

# THE COURTS

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### PART V. PROFESSIONAL ETHICS AND CONDUCT [ 204 PA. CODE CH. 81 ]

#### Amendments to the Pennsylvania Rules of Professional Conduct Relating to Special Responsibilities of a Prosecutor

The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it adopt the amendments to Model Rule of Professional Conduct 3.8 that were approved by the American Bar Association (ABA) in February 2008 and amend Pennsylvania Rule of Professional Conduct (PA RPC) 3.8, as set forth in Annex A.

The proposed changes to PA RPC 3.8 include the addition of paragraphs (f) and (g) and accompanying Comments (5), (6) and (7). Comment (1) would be amended to reword one sentence and to add one clause and one sentence.

The language of the proposed amendments in Annex A is identical to the language of the recent revisions to the ABA Model Rule, although in the ABA version the new paragraphs are designated (g) and (h) and the new Comments are numbered (7), (8) and (9).

The genesis and development of the Model Rule provisions is explained in a comprehensive Report to the ABA's House of Delegates (Report) prepared by that organization's Criminal Justice Section. The Report is available on the ABA's web site at [http://www.abanet.org/cpr/mrpc/model\\_rules.html](http://www.abanet.org/cpr/mrpc/model_rules.html). According to the Report, the process that led to the recommendation for adoption of the Model Rule changes involved significant input from State and Federal prosecutors and representatives of the criminal defense bar. The Report develops, from a legal and ethical perspective, the underlying premise that prosecutors have professional duties upon learning that a wrongful conviction may have occurred. The Report also recognizes that one of the most fundamental professional obligations of a criminal prosecutor is to rectify the conviction of an innocent person.

The proposed provisions rectify the omission of this fundamental obligation from the current version of the Rule and provide guidance to prosecutors concerning their minimum disciplinary responsibilities. Guidance is achieved by identifying three prosecutorial duties (disclosure, investigation, and remedial action) and defining the triggering point for each of those duties. Recognizing that individual cases and jurisdictions differ, the drafters did not prescribe particular investigative steps and remedial measures that must be pursued.

Proposed paragraph (f) and proposed Comment (5) to PA RPC 3.8 address the duty to disclose and the duty to investigate. When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a defendant outside the prosecutor's jurisdiction was convicted of a crime that the defendant did not commit, the prosecutor must promptly disclose that evidence to an appropriate court or authority, such as the chief prosecu-

tor of the jurisdiction where the conviction occurred. If the conviction occurred within the prosecutor's jurisdiction, the prosecutor must make prompt disclosure to the defendant unless a court authorizes delay, and undertake further investigation to determine if the defendant is in fact innocent.

Proposed paragraph (g) and proposed Comment (6) to PA RPC 3.8 address the duty to take remedial measures. Once a prosecutor knows of clear and convincing evidence establishing that the defendant was convicted of a crime that the defendant did not commit, paragraph (g) requires that the prosecutor seek to remedy the conviction.

The *mens rea* standard in paragraphs (f) and (g) is "knows," which under both the Model Rule and PA RPC 1.0(f) "denotes actual knowledge of the fact in question." Proposed Comment (7) explains that a prosecutor does not violate the Rule if the prosecutor, in the exercise of independent judgment, erroneously determines that the new evidence is insufficient to trigger the obligations of paragraphs (f) and (g), as long as the prosecutor acts in good faith.

Interested persons are invited to submit written comments regarding the proposed amendments to the Office of the Secretary, The Disciplinary Board of the Supreme Court of Pennsylvania, 601 Commonwealth Avenue, Suite 5600, P. O. Box 62625, Harrisburg, PA 17106-2625 on or before July 2, 2010.

*By The Disciplinary Board of the  
Supreme Court of Pennsylvania*

ELAINE M. BIXLER,  
*Secretary of the Board*

#### Annex A

### TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

#### PART V. PROFESSIONAL ETHICS AND CONDUCT

##### Subpart A. PROFESSIONAL RESPONSIBILITY

#### CHAPTER 81. RULES OF PROFESSIONAL CONDUCT

##### Subchapter A. RULES OF PROFESSIONAL CONDUCT

#### § 81.4. Rules of Professional Conduct.

The following are the Rules of Professional Conduct:

#### ADVOCATE

#### Rule 3.8. Special Responsibilities of a Prosecutor.

The prosecutor in a criminal case shall:

\* \* \* \* \*

**(f) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:**

**(1) promptly disclose that evidence to an appropriate court or authority, and**

**(2) if the conviction was obtained in the prosecutor's jurisdiction,**

**(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and**

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(g) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Comment

(1) A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice [ and ], that guilt is decided upon the basis of sufficient evidence[ . Precisely how far the prosecutor is required to go in this direction ], and that special precautions are taken to prevent and to rectify the conviction of innocent persons. The extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which [ in turn ] are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. **Competent representation of the sovereignty may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation.** Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

\* \* \* \* \*

(5) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (f) requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, paragraph (f) requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

(6) Under paragraph (g), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor

has knowledge that the defendant did not commit the offense of which the defendant was convicted.

(7) A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (f) and (g), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

[Pa.B. Doc. No. 10-861. Filed for public inspection May 14, 2010, 9:00 a.m.]

# Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CH. 1 ]

## Proposed Amendments to Pa.R.Crim.P. 114 (Orders and Court Notices: Filing; Service; and Docket Entries)

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 114 to permit a party to consent generally to receive orders and notices electronically in all cases. 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 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 amendments to the rule 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  
601 Commonwealth Avenue, Suite 6200  
Harrisburg, PA 17106-2635

fax: (717) 231-9520

e-mail: criminal.rules@pacourts.us

no later than Tuesday, June 22, 2010.

By the Criminal Procedural Rules Committee

RISA VETRI FERMAN,  
*Chair*

### Annex A

#### TITLE 234. RULES OF CRIMINAL PROCEDURE CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

##### PART A. Business of the Courts

#### Rule 114. Orders and Court Notices: Filing; Service; and Docket Entries.

\* \* \* \* \*

(B) Service

\* \* \* \* \*

(3) Methods of Service

Except as otherwise provided in Chapter 5 concerning notice of the preliminary hearing, service shall be:

(a) in writing by

\* \* \* \* \*

(vi) sending a copy by facsimile transmission or other electronic means if the party's attorney, or the party if unrepresented, has filed a written request for this method of service [ or has included a facsimile number or an electronic address on a prior legal paper filed in the case ] as provided in paragraph (B)(3)(c); or

\* \* \* \* \*

(b) Orally in open court on the record.

(c) A party's attorney, or the party if unrepresented, may request to receive service of court orders or notices pursuant to this rule by facsimile transmission or other electronic means by

(i) filing a written request for this method of service in the case or including a facsimile number or an electronic address on a prior legal paper filed in the case; or

(ii) filing a written request for this method of service to be performed in all cases, specifying a facsimile number or an electronic address to which these orders and notices may be sent.

The request for electronic service in all cases filed pursuant to paragraph (ii) may be rescinded at any time by the party's attorney, or the party if unrepresented, by filing a written notice that service of orders and notices shall be accomplished as otherwise provided in this rule.

