

# THE COURTS

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 4 AND 7 ]

Proposed Amendments to Pa.Rs.Crim.P. 409, 414,  
424, 454, 456 and 706

### Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 409, 414, 424, 454, 456 and 706 that would add a provision to these rules providing for the imposition of a fee for issuance of an installment payment plan. 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. 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 amendments to the Rules precedes the *Report*. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel  
Supreme Court of Pennsylvania  
Criminal Procedural Rules Committee  
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no later than Friday, April 10, 2009.

*By the Criminal Procedural  
Rules Committee*

D. PETER JOHNSON,  
*Chair*

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 4. PROCEDURES IN SUMMARY CASES 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 the 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 a fine and costs is without the financial means immediately to pay the fine and costs.

**(D) When authorized by the president judge, the issuing authority may impose a reasonable fee for the issuance of an installment payment plan pursuant to paragraph (C)(5) not to exceed the amount provided for by 42 Pa.C.S. § 1725.1(c)(5).**

#### Comment

The rule was amended in 2007 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 the 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 2007 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.

**The amount of an installment payment plan fee permitted by paragraph (D) may be increased as provided by law. See 42 Pa.C.S. § 1725.1. Each county should establish local procedures to ensure adequate notice and uniform application of this fee and any increases. See also Rules 414, 424, 454, 456, and 706.**

For procedure upon default in payment of the 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 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 January 18, 2007, effective August 1, 2007[. ] ; **amended** , **2009, effective** , **2009.**

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*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. 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).

**Final Report explaining the January 18, 2007 amendments to paragraphs (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).**

**Report explaining the proposed amendments adding paragraph (D) concerning imposition of installment payment plans published at 39 Pa.B. 990 (February 21, 2009).**

**PART B(2). Procedures When Citation Filed**

**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 the 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 a fine and costs is without the financial means immediately to pay the fine and costs.

**(D) When authorized by the president judge, the issuing authority may impose a reasonable fee for the issuance of an installment payment plan pursuant to paragraph (C)(5) not to exceed the amount provided for by 42 Pa.C.S. § 1725.1(c)(5).**

#### COMMENT

The rule was amended in 2007 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 the 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 2007 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.

**The amount of an installment payment plan fee permitted by paragraph (D) may be increased as provided by law. See 42 Pa.C.S. § 1725.1. Each county should establish local procedures to ensure adequate notice and uniform application of this fee and any increases. See also Rules 409, 424, 454, 456 and 706.**

For procedure upon default in payment of the 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 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 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 January 18, 2007, effective August 1, 2007[. ] ; amended , 2009, effective , 2009.

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#### *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. 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).

Final Report explaining the January 18, 2007 amendments to paragraphs (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

**Report explaining the proposed amendments adding paragraph (D) published at 39 Pa.B. 990 (February 21, 2009).**

#### **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 the 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 a fine and costs is without the financial means immediately to pay the fine and costs.

**(D) When authorized by the president judge, the issuing authority may impose a reasonable fee for the issuance of an installment payment pursuant to paragraph (C)(5) not to exceed the amount provided for by 42 Pa.C.S. § 1725.1(c)(5).**

#### Comment

The rule was amended in 2007 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 the 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 2007 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.

**The amount of an installment payment plan fee permitted by paragraph (D) may be increased as provided by law. See 42 Pa.C.S. § 1725.1. Each county should establish local procedures to ensure adequate notice and uniform application of this fee and any increases. See also Rules 409, 414, 454, 456 and 706.**

For procedure upon default in payment of the 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, 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 January 18, 2007, effective August 1, 2007[. ] ; **amended , 2009, effective , 2009.**

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#### *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. 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).

Final Report explaining the January 18, 2007 amendments to paragraphs (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

**Final Report explaining the proposed amendments adding paragraph (D) published at 39 Pa.B. 990 (February 21, 2009).**

#### **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 (F)(1) through (F)(3), and a copy of the order shall be given to the defendant.

