

# THE COURTS

## Title 210—APPELLATE PROCEDURE

### PART I. RULES OF APPELLATE PROCEDURE

[ 210 PA. CODE CH. 21 ]

Order Adopting Amendments to Pa.R.A.P. 2116;  
No. 192; Appellate Procedural Rules; Doc. No. 1

#### Order

*Per Curiam*

*And Now*, this 11th day of July, 2008, upon the recommendation of the Appellate Court Procedural Rules Committee, the proposal having been published before adoption at 38 Pa.B. 1446 on March 29, 2008;

*It Is Ordered*, pursuant to Article V, Section 10 of the Constitution of Pennsylvania, that Pennsylvania Rule of Appellate Procedure 2116 is amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective 30 days after adoption and shall apply to all briefs filed after the effective date.

#### Annex A

### TITLE 210. APPELLATE PROCEDURE

#### CHAPTER 21. BRIEFS AND REPRODUCED RECORD

#### CONTENT OF BRIEFS

#### Rule 2116. Statement of Questions Involved.

(a) *General rule.*—The statement of the questions involved must state [ **the question or questions in the briefest and most general terms, without names, dates, amounts or particulars of any kind.** ] **concisely the issues to be resolved, expressed in the terms and circumstances of the case but without unnecessary detail. The statement shall be no more than two pages and will be deemed to include every subsidiary question fairly comprised therein. [ It should not ordinarily exceed 15 lines, must never exceed one page, and must always be on a separate page, without any other matter appearing thereon. This rule is to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point ]** No question will be considered [ **which** ] **unless it is [ not set forth ] stated in the statement of questions involved or is fairly suggested thereby. [ Whenever possible each ] Each question [ must ] shall be followed [ immediately ] by an answer stating simply whether [ it was affirmed, negated, qualified or not answered by the court or government unit below ] the court or government unit agreed, disagreed, did not answer, or did not address the question. If a qualified answer was given to the question, appellant shall indicate [ **, most briefly,** ] the nature of the qualification, or if the question was not answered**

or addressed and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court or government unit below.

\* \* \* \* \*

#### Official Note:

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The 2008 amendments are intended to reinforce the importance placed upon a party's statement of a limited number of concise questions that enable the court to understand the nature of the legal issue, and in a general way what points it will be called on to decide. Thus, a party should incorporate the pertinent terms and circumstances of the case, but without details such as names, dates, amounts or particulars that are irrelevant to the resolution of the issues presented to the court.

Previously, some practitioners violated Pa.R.A.P. 124 to avoid the 15-line and one-page restrictions of Pa.R.A.P. 2116 by adjusting fonts, spacing, and margins. Appellate courts may find issues to be waived when they are not set forth in compliance with the Rules of Appellate Procedure. The increase from one to two pages should provide ample space for most parties to articulate their questions in an informative yet concise manner. A party requiring more than two pages for a statement of questions should file an application under Pa.R.A.P. 123 asking for extra pages, explaining why additional pages are needed, and attaching the proposed questions to the application. See Pa.R.A.P. 105.

The current language of the Rule is consistent with the standard set forth in Pa.R.A.P. 1115(a)(3) for questions presented for review in a Petition for Allowance of Appeal to the Supreme Court.

[Pa.B. Doc. No. 08-1362. Filed for public inspection July 25, 2008, 9:00 a.m.]

## Title 231—RULES OF CIVIL PROCEDURE

### PART I. GENERAL

[ 231 PA. CODE CH. 200 ]

Amendment of Rule 226 Governing Points for Charge; No. 494; Civil Procedural Rules; Doc. No. 5

#### Order

*Per Curiam*

*And Now*, this 10th day of July, 2008, Pennsylvania Rule of Civil Procedure 226 is amended to read as follows.

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective September 1, 2008.

Annex A

TITLE 231. RULE OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 200. BUSINESS OF THE COURTS

Rule 226. Points for Charge. Motion for Directed Verdict.

(a) Points upon which the trial judge is requested to charge the jury shall be so framed that each may be completely answered by a simple affirmation or negation. Attorneys shall hand copies of requested points for charge to the trial judge and to the opposing attorneys before the closing addresses to the jury are begun. A requested point for charge that was presented to the trial judge becomes part of the record when the point is read into the record, or filed in the office of the prothonotary prior to filing a motion for post-trial relief regarding the requested point for charge.

