

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 50]

Order Approving Revision of the Comment to Rule 51; No. 222; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Report explaining the changes which are the subject of the Court's Order. The Report follows the Court's Order.

Order

Per Curiam:

Now, this 6th day of June, 1997, upon the recommendation of the Criminal Procedural Rules Committee;

The Rule 51 Comment revision having been approved without publication, as permitted by Pa.R.J.A. 103(a)(3) and a Report to be published with this Order;

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the Comment to Rule of Criminal Procedure 51 is revised in the following form.

This Order shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective immediately.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

CHAPTER 50. PROCEDURE IN SUMMARY CASES

PART I. INSTITUTING PROCEEDINGS

Rule 51. Means of Instituting Proceedings in Summary Cases.

Criminal proceedings in summary cases shall be instituted either by:

- (a) issuing a citation to the defendant; or
- (b) filing a citation; or
- (c) filing a complaint; or
- (d) arresting without a warrant when arrest is specifically authorized by law.

Official Note: Previous Rule 51, adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; **Comment revised June 6, 1997, effective immediately.**

Comment

This rule establishes the means of instituting criminal proceedings in summary cases. For general citation procedures, see Part II, Rules 52 and 53.

For the procedures when a citation is issued to a defendant pursuant to paragraph (a) of this rule, see Part IIA, Rules 55, 56, 57, 58, 59.

For the procedures when a citation is filed pursuant to paragraph (b), see Part IIB, Rules 60, 61, 62, 63, 64.

For the procedures when a complaint is filed pursuant to paragraph (c), see Part III, Rules 65, 66, 67, 68, 69.

For the procedures when there is an arrest without a warrant pursuant to paragraph (d), see Part IV, Rules 70, 71.

For the procedures regarding the use of arrest warrants in summary cases, see Part V, Rules 75, 76.

For general procedures applicable in all summary cases, see Part VI, Rules 80, 81, 82, 83, 84, 85, 86, 90.

For the procedures in summary cases charging parking violations, see Part VII, Rule 95. Although a criminal proceeding may be instituted in these cases by issuing a citation either by handing it to a defendant or placing it on a vehicle windshield, it is expected that many parking cases will be disposed of without a criminal proceeding under these rules. A parking ticket, which is not a citation, is used by a political subdivision and the defendant pays the amount specified on the ticket within the time specified.

Summary cases are cases in which all the offenses charged are either summary offenses, as defined in the Crimes Code, 18 Pa.C.S. § 106(c), or violations of ordinances for which imprisonment may be imposed upon conviction or upon failure to pay a fine or penalty. See Rule 3. Criminal proceedings in summary cases are to be brought under this chapter of the rules. If one or more of the offenses charged is a misdemeanor, felony, or murder, the case is a court case (see Rule 3) and proceeds under Chapter 100 of the rules. Any summary offenses in such a case, if known at the time, must be charged in the same complaint as the higher offenses and must be disposed of as part of the court case. See Crimes Code § 110, 18 Pa.C.S. § 110, and *Commonwealth v. Campana*, 304 A.2d 432 (Pa. 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 314 A.2d 854 (Pa. 1974). But see *Commonwealth v. Beatty*, 455 A.2d 1194 (Pa. 1983) [, concerning summary violations of the Vehicle Code.]; *Commonwealth v. Taylor*, 522 A.2d 37 (Pa. 1987); and *Commonwealth v. Kresge*, 464 A.2d 384 (Pa. Super. 1983) (no Section 110 violation when separate prosecutions involve offenses "not within the jurisdiction of a single court"). See also *Commonwealth v. Geyer*, 687 A.2d 815 (Pa. 1996) (Section 110 applies to separate prosecution of two summary offenses within the jurisdiction of a single court).

The summary case rules are not intended to prohibit or to suspend any acknowledgment of guilt procedures that may be specifically authorized by statute. See, e.g., Section 926 of the Game and Wildlife Code, 34 Pa.C.S. § 926, and Section 925 of the Fish and Boat Code, 30 Pa.C.S. § 925. Furthermore, the use of a field acknowledgment of guilt pursuant to 34 Pa.C.S. § 926 or 30 Pa.C.S. § 925 should not be construed as the issuance of a citation for the purpose of instituting a summary case under these rules. See Rules 55 and 60.

The Rules of Criminal Procedure generally do not apply to juvenile proceedings, but these rules do apply to proceedings in summary cases involving juveniles to the

extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act §§ 6302—6303, 42 Pa.C.S. §§ 6302—6303; Vehicle Code § 6303, 75 Pa.C.S. § 6303. See also 42 Pa.C.S. § 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

See Section 1522 [to] of the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Committee Explanatory Reports:

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

Report explaining the January 16, 1996 Comment revisions published with the Court's Order at 26 Pa.B. 437 (February 3, 1996).