**(G) When authorized by the president judge, the issuing authority may impose a reasonable fee for issuance of an installment payment plan pursuant to this rule. The fee shall not exceed the amount permitted by 42 Pa.C.S. § 1725.1(c)(5).**

#### 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 (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 (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 (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.

**The amount of an installment payment plan fee permitted by paragraph (G) may be increased as provided by law. See 42 Pa.C.S. § 1725.1. Each county should establish local procedures to ensure adequate notice and uniform application of this fee and any increases. See also Rules 409, 414, 424, 456 and 706.**

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 January 18, 2007, effective August 1, 2007[. ] ; **amended** , **2009, effective** , **2009.**

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*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. 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 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. 4293 (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).

Final Report explaining the January 18, 2007 amendments adding paragraph (E) concerning intermediate punishment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

**Final Report explaining the proposed amendments adding paragraph (G) concerning installment payment plan fees published at 39 Pa.B. 990 (February 21, 2009).**

**Rule 456. Default Procedures: Restitution, Fines, and Costs.**

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

(C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing to determine whether the defendant is financially able to pay as ordered.

(1) Upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

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

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

(ii) the defendant must appear for the hearing de novo in the court of common pleas or the appeal may be dismissed;

(c) 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

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the infor-

mation specified in paragraphs (C)(3)(a) through (C)(3)(c), and a copy of the order shall be given to the defendant.

**(D) When authorized by the president judge, the issuing authority may impose a reasonable fee for issuance of an installment payment plan pursuant to this rule. The fee shall not exceed the amount permitted by 42 Pa.C.S. § 1725.1(c)(5).**

**[ (D) ] (E)** A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461 and 462.

#### Comment

The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(D).

If the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is 18 years or older when the default in payment occurs, the issuing authority must proceed under these rules.

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set bail as provided in Chapter 5 Part C.

Under paragraph (C)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may

impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). See also Rules 121 and 122 (dealing with the right to counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. See 42 Pa.C.S. § 9730(b)(3).

**The amount of an installment payment plan fee permitted by paragraph (D) may be increased as provided by law. See 42 Pa.C.S. § 1725.1. Each county should establish local procedures to ensure adequate notice and uniform application of this fee and any increases. See also Rules 409, 414, 424, 454 and 706.**

This rule contemplates that when there has been an appeal pursuant to paragraph **[ (D) ] (E)**, the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.

**Official Note:** 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; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005[.]; **amended** , **2009, effective** , **2009.**

\* \* \* \* \*

#### *Committee Explanatory Reports:*

Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (C) published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

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

Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 3, 2004 amendment to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

**Final Report explaining the proposed amendments adding new paragraph (D) concerning the imposition of a fee for issuance of an installment plan published at 39 Pa.B. 990 (February 21, 2009).**

**CHAPTER 7. POST-TRIAL PROCEDURES IN COURT CASES**

**PART A. Sentencing Procedures**

**Rule 706. Fines or Costs.**

(A) A court shall not commit the defendant to prison for failure to pay a fine or costs unless it appears after hearing that the defendant is financially able to pay the fine or costs.

(B) When the court determines, after hearing, that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the court may provide for payment of the fines or costs in such installments and over such period of time as it deems to be just and practicable, taking into account the financial resources of the defendant and the nature of the burden its payments will impose, as set forth in paragraph (D) below.

(C) The court, in determining the amount and method of payment of a fine or costs shall, insofar as is just and practicable, consider the burden upon the defendant by reason of the defendant's financial means, including the defendant's ability to make restitution or reparations.

(D) In cases in which the court has ordered payment of a fine or costs in installments, the defendant may request a rehearing on the payment schedule when the defendant is in default of a payment or when the defendant advises the court that such default is imminent. At such hearing, the burden shall be on the defendant to prove that his or her financial condition has deteriorated to the extent that the defendant is without the means to meet the payment schedule. Thereupon the court may extend or accelerate the payment schedule or leave it unaltered, as the court finds to be just and practicable under the circumstances of record. When there has been default and the court finds the defendant is not indigent, the court may impose imprisonment as provided by law for nonpayment.