Official Note: An appellate court will not review an objection to a ruling of a trial court regarding a point for charge unless the point for charge was (1) presented to the court and (2) made a part of the record by either reading the point into the record or filing it in the office of the prothonotary prior to filing a motion for post-trial relief.

(b) At the close of all the evidence, the trial judge may direct a verdict upon the oral or written motion of any party.

[ Official Note: Subdivision (b) changes the historic practice under the Act of April 22, 1905, P. L. 286, as amended, and the Act of April 20, 1911, P. L. 70, § 1, as amended, repealed by JARA, requiring the filing of a written request for binding instructions as a condition precedent to the filing of a motion for judgment notwithstanding the verdict or after disagreement of a jury. ]

Explanatory Comment

Rule 226 governing points for charge has been amended to cure the problem of making points for charge part of the record for appellate review. The amendment is in response to the case of *Bennyhoff v. Pappert*, 790 A.2d 313 (Pa. Super. 2001), petition for allowance of appeal denied, 573 Pa. 682, 823 A.2d 143 (2003), in which the Superior Court concluded that although a point for charge had been raised by counsel and addressed by the trial court, the text of the point had not been made part of the certified record on appeal. The amendment specifies the methods by which points for charge may be placed on the record. It is important to note that all points for charge must be presented to the court in accordance with the rule regardless of the method by which they are made part of the record.

By the Civil Procedural Rules Committee

R. STANTON WETTICK, Jr.,  
Chair

[Pa.B. Doc. No. 08-1363. Filed for public inspection July 25, 2008, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 1 AND 5 ]

Order Approving the Amendment of Rules of Criminal Procedure 135, 504, 510, 543 and 547 and Revisions to the Comments to Rules 109, 512 and 527; Criminal Procedural Rules; No. 365; Doc. No. 2

Order

Per Curiam

Now, this 10th day of July, 2008, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 37 Pa.B. 1303 (March 24, 2007), and in the Atlantic Reporter (Second Series Advance Sheets, Vol. 865), and a Final Report to be published with this Order:

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

(1) Rules of Criminal Procedure 135, 504, 510, 543 and 547 are amended, and

(2) the revisions of the Comments to Rules 109, 512 and 527 are approved,

This Order shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective February 1, 2009.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

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

PART A. BUSINESS OF THE COURTS

Rule 109. Defects in Form, Content, or Procedure.

\* \* \* \* \*

Comment

\* \* \* \* \*

Ordinarily, if a defendant does not raise a defect at the summary trial or before the conclusion of the preliminary hearing, the defendant cannot thereafter raise the defect as grounds for dismissal or discharge at a later stage in the proceedings. See *Commonwealth v. Krall*, 452 Pa. 215, 304 A.2d 488 ([ Pa. ] 1973). In a summary case, however, the provisions of this rule do not preclude a defendant from raising a defect for the first time after the summary trial when the interests of justice require it, as for example, when the defendant was not represented by counsel during the proceedings before the district justice or when the defendant could not reasonably have discovered the defect until after the conclusion of the summary trial.

\* \* \* \* \*

If the issuing authority determines that a defect is prejudicial, it is intended that the decision recorded on the docket pursuant to Rule 135(B)[ (12) ] (13) shall be "discharge of the defendant" or "dismissal of the case," rather than "not guilty."

**Official Note:** Former Rule 90 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 109. Former Rule 150, formed from former Rule 114 (Informal Defects), and former Rule 115 (Substantive Defects), both adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; both revised January 31, 1970, effective May 1, 1970; combined, renumbered Rule 150 and amended September 18, 1973, effective January 1, 1974; amended April 8, 1982, effective July 1, 1982, Comment revised July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 109. New Rule 109 adopted March 1, 2000, effective April 1, 2001; **Comment revised July 10, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

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**Final Report explaining the July 10, 2008 revisions to the Comment related to the cross-reference to Rule 135, published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**PART C. VENUE, LOCATION, AND RECODING OF PROCEEDINGS BEFORE ISSUING AUTHORITY**

**Rule 135. Transcript of Proceedings Before Issuing Authority.**

\* \* \* \* \*

(B) The transcript shall contain the following information, where applicable;

\* \* \* \* \*

**(9) a notation that the defendant has or has not been fingerprinted;**

**[ (9) ] (10)** a specific description of any defect properly raised in accordance with Rule 109;

**[ (10) ] (11)** a notation that the defendant was advised of the right to apply for the assignment of counsel;

**[ (11) ] (12)** the defendant's plea **[ or ]** of guilty or not guilty, the decision that was rendered in the case and the date thereof, and the judgment of sentence and place of confinement, if any;

**[ (12) ] (13)** any other information required by the rules to be in the issuing authority's transcript.

**Comment**

The requirement of a docket was deleted from this rule in 1985 because dockets are now routinely maintained under the supervision of the Administrative Office of Pennsylvania Courts. It is expected that issuing authorities will continue to keep dockets of criminal proceedings. The transcript requirements presuppose an accurate docket to supply the information necessary to prepare **[ an ]** a transcript.