Report explaining the June 6, 1997 Comment revision published with the Court's Order at 27 Pa.B. 2923 (June 21, 1997).

REPORT

**Comment Revision to Pa.R.Crim.P. 51
Applicability of 18 Pa.C.S. § 110 to Summary Cases**

On June 6, 1997, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court of Pennsylvania approved an addition to the Comment to Rule 51 (Means of Instituting Proceedings in Summary Cases) which clarifies the general rule that summary charges included in a court case must be disposed of as part of the court case.

For some time, the Comment to Rule 51 has contained a discussion of 18 Pa.C.S. § 110 and *Commonwealth v. Campana*, 304 A.d. 432 (Pa. 1973), followed by a citation to *Commonwealth v. Beatty*, 455 A.d. 1194 (Pa. 1983) (concerning summary violations of the Vehicle Code). In addition to *Commonwealth v. Beatty*, the courts have issued several other opinions addressing the applicability of 18 Pa.C.S. § 110 to summary cases. As an aid to the bench and bar, the Committee has added these cases to the Rule 51 Comment: *Commonwealth v. Kresge*, 464 A.d. 384 (Pa. Super. 1983); *Commonwealth v. Taylor*, 522 A.d. 37 (Pa. 1987); and *Commonwealth v. Geyer*, 687 A.d. 815 (Pa. 1996).

[Pa.B. Doc. No. 97-968. Filed for public inspection June 20, 1997, 9:00 a.m.]

1. Administrative Regulation 96-2 establishing mandatory mediation orientation for petitions to modify custody is hereby rescinded.

2. Administrative Regulation 93-1 establishing custody mediation procedures and forms is hereby reinstated pending promulgation of revised custody mediation procedures.

3. All pending petitions seeking custody, partial custody, and/or visitation, or petitions seeking modification of prior custody orders, which were filed prior to March 1, 1997, shall be listed before a Domestic Relations Judge for disposition.

4. All custody petitions filed on or after March 1, 1997, shall be processed as follows:

(A) All initial petitions seeking partial custody and/or visitation, and all petitions seeking partial custody and/or visitation as a modification of a prior custody order, shall be listed before a Custody Hearing Officer for a record hearing consistent with PA.R.C.P. 1915.4-1 and 1915.4-2. In appropriate cases the Custody Hearing Officer may refer the parties to the Family Court's Custody Mediation Program prior to the record hearing consistent with Administrative Regulation 93-1.

(B) All initial petitions seeking sole custody or primary physical custody, or petitions seeking to modify an existing custody order for sole custody or primary physical custody, shall be listed before a Custody Hearing Officer for a conference for the purpose of attempting to effectuate a settlement. If no agreement is reached at the conference, the parties shall be given a date certain for a record hearing before a Domestic Relations Judge and/or may be referred to the Court's Custody Mediation Program consistent with Administrative Regulation 93-1.

(C) The Custody Hearing Officer shall determine whether there are compelling circumstances necessitating an interim Order at which time he/she shall prepare a recommended interim order and refer the case to the Motion Judge for consideration of the proposed interim Order.

(D) This Administrative Regulation is adopted pending modification of the Philadelphia County Local Rules governing Child Custody matters.

PAUL P. PANEPINTO,
*Administrative Judge
Family Court Judge*

[Pa.B. Doc. No. 97-969. Filed for public inspection June 20, 1997, 9:00 a.m.]

**Title 249—PHILADELPHIA
RULES**

PHILADELPHIA COUNTY

**Administrative Regulation 97-2; Promulgation of
Custody Procedures**

And Now, this 2nd day of June, 1997, in order to facilitate the processing of custody cases and to establish procedures for pending and future custody cases, and to encourage the use of mediation for resolution of custody disputes where appropriate, it is hereby *Ordered* and *Decreed* as follows:

**Title 255—LOCAL COURT
RULES**

DELAWARE COUNTY

**Compliance with Track I and Track II Education
Classes for DUI Defendants**

Order

And Now, this 29th day of May, 1997, it is hereby *Ordered and Decreed* that all Defendants convicted of their first Driving Under the Influence Offense shall complete Delaware County Track I Classes as well as any other requirements *Ordered* by the Court.

Defendants who are convicted of their second or any subsequent offense of Driving Under the Influence shall complete the Delaware County Track II Classes. Any Defendant who has been convicted of a second or any subsequent offense must have completed the Track I requirements prior to entering the Track II Program.

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 97-970. Filed for public inspection June 20, 1997, 9:00 a.m.]