**(E) When authorized by the president judge, the court may impose a reasonable fee for issuance of an installment payment plan pursuant to this rule. The fee shall not exceed the amount permitted by 42 Pa.C.S. § 1725.1(c)(5).**

**Comment**

See generally *Commonwealth ex rel. Benedict v. Cliff*, 451 Pa. 427, 304 A.2d 158 (1973).

**The amount of an installment payment plan fee permitted by paragraph (E) may be increased as provided by law. See 42 Pa.C.S. § 1725.1. Each county should establish local procedures to ensure adequate notice and uniform application of this fee and any increases. See also Rules 409, 414, 424, 454 and 456.**

Under this rule, when a defendant fails to pay the fine and costs, the common pleas court judge may issue a bench warrant for the collection of the fine and costs. When a "failure to pay" bench warrant is issued, the bench warrant must be executed by a police officer following the procedures set forth in Rule 431(C)(1)(c) and (C)(2), or, if the defendant is unable to pay, the police officer must proceed as provided in Rule 150 (Bench Warrants).

Nothing in this rule is intended to abridge any rights the Commonwealth may have in a civil proceeding to collect a fine or costs.

For suspension of Acts of Assembly, see Rule 1101(F).

**Official Note:** Rule 1407 approved July 23, 1973, effective 90 days hence; renumbered Rule 706 and amended March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective August 1, 2006[.]; **amended , 2009, effective , 2009.**

\* \* \* \* \*

*Committee Explanatory Reports:*

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

Final Report explaining the March 9, 2006 Comment revision concerning fine and cost warrants published with the Court's Order at 36 Pa.B. 1396 (March 25, 2006).

**Final Report explaining the proposed amendments adding paragraph (E) concerning installment payment fees published at 39 Pa.B. 990 (February 21, 2009).**

**REPORT**

*Proposed Amendments to Pa.Rs.Crim.P. 409, 414, 424, 454, 456 and 706*

**ISSUANCE OF INSTALLMENT PLANS FEES**

The Committee is planning to propose to the Supreme Court amendments to Rules of Criminal Procedure 409, 414, 424, 454, 456 and 706 that would add a provision to these rules providing for the imposition of a fee for issuance of an installment payment plan. The need for these amendments was suggested to the Committee in communications from several judicial districts questioning whether the Criminal Rules authorized such fees.

The Criminal Rules permit both the magisterial district judges and the common pleas court judges to establish installment payment plans when defendants are without the financial means to pay the full amount of their fines, costs, and restitution in a single remittance. Because of the added costs to the judicial districts to administer these installment payment plans, some judicial districts have implemented a modest fee for the issuance of these plans relying on the provisions of 42 Pa.C.S. § 1725.1(c)(5). Section 1725.1(c)(5) provides

**(c) Unclassified costs or charges.**—Subject to subsection (f), the costs to be charged by the minor judiciary in the following instances not readily classifiable shall be as follows:

(5) Any other issuance not otherwise provided for in this subsection. . . . . \$10.00.<sup>1</sup>

Some of the Criminal Rules include provisions for the imposition of reasonable charges related to the administration of programs established pursuant to the rules. For example, Rule 316 (Conditions of the Program) permits, as a condition of an ARD program, "the imposition of a reasonable charge relating to the expense of administering the program," and Rule 535 (Receipt for Deposit;

<sup>1</sup> The Act 2001-113 added paragraph (f) that provides "Annual increase in costs.—Beginning on January 1, 1994, and each January 1 thereafter, the costs under subsections (a), (b) and (c) shall be increased by the percentage of increase in the Consumer Price Index for Urban Workers for the immediate preceding calendar year which shall be published in the Pennsylvania Bulletin annually by the Supreme Court on or before the preceding November 30. This subsection shall expire January 1, 2001." The Pennsylvania Supreme Court, by order dated Oct. 3, 2007, adopted the Financial Regulations promulgated by the Court Administrator to implement Act 2001-113, 42 Pa.C.S. § 1725.1(f), effective immediately, which included an increase of this fee to \$15.00.