\* \* \* \* \*

Comment

\* \* \* \* \*

Although paragraph (B)(3)(a)(iv) permits the use of assigned mailboxes for service under this rule, the Attorney General's office never may be served by this method.

Paragraph (B)(3)(c) provides two methods for consenting to the receipt of orders and notices electronically. The first method, added to this rule in 2004, permits electronic service on a case-by-case basis with an authorization for such service required to be filed in each case. A facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph [ (B)(3)(a)(vi) ] (B)(3)(c)(i). The authorization for service by facsimile transmission or other electronic means under this rule is valid only for the duration of the case. A separate authorization must be filed in each case the party or attorney wants to receive documents by this method of service.

The second method was added in 2010 to provide the option of entering a "blanket consent" to electronic service in all cases. It is expected that this would be utilized by those offices that work frequently in the criminal justice system, such as a district attorney's office or public defender's office, or by a judicial district that has the capability, based upon the availability of local technological resources, to accept a general request from a party to receive court orders and notices electronically. For example, a judicial district may have a system

for electronically scanning documents that are stored on the courthouse computer system. In such a situation, an office that is part of the system, such as the District Attorney's Office or the Public Defender's Officer, could consent to the receipt of all court orders and notices generally. As with service under paragraph (B)(3)(c)(i), a facsimile number or an electronic address set forth on letterhead is not sufficient to authorize service by facsimile transmission or other electronic means under paragraph (B)(3)(c)(ii). This consent may be rescinded as provided in paragraph (B)(3)(c)(iii).

\* \* \* \* \*

**Official Note:** Formerly Rule 9024, adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective as to cases in which the determination of guilt occurs on or after January 1, 1994; renumbered Rule 9025 and Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 114 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005; amended July 20, 2006, effective September 1, 2006; Comment revised September 18, 2008, effective February 1, 2009; amended , 2010, effective , 2010.

*Committee Explanatory Reports:*

Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1685, 1699 (April 10, 1993).

Report explaining the June 2, 1994 rule changes published at 23 Pa.B. 5008, 5009 (October 23, 1993).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

Final Report explaining the March 3, 2004 rule changes concerning filing and service, making docket entries, and orders and court notices published with the Court's Order at 34 Pa.B. 1547, 1561 (March 20, 2004).

Final Report explaining the August 24, 2004 changes concerning notice of preliminary hearing published with the Court's Order at 34 Pa.B. 5016, 5025 (September 11, 2004).

Final Report explaining the July 20, 2006 deletion of "manner of service" from paragraph (C)(2)(c) published with the Court's Order at 36 Pa.B. 4172, 4173 (August 5, 2006).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5425, 5428 (October 4, 2008).

**Report explaining the proposed amendment concerning consent to electronic service published at 40 Pa.B. 2517, 2518 (May 15, 2010).**

**REPORT**

*Proposed Amendments to Pa.R.Crim.P. 114*

***Electronic Distribution of Orders***

As part of its duty of reviewing the impact of technology on criminal practice, the Committee examined the possibility of broadening the methods for consent to be served court orders and notices electronically. This issue was first raised to the Committee by a judicial district that has a document scanning function in their local computer system that provides immediate distribution of



documents to users when an order is scanned into the system. They raised the question of whether frequent users, such as the District Attorney's Office or Public Defender's Office, could avoid the requirement to provide consent to electronic service in each case by providing a general consent.<sup>1</sup>

The problem arises from the language in Rule 114(B)(3)(a)(vi) that permits the distribution of orders "by facsimile transmission or other electronic means" but only if the party or counsel for the party files a written request for this method of service in each case or "has included a facsimile number or an electronic address on a prior legal paper filed in the case . . ." Additionally, the Comment to Rule 113 states, "In those cases in which the attorney has authorized receiving service by facsimile transmission or electronic means, the docket entry required in paragraph (C)(2) must include the facsimile number or electronic address."

The Committee examined the history of the Rule 114 requirement for case-by-case consent. The language regarding electronic service of orders was added to Rule 114 in 2004.<sup>2</sup> The Final Report to that amendment specifically discusses the rationale for the allowance for electronic service:

In addition, the Committee discussed service by electronic means. We noted both that Pa.R.Civ.P. 236(d) permits service of orders by facsimile or electronic transmission, and that the use of electronic technology for transmitting documents is proliferating. However, the Committee expressed concern about issues such as proof of service and signatures that arise with the various means of electronically transmitting documents. Following several meetings at which this issue was debated at length, the Committee ultimately concluded there is nothing in Civil Rule 236(d) that is contrary to the purposes of service in criminal cases and having uniform means of service in civil and criminal cases is a salutary purpose. Accordingly, Rule 114(B)(3)(a)(vi), modeled on Civil Rule 236(d), permits this method of service. To alleviate the members' concerns about service by electronic means, the new provision incorporates two safeguard provisions. First, the paragraph permits the use of electronic means of service, but only if counsel or, the defendant if unrepresented, requests this method of service either by filing a specific request or including the facsimile number or an electronic address on a prior legal paper filed in the case. The Comment includes a paragraph clarifying that the facsimile number or electronic address on letterhead is not sufficient to authorize service by facsimile. Second, the paragraph requires the authorization for the use of electronic means for service by the court to be on a case-by-case basis. A Comment provision explains this, and notes a new authorization must be made for each case of the attorney or defendant.

As indicated in the report, the electronic service provision was based on Civil Rule 236(d) that reads:

(d) The prothonotary may give he notice required by subdivision (a) or notice of other matters by facsimile transmission or other electronic means if the party to whom notice is to be given or the party's attorney has filed a written request for such method of notification

or has included a facsimile or other electronic means if the prothonotary chooses to use such a method.

A Note<sup>3</sup> to Rule 236(d) contains language identical to that contained in the Rule 114 Comment that a fax number or electronic address on letterhead is insufficient to authorize electronic service.

In reviewing the Committee's earlier discussion that lead to the inclusion of this provision in the amendment to Rule 114, it became clear that the case-by-case requirement was due to a concern that electronic distribution would not be as effective as more traditional means of serving these orders. It was felt that an electronic message could more easily fall astray due to a technical glitch or that a party could more easily claim never to have received the transmission.

The Committee concluded that this requirement was established 5 year ago when the electronic service of documents was a still a relative novelty. In the intervening time, electronic service of documents, usually as part of a larger electronic filing system, has become more routine. Based on a review of the practice of the electronic transfer of documents in a number of jurisdictions, the Federal system being a foremost example, the Committee believes that many of the concerns about problems with the technology have proven unfounded. The Committee therefore concluded that permitting "blanket consent" for electronic service would be efficient and practical.

The Committee also concluded that, if a method of providing consent that was not case specific were added to the rule, some mechanism for rescinding such consent should be included as well.

Therefore, a new paragraph (B)(3)(c) would be added to Rule 114 that provides the two methods of consent to receive orders electronically as well as the method for rescinding the general consent. Paragraph (B)(3)(c)(i) would retain the case-by-case method of the present rule while paragraph (B)(3)(c)(ii) would provide for the general, non-case-specific consent. Language also would be added to the Comment to indicate that the practice of providing a general consent is not mandatory and should be utilized only in those judicial districts where existing technology makes this practical.

