant for summary offenses, with a possible sentence of imprisonment, including a charge under 75 Pa.C.S. § 1543(b), which carries a mandatory sentence of imprisonment. Communications with the Committee point out that there have been occasions in which the officer charges an offense that carries a likelihood of a sentence of imprisonment and includes on the citation the total of the fines and costs. Because the fines and costs have been specified on the citation, a defendant potentially may plead guilty by mail, not realizing that a sentence of imprisonment should be imposed since Rules 409(a)(2), 414(A)(2), and 424 (a)(2) only require an appearance if the fines and costs are not specified. The Comment to Rule 403 contributes to the confusion by providing:

If the law enforcement officer specifies the fine and costs in the citation, the defendant may plead guilty by mail. The officer may specify the fine and costs only when the penalty provided by law does not include imprisonment and the statute or ordinance fixes the specific amount for the fine. Consequently, if by statute a sentence of imprisonment is authorized for the offense(s) charged, such sentence may only be imposed if neither the fine nor costs is specified in the citation and the defendant therefore must personally appear before the issuing authority.

Related to this issue is the question of how to handle the situation in which a defendant is charged with an offense that carries a possible jail sentence but to which he or she pleads guilty by mail because the police officer has listed the amount of the fines and costs on the citation. Under the Rule 403 Comment language, a defendant in that situation could not receive confinement. The Committee believes that this not only frustrates the statutory intent but also is a usurpation of the judicial function of the issuing authority by the police.

II. DISCUSSION OF THE PROPOSED RULE CHANGES

To address the first issue, the Committee is proposing that the summary guilty plea rules, Rules 409, 414, and 424, and Rule 454 be modified to permit an issuing authority to delay the guilty plea/sentencing proceeding to investigate those cases in which intermediate punishment might be available to the defendant. Paragraph (C)(4) of Rules 409, 414, and 424 and Rule 454(E) would be amended by the addition of language authorizing the issuing authority to delay sentencing for this purpose and the Comments would provide a further explanation

To address the second issue, the Committee is proposing a modification to the summary guilty plea rules to provide that an issuing authority must not accept a guilty

plea that is mailed in when the offense charged has a mandatory sentence of incarceration and that an issuing authority has the discretion to not accept guilty pleas in those cases when there is a possible sentence of incarceration. Paragraphs (B)(3) of Rules 409, 414, and 424 would be amended to prohibit the issuing authority from accepting a mailed in guilty plea in these cases. The issuing authority would also be required to notify the defendant of the rejection of the guilty plea by mail, to appear in person to enter the plea, and of the right to counsel, and to notify the affiant that the guilty plea by mail had not been accepted. The Comments to the guilty plea rules would provide additional guidance about this new procedure.

The Committee is also recommending that Rule 403(B)(2)(b)(ii) include a cross-reference to the new provisions in Rules 409(B)(3), 414(B)(3), and 424(B)(3) concerning acceptance of guilty pleas by mail and a revision of the Rule 403 Comment to remove the troublesome language that the possibility of a jail sentence could be precluded by the police officer listing fines and costs on the citation.

[Pa.B. Doc. No. 06-920. Filed for public inspection May 26, 2006, 9:00 a.m.]

Title 255—LOCAL COURT RULES

BEAVER COUNTY

Local Rules of Criminal Procedure; No. 335 Misc. of 2006

Order

Beaver County L.R.Crim.P. No. 117 is adopted effective August 1, 2006. The Court Administrator shall:

(1) file seven certified copies of this Order and the following rule with the Administrative Office of Pennsylvania Courts;

(2) distribute 2 certified copies of this Order and the attached rule and a computer diskette to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*;

(3) file one certified copy of this Order and the following rule with the Criminal Procedural Rules Committee of the Pennsylvania Supreme Court.

The Clerk of Courts shall keep a copy of the following rule available for public inspection and copying pursuant to Pa.R.Crim.P. No. 105(c)(5).

By the Court

ROBERT E. KUNSELMAN,
President Judge

RULE OF CRIMINAL PROCEDURE

L.R. 117. Coverage Magisterial District Judges

(1) All Magisterial District Judge Offices shall be open for regular business on Mondays through Fridays from 9:00 A.M. to 5:00 P.M. Prevailing time.

(2) Magisterial District Judges shall be available twenty-four hours per day, every day of the calendar year to provide continuous coverage for the issuance of search warrants, pursuant to Pa.R.Crim.P. No. 203, arrest war-

be sentenced to county intermediate punishment after undergoing an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments)."

rants pursuant to Pa.R.Crim. No. 513, requests to accept bail, and emergency orders under the Protection from Abuse Act.

The Magisterial District Judges shall satisfy this rule by remaining on call during non-regular business hours on a rotating basis pursuant to a schedule prepared by the Court Administrator. The schedule shall be distributed and publicized pursuant to past practice.

(3) Magisterial District Judges shall be available during non-regular business hours each day at 6:00 A.M., 2:00 P.M. and 10:00 P.M. for the purpose of providing the services set forth in Pa.R.Crim.P. No. 117(A)(2)(a), (b), (c) and (d). The availability of each Magisterial District Judge shall be on a rotating basis pursuant to the same schedule proposed pursuant to subdivision (2) and shall be publicized pursuant to past practice.

