

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL [234 PA. CODE CH. 50] Procedure in Summary Cases

Introduction

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 75 (Issuance of Arrest Warrant), 83 (Trial in Summary Cases), and 86 (Appeals). These amendments clarify that an arrest warrant may be issued by the issuing authority in summary cases in which the defendant fails to appear for the execution of sentence. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's 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 explanatory Reports.

The text of the proposed rule changes precedes the Report.

We request that interested persons submit suggestions, comments or objections concerning this proposal to the Committee through counsel, Anne T. Panfil, Chief Staff Counsel, Supreme Court of Pennsylvania, Criminal Procedural Rules Committee, P. O. Box 1325, Doylestown, PA 18901 no later than Monday, September 20, 1999.

By the Criminal Procedural Rules Committee

J. MICHAEL EAKIN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE PART I. GENERAL CHAPTER 50. PROCEDURE IN SUMMARY CASES PART V. PROCEDURES REGARDING ARREST WARRANTS IN SUMMARY CASES

Rule 75. Issuance of Arrest Warrant.

(1) A warrant for the arrest of the defendant shall be issued when:

* * * * *

(b) the citation or summons is returned undelivered; [or]

(c) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons [.]; or

(d) the defendant has failed to appear for the execution of sentence as required in Rule 83(E).

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Official Note: Adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991;

amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; **amended _____, effective _____.**

Comment

Personal service of a citation under paragraph (1)(a) is intended to include the issuing of a citation to a defendant as provided in Rule 51(a) and the rules of Part IIA.

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An arrest warrant may not be issued under paragraph (1)(a) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 80.

Rule 83 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 86(B). Paragraph (A)(1)(d) was added in 1999 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 84, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a warrant for the arrest of the defendant pursuant to paragraph (2) in order to bring the defendant before the issuing authority for the summary trial.

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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).

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Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 1999).

Report explaining the proposed amendments adding paragraph (1)(d) published at 29 Pa.B. 4348 (August 14, 1999).

PART VI. GENERAL PROCEDURES IN SUMMARY CASES

Rule 83. Trial in Summary Cases.

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

* * * * *

(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 that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued;** and

* * * * *

Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date 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 [.] ; amended _____, effective _____.

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).

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Report explaining the proposed amendments amending paragraph (E)(3) published at 29 Pa.B. 4348 (August 14, 1999).

Rule 86. Appeals.

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Official Note: Adopted July 12, 1985, effective January 1, 1986; Comment revised 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 March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999 [.] ; **Comment revised _____ 1999, effective _____, 1999.**

Comment

This rule applies to appeals in all summary proceedings, including prosecutions for violations of municipal ordinances which provide for the possibility of imprisonment and default hearings.

* * * * *

The Rules of Criminal Procedure are applicable generally to these proceedings. See, e.g., Rule 3, Chapter 50 (Summary Cases), Rule 1117, and Chapter 6000. The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

See Rule 83(E) for the procedures for executing a sentence of imprisonment when there is a stay.

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Committee Explanatory Reports:

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

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Report explaining the proposed revision of the Comment adding the cross-reference to Rule 83(E) published at 29 Pa.B. 4348 (August 14, 1999).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 75 and 83, Revision of the Rule 86 Comment

Warrants of Arrest for Failure to Appear for Execution of Sentence in Summary Cases

The Committee is proposing that Rules 75 (Issuance of Arrest Warrant) and 83 (Trial in Summary Cases) be

amended to clarify that an issuing authority may issue an arrest warrant when a defendant fails to appear for the execution of sentence. The need for the clarification was brought to the Committee's attention in correspondence suggesting that there is confusion among some district justices about how to proceed when a defendant fails to appear for the execution of sentence in summary cases.

Rule 83(E)(3) provides that the issuing authority is to advise the defendant that he or she must appear before the issuing authority on a date certain for the execution of a sentence of imprisonment, which date is set to be after the expiration of the 30-day stay period provided in Rule 86(B)(1). The confusion arises because neither Rule 83 nor Rule 75 specifically provide that the issuing authority may issue a warrant to bring the defendant in for the execution of sentence. Because district justices are trained to be constrained by the parameters of the rules, and, in some procedural matters, also are constrained by the limitations placed on their discretionary actions by the Administrative Offices of Pennsylvania Courts' District Justice Computer System, some district justices think they cannot issue a warrant in these cases. Furthermore, the confusion is exacerbated because this type of situation does not fall within the category of contemptuous behavior over which the issuing authorities have jurisdiction to act, so they cannot issue a warrant for purposes of contempt. See, e.g., Pa.R.Crim.P. 30.