[Pa.B. Doc. No. 10-862. Filed for public inspection May 14, 2010, 9:00 a.m.]

#### [ 234 PA. CODE CHS. 1 AND 4 ]

### Proposed Amendments to Pa.Rs.Crim.P. 135, 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 135, 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456. The proposed amendments establish new procedures in summary cases in which a defendant fails to respond to a citation or a summons. 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

<sup>1</sup> This proposal applies only to the service of court orders and notices by the court and does not apply to service by the parties.

<sup>2</sup> See 34 PaB. 1547 (March 20, 2004).

<sup>3</sup> The Civil Rules are structured differently than the Criminal Rules. The Civil Rules contain annotations that are titled "Notes" scattered through the particular rule providing information similar to that contained in the Criminal Rules' Comments.

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  
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 Criminal Procedural Rules Committee  
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no later than Wednesday, June 23, 2010.

*By the Criminal Procedural Rules Committee*

RISA VETRI FERMAN,  
*Chair*

**Annex A**

**TITLE 234. RULES OF CRIMINAL PROCEDURE  
 CHAPTER 1. SCOPE OF RULES, CONSTRUCTION  
 AND DEFINITIONS, LOCAL RULES**

**PART C. Venue, Location, and Recording of  
 Proceedings Before Issuing Authority**

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

(A) The issuing authority shall prepare and forward to the court of common pleas a transcript of the proceedings in all summary cases when an appeal is taken **or when a summary case is forwarded after the case is closed pursuant to Rules 455(F) and 456(D)**, and in all court cases when the defendant is held for court.

\* \* \* \* \*

**Official Note:** Formerly Rule 125 adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970, revised January 31, 1970, effective May 1, 1970; renumbered Rule 26 and subparagraphs (b)(5) and (b)(10) amended September 18, 1973, effective January 1, 1974; subparagraph (b)(10) amended April 8, 1982, effective July 1, 1982; previous subparagraph (b)(7) deleted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 135 and amended March 1, 2000, effective April 1, 2001; amended July 10, 2008, effective February 1, 2009; **amended** , **2010, effective 2010.**

*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. 1477, **1478** (March 18, 2000).

Final Report explaining the July 10, 2008 amendment adding new paragraph (9) requiring a notation of fingerprinting published with the Court's Order at 38 Pa.B. **3971, 3975** (July 26, 2008).

**Report explaining the proposed amendments to paragraph (A) concerning closed cases and forwarding them to common pleas court published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

**CHAPTER 4. PROCEDURES IN SUMMARY CASES**

**PART B. Citation Procedures**

**Rule 403. Contents of Citation.**

\* \* \* \* \*

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

\* \* \* \* \*

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

(a) **[ shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant ]** constitute consent by the defendant to have the issuing authority enter a not guilty plea on behalf of the defendant; and

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

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

(6) **that failure to pay the fine, costs, and restitution may result in the issuance of a bench warrant for the arrest of the defendant, the referral of the collection of the fines, costs, and restitution to a collection agency, a judgment being entered against the defendant, the defendant's wages being attached, or a contempt proceeding being instituted; and**

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

**Comment**

\* \* \* \* \*

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

**The 2010 amendments to paragraph (B)(4)(a) provide notice to the defendant that failure to respond to the citation will result in the issuing authority entering a not guilty plea on behalf of the defendant so the case may proceed in the same manner as all other summary cases.**

\* \* \* \* \*

**The 2010 amendments to paragraph (B)(6) provide notice to the defendant that, if, following a conviction, the defendant fails to pay any fine, costs, and restitution, the issuing authority may issue a bench warrant, and thereafter may forward the case to the common pleas court where a judgment may be entered, the collection of the fines, costs, and restitution of a defendant may be referred to a collection agency, the defendant's wages may be attached, or contempt proceedings may be instituted.**

Paragraph **[ (B)(6) was amended in 2000 to make ] (B)(7) makes** it clear in a summary criminal case that

the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea. See Rule 460 (Notice of Appeal).

\* \* \* \* \*

**Official Note:** Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; **amended** , 2010, **effective** , 2010.

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788, **4793** (September 15, 1990); Supplemental Report published at 21 Pa.B. **615**, 621 (February 16, 1991).

Report explaining the June 3, 1993 amendments published with the Court's Order at 23 Pa.B. 2809, **2811** (June 19, 1993).

Report explaining the July 25, 1994 amendments published with Court's Order at 24 Pa.B. **4066**, 4068 (August 13, 1994).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. **1477**, 1478 (March 18, 2000).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. **1508**, 1509 (March 18, 2000).

Final Report explaining the February 6, 2003 Comment revisions cross-referencing Rule 401 concerning electronic transmission of parking citations published with the Court's Order at 33 Pa.B. **969**, 973 (February 22, 2003).

Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. **4289**, 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published with the Court's Order at 37 Pa.B. **752**, 760 (February 17, 2007).

**Report explaining the proposed amendments to paragraph (B)(4) and (B)(6) concerning consent to a not guilty plea and consequences of failure to pay published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

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

**Rule 407. Pleas in Response to Citation.**

(A) Within 10 days after issuance of a citation, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

(B) **If the defendant fails to notify the issuing authority of his or her plea, the issuing authority shall:**

(1) **in summary traffic cases, 15 days after issuance of the citation, notify the defendant that failure to respond within 15 days will result in a license suspension, and**

(2) **30 days after issuance of the citation, enter a not guilty plea on behalf of the defendant and proceed under Rule 408 et. seq.**

**Comment**

**[ For the consequences of failure to respond as provided in this rule, see Rules 430 and 431. ]**

To notify the issuing authority of the plea, the defendant should sign and return the citation. When a defendant fails to sign the citation to indicate the plea, the issuing authority should record the unsigned citation as a guilty plea. See Rule 403(B)(5).

**Concerning the 15-day notice requirement in paragraph (B)(1), see Rule 470 and 75 Pa.C.S. § 1533.**

**Official Note:** Previous Rule 57 adopted September 18, 1973, effective January 1, 1974; title of rule amended January 23, 1975, effective September 1, 1975; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 411—414 and 421—424. Present Rule 57 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 407 and amended March 1, 2000, effective April 1, 2001; **amended** , 2010, **effective** , 2010.

*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. **1477**, 1478 (March 18, 2000).

**Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

**Rule 408. Not Guilty Pleas—Notice of Trial.**

\* \* \* \* \*

(B) The issuing authority, upon receiving a plea of not guilty or entering a not guilty plea as required in Rule 407, shall:

\* \* \* \* \*

**Comment**

\* \* \* \* \*

**When a defendant fails to respond to the citation as required in Rule 407, the issuing authority is required to enter a not guilty plea on behalf of the defendant and proceed as provided in paragraph (B).**



When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

**Official Note:** Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; amended , 2010, effective , 2010.

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788, 4793 (September 15, 1990); Supplemental Report published at 21 Pa.B. 615, 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

Report explaining the proposed amendment to paragraph (B) adding entering a not guilty plea published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).