\* \* \* \* \*

**The requirement that there be a notation indicating whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is to alert the district attorney and the court whether it is necessary to have the defendant fingerprinted after the case is held for court.**

**Official Note:** Formerly Rule 125 adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970, revised January 31, 1970, effective May 1, 1970; renumbered Rule 26 and subparagraphs (b)(5) and (b)(10) amended September 18, 1973, effective January 1, 1974; subparagraph (b)(10) amended April 8, 1982, effective July 1, 1982; previous subparagraph (b)(7) deleted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 135 and amended March 1, 2000, effective April 1, 2001; **amended July 10, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the July 10, 2008 amendment adding new paragraph (9) requiring a notation of fingerprinting published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES**

**PART B(1). Complaint Procedures**

**Rule 504. Contents of Complaint.**

Every complaint shall contain:

\* \* \* \* \*

**(9) a notation that the defendant has or has not been fingerprinted;**

**[ (9) ] (10)** a request for the issuance of a warrant of arrest or a summons, unless an arrest has already been effected;

**[ (10) ] (11)** a verification by the affiant that the facts set forth in the complaint are true and correct to the affiant'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; and

**[ (11) ] (12)** the signature of the affiant and the date of the execution of the complaint.

**Comment**

This rule sets forth the required contents of all complaints whether the affiant is a law enforcement officer, a police officer, or a private citizen. When the affiant is a private citizen, the complaint must be submitted to an attorney for the Commonwealth for approval. See Rule 506. When the district attorney elects to proceed under Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth—**Local Option**), the police officer must likewise submit the complaint for approval by an attorney for the Commonwealth.

Ordinarily, whenever a misdemeanor, felony, or murder is charged, any summary offense in such a case, if known at the time, should be charged in the same complaint, and the case should proceed as a court case under Chapter 5 Part B. See *Commonwealth v. Cauffman*, 541 Pa. 299, 662 A.2d 1050 (1995) and *Commonwealth v. Campana*, 455 Pa. 622, 304 A.2d 432 (**[ Pa. ]** 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 454 Pa. 233, 314 A.2d 854 (1974) (compulsory joinder rule). In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or

murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 275 Pa. Super. 166, 418 A.2d 664 (1980).

\* \* \* \* \*

The requirement that the affiant who prepares the complaint indicate whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is included so that the issuing authority knows whether it is necessary to issue a fingerprint order with the summons as required by Rule 510.

**Official Note:** Original Rule 104 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 504 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; **amended July 10, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

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**Final Report explaining the July 10, 2008 amendments adding new paragraph (9) requiring a notation concerning fingerprinting published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**PART B(2). SUMMONS PROCEDURES**

**Rule 510. Contents of Summons; Notice of Preliminary Hearing.**

\* \* \* \* \*

(C) [ A copy of the complaint shall be attached to the summons. ]

The following items shall be attached to the summons:

- (1) a copy of the complaint; and
- (2) an order directing the defendant to submit to fingerprinting in all cases in which the defendant has not been fingerprinted, except cases initiated by private complaint.

**Comment**

For the summons procedures in non-summary cases in the Municipal Court of Philadelphia, see Rule 1003(C).

[When a defendant appears for a preliminary hearing pursuant to a summons under this rule and is held for court, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. It is suggested that these processing procedures be made a condition of bail or release. See Criminal History Record Information Act, 18 Pa.C.S. § 9112. ]

When a case proceeds by summons, the issuing authority also must issue an order requiring the defendant to submit to the administrative processing and identification procedures as authorized by law (such as fingerprinting) that ordinarily occur following an arrest.

**Paragraph (C)(2), added in 2008, requires that the fingerprint order be sent to the defendant with the summons. The purpose of this change is to ensure that the fingerprinting process in summons cases is completed. See the Criminal History Record Information Act, 18 Pa.C.S. § 9112.**

The requirement in paragraph (C)(2) that a fingerprint order be attached to the summons does not apply to cases that have been initiated by private complaint or cases in which the defendant has been processed for fingerprinting and other identification procedures prior to being released pursuant to Rule 519.