Return of Deposit) permits the imposition of reasonable costs "of administering the percentage cash bail program." The purpose of the authorized charges is to help defray the judicial districts' expenses for the administration of these programs, programs that are established as a benefit to the defendants.

The Committee, in discussing the need for the fees for the issuance of payment plans, understands that Section 1725.1(c)(5) of Title 42 imposes a limitation on the amount of such fees. The Committee also recognized that there is some confusion concerning whether this statutory provision even permits such fees. In view of this, we agreed that the Criminal Rules should be amended to permit the imposition of fees for the issuance of payment plans and to make it clear that the amount of these fees are limited by the statute.

Accordingly, the Committee is proposing a new fee provision be added to all the Criminal Rules that provide for installment payments: the guilty plea rules, Rules 409, 414 and 424; the summary trial rule, Rule 454; the summary default rule, Rule 456; and the court case fine and cost rule, Rule 706. The new provision that would require the president judge to authorize the fee before a judge may impose the fee. The amount of the fee may not be more than what is provided by 42 Pa.C.S. § 1725.1(c)(5).

The Comment to each rule would be revised to include an explanation that the amount of the fee may be raised only when Section 1725.1 raises the amount. In addition, to insure that defendants are adequately advised concerning the costs for having the judge issue an installment plan, the Comment cautions the judicial districts that there must be adequate notice of the fee and any changes to the fee.

[Pa.B. Doc. No. 09-290. Filed for public inspection February 20, 2009, 9:00 a.m.]

[ 234 PA. CODE CH. 5 ]

**Proposed Amendments to Pa.Rs.Crim.P. 590 (Pleas and Plea Agreements)**

*Introduction*

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 590 to provide for more detailed standards regarding the areas of inquiry that are required to be part of all guilty plea colloquies. 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. 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 amendments to the rules precedes the *Report*. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Chief Staff Counsel  
 Supreme Court of Pennsylvania  
 Criminal Procedural Rules Committee  
 5035 Ritter Road, Suite 100  
 Mechanicsburg, PA 17055  
 fax: (717) 795-2106  
 e-mail: criminal.rules@pacourts.us

no later than Friday, April 10, 2009.

*By the Criminal Procedural  
 Rules Committee*

D. PETER JOHNSON,  
*Chair*

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE**

**PART I. GENERAL**

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

**PART G. Plea Procedures**

**Rule 590. Pleas and Plea Agreements.**

\* \* \* \* \*

**(3) Guilty Pleas.**

**(a)** The judge may refuse to accept a plea of guilty or nolo contendere, and shall not accept it unless the judge determines after inquiry of the defendant that the plea is voluntarily and understandingly tendered. **[ Such inquiry shall appear on the record. ]**

**(b)** To ensure that the defendant understands the full impact and consequences of the plea, and is willing to enter that plea, the following information shall be elicited as part of an oral examination on the record:

- (i)** confirmation of the identity of the defendant;
- (ii)** the defendant's capacity to comprehend and communicate in the proceedings;
- (iii)** the defendant's understanding of the nature and elements of the charges to which he or she is pleading guilty or nolo contendere, as well as the maximum sentences, including fines, for the offenses charged and any applicable mandatory sentence;
- (iv)** the factual basis for the plea; and
- (v)** the defendant's satisfaction with the representation afforded by his or her attorney.

**(c)** In addition to the information required to be elicited under paragraph (b), the following information shall be elicited, either orally or in writing, on the record:

- (i)** the defendant's understanding that he or she has certain rights with regard to the charges, including but not limited to the filing and litigation of pretrial motions; the right to counsel; the right to trial by jury before twelve jurors the defendant would assist in selecting; the right to challenge potential jurors; the requirement of a unanimous verdict; that he or she is presumed innocent and can only be found guilty if the prosecution proves guilt beyond a reasonable doubt; that he or she has the right to cross-examine the prosecution witnesses; and the right to call his or her own witnesses; and

(ii) the defendant's understanding that, if the judge accepts the plea and finds the defendant guilty, the defendant's right to appeal is limited to the legality of the sentence, the voluntariness of the plea, and the jurisdiction of the court.