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

**Rule 412. Pleas in Response to Summons.**

(A) Within 10 days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

(B) If the defendant fails to notify the issuing authority of his or her plea, the issuing authority shall:

(1) in summary traffic cases, 15 days after service of the summons, notify the defendant that failure to respond within 15 days will result in a license suspension, and

(2) 30 days after service of the summons, enter a not guilty plea on behalf of the defendant and proceed under Rule 413 *et. seq.*,

unless service of the summons was by first class mail.

(C) If service was by first class mail, before proceeding pursuant to paragraph (B), the issuing authority shall cause service to be made upon the defendant personally or by certified mail, return receipt requested.

**Comment**

To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See Rule 403(B)(5).

[ For the consequences of failure to respond as provided in this rule, see Rule 430(A). ]

Nothing in this rule is intended to preclude a judicial district from utilizing the United States

**Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.**

**If service cannot be accomplished under paragraph (C), an arrest warrant will be issued as required in Rule 430(A)(1).**

**Concerning the 15-day notice requirement in paragraph (B)(1), see Rule 470 and 75 Pa.C.S. § 1533.**

**Official Note:** Previous rule, originally numbered Rule 118 and 118(b), adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered as Rule 62 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 441. Present Rule 62 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 412 and amended March 1, 2000, effective April 1, 2001; amended , 2010, effective , 2010.

*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. 1477, 1478 (March 18, 2000).

Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).

**Rule 413. Not Guilty Pleas—Notice of Trial.**

\* \* \* \* \*

(B) The issuing authority, upon receiving a plea of not guilty or entering a not guilty plea as required in Rule 412, shall:

\* \* \* \* \*

**Comment**

\* \* \* \* \*

**When a defendant fails to respond to the summons as required in Rule 412, the issuing authority is required to enter a not guilty plea on behalf of the defendant and proceed as provided in paragraph (B).**

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

**Official Note:** Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and

amended March 1, 2000, effective April 1, 2001; amended , 2010, effective , 2010.

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788, 4793 (September 15, 1990); Supplemental Report published at 21 Pa.B. 615, 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

**Report explaining the proposed amendment to paragraph (B) concerning the addition of entering a not guilty plea published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

**PART C. Procedures in Summary Cases When Complaint Filed**

**Rule 422. Pleas In Response to Summons.**

(A) Within 10 days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

(B) If the defendant fails to notify the issuing authority of his or her plea, the issuing authority shall:

(1) in summary traffic cases, 15 days after service of the summons, notify the defendant that failure to respond within 15 days will result in a license suspension, and

(2) 30 days after service of the summons, enter a not guilty plea on behalf of the defendant and proceed under Rule 413 *et. seq.*, unless service of the summons was by first class mail.

(C) If service was by first class mail, before proceeding pursuant to paragraph (B), the issuing authority shall cause service to be made upon the defendant personally or by certified mail, return receipt requested.

**Comment**

To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. *See* Rule 403(B)(5).

[ For the consequences of failure to respond as provided in this rule, see Rule 430(A). ]

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

If service cannot be accomplished under paragraph (C), an arrest warrant will be issued as required in Rule 430(A)(1).

Concerning the 15-day notice requirement in paragraph (B)(1), see Rule 470 and 75 Pa.C.S. § 1533.

**Official Note:** Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; Comment revised April 24, 1981,

effective July 1, 1981; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001; amended , 2010, effective , 2010.

*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. 1477, 1478 (March 18, 2000).

**Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

**Rule 423. Not Guilty Pleas—Notice of Trial.**

\* \* \* \* \*

(B) The issuing authority, upon receiving a plea of not guilty or entering a not guilty plea as required in Rule 422, shall:

\* \* \* \* \*

**Comment**

\* \* \* \* \*

When a defendant fails to respond to the summons as required in Rule 422, the issuing authority is required to enter a not guilty plea on behalf of the defendant and proceed as provided in paragraph (B).

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offenses charged.

**Official Note:** Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and amended March 1, 2000, effective April 1, 2001; amended , 2010, effective , 2010.

*Committee Explanatory Reports:*

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788, 4793 (September 15, 1990); Supplemental Report published at 21 Pa.B. 615, 621 (February 16, 1991).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

**Report explaining the proposed amendment to paragraph (B) concerning the addition of entering a not guilty plea published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

**PART D. Arrest Procedures in Summary Cases**

**PART D(1). Arrests With a Warrant**

**Rule 430. Issuance of Warrant.**

\* \* \* \* \*



(B) BENCH WARRANTS

(1) A bench warrant shall be issued when [ :

(a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested; or

(b) the defendant has failed to appear for the execution of sentence as required in Rule 454(F)(3) ] the defendant has failed to appear for the execution of sentence as required in Rule 454(E)(4).

(2) A bench warrant may be issued when a defendant has entered a not guilty plea [ and ], or the issuing authority has entered a not guilty plea on behalf of the defendant as provided in Rules 407, 412, and 422, and the defendant fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

\* \* \* \* \*

(5) When the issuing authority issues a bench warrant for the failure to pay fines, costs, and restitution as provided in Rules 455 and 456, the bench warrant shall expire 365 days after the date of issuance.

Comment

[ Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).

When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1).

A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451. ]

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Rule 454 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 461. Paragraph [ (B)(1)(b), formerly paragraph (A)(1)(d), was added in 2003 to make ] (B)(1) makes 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.

\* \* \* \* \*

Official Note: Rule 75 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; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001;

amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective February 1, 2008; Comment revised September 18, 2008, effective February 1, 2009; amended , 2010, effective , 2010.

Committee Explanatory Reports:

Report explaining the January 31, 1991 amendments published at 20 Pa.B. 4788, 4793 (September 15, 1990); Supplemental Report published at 21 Pa.B. 615, 621 (February 16, 1991).

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2116, 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5408, 5414 (October 18, 1997).

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. 3716, 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. 1477, 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1324, 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles published with the Court's Order at 33 Pa.B. 4289, 4293 (August 30, 2003).

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. 2210, 2213 (April 16, 2005).

Final Report explaining the June 30, 2005 changes distinguishing between warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3901, 3911 (July 16, 2005).

Final Report explaining the January 26, 2007 change to Rule 454 reference in paragraph (B)(1)(b) published with the Court's Order at 37 Pa.B. 752, 760 (February 17, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5425, 5428 (October 4, 2008).

Report explaining the proposed amendments to paragraph (B)(2) and (B)(5) concerning bench warrants for failure to pay fines and costs published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).

PART E. General Procedures in Summary Cases

Rule 454. Trial in Summary Cases.

\* \* \* \* \*

(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 that failure to pay the fines, costs, and restitution may result in the issuance of a bench warrant for the arrest of the defendant, the referral of the collection of the fines, costs, and restitution of a defendant to a collection agency, a judgment being entered against the defendant, the defendant's wages being attached, or a contempt proceeding being instituted;**

(3) 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;

(4) 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) ] (5) 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) ] (F)(4), and a copy of the order shall be given to the defendant.

**Comment**

\* \* \* \* \*

Paragraph [ (F)(2)(b) ] (F)(3)(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.