**If a defendant has not complied with the fingerprint order by the time of the preliminary hearing, the issuing authority must make compliance a condition of release on bail.**

\* \* \* \* \*

**Official Note:** Original Rule 109 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; **amended July 10, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

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**Final Report explaining the July 10, 2008 amendments to paragraph (C) concerning the fingerprint order published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**Rule 512. Procedure in Court Cases Following Issuance of Summons.**

The defendant shall appear before the issuing authority for a preliminary hearing on the date, and at the time and place specified in the summons. If the defendant fails to appear, the issuing authority shall proceed as provided in Rule 543(D).

**Comment**

For the proper time for the preliminary hearing, see Rule 510.

[When a defendant appears for a preliminary hearing pursuant to a summons and is held for court, the issuing authority should require that the defendant submit to administrative processing and identification procedures (fingerprinting, for example) as authorized by law. It is recommended that this requirement be made a condition of bail or release. See Criminal History Record Information Act, 18 Pa.C.S. § 9112. ]

When a case proceeds by summons, the issuing authority must require that the defendant submit to the administrative processing and identification procedures as authorized by law (such as fingerprinting) that ordinarily occur following an arrest. See, e.g., Criminal History Record Information Act, 18 Pa.C.S. § 9112. If these processing procedures

are not completed by the time of the preliminary hearing, they must be made a condition of bail or release. Concerning fingerprinting, see Rule 510(C)(2) that requires the issuing authority to send the fingerprint order with the summons.

\* \* \* \* \*

**Official Note:** Rule 113 adopted September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 512 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; **Comment revised July 10, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

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**Final Report explaining the July 10, 2008 Comment revisions concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**PART C(1). RELEASE PROCEDURES**

**Rule 527. Nonmonetary Conditions of Release on Bail.**

\* \* \* \* \*

(B) The bail authority shall state with specificity on the bail bond any nonmonetary conditions imposed pursuant to this rule.

**Comment**

\* \* \* \* \*

The following sets forth a few examples of conditions that might be imposed to address specific situations. In some circumstances, a combination of such conditions might also be considered. This is not intended to be an exhaustive list of appropriate conditions.

\* \* \* \* \*

**(6) When a case proceeds by summons, the issuing authority must require that the defendant submit to required administrative processing and identification procedures, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, that ordinarily occur following an arrest. Rule 510(C)(2) requires an order directing the defendant to be fingerprinted be issued with the summons. If the defendant has not completed fingerprinting by the date of the preliminary hearing, completion of these processing procedures must be made a condition of release.**

**Official Note:** Former Rule 4006 adopted July 23, 1973, effective 60 days hence, replacing prior Rules 4008 and 4010; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rules 524 and 528. Present Rule 4006 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 527 and amended March 1, 2000, effective April 1, 2001; **Comment revised July 10, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

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**Final Report explaining the July 10, 2008 Comment revisions adding paragraph (6) concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**PART D. PROCEEDINGS IN COURT CASES BEFORE ISSUING AUTHORITIES**

**Rule 543. Disposition of Case at Preliminary Hearing.**

\* \* \* \* \*

(C) When the defendant has appeared and has been held for court, the issuing authority shall:

(1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 529[ . ](A.); and

**(3) if the defendant has not submitted to the administrative processing and identification procedures as authorized by law, such as fingerprinting pursuant to Rule 510(C)(2), make compliance with these processing procedures a condition of bail.**

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

\* \* \* \* \*

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

\* \* \* \* \*

(b) If the preliminary hearing is conducted and the case held for court, the issuing authority shall

\* \* \* \* \*

(ii) pursuant to Rule 547, transmit the transcript to the clerk of courts with a request that a bench warrant be issued by the court of common pleas **and, if the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), with a notice to the court of common pleas of the defendant's non-compliance.**

\* \* \* \* \*

**Comment**

Paragraph (C) reflects the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. See Rules 509 and 510.

\* \* \* \* \*

**If the administrative processing and identification procedures as authorized by law, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, that ordinarily occur following an arrest are not completed previously, when bail is set at the conclusion of the preliminary hearing, the issuing authority must order the defendant to submit to the administrative processing and identification procedures as**

a condition of bail. See Rule 527 for nonmonetary conditions of release on bail.

