

**CHAPTER 10. RULES OF CRIMINAL PROCEDURE FOR THE
PHILADELPHIA MUNICIPAL COURT AND THE PHILADELPHIA
MUNICIPAL COURT TRAFFIC DIVISION**

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Rule 1000. Scope of Rules.

(A) The rules in this chapter govern all proceedings in the Philadelphia Municipal Court, including summary cases; Municipal Court cases, as defined in Rule 1001(A); the filing of appeals from Municipal Court cases; the filing of petitions for writs of *certiorari*; and the preliminary proceedings in criminal cases charging felonies, Part A, and govern proceedings in summary traffic cases in Municipal Court Traffic Division, Part B.

(B) Any procedure that is governed by a statewide Rule of Criminal Procedure that is not specifically covered in Chapter 10 or by a Philadelphia local rule authorized by these rules and adopted pursuant to Rule 105 shall be governed by the relevant statewide rule.

Comment

The 2004 amendments make it clear that, except as otherwise provided in the rules, Chapter 10 governs all proceedings in the Philadelphia Municipal Court, including the procedures for instituting criminal cases charging felonies, preliminary arraignments, and preliminary hearings. *See* 42 Pa.C.S. § 1123 (Jurisdiction and Venue).

Official Note: Rule 6000 adopted December 30, 1968, effective January 1, 1969; amended March 28, 1973, effective March 28, 1973; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1000 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended June 30, 2005, effective August 1, 2006; amended September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately.

Committee Explanatory Reports:

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

Final Report explaining the August 24, 2004 amendments clarifying the scope of Chapter 10 published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the June 30, 2005 amendments to paragraph (B) concerning local rules published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the September 9, 2005 amendments adding new rules governing Philadelphia Traffic Court published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the May 7, 2014 amendments concerning the abolition of the Philadelphia Traffic Court transfer of functions to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1000 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended June 30, 2005, effective August 1, 2006, 35 Pa.B. 3901; amended September 9, 2005, effective February 1, 2006, 35 Pa.B. 5239; amended May 7, 2014, effective immediately, 44 Pa.B. 3056. Immediately preceding text appears at serial pages (358899) to (358900).

Rule 1001. Disposition of Criminal Cases—Philadelphia Municipal Court.

(A) A Municipal Court case is any case in which the only offense or offenses charged are misdemeanors under the Crimes Code or other statutory criminal offenses for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years, including any offense under the Vehicle Code other than a summary offense.

(B) When one or more such offenses are charged in a single complaint or series of complaints against one defendant, all shall be joined in the same Municipal Court case, regardless of the length of the cumulative sentence which could be imposed on all charges.

(C) A Municipal Court case may be transferred from the Municipal Court to the Court of Common Pleas by order of the President Judge of the Court of Common Pleas, or the President Judge's designee, upon the President Judge's approval of:

(1) a certification by defense counsel that trial in the Municipal Court will unduly delay defendant's access to a trial by jury; or

(2) a certification by both defense counsel and the attorney for the Commonwealth that the trial of the case will be so time consuming as to unduly disrupt the business of the Municipal Court.

(D) The attorney for the Commonwealth may file with the Municipal Court Clerk of Courts a written certification to exercise the Commonwealth's right to a jury trial in a Municipal Court case. The attorney for the Commonwealth shall serve a copy of the certification on counsel for the defendant, or the defendant if unrepresented, and on the President Judge of Municipal Court. Upon receipt of the certification, the President Judge promptly shall schedule a preliminary hearing, and the case shall be conducted as provided in Rules 541, 542, 543 and 1003(E). When a case is held for court, the case shall remain in the Common Pleas Court through final disposition.

Comment

This rule, which defines "Municipal Court case," is intended to ensure that the Municipal Court will take dispositive action, including trial and verdict when appropriate, in any criminal case that does not involve a felony, excluding summary cases under the Vehicle Code. The latter are under the jurisdiction of the Municipal Court Traffic Division, the successor of the Philadelphia Traffic Court, see Act 17 of 2013, P. L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §§ 102, 325, 1121, 1127, 1302, 1321.

Paragraph (D) was added in 2007 in accord with the 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides that "the Commonwealth shall have the same right to trial by jury as does the accused." See *Commonwealth v. Hargraves*, 883 A.2d 616 (Pa. Super. 2005), *allocatur denied*, 587 Pa. 711, 898 A.2d 1069 (2006). The filing and service requirement in paragraph (D) must be accomplished as provided in Rule 576. Once a case is bound over to Common Pleas Court, the trial judge may not remand the case to the Municipal Court for any reason, even if the right to jury trial is waived.

Official Note: Present Rule 6001 adopted March 28, 1973, effective March 28, 1973, replacing prior Rule 6001; amended June 28, 1974, effective July 1, 1974; paragraph (C) added February 10, 1975, effective immediately; title amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended June 19, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1001 and Comment revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended January 5, 2007, effective March 6, 2007; amended January 27, 2011, effective in 30 days; Comment revised May 7, 2014, effective immediately.

Committee Explanatory Reports:

Final Report explaining the June 19, 1996 amendments published with the Court's Order at 26 Pa.B. 3128 (July 6, 1996).

Final Report explaining the August 28, 1998 amendments published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

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

Final Report explaining the August 24, 2004 amendments clarifying the definition of "Municipal Court Case" published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the January 5, 2007 amendments adding paragraph (D) concerning the Commonwealth's right to a jury trial in a Municipal Court case published with the Court's Order at 37 Pa.B. 313 (January 20, 2007).

Final Report explaining the May 7, 2014 Comment concerning revision the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1001 amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended January 5, 2007, effective March 6, 2007, 37 Pa.B. 312; amended January 27, 2011, effective in 30 days, 41 Pa.B. 834; amended May 7, 2014, effective immediately, 44 Pa.B. 3056. Immediately preceding text appears at serial pages (358900) and (356095) to (356096).

PART A. Philadelphia Municipal Court Procedures

Rule 1002. [Rescinded].

Official Note: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended 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 August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001; rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

Final Report explaining the August 15, 2005 rescission of Rule 1002 and new Rule 1002 published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Rule 1002. Procedure in Summary Cases.

(A) Except as provided in this rule or by local rule authorized by this rule, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused only of one or more non-traffic summary offenses or violations of municipal criminal ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

(B) Non-traffic summary proceedings shall be instituted either by a citation issued to the defendant or arresting without a warrant when arrest is specifically authorized by law.

(1) Issuance of Citation

(a) The law enforcement officer shall issue the citation to the defendant pursuant to Rule 405 (Issuance of Citation), together with a notice to appear, unless required to proceed pursuant to paragraph (B)(1)(e). The notice to appear shall:

(i) direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room, and

(ii) shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

(b) When authorized by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule 403(A) (Contents of Citation) and a notice to appear. The notice to appear shall:

(i) direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room, and

(ii) shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

(c) Within 5 days after issuance of the citation and notice to appear, the citation shall be filed with the clerk of Municipal Court.