With this background in mind, and because there was no apparent or obvious reason why the issuing authority should not issue a warrant when a defendant has failed to appear for the execution of a sentence of imprisonment, the Committee agreed that the rules should be amended to clarify that a warrant would be appropriate in these cases. Accordingly, the following changes are proposed:

1. Rule 75(1) would be amended by the addition of a new paragraph (d) that provides that failure to appear for execution of sentence is another warrant situation.
2. The Rule 75 Comment would be revised to elaborate on the interplay between Rule 75 and the Rule 83 execution of sentence provision.
3. Rule 83(E)(3) would be amended to require that, in addition to directing the defendant to appear on a date certain for execution of sentence, the issuing authority must advise the defendant that failure to appear will result in an arrest warrant being issued. This provision provides adequate notice to the defendant of the consequences of failing to appear.
4. The Rule 86 Comment would be revised to add a cross-reference Rule 83(E) concerning execution of sentence following a stay.

[Pa.B. Doc. No. 99-1315. Filed for public inspection August 13, 1999, 9:00 a.m.]

Title 25—LOCAL COURT RULES

BRADFORD COUNTY Rule of Civil Procedure No. 400.1(b)

Order

And Now, this 28th day of July, 1999, the Court hereby adopts the following Bradford County Rule of Civil Proce-

ture, to be effective thirty (30) days after the date of publication in the *Pennsylvania Bulletin*.

It is further ordered that the District Court Administrator shall file seven (7) certified copies of this Rule with the Administrative Office of Pennsylvania Courts, two (2) certified copies to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, one (1) certified copy to the Civil Procedural Rules Committee and one (1) copy to the *Bradford County Law Journal* for publication in the next issue of the *Bradford County Law Journal*.

It is further ordered that this local rule shall be kept continuously available for public inspection and copying in the Prothonotary's Office.

By the Court

JEFFREY A. SMITH,
President Judge

Rule 400.1(b)

Original process shall be served within the Commonwealth

(i) by the sheriff or a competent adult in all actions in equity, in partition, to prevent waste, and for declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the sheriff in all other actions.

[Pa.B. Doc. No. 99-1316. Filed for public inspection August 13, 1999, 9:00 a.m.]

DELAWARE COUNTY

Amendment of Rule of Civil Procedure 400.1 Governing Service of Original Process and Other Legal Papers; Misc. Doc. No. 90-18200

Order

And Now, to wit, this 27th day of July, 1999, in conformity with Pa. R.C.P. 400.1(b)(1), as recently amended and adopted by the Supreme Court of Pennsylvania, and which amendment is scheduled to take effect on September 1, 1999, it is hereby *Ordered* and *Decreed* that original process shall be served within Delaware County

(a) by the sheriff or a competent adult in the actions in equity, partition, prevent waste and declaratory judgment when declaratory judgment is the only relief sought; and

(b) by the sheriff in all other actions.

This Order shall remain in effect until the matter may be more closely examined by the Delaware County Civil Rules Committee and the Board of Judges of Delaware County and a local rule passed thereafter.

By the Court

A. LEO SERENI,
President Judge

[Pa.B. Doc. No. 99-1317. Filed for public inspection August 13, 1999, 9:00 a.m.]

NORTHUMBERLAND COUNTY

Local Rule Pursuant to Rule 400.1 of the Pennsylvania Rules of Civil Procedure; No. CU-99-982

Order of Court

And Now this 19th day of July, 1999, the Court having received the Petition of Charles S. Berkoski, the Sheriff of Northumberland County, hereby establishes a Local Rule of Court pursuant to Rule 400.1 of the Pennsylvania Rules of Civil Procedure providing that:

With respect to all actions filed in Northumberland County, Pennsylvania, original process shall be served within the Commonwealth:

(i) by the sheriff or a competent adult in the actions in equity, partition, prevent waste, and declaratory judgment when declaratory relief is the only relief sought, and

(ii) by the Sheriff in all other actions.

By the Court

ROBERT B. SACAVAGE,
President Judge

[Pa.B. Doc. No. 99-1318. Filed for public inspection August 13, 1999, 9:00 a.m.]