If a case initiated by summons is held for court after the preliminary hearing is conducted in the defendant's absence pursuant to paragraph (D)(2) and the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), the issuing authority must include with the transmittal of the transcript a notice to the court of common pleas that the defendant has not complied with the fingerprint order. See Rule 547.

\* \* \* \* \*

**Official Note:** Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; **amended July 10, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

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**Final Report explaining the July 10, 2008 amendments to paragraphs (C) and (D)(2)(c) concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).**

**Rule 547. Return of Transcript and Original Papers.**

\* \* \* \* \*

(C) In addition to this transcript the issuing authority shall also transmit the following items:

\* \* \* \* \*

(4) the appearance or bail bond for the defendant, if any, or a copy of the order committing the defendant to custody; [ and ]

(5) a request for the court of common pleas to issue a bench warrant as required in Rule 543(D)(3)(b) [ . ]; and

(6) notice informing the court of common pleas that the defendant has failed to comply with the fingerprint order as required in Rule 543(D)(3)(b)(ii).

**Comment**

\* \* \* \* \*

When the case is held for court pursuant to Rule 543(D)(3), the issuing authority must include with the transcript transmittal a request for the court of common pleas to issue a bench warrant.

When the case is held for court pursuant to Rule 543(D)(3)(b)(ii), the issuing authority must include with the transcript transmittal a notice to the court of common pleas that the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2). The court of common pleas must take whatever actions deemed appropriate to address this non-compliance.

**Official Note:** Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1982, effective January 1, 1982; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007; **amended July 10, 2008, effective February 1, 2009.**

*Committee Explanatory Reports:*

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**Final Report explaining the July 10, 2008 amendments to paragraph (C)(6) concerning the fingerprint order published at 37 Pa.B. 3975 (July 26, 2007).**

**FINAL REPORT<sup>1</sup>**

*Proposed Amendments to Pa.Rs.Crim.P. 135, 504, 510, 543, and 547 and Revisions of the Comments to Pa.Rs.Crim.P. 109, 512, and 527*

**FINGERPRINT ORDERS IN SUMMONS CASES**

On July 10, 2008, effective February 1, 2009, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 135 (Transcript of Proceedings Before Issuing Authority), 504 (Contents of Complaint), 510 (Contents of Summons; Notice of Preliminary Hearing), 543 (Disposition of Case at Preliminary Hearing), and 547 (Return of Transcript in Court Cases) and approved the revision of the *Comments* to Rules 109 (Defects in Form, Content, or Procedure), 512 (Procedures in Court Cases Following Issuing of Summons), and 527 (Nonmonetary Conditions of Release on Bail) to provide procedures for ensuring compliance with identification procedures, including fingerprinting, in summons cases.

These changes are in response to numerous communications received by the Committee, especially from magisterial district judges, questioning how the fingerprint requirements of the Criminal History Records Information Act (CHRIA), 18 Pa.C.S. § 9112, are to be accomplished in cases initiated by summons.<sup>2</sup> Section 9112(B)(2) requires that, in cases initiated by summons, "the court...shall order the defendant to submit within five days of such order for fingerprinting . . ."

In summons cases, the defendant does not undergo the same type of identification processing that occurs in arrest cases since the defendant is not in custody and no preliminary arraignment is held. The first occasion in which the defendant comes before an issuing authority is usually at the preliminary hearing.

<sup>1</sup> 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*.

<sup>2</sup> Unlike summons cases, in cases initiated by arrest with or without a warrant, compliance with the fingerprinting requirements of CHRIA is relatively straightforward, with the defendant's fingerprints being taken as part of the usual administrative processing following arrest.

The Committee received reports that there is a divergence of practice regarding this question running the gamut from issuing authorities sending out fingerprint orders with the summons to issuing authorities who believe that, based on language in the *Comment* to Rule 510, fingerprints may only be ordered after the case is held for court at the preliminary hearing.

Initially, the Committee considered permitting an issuing authority the discretion to chose the procedure for the issuance of the fingerprint order. However, because the fingerprint requirements of CHRIA apply regardless of whether a case was bound over for court, the Committee concluded that permitting such discretion does not adequately address the problem. In other words, in those cases started by summons that are not held for court at the preliminary hearing, unless the fingerprint order has been issued with the summons, there would be no mechanism to have the defendant fingerprinted. Therefore, the Committee concluded that the rules should require that in all cases, when a summons is issued, the issuing authority also would be required to send out a fingerprint order and would not have the option of waiting until the preliminary hearing to issue the order. To accomplish this, Rule 510 has been amended to provide that the fingerprint order be attached to the summons, along with the copy of the complaint. Additionally, the language in the *Comments* to Rules 510 and 512 that suggests that the issuing authority must wait until the preliminary hearing to issue the fingerprint order has been deleted.