(d) When the defendant appears before the judge or trial commissioner as provided in paragraph (B)(1)(a) or (B)(1)(b), the judge or trial commissioner shall explain the process to the defendant.

(i) If the defendant enters a guilty plea, the judge or trial commissioner shall impose the fines and costs.

(ii) If the defendant enters a not guilty plea, the judge or trial commissioner shall set a date for trial before a judge and issue a subpoena to the defendant. The judge or trial commissioner shall advise the defendant that failure to appear at the trial shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

(iii) If applicable, after paying any fee imposed, the defendant may be accepted into the Municipal Court's summary case diversionary program, or any other diversionary program offered pursuant to local rule promulgated pursuant to Rule 105 (Local Rules). When the defendant successfully completes the Municipal Court's summary case diversionary program, the defendant's arrest record automatically will be expunged.

(e) When required by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the law enforcement officer or a superior officer shall prepare and issue the citation to the defendant. Thereafter, the law enforcement officer without unnecessary delay shall transport the defendant to the Municipal Court for proceedings before a judge, and the case shall proceed as provided by local rule promulgated pursuant to Rule 105 (Local Rules).

(f) The defendant shall not be slated, fingerprinted, or photographed, except as provided by law.

(2) Arrest Without a Warrant

(a) When an arrest without a warrant in a non-traffic summary case is authorized by law, the police officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the police officer or a superior officer shall prepare and issue a citation to the defendant.

(b) Except when the police officer is required to proceed pursuant to paragraph (B)(1)(e), or as otherwise provided in this rule, the case shall proceed as provided in Rule 441.

(c) If the defendant is to be released pursuant to Rule 441(B), the defendant shall be released on his or her own recognizance and given a notice to appear on a date and at a time certain in a specified court room. The notice to appear shall advise the defendant that failure to appear shall constitute consent to a trial in the defendant's absence, and if the defendant is found guilty, the defendant shall have the right to appeal within 30 days for a trial *de novo*.

(d) If the defendant is not released under Rule 441(B), the defendant without unnecessary delay shall be brought before a judge, who shall proceed as provided in Rule 441(C).

(C) If the defendant fails to appear pursuant to the notice to appear issued as required by paragraphs (B)(1)(a), (B)(1)(b) or (B)(2)(c), or a subpoena issued as required by paragraph (B)(1)(d)(ii), the case shall proceed as provided in paragraph (D).

(D) If the defendant fails to appear as required in (C), the trial shall be conducted in the defendant's absence, unless the judge determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the judge shall issue a bench warrant for the defendant's arrest.

(1) At trial, the judge shall proceed to determine the facts and render a verdict in the same manner as trials in criminal cases are conducted in the Common Pleas Court when a jury trial has been waived; however, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant. The allegations in the citation may be recited on behalf of the observing law enforcement officer by his or her representative or designee. The failure of the defendant to appear will be deemed to be a waiver of the right to present defense witnesses.

(2) If the defendant is found guilty, the judge shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, of the right to file an appeal within 30 days for a trial *de novo*, and of the consequences for failing to pay the costs and fines imposed.

(3) In appeals from the summary conviction, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(a) the defendant waives the presence of the law enforcement officer in open court on the record;

(b) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(c) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(E) When the same conduct is proscribed under an Act of Assembly and a municipal criminal ordinance, the charge shall be brought under the Act of Assembly and not under the ordinance.

Comment

This rule, which replaced former Rule 1002 in 2005, was developed to accommodate the procedures Philadelphia Municipal Court has implemented to address the issues in non-traffic summary cases unique to Philadelphia to more efficiently handle the vast number of non-traffic summary cases, to protect the defendants' rights to a fair and prompt disposition of their cases, and, when appropriate, to provide the necessary rehabilitation or social services. Municipal Court is required to implement local rules pursuant to Rule 105 (Local Rules) enumerating the details of the summary proceedings following the issuance of a citation or a summons. For purposes of this rule, "local rule" includes all memoranda of understanding and administrative orders that affect non-traffic summary case procedures.

Once a summary case is appealed to the Court of Common Pleas for trial *de novo*, the case shall remain in the Court of Common Pleas. *See also* Rule 462 and its Comment.

The 2009 amendments to paragraph (B) conform the non-traffic summary citation procedures in Philadelphia with the statewide procedures governing the institution of a non-traffic summary case by issuing a citation to the defendant in person or arresting the defendant without a warrant. *See* Rules 405 (Issuance of Citation) and 440 (Arrest Without Warrant). The amendments require the police officer to issue a citation as provided in Rule 405 and proceed pursuant to paragraph (B)(1)(a) or (B)(1)(b), unless the case falls within the jurisdiction of one of Philadelphia Municipal Court's Nuisance Night Courts or Community Courts, or to arrest without a warrant when such an arrest is authorized by law.

The contents of the citation must comply with the requirements of Rule 403(A). The notice to appear required by paragraphs (B)(1)(a), (B)(1)(b), and (B)(2)(c) may be added to the citation form.

Nothing in this rule is intended to permit the admission of double hearsay.

Arrests without a warrant in summary cases are authorized only in exceptional circumstances, such as cases involving enhanced penalties, or when the defendant fails to produce identification, or when there is violence or the imminent threat of violence, or when there is a likelihood that the defendant will flee.

Nothing in this rule prevents the filing of a citation pursuant to Rules 410 and 411.

The 2009 amendments do not modify the current procedures governing Philadelphia Municipal Court's Nuisance Night Courts and Community Courts that are implemented by paragraph (B)(1)(e).

Although defendants in summary cases ordinarily are not slated, photographed, or fingerprinted, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. *See, e.g.*, 18 Pa.C.S. § 3929(g) concerning fingerprinting in retail theft cases.

The 2010 amendments added new paragraph (D) and related changes to clarify that summary trials in Philadelphia courts may be conducted in the defendant's absence, conforming Philadelphia practice with the statewide procedures governing trials in the defendant's absence. *Compare* Rules 454, 455 and 462.

Nothing in paragraph (D) requires that the trial in absentia be conducted immediately.

All summary offenses under the motor vehicle laws and parking violations are under the jurisdiction of the Municipal Court Traffic Division, the successor of the Philadelphia Traffic Court, *see* Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §§ 102, 325, 1121, 1127, 1302, 1321.

Official Note: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; Comment revised January 28, 1983, effective July 1, 1983; amended 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 August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002; amended May 12, 2009, effective February 1, 2010; Comment revised February 12,

2010, effective April 1, 2010; amended December 22, 2010, effective February 20, 2011; Comment revised May 7, 2014, effective immediately.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Final Report explaining the May 12, 2009 changes to paragraph (B) concerning issuing citations and arrest without warrants in summary cases published at 39 Pa.B. 2568 (May 23, 2009).