\* \* \* \* \*

Under paragraph [ (F)(2)(a) ] (F)(3)(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) ] (F)(4), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

\* \* \* \* \*

**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 26, 2007, effective February 1, 2008; **amended** , **2010**, **effective** , **2010**.

*Committee Explanatory Reports:*

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841, 5843 (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. 2118, 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. 5408, 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. 1126, 1127 (February 28, 1998).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1324, 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289, 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, 1931 (April 10, 2004).

Final Report explaining the January 26, 2007 amendments adding paragraph (E) concerning intermediate punishment published with the Court's Order at 37 Pa.B. 752, 760 (February 17, 2007).

**Report explaining the proposed amendments adding new paragraph (E)(2) concerning consequences of failing to pay published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

**Rule 455. Trial in Defendant's Absence.**

\* \* \* \* \*

(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, and of the right to file an appeal within 30 days for a trial *de novo*. In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within [ 10 ] 30 days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due [ may ] shall result in the issuance of [ an arrest ] a bench warrant.

(E) Any collateral previously deposited shall be forfeited and applied only to the payment of the fine and costs. When the amount of collateral deposited is more than the fine and costs, the balance shall be returned to the defendant.

(F) If the defendant does not **file an appeal or** respond [ **within 10 days** ] to the notice in paragraph (D) **within 30 days**, the issuing authority [ **may issue a**

warrant for the defendant's arrest ] shall issue a bench warrant. The bench warrant shall expire 365 days after the date of issuance.

(1) When the defendant appears before the issuing authority following an arrest, the case shall proceed as provided in Rule 456.

(2) When the bench warrant expires, the issuing authority shall close the case and forward it to the clerk of courts.

(a) The issuing authority shall prepare and forward a transcript of the proceedings with the case pursuant to Rule 135. The issuing authority shall include a request for the attachment of defendant's wages as permitted in 42 Pa.C.S. § 8127(a)(5).

(b) Once a case has been forwarded pursuant to this paragraph, the case shall remain in the court of common pleas for any further proceedings. Further proceedings include the entry of a judgment for the fines, costs, restitution, and any interest or additional costs that may accrue; the referral of the collection of the fines, costs, and restitution to a collection agency; the attachment of defendant's wages; and a contempt proceeding being instituted.

(3) Any license suspension for failure to respond in effect at the time the bench warrant expires shall be continued pursuant to Rule 470 and 75 Pa.C.S. § 1533 as a suspension for failure to pay the fines and costs.

Comment

\* \* \* \* \*

If the defendant is under 18 years of age, the notice in paragraph (D) 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 ] 30-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 of age or older and fails to pay or appear as required in paragraph (D), the issuing authority must proceed under these rules.

Paragraph (F), amended in 2010, provides when a defendant fails to respond to the 30-day notice in paragraph (D) that the issuing authority issue a bench warrant. The bench warrant in this case will expire at the end of 365 days.

If the bench warrant expires, the issuing authority must close the case and transfer it to the clerk of courts. When a case is transferred, all further proceedings will be in the court of common pleas.

Once the case is in the court of common pleas, a judgment must be entered as provided in 42 Pa.C.S. § 9728(a)(1) for the amount of the outstanding fines, costs, and restitution, even if the amount is less than \$1000.00 notwithstanding the provisions of 42 Pa.C.S. § 9728(b)(2). Other actions that may be taken in the common pleas court include collection of fines, costs, and restitution by a collection agency, see 42 Pa.C.S. § 9730.1, and attachment of wages, see 42 Pa.C.S. § 8127. Contempt proceedings for failure to pay fines and cost also may be instituted in the court of common pleas as provided by law.

To transfer the case, the issuing authority must prepare and forward a transcript of the proceedings pursuant to Rule 135.

For the defendant's right to counsel, see Rule 122.

For arrest warrant procedures in summary cases, see Rules 430 and 431.

**Official Note:** Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended August 15, 2005 effective February 1, 2006; amended , 2010, effective 2010.

Committee Explanatory Reports:

Final Report explaining the April 18, 1997 amendments mandating a summary trial *in absentia* with certain exceptions published with the Court's Order at 27 Pa.B. 2116, 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraphs (D) and (E) published with the Court's Order at 27 Pa.B. 5408, 5414 (October [ 1 ] 18, 1997).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1477, 1478 (March 18, 2000).

Final Report explaining the August 7, 2003 changes to the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4289, 4293 (August 30, 2003).

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. 2210, 2213 (April 16, 2005).

Final Report explaining the August 15, 2005 amendments to paragraph (D) concerning notice of right to appeal published with the Court's Order at 35 Pa.B. 4914, 4918 (September 3, 2005).

**Report explaining the proposed amendments to paragraph (F) concerning consequences of failure to pay fines and costs published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

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

\* \* \* \* \*

(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 bench warrant for the defendant's arrest [ may ] shall be issued, the collection of the fines, costs, and restitution may be referred to a collection agency; a judgment may be entered against the defendant; the defendant's wages may be attached, or a contempt proceeding may be instituted.

\* \* \* \* \*



(D) If the defendant does not respond within 10 days to the notice in paragraph (B), the issuing authority shall issue a bench warrant for the defendant's arrest. When the issuing authority issues a bench warrant, the warrant shall expire 365 days after the date of issuance.

(1) When the defendant appears before the issuing authority following an arrest, the case shall proceed as provided in paragraph (C).

(2) When the bench warrant expires, the issuing authority shall close the case and forward it to the clerk of courts.

(a) The issuing authority shall prepare and forward a transcript of the proceedings with the case pursuant to Rule 135. The issuing authority shall include a request for the attachment of defendant's wages.

(b) Once a case has been forwarded pursuant to this paragraph, the case shall remain in the court of common pleas for any further proceedings. Further proceedings include the entry of a judgment for the fines, costs, restitution, and any interest or additional costs that may accrue; the referral of the collection of the fines, costs, and restitution to a collection agency; the attachment of defendant's wages; and a contempt proceeding being instituted.

(3) Any license suspension for failure to respond in effect at the time the bench warrant expires shall be continued pursuant to Rule 470 and 75 Pa.C.S. § 1533 as a suspension for failure to pay the fines and costs.

[ (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**

\* \* \* \* \*

Pursuant to [ paragraph (C) ] paragraphs (C) and (D), 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.

\* \* \* \* \*

Paragraph (D), added in 2010, provides that the issuing authority must issue a bench warrant when a defendant fails to respond to the 10-day notice. The bench warrant in this case will expire at the end of 365 days.

Once the case is in the court of common pleas, a judgment must be entered as provided in 42 Pa.C.S. § 9728(a)(1) for the amount of the outstanding fines, costs, and restitution, even if the amount is less than \$1000.00 notwithstanding the provisions of 42 Pa.C.S. § 9728(b)(2). Other actions that may be taken in the common pleas court include collection of fines, costs, and restitution by a collection agency, see 42 Pa.C.S. § 9730.1 and attachment of wages, see 42 Pa.C.S. § 8127. Contempt proceedings for failure to pay fines and cost also may be instituted in court of common pleas as provided by law.

To transfer the case, the issuing authority must prepare and forward a transcript of the proceedings pursuant to Rule 135.

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.