(d) Counsel for the defendant shall certify on the record, either orally or in writing, that he or she has had the opportunity to discuss the case with the defendant, and that the defendant has been advised of his or her rights and the effects of entry of a plea of guilty or nolo contendere.

(e) The judge may permit the attorney for the Commonwealth or defendant's attorney to conduct the examination of the defendant pursuant to paragraph (A)(3)(b). The judge shall be present during this examination.

(B) PLEA AGREEMENTS.

\* \* \* \* \*

(2) The judge shall conduct a separate inquiry of the defendant on the record to determine whether the defendant understands and voluntarily accepts the terms of the plea agreement on which the guilty plea or plea of nolo contendere is based, and that the judge is not bound by the terms of the tendered plea agreement unless the judge accepts the plea agreement.

\* \* \* \* \*

Comment

The purpose of paragraph (A)(2) is to codify the requirement that the judge, on the record, ascertain from the defendant that the guilty plea or plea of nolo contendere is voluntarily and understandingly tendered. On the mandatory nature of this practice, see *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 (1974); *Commonwealth v. Campbell*, 451 Pa. 198, 304 A.2d 121 (1973); *Commonwealth v. Jackson*, 450 Pa. 417, 299 A.2d 209 (1973).

Paragraph (A)(3) was added in 2009 to provide further instructions to judges accepting pleas of guilty or nolo contendere. Under *Commonwealth v. Willis*, 471 Pa. 50, 369 A.2d 1189 (1977), and *Commonwealth v. Dilbeck*, 466 Pa. 543, 353 A.2d 824 (1976), judges are required to make inquiry on the record into six areas, at a minimum, to ensure that a defendant is entering the plea voluntarily and understandingly. Paragraphs (A)(3)(b) and (c) elaborate on these areas of inquiry.

Paragraph (A)(3)(b) recognizes that certain elements of the colloquy are so critical to assuring the judge that the defendant understands the plea and that the colloquy is in compliance with this rule that the inquiry must be performed orally on the record.

Paragraph (A)(3)(c) requires two additional areas of inquiry. Nothing in the rule would preclude the use of a written colloquy for inquiry into these areas that is read, completed, signed by the defendant, and made part of the record of the plea proceedings. Similarly, areas of inquiry not listed in the rule but that the court deems necessary for the acceptance of the plea may be addressed in a written colloquy. The written colloquy may have to be supplemented by some on-the-record oral examination. Its use would not, of course, change any other requirements of law, including these rules, regarding the prerequisites of a valid guilty plea or plea of nolo contendere.

Some areas of inquiry that require oral inquiry do not necessarily need to be performed as a direct examination of the defendant. For example, the factual basis of the plea and the nature of the charges are case-specific and therefore an oral inquiry must be conducted into the specific facts of the case. This may be accomplished by the defendant confirming on the record a recitation of the facts by the attorney for the Commonwealth or defense counsel. In such a situation, however, the judge must be assured that the defendant fully understands and agrees with such a recitation.

Paragraph (A)(3)(d) requires that, in addition to the colloquy conducted of the defendant, counsel for the defendant also must certify on the record that the defendant has been fully advised of the nature and effects of his or her plea.

The court may inquire of counsel for the defendant if he or she knows of any reason why the defendant cannot voluntarily and understandingly giving up his or her rights and pleading guilty or nolo contendere.

Similarly, paragraph (B)(1) requires that counsel for the defendant and for the Commonwealth state on the record the terms of any plea agreement. Under paragraph (B)(2), the defendant's understanding of the terms of the agreement also must be elicited. This inquiry should include discussion of whether the court is bound by the agreement, the ability to withdraw the plea if it is not accepted, and that no coercion or other promises outside of the plea agreement have led to the defendant's willingness to enter a plea.