Final Report explaining the February 12, 2010 Comment revision concerning the disposition of summary offenses at the court of common pleas published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Final Report explaining the December 22, 2010 amendments published with the Court's Order at 41 Pa.B. 216 (January 8, 2011).

Final Report explaining the May 7, 2014 Comment revisions concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1002 adopted August 15, 2005, effective February 1, 2006, 35 Pa.B. 4914; amended May 12, 2009, effective February 1, 2010; amended February 12, 2010, effective April 1, 2010, 40 Pa.B. 1068; amended December 22, 2010, effective February 20, 2011, 41 Pa.B. 216; amended May 7, 2014, effective immediately, 44 Pa.B. 3056. Immediately preceding text appears at serial pages (356096), (354897) to (354898) and (361907) to (361908).

Rule 1003. Procedure in Non-Summary Municipal Court Cases.

(A) INITIATION OF CRIMINAL PROCEEDINGS

(1) Criminal proceedings in court cases shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

- (a) an arrest without a warrant when a felony or misdemeanor is committed in the presence of the police officer making the arrest; or
- (b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law; or
- (c) an arrest without a warrant upon probable cause when the offense is a felony.

(2) Private Complaints

(a) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the attorney for the Commonwealth:

- (i) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;
- (ii) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the President Judge of Municipal Court, or the President Judge's designee, for review of the decision. Appeal of the decision of the Municipal Court shall be to the Court of Common Pleas.

(B) CERTIFICATION OF COMPLAINT

Before an issuing authority may issue process or order further proceedings in a Municipal Court case, the issuing authority shall ascertain and certify on the complaint that:

- (1) the complaint has been properly completed and executed; and
- (2) when prior submission to an attorney for the Commonwealth is required, an attorney has approved the complaint.

The issuing authority shall then accept the complaint for filing, and the case shall proceed as provided in these rules.

(C) SUMMONS AND ARREST WARRANT PROCEDURES

When an issuing authority finds grounds to issue process based on a complaint, the issuing authority shall:

- (1) issue a summons and not a warrant of arrest when the offense charged is punishable by imprisonment for a term of not more than 1 year, except as set forth in paragraph (C)(2);
- (2) issue a warrant of arrest when:
 - (a) the offense charged is punishable by imprisonment for a term of more than 5 years;
 - (b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons;
 - (c) the summons has been returned undelivered;
 - (d) a summons has been served and disobeyed by a defendant;
 - (e) the identity of the defendant is unknown;
 - (f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or
- (3) when the offense charged does not fall within the categories specified in paragraph (C)(1) or (2), the issuing authority may, in his or her discretion, issue a summons or a warrant of arrest.

(D) PRELIMINARY ARRAIGNMENT

(1) When a defendant has been arrested within Philadelphia County in a Municipal Court case, with or without a warrant, the defendant shall be afforded a preliminary arraignment by an issuing authority without unnecessary delay. If the defendant was arrested without a warrant pursuant to paragraph (A)(1)(a) or (b), unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

(2) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.

- (3) At the preliminary arraignment, the issuing authority:
 - (a) shall not question the defendant about the offense(s) charged;
 - (b) shall give the defendant's attorney, or if unrepresented the defendant, a copy of the certified complaint;
 - (c) if the defendant was arrested with a warrant, the issuing authority shall provide the defendant's attorney, or if unrepresented the defendant with copies of the warrant and supporting affidavit(s) at the preliminary arraign-

ment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant's attorney, or if unrepresented the defendant, shall be given copies no later than the first business day after the preliminary arraignment; and

(d) also shall inform the defendant:

(i) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(ii) of the day, date, hour, and place for the trial, which shall not be less than 20 days after the preliminary arraignment, unless the issuing authority fixes an earlier date for the trial upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth, and that failure to appear without cause at any proceeding for which the defendant's presence is required, including trial, may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence, and a warrant of arrest shall be issued;

(iii) in a case charging a felony, unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2, of the date, time, and place of the preliminary hearing, which shall not be less than 14 nor more than 21 days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and that failure to appear without cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and that the case shall proceed in the defendant's absence, and a warrant of arrest shall be issued;

(iv) if a case charging a felony is held for court at the time of the preliminary hearing, that failure to appear without cause at any proceeding for which the defendant's presence is required, including trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence, and a warrant of arrest shall be issued; and

(v) of the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

(4) After the preliminary arraignment, if the defendant is detained, he or she shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail, as provided by law.

(E) PRELIMINARY HEARING IN CASES CHARGING A FELONY

(1) Except as provided in paragraphs (E)(2) and (E)(3), in cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 542 (Preliminary Hearing; Continuances) and Rule 543 (Disposition of Case at Preliminary Hearing).

(2) At the preliminary hearing, the issuing authority shall determine whether there is a *prima facie* case that an offense has been committed and that the defendant has committed it.

(a) Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established.

(b) Hearsay evidence shall be sufficient to establish any element of an offense including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

(3) If a *prima facie* case is not established on any felony charges, but is established on any misdemeanor or summary charges, the judge shall remand the case to Municipal Court for trial.

(F) ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Courts shall accept bail at any time prior to the Municipal Court trial.

Comment

The 2004 amendments make it clear that Rule 1003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 1001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.

See Chapter 5 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.

The 2004 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 502 (Means of Instituting Proceedings in Court Cases).

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary cases in Municipal Court with the statewide procedures for private complaints in Rule 506 (Approval of Private Complaints). In all cases in which the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

The procedure set forth in paragraph (C)(3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, etc.

If the attorney for the Commonwealth exercises the options provided by Rule 202, Rule 507, or both, the attorney must file the certifications required by paragraphs (B) of Rules 202 and 507 with the Court of Common Pleas of Philadelphia County and with the Philadelphia Municipal Court.

For the contents of the complaint, see Rule 504.

Under paragraphs (A) and (D), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before the defendant may be detained. See *Riverside v. McLaughlin*, 500 U. S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

10-10.1

Within the meaning of paragraph (D)(2), counsel is present when physically with the defendant or with the issuing authority.

Under paragraph (D)(2), the issuing authority has discretion to order that a defendant appear in person for the preliminary arraignment.

Under paragraph (D)(2), two-way simultaneous audio-visual communication is a form of advanced communication technology.

See Rule 130 concerning venue when proceedings are conducted pursuant to this rule using advanced communication technology.

Paragraph (D)(3)(c) requires that the defendant's attorney, or if unrepresented the defendant, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 540(C). See also Rules 208(A) and 513(A).

Paragraph (D)(3)(c) includes a narrow exception which permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 (1987).

The 2012 amendment to paragraph (D)(3)(d)(iii) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur. See Rule 556.2. See also Rule 556.11 for the procedures when a case will be presented to the indicting grand jury.