\* \* \* \* \*

**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** , 2010, **effective** 2010.

*Committee Explanatory Reports:*

Final Report explaining the new rule published with the Court's Order at 27 Pa.B. 5408, 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. 3716, 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. 1477, 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. 4289, 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. 1547, 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. 2210, 2213 (April 16, 2005).

**Report explaining the proposed amendments to paragraph (B) and the addition of new paragraph (D) concerning consequences for failure to pay published for comment at 40 Pa.B. 2519, 2527 (May 15, 2010).**

**REPORT**

*Proposed Amendments to Pa.Rs.Crim.P. 135, 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456*

**Procedures When Defendant Fails to Respond to Citation or Summons**

**I. Introduction**

The Committee is planning to propose to the Supreme Court amendments to Rules of Criminal Procedure 135, 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456 that would establish new procedures in summary cases in which the defendant has failed to respond to a citation or summons. Instead of issuing an arrest warrant when the defendant fails to respond as is required under the current rules, the issuing authority would be required to enter a not guilty plea on behalf of the defendant and the case would proceed as provided in the rules.

These proposed changes were developed by a Joint Subcommittee of the Minor Court Procedural Rules Committee and the Criminal Procedural Rules Committee. The changes are the result of several years of discussions by the members of the two Committees separately and by the members of the Joint Subcommittee about what could be done to address the numerous inactive summary cases that the minor judiciary have open on their dockets. Inactive summary cases are cases in which a defendant has not responded to a citation or summons, or, cases in which the defendant has been convicted and has failed to pay the fine and costs. In either situation, under the current rules, warrants have been issued for these defendants' arrest and the warrants remain unexecuted.<sup>1</sup>

The Joint Subcommittee's recommendations have been fully reviewed and approved for publication by both Committees.

## II. Background

Initially, the focus of the Committees' discussions was to provide for the administrative termination of the inactive cases. The Committees noted that the Court's policy concerning inactive cases within the unified judicial system is "to bring each pending matter to a final conclusion as promptly as possible consistently with the character of the matter and the resources of the system," and that this policy applied to summary cases. See paragraph (a) of Rule of Judicial Administration 1901 (Prompt Disposition of Matters; Termination of Inactive Cases). Some judicial districts, relying on the provisions of Rule of Judicial Administration 1901, have provided for the administrative termination of these summary cases by local rule. Rule 1901(b)(1) provides that the courts of common pleas have the primary responsibility to "make local rules of court for purposes applicable to the court and to the community court or magisterial district judge of the peace of the judicial district" to terminate matters that have been inactive for an unreasonable period of time. However, other judicial districts have not proceeded pursuant to Rule 1901 because of uncertainty whether this rule permits the administrative termination of inactive summary case particularly when the cases have outstanding fines and costs. In view of the confusion in this area and the increasing number of open, inactive summary cases, both the Minor Court Procedural Rules Committee and the Criminal Procedural Rules Committee suggested to Zygmunt Pines, Court Administrator of Pennsylvania, in 2000 that Rule 1901 be amended to permit the administrative termination of open, inactive summary cases.

During this time period, the Intergovernmental Task Force to Study the District Justice System's Quality of Justice Subcommittee had been studying this issue and recommended that there be a statewide rule providing for "the termination of inactive cases in the minor judiciary that recognizes the special circumstances and jurisdictional issues at the district justice level."<sup>2</sup>

The Criminal Procedural Rules Committee and the Minor Court Procedural Rules Committee during this period continued to monitor the issues surrounding the staggering number of open and inactive summary cases. From their review of current practices, the members acknowledged that providing only for a procedure that authorized the administrative termination of all open, inactive cases, particularly those cases with outstanding

fines and costs, could be perceived as forgiveness of alleged offenses and convey the message that, if the defendant waits long enough, then the case will go away. They also agreed that, conceptually, this would be a big step in the opposite direction from the goal of making summary proceedings meaningful.

In view of these considerations, the Committees agreed to form a Joint Subcommittee to develop a new approach to address matter. The Joint Subcommittee's task was to develop other means within the scope of the existing Criminal Rules to reduce the number of open, inactive cases by providing the magisterial district judges (MDJs) with better tools to accomplish this goal, thereby eliminating the need for administrative terminations in summary cases.

## III. Discussion

The Joint Subcommittee noted in developing its proposal that in many of the inactive cases the defendant has failed to respond to the citation or summons after the case was instituted. Under the current rules, the issuing authority has one option—to issue a warrant for the arrest of the defendant. At this point, unless the defendant is located and arrested, the case will remain open without any disposition.

The second point at which cases will fall into the inactive case category is following a finding of guilt and imposition of a sentence of fine and costs. In many cases, the defendant will fail to pay the fines and costs. Under the current rules, the issuing authority is required to issue a bench warrant, and unless the defendant is located and arrested, the case will remain open.

The members agreed that a procedural mechanism was necessary that would keep the case moving after a defendant fails to respond to a citation in the first instance. The procedure they devised is that the issuing authority would enter a not guilty plea on behalf of a defendant who failed to respond to a citation or summons and the case would move forward to the trial. Only after a trial in the defendant's absence, a finding of guilt, and the imposition of sentence, would the issuing authority have the option to issue a bench warrant.

At the same time, although the members are concerned about the negative consequences of administrative terminations of the inactive summary cases, particularly those cases with outstanding fines and costs, they also recognize that, in view of the staggering number of these cases that have been pending for years without any action that are not likely to ever be resolved, a one time administrative termination of the oldest cases makes sense. Accordingly, the Committee is considering proposing to the Supreme Court that it order a one-time administrative termination of all open inactive summary criminal cases, including cases in which there are outstanding fines and costs, initiated, from a specific date and earlier.

### A. Overview of Proposed New Procedural Framework

This section provides an overview of the procedural framework devised by the Joint Subcommittee. The specific procedures are explained more fully in the description of the individual rules. Briefly,

- when a defendant fails to respond to a citation or summons, instead of issuing a warrant as provided in the current rules, the issuing authority must enter a not guilty plea on behalf of the defendant (Rules 407, 412, and 422);

<sup>1</sup> According to information provided by the Administrative Offices of Pennsylvania Courts (AOPC), for the time period from 2000 to 2007, there were 290,595 cases that had active warrants.

<sup>2</sup> A copy of the Subcommittee's Report may be found at <http://www.aopc.org/NR/rdonlyres/E6085C7B-721A-494D-B1B2-06DFE3016B40/0/04qualjust.pdf>

- when a summons is delivered by first class mail and the defendant fails to respond, before entering a not guilty plea on behalf of the defendant, the issuing authority must do a second service in person or by certified mail receipt return requested as required in current Rule 451 (Rules 412 and 422);

- after entering a not guilty plea on behalf of the defendant, the issuing authority must send out the notice of trial and proceed as provided in the current rules (Rules 408, 413, and 423);

- when the defendant fails to appear for the summary trial or fails to pay fines and costs, the issuing authority must issue a bench warrant (Rules 430(B), 454, and 455); and

- if the bench warrant remains unexecuted after 365 days, the issuing authority must close the case and forward it to the common pleas court where a judgment may be entered, the case may be referred to a collection agency, the defendant's wages may be attached, or a contempt proceeding may be instituted (Rules 455 and 456).