(4) Magisterial District Judges shall be available during normal business hours for all other business.

(5) Each Magisterial District Judge shall be available to preside over preliminary hearings at the Beaver County Courthouse, or such other location that may be established for "Central Court," on a rotating basis pursuant to a schedule prepared by the Court Administrator.

(6) This rule shall be effective August 1, 2006 provided the requirements of Pa.R.Crim.P. No. 105(c) have been complied with.

[Pa.B. Doc. No. 06-921. Filed for public inspection May 26, 2006, 9:00 a.m.]

BERKS COUNTY

Rules of Court; No. 98-8009 Prothonotary; No. 1-AD-2006 Clerk of Courts

Order

And Now, this 26th day of April, 2006, it is hereby *Ordered* and *Decreed* that the following local rule, Rule 1920.42 Filing of Praecepta to Transmit Record, in the 23rd Judicial District composed of Berks County is hereby amended as follows:

Rule 1920.42 Filing of Praecepta to Transmit Record

(c) An administrative fee of \$85.00, in addition to any fees imposed by the Commonwealth, shall be paid upon the filing of the praecipe to transmit the record.

All other provisions of Berks County Rule of Civil Procedure 1920.42 shall remain in full force and effect. Said amendment to become effective thirty days after the publication of the amendment in the *Pennsylvania Bulletin*.

The District Court Administrator is *Ordered* and *Directed* to:

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

2. File two (2) certified copies and one (1) disk copy with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Domestic Relations Procedural Rules Committee of the Supreme Court of Pennsylvania.

4. File one (1) certified copy with the Berks County Law Library.

5. Keep continuously available for public inspection and copying, one (1) copy in the Office of the Prothonotary of Berks County.

By the Court

ARTHUR E. GRIM,
President Judge

[Pa.B. Doc. No. 06-922. Filed for public inspection May 26, 2006, 9:00 a.m.]

CARBON COUNTY

Adoption of Local Rules of Civil Procedure 1910.10 Alternate Hearing Procedures and 1910.12 Office Conference, Hearing, Record, Exceptions, Order; No. 1 DR 2006

Amended Administrative Order No. 11-2006

And Now, this 12th day of May, 2006, pursuant to Pennsylvania Rule of Civil Procedure 1910.10, it is hereby

Ordered and *Decreed* that, effective July 1, 2006, the Carbon County Court of Common Pleas hereby *Adopts* Local Rule of Civil Procedure CARB.R.C.P. 1910.10 governing alternative hearing procedures in Domestic Relations matters and Local Rule of Civil Procedure CARB.R.C.P. 1910.12 governing the office conference, hearing, record, exceptions and order in Domestic Relations matters.

The Carbon County District Court Administrator is *Ordered* and *Directed* to do the following:

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

2. File two (2) certified copies and one (1) diskette with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

3. File one (1) certified copy with the Pennsylvania Domestic Relations Procedural Rules Committee.

4. Forward one (1) copy for publication in the *Carbon County Law Journal*.

5. Forward one (1) copy to the Carbon County Law Library.

6. Keep continuously available for public inspection a copy of the Order in the Domestic Relations' Office.

By the Court

ROGER N. NANOVIC,
President Judge

RULE 1910.10—ALTERNATE HEARING PROCEDURES

Pursuant to Pennsylvania Rule of Civil Procedure 1910.10, the Carbon County Court of Common Pleas hereby adopts the alternative hearing procedures set forth in Pennsylvania Rule of Civil Procedure 1910.12.

RULE 1910.12—OFFICE CONFERENCE. HEARING. RECORD. EXCEPTIONS. ORDER

When Exceptions are filed to the report of a Hearing Officer, the party filing the exceptions shall, within ten (10) days of the filing of the Hearing Officer's report, arrange for the transcribing of the testimony of the hearing before the Hearing Officer in accordance with Carbon County Local Rule of Judicial Administration 5000.5 for filing with the Court. Said party shall pay the stenographer for the transcript in accordance with Carbon County Local Rule of Judicial Administration 5000.7. Absent good cause shown, failure of the excepting party to arrange for the transcript and pay the cost thereof, as provided herein, shall result in the dismissal of said Exceptions by the Court upon motion.

[Pa.B. Doc. No. 06-923. Filed for public inspection May 26, 2006, 9:00 a.m.]

DISCIPLINARY BOARD OF THE SUPREME COURT

Notice of Suspension

Notice is hereby given that by Order of the Supreme Court of Pennsylvania dated May 15, 2006, Marie Elena Klarman is Suspended on Consent from the Bar of this Commonwealth for a period of one year and one day,

retroactive to January 16, 2006. 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,
Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 06-924. Filed for public inspection May 26, 2006, 9:00 a.m.]

Notice of Suspension

Notice is hereby given that Jose Matos Quinones having been suspended for a period of ninety days from the practice of law before the Board of Immigration Appeals, the Immigration Courts and the Department of Homeland Security by Order of the Board of Immigration Appeals dated September 16, 2005, the Supreme Court of Pennsylvania issued an Order dated May 15, 2006, suspending Jose Matos Quinones from the practice of law in this Commonwealth for a period of ninety days. 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,
Secretary

*The Disciplinary Board of the
Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 06-925. Filed for public inspection May 26, 2006, 9:00 a.m.]