DELAWARE COUNTY

District Justice Sentencing Authority; Delaware County Community Service Program; Doc. No. A-41-31-1990

Order

And Now, this 29th day of May, 1997, it is hereby *Ordered and Decreed* as follows:

1) The Delaware County Community Service Program is hereby approved as an alternative sentencing option which may be imposed by District Justices for first time offenders charged with summary offenses except in cases charging offenses under Title 75 (relating to vehicles) and Title 34 (relating to game), upon a finding of guilt or a guilty plea.

2) The Defendant shall be required to pay any and all restitution as a condition to participation in the Community Service Program.

3) The Community Service Program shall be implemented and supervised by Mr. Walter Omlor, Executive Administrator for Alternative Sentences, and strictly enforced according to guidelines issued by the Executive Administrator and approved by the Administrator's Office for District Justices at the direction of the President Judge.

4) The Community Service Program shall be phased in throughout Delaware County by "Catchment Areas" according to a timetable which shall be published by the Executive Administrator for Alternative Sentences at the direction of the President Judge. The Executive Administrator shall be responsible for maintaining the record checking, recordkeeping and reporting requirements and shall provide such reports as may be required by the President Judge.

5) District Justices shall require a Defendant admitted into the Community Service Program to pay Court costs and shall sentence the Defendant to not more than fifty (50) hours of Community Service. The Defendant shall pay a Community Service Program fee of twenty-five dollars (\$25.00) and an administrative application fee of sixty dollars (\$60.00) payable directly to the Community Service Program. The fees may be changed from time to time after a determination is made by the Executive Administrator for Alternative Sentences of the appropriate fee based upon the administrative expenses.

6) Whether a Defendant is eligible for the Community Service Program is within the sound discretion of the District Justice.

7) The District Justice and Mr. Walter Omlor shall have the discretion, based upon extenuating circumstances, to admit a Defendant into the Community Service Program even if the Defendant has previously been admitted into the program.

8) If the Defendant fails to complete the Community Service Program, or if the District Justice does not approve an alternative sentence, the District Justice shall proceed with the case as provided by law.

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 97-971. Filed for public inspection June 20, 1997, 9:00 a.m.]

DELAWARE COUNTY

District Justice Sentencing Authority; Delaware County Youth Alcohol and Drug Awareness Program; Doc. No. A-41-31-1990

Order

And Now, this 29th day of May, 1997, it is hereby *Ordered and Decreed* as follows:

1) Upon a finding of guilt or a guilty plea, the Delaware County Youth Alcohol and Drug Awareness Program is hereby approved as the exclusive educational sentencing program which shall be imposed by District Justices for first time offenders charged with violating 18 Pa.C.S. § 6308 relating to the possession or consumption of alcohol by persons under the age of twenty-one. In addition thereto, but not in place thereof, the District Justice may also enter an Order placing the offender in the Delaware County Community Service Program.

2) Where a Defendant is convicted or is admitted to any approved alternative sentencing program for a violation of 18 Pa.C.S. § 6308, the court shall order the Defendant's operating privileges suspended pursuant to 18 Pa.C.S. § 6310.4. Furthermore, a copy of the Order shall be transmitted to the Department of Transportation.

3) The Defendant shall be required to pay any and all restitution as a condition to participation in the Youth Alcohol and Drug Awareness Program.

4) The Alcohol and Drug Awareness Program shall be implemented and supervised by Mr. Walter Omlor, Executive Administrator for Alternative Sentences, and strictly enforced according to guidelines issued by the Executive Administrator and approved by the Administrator's Office for District Justices at the direction of the President Judge. The Executive Administrator shall be responsible for maintaining the record checking, recordkeeping and reporting requirements and shall provide such reports as may be required by the President Judge.

5) District Justices shall require a Defendant admitted into the Youth Alcohol and Drug Awareness Program to pay Court costs. The Defendant shall pay a Youth Alcohol and Drug Awareness Program fee of One Hundred Dollars (\$100.00) and an administrative application fee of Sixty dollars (\$60.00) payable directly to the Youth Alcohol and Drug Awareness Program, and, where the Defendant is

placed in the Community Service Program, a Community Service Program fee of Twenty-five dollars (\$25.00) payable directly to the Community Service Program. The fees may be changed from time to time after a determination is made by the Executive Administrative for Alternative Sentences of the appropriate fee based upon the administrative expenses.

6) Whether a Defendant is eligible for the Community Service Program is within the sound discretion of the District Justice.

7) The District Justice and Mr. Walter Omlor shall have the discretion, based upon extenuating circumstances, to admit a Defendant into the Youth Alcohol and Drug Awareness Program or the Community Service

Program even if the Defendant has previously been admitted into either program.

8) If the Defendant fails to complete the Youth Alcohol and Drug Awareness Program or, if applicable, the Community Service Program, the District Justice shall proceed with the case as provided by law.

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 97-972. Filed for public inspection June 20, 1997, 9:00 a.m.]