Paragraphs (D)(3)(d)(ii) and (D)(3)(d)(iv) require that, in all cases at the preliminary arraignment, the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant's failure to appear for trial. See also *Commonwealth v. Bond*, 693 A.2d 220 (Pa. Super. 1997) (“[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent ‘without cause.’”)

Under paragraph (D)(4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

Paragraphs (D)(3)(d)(iii) and (E) make it clear that, with some exceptions, the procedures in Municipal Court for both preliminary hearings and cases in which the defendant fails to appear for the preliminary hearing are the same as the procedures in the other judicial districts.

Paragraph (E) was amended in 2013 to reiterate that traditionally our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, especially with regard to the use of hearsay to establish the elements of a *prima facie* case. See the Pennsylvania Rules of Evidence generally, but in particular, Article VIII. Accordingly, hearsay, whether written or oral, may establish the elements of any offense. The presence of witnesses to establish these elements is not required at the preliminary hearing. *But compare Commonwealth ex rel. Buchanan v. Verbonitz*, 525 Pa. 413, 581 A.2d 172 (1990) (plurality) (disapproving reliance on hearsay testimony as the sole basis for establishing a *prima facie* case. See also Rule 542.

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

Official Note: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; Comment revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded

August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended August 15, 2005, effective February 1, 2006; amended April 5, 2010, effective April 7, 2010; amended January 27, 2011, effective in 30 days; amended June 21, 2012, effective in 180 days; Comment revised July 31, 2012, effective November 1, 2012; amended April 25, 2013, effective June 1, 2013; amended May 2, 2013, effective June 1, 2013.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published at 22 Pa.B. 18 (January 4, 1992). Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).

Final Report explaining the August 28, 1998 amendments published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

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

Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the August 24, 2004 changes clarifying preliminary arraignment and preliminary hearing procedures in Municipal Court cases published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the August 15, 2005 amendments to paragraphs (A)(2)(b)(ii) and (D)(3)(d)(ii) published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Court's Order adopting the April 5, 2010 amendments to paragraph (D)(3)(d) published at 40 Pa.B. 2012 (April 17, 2010).

Court's Order of January 27, 2011 amending paragraph (E) concerning hearsay and reducing felony charges at preliminary hearing published at 41 Pa.B. 834 (February 12, 2011).

Final Report explaining the June 21, 2012 amendments to paragraph (D)(3)(d)(iii) concerning indicting grand juries published with the Court's Order at 42 Pa.B. 4153 (July 7, 2012).

Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(B) to Rule 540(C) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).

Final Report explaining the April 25, 2013 amendments to paragraph (E) concerning hearsay published with the Court's Order at 43 Pa.B. 2562 (May 11, 2013).

Final Report explaining the May 2, 2013 amendments concerning proceedings conducted in the defendant's absence published with the Court's Order at 43 Pa.B. 2710 (May 18, 2013).

Source

The provisions of this Rule 1003 amended May 10, 2002, effective September 1, 2002, 32 Pa.B. 2582; amended August 24, 2004, effective August 1, 2005, 34 Pa.B. 5016; amended August 15, 2005, effective February 1, 2006, 35 Pa.B. 4914; amended April 5, 2010, effective April 7, 2010, 40 Pa.B. 2012; amended January 27, 2011, effective in 30 days, 41 Pa.B. 834; amended June 21, 2012, effective in 180 days, 42 Pa.B. 4140; revised July 31, 2012, effective November 1, 2012, 42 Pa.B. 5333; amended April 25, 2013, effective June 1, 2013, 43 Pa.B. 2560; amended May 2, 2013, effective June 1, 2013, 43 Pa.B. 2704. Immediately preceding text appears at serial pages (361908) to (361910) and (363609) to (363611).

Rule 1004. Arraignment Prior to Trial.

Arraignment, if not waived by a defendant, shall take place immediately prior to trial.

Official Note: Rule 6004 adopted December 30, 1968, effective January 1, 1969; renumbered Rule 1004 March 1, 2000, effective April 1, 2001.

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 (March 18, 2000).

Rule 1005. Pretrial Application for Relief.

(A) All pretrial applications for relief including those for suppression of evidence may be made orally or in writing. If in writing, a copy of the application shall be submitted prior to trial to the attorney for the Commonwealth.

(B) Pretrial applications shall be heard on the day set for trial immediately prior to the trial. If the decision is adverse to the Commonwealth, the Court shall grant the Commonwealth a continuance upon motion of the attorney for the Commonwealth to give the attorney for the Commonwealth the opportunity to take an appeal.

(C) The Commonwealth's appeal shall be taken not later than 30 days from the date of the decision on the pretrial application.

(D) After an appeal pursuant to this rule is filed, and the Commonwealth has certified in the notice of appeal that the order will terminate or substantially handicap the prosecution, the Municipal Court shall take no further action in the case, unless otherwise provided in these rules.

Official Note: Rule 6005 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1005 and amended March 1, 2000, effective April 1, 2001; amended November 9, 2017, effective January 1, 2018.

Committee Explanatory Reports:

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

Final Report explaining the November 9, 2017 amendment regarding the effect that taking an appeal has on the ability of the Municipal Court to take further action in a case published with the Court's Order at 47 Pa.B. 7182 (November 25, 2017).

Source

The provisions of this Rule 1005 amended November 9, 2017, effective January 1, 2018, 47 Pa.B. 7181. Immediately preceding text appears at serial page (366978).

Rule 1006. Notice of Right to Appeal or to Petition for *Certiorari*; Guilty Plea Challenge Procedure.

(A) Immediately after the imposition of sentence, the judge shall inform the defendant:

- (1) in the case of a trial and verdict of guilty:
 - (a) of the right to file a petition for a writ of *certiorari* within 30 days without costs or to appeal for trial *de novo* within 30 days without costs;
 - (b) of the right to jury trial on appeal; and

(c) that the charge on which the defendant was found guilty in the Municipal Court will be considered by the district attorney as the basis for the preparation of an information after the filing of the notice of appeal;

(2) in the case of a plea of guilty:

(a) of the right to file a motion challenging the validity of the plea or the denial of a motion to withdraw the plea;

(b) of the 10-day time limit within which such motion must be filed;

(c) of the right to be represented by counsel in preparing and litigating the motion and to have counsel appointed in the event the defendant is unable to afford counsel;

(d) of the right to appeal from the final order disposing of the motion within 30 days after such order;

(e) that only the claims raised in the motion may be raised on appeal; and

(3) in any case, of the right to counsel to represent the defendant on appeal and of the right to have counsel appointed to represent the defendant on appeal in the event the defendant is unable to afford counsel.

(B) After a petition for writ of *certiorari* or notice of appeal for trial *de novo* is filed, the Municipal Court shall take no further action in the case, unless otherwise provided in these rules.