[ It is difficult to formulate a comprehensive list of questions a judge must ask of a defendant in determining whether the judge should accept the plea of guilty or a plea of nolo contendere. Court decisions may add areas to be encompassed in determining whether the defendant understands the full impact and consequences of the plea, but is nevertheless willing to enter that plea. At a minimum the judge should ask questions to elicit the following information:

- (1) Does the defendant understand the nature of the charges to which he or she is pleading guilty or nolo contendere?
- (2) Is there a factual basis for the plea?
- (3) Does the defendant understand that he or she has the right to trial by jury?
- (4) Does the defendant understand that he or she is presumed innocent until found guilty?
- (5) Is the defendant aware of the permissible range of sentences and/or fines for the offenses charged?
- (6) Is the defendant aware that the judge is not bound by the terms of any plea agreement tendered unless the judge accepts such agreement? ]

\* \* \* \* \*

It is advisable that the judge conduct the examination of the defendant. However, paragraph (A)(3)(e) [ does not prevent ] authorizes the judge to permit defense counsel or the attorney for the Commonwealth [ from conducting ] to conduct part or all of the examination of the defendant [ , as permitted by the judge. In

addition, nothing in the rule would preclude the use of a written colloquy, that is read, completed, signed by the defendant, and made part of the record of the plea proceedings. This written colloquy would have to be supplemented by some on-the-record oral examination. Its use would not, of course, change any other requirements of law, including these rules, regarding the prerequisites of a valid guilty plea or plea of nolo contendere ].

\* \* \* \* \*

Paragraph (C) reflects a change in Pennsylvania practice, [which] that formerly required the judge to convene a panel of three judges to determine the degree of guilt in murder cases in which the imposition of a sentence of death was not statutorily authorized. **The 2008 amendment to paragraph (C) and the Comment recognizes the Commonwealth's right to have a jury determine the degree of guilt following a plea of guilty to murder generally. See Article I, § 6 of the Pennsylvania constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused." See also *Commonwealth v. White*, 589 Pa. 642, 910 A.2d 648 (2006).**

**Official Note:** Rule 319(a) adopted June 30, 1964, effective January 1, 1965; amended November 18, 1968, effective February 3, 1969; paragraph (b) adopted and title of rule amended October 3, 1972, effective 30 days hence; specific areas of inquiry in *Comment* deleted in 1972 amendment, reinstated in revised form March 28, 1973, effective immediately; amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; paragraph (c) added and *Comment* revised May 22, 1978, effective July 1, 1978; *Comment* revised November 9, 1984, effective January 2, 1985; amended December 22, 1995, effective July 1, 1996; amended July 15, 1999, effective January 1, 2000; renumbered Rule 590 and *Comment* revised March 1, 2000, effective April 1, 2001; **amended September 18, 2008, effective November 1, 2008; amended , 2009, effective , 2009.**

*Committee Explanatory Reports:*

\* \* \* \* \*

**Final Report explaining the September 18, 2008 amendments to paragraph (C) concerning juries determining degree of guilt published with the Court's Order at 38 Pa.B. 5431 (October 4, 2008).**

**Report explaining the proposed changes to subparagraph (A)(3) concerning plea colloquies published at 39 Pa.B. 993 (February 21, 2009).**

#### REPORT

*Proposed Amendments to Pa.Rs.Crim.P. 590*

#### GUILTY PLEA COLLOQUY

The Committee began examining guilty plea colloquy practice as a result of the opinion in *Commonwealth v. Fowler*, 893 A.2d 758 (2006), that discussed the contents of a guilty plea colloquy that are necessary for the plea to be accepted as voluntary. In a concurring opinion, Judge Klein criticizes the majority for not enforcing the requirement, derived from *Commonwealth v. Willis*, 369 A.2d 1189 (Pa. 1977), that the colloquy include six areas of inquiry. The list of these six items is included in the Rule 590 Comment, as well as a cross-reference to the *Willis* case. The Committee also received anecdotal reports that some courts were not eliciting all of this required information, thereby calling into question the providency of the pleas taken.