## B. Explanation of the Proposed Rule Changes

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

The proposed amendments to Rule 135(A) make it clear that the transcript of proceedings must be prepared and forwarded to the court of common pleas in those cases that have been closed pursuant to Rules 455(F) and 456(D).

### *Rule 403. Contents of Citation.*

The proposed amendments to Rule 403(B)(4)(a) require that the copy of the citation that is given to the defendant include a notice to the defendant that failure to respond to the citation within the time set in the rules will constitute consent to have the issuing authority enter a not guilty plea on behalf of the defendant.

Proposed new paragraph (B)(6) requires that the copy of the citation that is given to the defendant include a notice to the defendant of the consequences of failing to pay any fines, costs, and restitution. The consequences include the issuance of a bench warrant, entry of a judgment, referral of the collection of fines and costs to a collection agency, attachment of wages, or institution of a contempt proceeding.

### *Rule 407. Pleas in Response to Citation.*

Proposed new paragraph (B) sets forth the procedures the issuing authority must follow in cases in which the defendant fails to respond to the citation within the 10-day period. In summary traffic cases, if the defendant has not responded, proposed new paragraph (B)(1) requires that, on the 15th day, the issuing authority must send the defendant a "DL 38" notice that if the defendant does not respond to the notice within 15 days, the defendant's drivers license will be suspended.<sup>3</sup> In the members' experience, this "DL 38" notice results in many of the non-responders responding.

In the cases in which the defendant has not responded to either the citation or the "DL 38" notice, on the 30th day after the citation is issued, the issuing authority will enter the not guilty plea on behalf of the defendant and

the case will move forward. The additional 15 days incorporates the 15-day time period within which the defendant must respond to the "DL 38" notice.

Although the "DL 38" notice requirement only applies to summary traffic cases, the Committee agreed to have the same 30-day delay before the issuing authority enters the not guilty plea to also apply to the non-traffic summaries to avoid the confusion that having different times could cause.

*Rule 408. Not Guilty Pleas—Notice of Trial; Rule 413. Not Guilty Pleas—Notice of Trial; Rule 423. Not Guilty Pleas—Notice of Trial.*<sup>4</sup>

The proposed amendments to Rules 408, 413, and 423 add to paragraph (B) the phrase "or entering a not guilty plea as required in Rule 407" to conform paragraph (B) with the new procedure of entering a not guilty plea on behalf of the defendant when the defendant fails to respond to the citation.

*Rule 412. Pleas in Response to Summons; and Rule 422. Pleas In Response to Summons.*

Both Rules 412 and 422 include the same timing procedures concerning when the issuing authority may enter a not guilty plea after a defendant has failed to respond that are in Rule 407, as previously described. The trigger for the time periods in these rules differ from Rule 407 because, in these cases, the summary proceedings are instituted by mailing a summons to the defendant and the time within which the defendant must respond is 10 days after receipt of the summons. See paragraph (A). The 15-day time period for when a "DL 38" notice may be issued set forth in proposed new paragraph (B)(1) and the 30-day time period before the issuing authority may enter a not guilty plea on behalf of the defendant set forth in proposed new paragraph (B)(2) runs from the date of service. The Committee agreed to use the date of service in paragraphs (B)(1) and (B)(2) rather than the date of receipt that is in paragraph (A) because the issuing authority may not know when the summons was served.

Ordinarily, the summons initially is mailed by first class mail. As required in Rule 451 (Service) and proposed new paragraph (C), if a defendant fails to respond to the summons, the issuing authority must serve the summons either in person or by certified mail, return receipt requested, before any of the subsequent actions may be taken. If the summons is returned undelivered, then the issuing authority is required to issue an arrest warrant to initiate the proceedings as provided in Rule 430(A). This is explained in the Comment to Rules 412 and 422.

The Committee considered but rejected providing that proof of service in these cases would be similar to the proof of service provided for summonses in court cases pursuant to Rule 511(B). Rule 511(B) provides that proof of service by mail includes a return receipt signed by the defendant or a returned summons showing that the certified mail was not signed by a defendant and a notation on the transcript that the first class mail was not returned. The Committee noted that, under the proposed new procedures in which the issuing authority will enter a not guilty plea on behalf of a defendant who has failed to respond and the case will proceed through trial, there has to be actual proof of service. They agreed that the fact the first class mail is not returned, which is

<sup>3</sup> Rule 470 (Procedures Related to License Suspension After Failure to Respond to Citation or Summons), which implements the procedures in 75 Pa.C.S. § 1533 (Suspension of Operating Privilege for Failure to Respond to Citation), requires that, before a license may be suspended for failure to respond to the citation or summons, the issuing authority must give the defendant notice that the license will be suspended.

<sup>4</sup> The procedures when a citation is issued, Chapter 4, Part B(1), when a citation is filed and a summons is issued, Chapter 4, Part B(2), and when a complaint is filed, Chapter 4, Part C, are, for the most part, the same after the case is instituted. Therefore, for example, the procedures following an entry of a not guilty plea in Rules 408, 413 and 423 are the same.



sufficient in the context of Rule 511, does not satisfy proof of actual service on the defendant for purposes of the case proceeding to trial.

The Comment includes a new paragraph explaining the option to use the postal service's electronic return receipt for the certified mailing to conform Rules 412 and 422 with comparable recent changes to the Criminal Rules recognizing the validity of the postal service's electronic return option.

*Rule 430. Issuance of Warrant.*

Rule 430(B)(1) and (B)(2) would be modified to conform to the proposed new procedures. Under paragraph (B)(1), with the proposed changes, the only time it will be mandatory that a bench warrant issue is when the defendant has failed to appear for execution of sentence pursuant to Rule 454(F)(3). The paragraph (B)(2) discretionary bench warrant procedures include the situation under the proposed new procedures when the issuing authority enters the not guilty plea on behalf of the defendant and may issue a bench warrant when the defendant fails to appear for the trial *de novo*.

Proposed new paragraph (B)(5) establishes a mandatory 365-day time limit on a bench warrant issued when a defendant has failed to pay fines, costs, and restitution. After the 365-day time period, the bench warrant automatically will expire and, as provided in the proposed changes to Rules 455 and 456 described as follows, the case will be closed and forwarded to the court of common pleas for further proceedings. The Committee reasoned providing a full year within which to find a defendant who has failed to pay is sufficient time before other action in the case may be taken.

The first three paragraphs of the Rule 430 Comment would be deleted as no longer necessary. Pursuant to the proposed new procedures, because the issuing authority is required to enter a not guilty plea on behalf of the defendant, there never will be a warrant issued when a defendant fails to respond to the citation. In addition, with the new "entry of a not guilty plea" procedure, the special summons procedures for juveniles are no longer necessary.

*Rule 454. Trial in Summary Cases.*

Paragraph (F) would be amended by the addition of a new paragraph (F)(2) that would require at the conclusion of the summary trial that the issuing authority give notice to the defendant of the consequences of the defendant's failure to pay the fine, costs, and restitution as ordered. These consequences include the issuance a bench warrant for the arrest of the defendant, the referral of the collection of the fines, costs, and restitution of a defendant to a collection agency, the entry of a judgment against the defendant, the attachment of the defendant's wages, or the institution of a contempt proceeding.