Comment

For the right to file a petition for a writ of *certiorari* to the court of common pleas, see Article V, Section 26 of the Pennsylvania Constitution, and the Judicial Code, 42 Pa.C.S. § 934. *See also Commonwealth v. Speights*, 509 A.2d 1263 (Pa. Super. 1986) (petition challenging sufficiency of the evidence), and *Commonwealth v. Frazier*, 471 A.2d 866 (Pa. Super. 1984) (petition alleging that judge erred in denying motion to suppress). *Certiorari* is available in non-summary cases only. *Compare* Rule 460.

Official Note: Rule 6006 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended February 21, 1996, effective July 1, 1996; renumbered Rule 1006 and amended March 1, 2000, effective April 1, 2001; amended November 9, 2017, effective January 1, 2018.

Committee Explanatory Reports:

Final Report explaining the February 21, 1996 amendments published with the Court's Order at 26 Pa.B. 991 (March 9, 1996).

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

Final Report explaining the November 9, 2017 amendment regarding the effect that taking an appeal has on the ability of the Municipal Court to take further action in a case published with the Court's Order at 47 Pa.B. 7182 (November 25, 2017).

Source

The provisions of this Rule 1006 amended November 9, 2017, effective January 1, 2018, 47 Pa.B. 7181. Immediately preceding text appears at serial pages (366978) and (385527).

Rule 1007. Challenge to Guilty Plea.

(A) A motion challenging the validity of a guilty plea or the denial of a motion to withdraw a guilty plea shall be in writing and shall be filed with the sentencing judge within 10 days after imposition of sentence. The motion shall be disposed of promptly.

(B) Execution of sentence shall be stayed and the amount of bail previously determined shall continue until disposition of the motion.

(C) The attorney for the Commonwealth shall be given notice of the motion and an opportunity to respond. The judge may schedule a hearing on the motion.

(D) Upon entry of a final order denying the motion, the judge shall inform the defendant of the right to appeal the order to the Court of Common Pleas within 30 days after the date of the order.

(E) After an appeal pursuant to this rule is filed, the Municipal Court shall take no further action in the case, unless otherwise provided in these rules.

Comment

The procedures applicable to the taking and the withdrawal of a plea of guilty are set forth in Rules 590 and 591.

This rule is intended to provide the exclusive procedure for challenging the validity of a guilty plea or the denial of a motion to withdraw a plea. For a discussion of the general principles underlying the rule, see the Comment to Rule 720.

Official Note: Rule 6007 adopted July 1, 1980, effective August 1, 1980; amended March 22, 1993, effective January 1, 1994; renumbered Rule 1007 and amended March 1, 2000, effective April 1, 2001; amended November 9, 2017, effective January 1, 2018.

Committee Explanatory Reports:

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

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

Final Report explaining the November 9, 2017 amendment regarding the effect that taking an appeal has on the ability of the Municipal Court to take further action in a case published with the Court's Order at 47 Pa.B. 7182 (November 25, 2017).

Source

The provisions of this Rule 1007 amended November 9, 2017, effective January 1, 2018, 47 Pa.B. 7181. Immediately preceding text appears at serial pages (385527) to (385528).

Rule 1008. Contents of Notice of Appeal or Petition for Certiorari.

(A) The notice shall state which method of review is being sought in the court of common pleas by indicating whether it is a notice of appeal or notice of a petition for a writ of certiorari.

(B) The notice shall contain the following information:

- (1) The name and address of the defendant.
- (2) The date of imposition of sentence.
- (3) The charges upon which the defendant was convicted.
- (4) The name of the sentencing judge.

Comment

The notice form previously set forth in this rule was deleted in 1996 because it is no longer necessary to control the specific form by rule.

Official Note: Rule 6008 adopted December 30, 1968, effective January 1, 1969; amended February 21, 1996, effective July 1, 1996; renumbered Rule 1008 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the February 21, 1996 amendments published with the Court's Order at 26 Pa.B. 991 (March 9, 1996).

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

Rule 1009. Notice to Municipal Court Judge and Attorney for Commonwealth of Appeal or of Petition for Certiorari.

The Clerk of Municipal Court shall notify the sentencing judge and the attorney for the Commonwealth of the filing of the appeal or the petition for a writ of certiorari.

Official Note: Rule 6009 adopted December 30, 1968, effective January 1, 1969; amended February 21, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1009 March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the February 21, 1996 amendments published with the Court's Order at 26 Pa.B. 989 (March 9, 1996).

Final Report explaining the August 28, 1998 amendment published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

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

Rule 1010. Procedures for Trial *De Novo*.

(A) When a defendant appeals after conviction by a Municipal Court judge,

(1) in a non-traffic summary case, upon the filing of the transcript and other papers, the case shall be heard *de novo* by the judge of the Court of Common Pleas sitting without a jury.

(2) In a Municipal Court case, the attorney for the Commonwealth, upon receiving the notice of appeal, shall prepare an information and the matter shall thereafter be treated in the same manner as any other court case.

(B) If the defendant fails to appear for the trial *de novo*, the Common Pleas Court judge may dismiss the appeal and thereafter shall enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

(C) Withdrawals of Appeals

(1) If the defendant withdraws the appeal, the Common Pleas Court judge shall enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

(2) In a Municipal Court case, the defendant may withdraw the appeal only with the written consent of the attorney for the Commonwealth.

(D) At the time of sentencing, the Common Pleas Court judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

(a) the amount of the fine and the obligation to pay costs;

(b) the amount of restitution ordered, including

(i) the identity of the payee(s),

(ii) to whom the restitution payment shall be made, and

- (iii) whether any restitution has been paid and in what amount; and
- (c) the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the Common Pleas Court judge may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the Common Pleas Court judge may set bail;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the Common Pleas Court judge. The order shall include the information specified in paragraphs (D)(1) through (D)(3), and a copy of the order shall be given to the defendant.

(E) After entry of judgment pursuant to paragraphs (B) or (C)(1), or after the trial *de novo* and imposition of sentence, the case shall remain in the Court of Common Pleas for the execution of sentence, including for the collection of any fines and restitution, for the collection of any costs, and for proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.

Comment

In any case in which there are summary offenses joined with the misdemeanor charges that are the subject of the appeal, the attorney for the Commonwealth must include the summary offenses in the information. *See Commonwealth v. Speller*, 458 A.2d 198 (Pa. Super. 1983).

Paragraph (B) makes it clear that the Common Pleas Court judge may dismiss an appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the Common Pleas Court judge must enter judgment and order execution of any sentence imposed by the Municipal Court judge. Nothing in this rule is intended to preclude the judge from issuing a bench warrant when the defendant fails to appear.

Certain costs are mandatory and must be imposed. *See, e.g.*, Section 1101 of the Crime Victims Act, 18 P.S. § 11.1101.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

Once a judgment is entered and sentence is imposed, paragraph (E) makes it clear that the case is to remain in the Court of Common Pleas for execution of the sentence and collection of any costs, and the case may not be returned to the Municipal Court judge. The execution of sentence includes the collection of any fines and restitution and any proceedings for violation of probation, intermediate punishment, or parole as provided by Rule 708.