Initially, the Committee considered recommending moving these six areas of inquiry from the Comment into the text of Rule 590 to emphasize their mandatory nature. However, the Committee recognized that this relatively simple proposal raised more complex questions regarding the standardization of colloquy procedures, especially with regard to the use of written colloquy forms and the extent to which the colloquy must be performed orally.

The Committee, after conducting a statewide survey of colloquy practice, noted the wide divergence in guilty plea colloquy practice throughout the Commonwealth. At first, the Committee considered attempting to create a uniform statewide guilty plea colloquy form that would ensure that the minimum requirements for a provident plea are met. Ultimately, the Committee concluded that practice with regard to written guilty plea colloquies was too diverse to capture in a single form that was still efficient to use. Rather than trying to create a single form that would be applicable to all counties, the Committee concluded that the better option would be to provide fuller guidance as to the elements that should be included in every colloquy.

To that end, the Committee developed a list of the mandatory colloquy components that would be included in the text of Rule 590. The current list of six mandatory colloquy items would be expanded upon and augmented to include a more detailed description of the areas of inquiry that the six areas of inquiry in the Rule 590 Comment are intended to encompass, and that are needed to ensure that the defendant is pleading voluntarily and understandingly.

In developing this proposal, some Committee members expressed the concern that the proposal could be interpreted to require an extensive oral colloquy of each element of the list. Such an interpretation would tie judges' hands and require a far more extensive colloquy than is necessary to ensure that a valid plea has been entered. Therefore, the Committee concluded that the rule should explicitly provide which mandatory items of the colloquy have to be done orally and which could be handled either orally or by a written colloquy form.

To accomplish this, a new paragraph (3)(b) would be added to Rule 590 setting forth the five areas of inquiry that must be conducted orally on the record. The items that are required to be elicited orally relate to confirming the defendant's identity, his or her capacity to understand the nature of the proceedings; the nature, elements, and factual basis of the charges; and his or her satisfaction with his or her representation. New paragraph (3)(c) would set forth two broad areas of inquiry that, while mandatory, may be addressed either orally or through a written colloquy form, and on the record. These two areas concern the defendant's understanding of the full panoply of rights that he or she will be giving up if the plea is accepted. One of the elements of the original list of six areas of inquiry, the advice to the defendant that the judge is not bound by the terms of any plea agreement unless the judge accepts the agreement, has been included in paragraph (B) that relates to plea agreements. Taken together, this new expanded list contains all of the original six areas of inquiry, augmented to provide more detailed instructions as to the composition of the colloquy.

The Comment language has been revised to reflect these changes and emphasize that the main purpose of the colloquy is to assure that the plea is entered providently and provide some detail as to how the colloquy requirements might be applied. For example, one area of oral inquiry in which more detailed instructions are

provided is that of the factual basis for the plea. Rather than requiring the defendant to provide an oral description of the facts of the case, the rule would permit an oral recitation by the district attorney or defense counsel confirmed by the defendant.

[Pa.B. Doc. No. 09-291. Filed for public inspection February 20, 2009, 9:00 a.m.]

## Title 252—ALLEGHENY COUNTY RULES

### ALLEGHENY COUNTY

Rules of the Court of Common Pleas; Rules Doc.  
No. DJ-2009-3; No. RD-2009-1 PJ

#### Order of Court

*And Now*, to-wit, this 30th day of January, 2009, pursuant to action of the Board of Judges, the within new local Rule 1901.1: Magisterial District Courts: Termination of Inactive Summary Cases is adopted, effective thirty (30) days after Publication in the *Pennsylvania Bulletin*.