In developing this proposal and after reviewing the publication comments, the Committee recognized that there are circumstances that are exceptions to the requirement that the fingerprint order be sent out with the summons. First, when the defendant already has been processed, for example, when a defendant has been released following an arrest without a warrant as provided in Rule 519(B), the fingerprint order would not need to be sent with the summons.<sup>3</sup> Another exception is when a case is initiated by private complaint, since CHRIA provides that in such cases the fingerprints would only be taken upon conviction. Therefore, language has been added to Rule 510 indicating that these exceptions exist with further elaboration about the exceptions in the *Comment*.

In considering the exception when the fingerprinting has already been completed, the Committee was concerned about how this information would be conveyed to the magisterial district judge so he or she will know that the fingerprint order is unnecessary. It was concluded that the police should provide this information at the time the complaint is filed. Accordingly, the content of complaints rule, Rule 504, is amended to require that a notation be added to complaints to indicate whether fingerprints have been taken.

Another issue that arose during the development of this proposal concerns the enforcement of the fingerprint order. Recognizing that, if the defendant fails to comply with the fingerprint order, the primary mechanism to enforce the fingerprint order is making compliance a bail condition following the preliminary hearing, new paragraph (C)(3) has been added to Rule 543 making it clear that compliance should be made a condition of bail. The *Comments* to Rules 510, 512, 527, and 543 have been revised to emphasize this required bail condition as well.

<sup>3</sup> Rule 519 provides that the defendant should be processed, which includes fingerprinting, prior to being released.

Finally, during the Committee's discussions on this issue, several members expressed concern about compliance with the fingerprint order in the situation when a case is held for court and transferred from the issuing authority to the court of common pleas. In these cases, there is a possibility that the fingerprint requirement might "get lost," especially in the situation in which the case is held for court in the defendant's absence as provided in Rule 543(D)(3). To address this situation, a provision has been added to Rules 543(D)(3)(b)(ii) and 547(C) that requires the issuing authority to send notice of the defendant's non-compliance to the court of common pleas. It is contemplated that the court of common pleas, once notified, will take whatever actions would be appropriate in the circumstances to ensure future compliance. To further assist in ensuring that such cases do not "fall through the cracks" when transferred to the court of common pleas, the transcript content rule, Rule 135, is amended to include a requirement that the transcript form include a notation that fingerprints have not been taken. Since all district attorney's offices receive copies of the transcript, the district attorney's office is put on notice of the noncompliance and could pursue the matter further. A correlative change has also been made to the *Comment* to Rule 109 to reflect this additional Rule 135 requirement.

[Pa.B. Doc. No. 08-1364. Filed for public inspection July 25, 2008, 9:00 a.m.]

## SUPREME COURT

### Duty Assignment Schedule for Emergency Petitions in the Year 2008; No. 321; Judicial Administration; Doc. No. 1

#### Order

*Per Curiam:*

*And Now*, this 9th day of July, 2008, the emergency duty assignment order of December 20, 2007, is herewith amended as follows:

January	Justice Thomas G. Saylor Justice Max Baer	(Eastern District) (Western District)
February	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
March	Justice Thomas G. Saylor Justice Debra Todd	(Eastern District) (Western District)
April	Justice Thomas G. Saylor Justice Max Baer	(Eastern District) (Western District)
May	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)
June	Justice J. Michael Eakin Justice Max Baer	(Eastern District) (Western District)
July	Justice J. Michael Eakin Justice Seamus P. McCaffery	(Eastern District) (Western District)

August Justice Thomas G. Saylor (Eastern District)  
Justice Jane C. Greenspan (Western District)

September Justice Debra Todd (Eastern District)  
Justice Seamus P. McCaffery (Western District)

October Justice Max Baer (Eastern District)  
Justice Debra Todd (Western District)

November Justice Thomas G. Saylor (Eastern District)  
Justice Jane C. Greenspan (Western District)

December Justice J. Michael Eakin (Eastern District)  
Justice Seamus P. McCaffery (Western District)

PATRICIA NICOLA,  
*Chief Clerk*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 08-1365. Filed for public inspection July 25, 2008, 9:00 a.m.]