Official Note: Rule 6010 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended August 28, 1998, effective immediately; renumbered Rule 1010 March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended February 12, 2010, effective April 1, 2010; amended September 21, 2011, effective November 1, 2011; amended March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Final Report explaining the August 28, 1998 amendment published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).

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

Final Report explaining the March 9, 2006 Comment revision concerning joinder of summary offenses with misdemeanor charges published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).

Final Report explaining the February 12, 2010 amendments to paragraph (B) concerning the disposition of summary offenses at the court of common pleas published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Final Report explaining the September 21, 2011 amendments to paragraphs (A)—(C) and adding new paragraphs (D) and (E) concerning the procedures for trials de novo in the Court of Common Pleas published with the Court's Order at 41 Pa.B. 5353 (October 8, 2011).

Final Report explaining the March 9, 2016 amendments to paragraph (D) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Source

The provisions of this Rule 1010 amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385; amended February 12, 2010, effective April 1, 2010, 40 Pa.B. 1068; amended September 21, 2011, effective November 1, 2011, 41 Pa.B. 5353; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532. Immediately preceding text appears at serial pages (358901) to (358902).

Rule 1011. Bail.

(A) Prior to verdict, an existing bail order may be modified by a Municipal Court judge in a Municipal Court case in the same manner as a judge of the court of common pleas may modify a bail order pursuant to Rule 529(C), (D), and (E).

(B) In all cases in which a sentence is imposed, the execution of sentence shall be stayed and the bail previously set shall continue, except as provided in this rule.

(1) If a notice of appeal or a petition for a writ of certiorari is not filed within 30 days, the judge shall direct the defendant to appear before the judge for the execution of sentence.

(2) If a notice of appeal is filed within 30 days, the bail previously set shall continue.

(3) If a petition for a writ of certiorari is filed within 30 days, bail shall be determined as provided in Rule 521(B)(1) and (2).

(C) The attorney for the Commonwealth may make application to the Court of Common Pleas to increase the amount of bail upon cause shown.

Comment

Paragraph (A) was added in 1995 to conform the practice for Municipal Court judges modifying a bail order before verdict in Municipal Court cases with the practice set forth in Rule 529 for judges of the common pleas court.

Official Note: Rule 6011 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended February 21, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 1011 and amended March 1, 2000, effective April 1, 2001; amended May 19, 2006, effective August 1, 2006.

Committee Explanatory Reports:

Final Report explaining the September 13, 1995 amendments published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the February 21, 1996 amendments published with the Court's Order at 26 Pa.B. 991 (March 9, 1996).

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

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

Source

The provisions of this Rule 1011 amended May 19, 2006, effective Aug. 1, 2006, 36 Pa.B. 2631.

**Rule 1012. Recording and Transcribing Municipal Court Proceedings;
Admissibility of Testimony at Trial *De Novo*.**

(A) Rule 115 and Pa.R.J.A. No. 4007, relating to the recording and transcribing of court proceedings, shall apply to Municipal Court case proceedings after the preliminary arraignment or, when a defendant appears pursuant to a summons, after the defendant's first appearance.

(B) No testimony produced at the Municipal Court trial or at any pretrial hearing in the Municipal Court shall be admissible at the trial *de novo* except in those cases in which the defendant was represented by counsel and had the opportunity to cross examine, and the witness afterwards dies, or is out of the jurisdiction so that the witness cannot be effectively served with a subpoena, or cannot be found, or becomes incompetent to testify for any legally sufficient reason properly proven.

Official Note: Rule 6012 adopted December 30, 1968, effective January 1, 1969; amended April 24, 1981, effective July 1, 1981; renumbered Rule 1012 and amended March 1, 2000, effective April 1, 2001; amended August 3, 2020, effective October 1, 2020.

Committee Explanatory Reports:

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

Final Report explaining the August 3, 2020 amendment regarding requests for transcripts pursuant to Pa.R.J.A. No. 4007 published with the Court's Order at 50 Pa.B. 4124 (August 15, 2020).

Source

The provisions of this Rule 1012 amended August 3, 2020, effective October 1, 2020, 50 Pa.B. 4123. Immediately preceding text appears at serial page (389122).

Rule 1013. Prompt Trial—Municipal Court.

(A)(1) Trial in a Municipal Court case shall commence no later than 180 days from the date on which the preliminary arraignment is held.

(2) Trial in a Municipal Court case in which the defendant appears pursuant to a summons shall commence no later than 180 days from the date on which the complaint is filed.

(3) Trial in a case that commenced as a Common Pleas Court case but was later ordered to be tried in Municipal Court shall commence no later than 180 days from the date on which the preliminary arraignment is held or 60 days from the date on which the order is made, whichever is greater.

(4) Trial in a case which is transferred from the juvenile court to the Municipal Court shall commence no later than 180 days from the date of filing the transfer order.

(B) For the purpose of this rule, trial shall be deemed to commence on the date the Municipal Court judge calls the case to trial, or the defendant tenders a plea of guilty or nolo contendere.

(C)(1)(a) At any time prior to the expiration of the period for commencement of trial, the attorney for the Commonwealth may apply to the Court orally or in writing for an order extending the time for commencement of trial. The defendant shall have the right to be heard on the Commonwealth's motion.

(b) If the motion is in writing, a copy shall be served upon the defendant through the defendant's attorney, if any.

(c) Such motion shall allege facts in support thereof, and shall be granted only upon findings based upon a record showing that trial cannot be commenced within the prescribed period despite due diligence by the Commonwealth and, if the delay is due to the Court's inability to try the defendant within the prescribed period, upon findings based upon a record showing the causes of the delay and the reasons why the delay cannot be avoided.

(d) Any order granting a motion for extension shall specify the date or period within which trial shall be commenced. Trial shall be scheduled for the earliest date or period consistent with the extension request and the court's business, and the record shall so indicate.

(2) It shall be the responsibility of the Court Administrator of Philadelphia, in addition to any prior listings, to list cases for trial not more than 40 days nor less than 20 days prior to the expiration of the period specified in paragraph (A). If the case cannot be tried at that listing, there shall be a judicial determination as to when trial shall commence.

(D) In determining the period for commencement of trial, there shall be excluded therefrom:

(1) any period of time for which the defendant expressly waives Rule 1013; and

(2) such period of delay at any stage of the proceedings as results from:

(a) the unavailability of the defendant or counsel; and

(b) any continuance granted at the request of the defendant or counsel.

(E) At any time before trial, the defendant or counsel may apply to the court orally or in writing for an order dismissing the charges with prejudice on the ground that this rule has been violated. If in writing, a copy of such motion shall be served upon the attorney for the Commonwealth. The attorney for the Commonwealth shall have the right to be heard on the motion for dismissal. Any order granting such motion shall dismiss the charges with prejudice and discharge the defendant.