*Rule 455. Trial in Defendant's Absence.*

The proposed changes to Rule 455 include a substantially re-written paragraph (F) that enumerates the proposed new procedures when a defendant fails to appear for the summary trial that is held in the defendant's absence, is convicted, and sentenced to pay fines and costs, and a change in the time set forth in paragraph (D).

Currently, paragraph (D) requires in cases in which the collateral posted is insufficient to pay the full amount of the fines and costs, that the issuing authority to send a notice to the defendant of the amount of fines and costs he or she owes. The notice also informs the defendant

that he or she must pay the outstanding fines and cost or appear for a hearing within 10 days of the notice or a bench warrant will be issued.

During the Joint Subcommittee's discussions about the proposed changes to Rule 455, several of the MDJ members explained that they allow a 30-day time period for the defendant to respond to the notice before issuing a warrant so the time is consistent with the 30-day time period that the defendant has for filing an appeal pursuant to Rule 460. If the defendant does not take an appeal and does not respond to the notice, then they issue the warrant. The Committee agreed with this expansion of the time within which the defendant has to pay or appear, and is proposing the "10-day" time limits be changed to "30 days." Thus, under the proposed new procedures, within the 30-day time period after the fines and costs notice is sent to the defendant, the defendant has three options—to respond to the notice by paying the outstanding fines and costs, to respond to the notice by appearing for a payment determination hearing, or to file an appeal.

Proposed new paragraph (F) sets forth the procedures when a defendant does not respond to the 30-day notice. As previously explained in the discussion about Rule 430, the Committee agreed that the procedure when a defendant fails to respond to the notice following a trial *in absentia* would be that a bench warrant would issue and have a 365-day life. The warrant would expire 365 days after issuance of the citation or service of the summons.

Proposed new paragraph (F)(1) addresses the procedures when a defendant appears before the bench warrant expires. The case is to proceed as provided in Rule 456 by having a payment determination hearing.

Proposed new paragraph (F)(2) sets forth the procedures when the defendant has not been apprehended and therefore has not paid the fines and costs, or has not set up a payment plan within the 365-day period. The issuing authority is required to close the case and forward it to the court of common pleas. Paragraph (F)(2)(a) requires the issuing authority to prepare and forward the transcript.

Proposed new paragraph (F)(2)(b) requires that once the case is forwarded to the court of common pleas, it remains in that court for further proceedings. This is consistent with the Court's stated policy that once a case is forwarded to common pleas court from the magisterial district court, the case is required to remain in the common pleas court. "Further proceedings" are explained to include the entry of a judgment against the defendant for the full amount of fines, costs, and restitution, the referral of the case to a collection agency for the collection of the fines and costs, the attachment of the defendant's wages, or the institution of contempt proceedings against the defendant.

The Rule 455 Comment has been revised to elaborate on the provisions of paragraph (F). In the ninth paragraph of the Comment, the Committee has included cross references to the various statutes that provide the court of common pleas with the authority to enter the judgment, 42 Pa.C.S. § 9728 (Collection of Restitution, Reparation, Fees, Costs, Fines and Penalties), use a collection agency, 42 Pa.C.S. § 9730.1 (Collection of Court Costs, Restitution and Fines by Private Collection Agency), or attach wages, 42 Pa.C.S. § 8127 (Personal Earnings Exempt From Process). In addition, the Comment makes it clear that the judgments in these summary cases is for the amount of the outstanding fines, costs, and restitution, even if the amount is less than \$1000.00 notwithstanding the provisions of 42 Pa.C.S. § 9728(b)(2).

During the Committee's discussions about the proposed changes to Rule 455, the members also considered the practical effects of the proposed new procedures on the driver's license suspension that was imposed when the defendant failed to respond to the citation or summons. When the defendant has failed to respond to the citation or summons, Rules 407, 412, and 423 include a provision for the issuing authority to issue the DL 38 notice. If the defendant still does not respond, then the defendant's license is suspended. If the defendant does not respond during the time before trial and fails to appear for trial, the trial is conducted in the defendant's absence. If the defendant is found guilty and a fine and costs are imposed, and if the defendant fails to pay or come in for a payment determination hearing, then the posture of the case has changed from one in which the defendant has not responded to the citation to one in which the defendant has not paid fines and costs. At this point, the defendant would be subject to the provisions of 75 Pa.C.S. § 1533 that require a license suspension for failure to pay the fines and costs. The Committee concluded that the original license suspension that had been imposed when the defendant failed to respond, and that has been in effect throughout the proceedings, should remain in effect until such time as the defendant pays the fines and costs in full or appears before the issuing authority to set up a payment plan.

*Rule 456.*

The proposed changes to Rule 456 include a new paragraph (D) that enumerates the proposed new procedures when a defendant fails to pay the fines and costs or to set up a payment plan, and amendments to paragraph (B) adding to the information that must be included in the 10-day notice that is issued following a default in payment of fines and costs.

When a defendant defaults on the payment of fines and costs, current paragraph (B) requires the issuing authority to send a notice to the defendant advising him or her that if there is no response within 10 days of the notice, a warrant will be issued. The Committee agreed that, to conform with the proposed new procedures, this notice to the defendant also should include the list of the possible consequences for failing to respond to the 10-day notice. The consequences are the same as those set forth in proposed new paragraph (F)(2)(b) of Rule 455.

Proposed new paragraph (D) and the correlative provisions in the Rule 456 Comment are the same as the procedures provided in Rule 455(F) and the correlative Rule 455 Comment that are previously explained.

[Pa.B. Doc. No. 10-863. Filed for public inspection May 14, 2010, 9:00 a.m.]

## Title 255—LOCAL COURT RULES

### DAUPHIN COUNTY

#### In Re: Promulgation of Local Rules; No. 1793 S 1989

#### Order

*And Now*, this 28th day of April 2010, Dauphin County Local Rules of Civil Procedure 205.2(a)(1)(n) is promulgated as follows:

#### Rule 205.2(a). Physical Characteristics of Pleadings and Other Legal Papers.

- (1)(n) Unless required by an applicable law or rule of court or unless so directed by the court, parties or their attorneys may include only:
- (1) the last four digits of the social security number or the taxpayer identification number;
  - (2) the year of the individual's birth;
  - (3) the last four digits of the financial account information

in documents filed with the Prothonotary. The responsibility for redacting these personal identifiers rests solely with the parties. Documents will not be reviewed by the Prothonotary for compliance with the rule.

#### Comment

Pursuant to 23 Pa.C.S.A. § 4304.1(a)(3), the complete Social Security Number is required when the divorce file is submitted to the court for entry of a divorce decree. Dauphin County uses a form entitled 'Divorce Information Sheet' for the collection of this information. This sheet is pulled from the Prothonotary's file after the entry of the divorce decree and is never available to the public.

These amendments shall be effective upon publication on the UJS web portal.

*By the Court*

TODD A. HOOVER,  
*President Judge*

[Pa.B. Doc. No. 10-864. Filed for public inspection May 14, 2010, 9:00 a.m.]