*By the Court*

HONORABLE DONNA JO MCDANIEL,  
*President Judge*

#### Rule 1901.1. Magisterial District Courts: Termination of Inactive Summary Cases

(a) Prior to June 30th of every calendar year, each magisterial district court of the Fifth Judicial District shall prepare and submit to the District Court Administrator a list of every summary case filed with the magisterial district court wherein:

(1) the docket discloses that there has been no action or proceeding other than the filing of a not found return on a warrant for a continuous period of three (3) years or more; and

(2) the docket discloses that there is no case balance, as no monetary funds were ever received as collateral or partial payment of fines, costs or restitution.

(b) Each case entered on the list shall include the case caption, docket number and charge.

(c) Upon receipt of a summary case list, the District Court Administrator, with the approval of the President Judge, shall cause the list to be published, pursuant to All.C.R.Crim.P. 114.1, on two (2) separate dates, with a notice of the President Judge's intention to dismiss the listed cases due to inaction thirty (30) days from the final publication, and that a party to a listed case may file, at the Minor Judiciary Docket, in the Department of Court Records, Civil Division, written objection to termination of a case, setting forth good cause as to why the case should not be dismissed.

(d) Each magisterial district judge shall notify the District Court Administrator, in writing, of any case wherein action has transpired to bring the prosecution to a conclusion from the time of submitting the list to the District Court Administrator and the set date for dismissal so that such case may be deleted from the list.

(e) The President Judge shall make a ruling as to any written objection to the termination filed before the set date for dismissal.

(f) On the set date of dismissal, the President Judge shall enter an order of court setting forth and dismissing such summary cases submitted by the magisterial district court for which no good cause was demonstrated nor action taking place to bring the prosecution to a conclusion.

(g) A copy of the Court's order will be forwarded to the magisterial district court and said court shall make the following entry on the respective docket for each dismissed case: "Dismissed—Local Rule 1901.1" and place a copy of the Court's order in the magisterial district court file.

(h) The District Court Administrator shall file proofs of notice by publication and court orders at the Minor Judiciary Docket.

(i) Any matter terminated after notice by publication may be reinstated by the President Judge after dismissal upon written application for good cause shown unless such application is filed after the documents relating to the matter have been disposed of pursuant to applicable record retention schedule established by or pursuant to law.

*Comment: Nothing in this rule is intended to preclude a magisterial district court from providing a list to an affiant of the affiant's inactive cases to facilitate prompt disposition of summary cases prior to the magisterial district court seeking termination pursuant to this rule.*

[Pa.B. Doc. No. 09-292. Filed for public inspection February 20, 2009, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### CLINTON COUNTY

Order Amending Rules 206.4(c), 208.2(d), 208.2(e),  
208.3(a), 1028(c), 1034(a) and 1035.2(a); No.  
114-09

#### Order

*And Now*, this 2nd day of February, 2009, *It Is Hereby Ordered* that the Clinton County Rules of Civil Procedure, adopted January 19, 2008, and published in the *Pennsylvania Bulletin*, Vol. 39, No. 5, on January 31, 2009, are *Amended* to reflect that Rules 206.4(c), 208.2(d), 208.2(e), 208.3(a), 1028(c), 1034(a) and 1035.2(a) will be effective immediately upon publishing on the Unified Judicial System (UJS) portal.

*By the Court*

J. MICHAEL WILLIAMSON,  
*President Judge*

[Pa.B. Doc. No. 09-293. Filed for public inspection February 20, 2009, 9:00 a.m.]

## ERIE COUNTY

**In the Matter of the Revision and Restatement of  
the Rules 308 and 2056; Civil Procedure; Civil  
Division; No. 90060; Court Order 2008**

**Order**

*And Now*, this 19th day of December, 2008, Rules 308 and 2056 of the Rules of Civil Procedure for the Court of Common Pleas of Erie County, Pennsylvania are rescinded, effective 30 days after publication in the *Pennsylvania Bulletin*.

ELIZABETH K. KELLY,  
*President Judge*

[Pa.B. Doc. No. 09-294. Filed for public inspection February 20, 2009, 9:00 a.m.]

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