(F) Nothing in this rule shall be construed to modify any time limit contained in any statute of limitations.

(G) A trial de novo in the Court of Common Pleas shall commence within a period of 120 days after the notice of appeal from the Municipal Court is filed. In all other respects the provisions of Rule 600 shall apply to such trials in the Court of Common Pleas.

(H) When a retrial is required in Municipal Court, the retrial shall commence within 90 days after the date of the order requiring the retrial.

(I) When a judge has ordered that a defendant's participation in the ARD program be terminated pursuant to Rule 318, trial shall commence within 90 days of the termination order.

Comment

For a discussion of the general principles underlying this rule and for other explanatory comments applicable to it, see the Comment to Rule 600. It should be noted, however, that in several technical respects the text of this rule differs from that of Rule 600.

Paragraph (A)(2) is intended to apply only when a defendant appears in compliance with a summons. It is not intended to apply when a defendant is arrested after non-compliance with or return of a summons.

Paragraph (A)(3) is intended to provide a minimum 60-day period for trial of those cases which become Municipal Court cases when, at the preliminary hearing, in court, or otherwise after preliminary arraignment, all offenses punishable by more than five years imprisonment are discharged.

The time for trial in cases that originate as Court of Common Pleas cases and are transferred to the Municipal Court but are subsequently transferred back to the Court of Common Pleas are governed by Rule 600. *See Commonwealth v. Far*, 616 Pa. 149, 46 A.3d 709 (2012).

"Order requiring the retrial," as used in paragraph (H) is intended to include, for example, the declaration of a mistrial, or the withdrawal, rejection of, or successful challenge to a guilty plea.

Official Note: Rule 6013 adopted June 28, 1974, effective prospectively as set forth in paragraphs (A)(1) and (A)(2) of this rule; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; the amendment to paragraph (D) as it regards exclusion of defense-requested continuances was specifically made effective as to continuances requested on or after January 1, 1982, and paragraph (H), which provides the time for retrials, was specifically made effective as to retrials required by orders entered on or after January 1, 1982; amended September 3, 1993, effective January 1, 1994; renumbered Rule 1013 and amended March 1, 2000, effective April 1, 2001; amended August 8, 2002, effective January 1, 2003; amended June 26, 2003, effective July 1, 2003; Comment revised July 1, 2013, effective August 1, 2013; amended October 24, 2013, effective immediately.

Committee Explanatory Reports:

Report explaining the September 3, 1993 amendments published with the Court's Order at 23 Pa.B. 4492 (September 25, 1993).

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

Final Report explaining the August 8, 2002, amendments to paragraphs (A)(2) and (A)(3) expanding the time for trial from 120 days to 180 days published with the Court's Order at 32 Pa.B. 4124 (August 24, 2002).

Final Report explaining the June 26, 2003 amendments to paragraphs (A)(4) and (A)(5) expanding the time for trial from 120 to 180 days, and to paragraph (G) expanding the time for trial from 90 days to 120 days published with the Court's Order at 33 Pa.B. 3364 (July 12, 2003).

Final Report explaining the July 1, 2013 Comment revision cross-referencing *Commonwealth v. Far* published with the Court's Order at 43 Pa.B. 4063 (July 20, 2013).

Final Report explaining the October 24, 2013 amendment deleting paragraph (A)(1) as obsolete published with the Court's Order at 43 Pa.B. 6657 (November 9, 2013).

Source

The provisions of this Rule 1013 amended August 8, 2002, effective January 1, 2003, 32 Pa.B. 4122; amended June 26, 2003, effective July 1, 2003, 33 Pa.B. 3363; amended July 1, 2013, effective August 1, 2013, 43 Pa.B. 4062; amended October 24, 2013, effective immediately, 43 Pa.B. 6657. Immediately preceding text appears at serial pages (368083) to (368085).

PART B. Philadelphia Municipal Court Traffic Division Procedures**Rule 1030. Scope of Summary Municipal Court Traffic Division Rules.**

Except as provided in these rules or by local rule authorized by these rules, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused of one or more summary traffic offenses only or violations of municipal traffic ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

Comment

These rules were developed in 2005 to accommodate the procedures Philadelphia Traffic Court implemented to address the issues in summary traffic cases unique to Philadelphia, to more efficiently handle the vast number of summary traffic cases, and to protect the defendants' rights to a fair and prompt disposition of their cases.

The jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division in 2013, see Act 17 of 2013, P. L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §§ 102, 325, 1121, 1127, 1302, 1321.

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the May 7, 2014 Comment revision concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1030 adopted September 9, 2005, effective February 1, 2006, 35 Pa.B. 5239; amended May 7, 2014, effective immediately, 44 Pa.B. 3056.

Rule 1031. Institution of Proceedings in Summary Traffic Cases.

(A) Summary traffic cases in Philadelphia shall be instituted by:

- (1) issuing a citation to the defendant as provided in Rules 405—409;
- (2) filing a citation with the Philadelphia Municipal Court Traffic Division as provided in Rules 410—414; or
- (3) arresting without a warrant when arrest is specifically authorized by law as provided in Rules 440 and 441.

(B) When provided by local rule as an exception to the trial notice procedures in Rule 408(B), the law enforcement officer also shall give the defendant written notice of the date and time and location set for the summary trial when a citation is issued to the defendant as provided in Rule 405.

(1) The trial notice shall include an explanation that if the defendant enters a guilty plea and pays the fine and costs indicated on the citation within the specified time, the summary trial will be cancelled.

(2) The trial notice also shall include notice to the defendant that:

- (a) failure to appear for the trial shall constitute consent for the trial to be conducted in the defendant's absence;

(b) if the defendant is found guilty, the collateral deposited will be forfeited and applied to payment of the fine, costs, and restitution; and

(c) the defendant will have the right to appeal within 30 days for a trial *de novo* in the court of common pleas.

Comment

See Rule 403 for the contents of the citation.

The trial notice permitted in paragraph (B) may be added to the citation form.

Paragraph (B)(2)(b) was amended in 2016 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority.

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately; amended June 10, 2016, effective August 1, 2016.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the May 7, 2014 amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Final Report explaining the June 10, 2016 addition of "restitution" to the list of items for which collateral may be forfeited after conviction published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).

Source

The provisions of this Rule 1031 adopted September 9, 2005, effective February 1, 2006, 35 Pa.B. 5239; amended May 7, 2014, effective immediately, 44 Pa.B. 3056; amended June 10, 2016, effective August 1, 2016, 46 Pa.B. 3235. Immediately preceding text appears at serial pages (372143) to (372144).

Rule 1032. Pleas in Response to Citation.

In addition to the procedures in Rules 407 and 412 for entering a plea in a summary traffic case, the defendant, by means of electronic transmission as provided by local rule, may notify the Municipal Court Traffic Division of his or her plea, and either pay the fine and costs or post the requisite collateral.

Comment

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the May 7, 2014 amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1032 adopted September 9, 2005, effective February 1, 2006, 35 Pa.B. 5239; amended May 7, 2014, effective immediately, 44 Pa.B. 3056. Immediately preceding text appears at serial page (351650).

Rule 1033. Procedures When Defendant Arrested with Warrant.

(A) When a defendant is arrested pursuant to a warrant issued as provided in Rule 430, the police officer without unnecessary delay shall take the defendant before the proper issuing authority and shall proceed as provided in this rule and by local rule.

(B) When the defendant appears in person or appears by means of two-way simultaneous audio-video equipment, the judge or arraignment court magistrate shall:

(1) inform the defendant concerning the specific citations to which the defendant has not entered a plea as required by Rules 407 and 412;

(2) inform the defendant concerning the specific citations that have been adjudicated that have outstanding fines or costs for which the defendant is in default of a payment order or a payment plan; and

(3) advise the defendant of the right to retain counsel, and if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment and the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic Division as provided in Rule 1035.

(C) When the defendant appears before an arraignment court magistrate, the arraignment court magistrate shall schedule the next court proceeding before the Traffic Division and give the defendant a hearing notice or subpoena, set collateral as provided in Rule 1034 and local rule, and release the defendant, or if the defendant is unable to post the collateral, commit the defendant.

(D) When the defendant appears before a Traffic Division judge or hearing officer,

(1) if the matter is not ready to proceed, the Traffic Division judge or hearing officer shall schedule the next court proceeding and give the defendant a scheduling order, and shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may fix the amount of collateral, as provided in Rules 452, 1034, and local rule, to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial, and if the defendant does not post the collateral, commit the defendant.

(a) In determining whether it is necessary to set collateral and what amount of collateral should be set, the Traffic Division judge or hearing officer shall consider the factors listed in Rule 523. The amount of collateral shall not exceed the full amount of the fine and costs.

(b) If collateral has been set, the Traffic Division judge or hearing officer shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

(c) If collateral is set and the defendant does not post collateral, the defendant shall not be detained without a trial longer than 72 hours or the close of the next business day if the 72 hours expires on a non-business day.

- (2) If the matter is ready to proceed,
- (a) when the defendant is arrested pursuant to a warrant issued as provided in Rule 430(A) or (B)(1)(a) or (B)(2), the defendant shall enter a plea. If the defendant pleads guilty, the Traffic Division judge or hearing officer shall impose sentence. If the defendant pleads not guilty, the summary trial shall be conducted.
 - (b) When the defendant is arrested following a trial *in absentia* pursuant to a warrant issued as provided in Rule 430(B)(3)(c) and (B)(4),
 - (i) the Traffic Division judge or hearing officer shall conduct an immediate hearing to determine defendant's financial ability to pay the full amount due.
 - (ii) If the Traffic Division judge or hearing officer determines the defendant is financially unable to pay the full amount due, the judge may order an installment payment plan as provided in Rule 456(C)(2).
 - (iii) If the judge or hearing officer determines the defendant is financially able to pay the full amount due, and that there is a likelihood that imprisonment will be imposed at the conclusion of the hearing, the judge or hearing officer shall advise the defendant of the right to retain counsel, and, if the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic Division as provided in Rule 1035. A hearing may be held if retained or appointed counsel is available; otherwise, the hearing shall be rescheduled for a date certain, and the defendant shall be released on collateral as provided in Rule 1034.
 - (iv) At the conclusion of the hearing, the Traffic Division judge or hearing officer shall proceed as provided in Rule 456(C)(3).
 - (c) When the defendant is arrested after defaulting on the payment of fine or costs or restitution pursuant to a warrant issued as provided in Rule 430(B)(3)(b) and (B)(4),
 - (i) the Traffic Division judge or hearing officer shall conduct an immediate hearing to determine whether the defendant is financially able to pay the outstanding fine and costs as previously ordered.
 - (ii) If the judge or hearing officer determines the defendant is financially unable to pay as previously ordered, the judge may issue a revised payment order or payment plan.
 - (iii) If the judge or hearing officer determines the defendant is financially able to pay as previously ordered, and that there is a likelihood that imprisonment will be imposed at the conclusion of the hearing, the judge shall advise the defendant of the right to retain counsel, and if, the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic Division as provided in Rule 1035. A hearing may be held if retained or appointed counsel is available; otherwise, the hearing shall be rescheduled for a date certain, and the defendant shall be released on collateral as provided in Rule 1034.

(iv) At the conclusion of the hearing, the Traffic Division judge or hearing officer shall proceed as provided in Rule 456(C)(3).

(d) When the defendant is arrested on multiple warrants in cases involving both unadjudicated citations and adjudicated citations with outstanding balances, the matter shall proceed as provided in paragraph (D)(2)(a) (summary trial), or paragraphs (D)(2)(b) or (D)(2)(c) (default hearings). These cases may be joined and the proceeding scheduled before the same Traffic Division judge or hearing officer.

Comment

Pursuant to Philadelphia Municipal Court Local Rule 540 and Traffic Division Local Rule 1033, when a defendant is arrested outside the normal business hours of Traffic Division, the defendant is to be taken without unnecessary delay before a Philadelphia Municipal Court arraignment court magistrate who shall proceed as provided in paragraph (C) and in Traffic Division Local Rule 1033.

“Proper issuing authority” as used in this rule is the Traffic Division judge or arraignment court magistrate assigned to conduct these proceedings as provided in this rule, Municipal Court Local Rule 540, and Traffic Division Local Rule 1033.

For the procedures for contempt proceedings in Traffic Division cases, see Rules 140, 141, and 142.

For the summary appeal procedures, see Rules 460, 461, and 462.

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately; amended April 10, 2015, effective July 10, 2015.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court’s Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the May 7, 2014 amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court’s Order at 44 Pa.B. 3065 (May 24, 2014).

Final Report explaining the April 10, 2015 amendment concerning the setting of collateral pending summary trial published with the Court’s Order at 45 Pa.B. 2045 (April 25, 2015).

Source

The provisions of this Rule 1033 adopted September 9, 2005, effective February 1, 2006, 35 Pa.B. 5239; amended May 7, 2014, effective immediately, 44 Pa.B. 3056; amended April 10, 2015, effective July 10, 2015, 45 Pa.B. 2040. Immediately preceding text appears at serial pages (372145) to (372147).

Rule 1034. Collateral.

(A) Except as provided in this rule, the procedures for collateral shall be as provided in Rule 452.

(B) When determining the amount of collateral, if any,

(1) if the defendant does not have a prior history of failure to appear for scheduled hearings, or there are other reasonable grounds to believe that the defendant will appear, or the defendant is without adequate resources to deposit collateral, the Traffic Division judge, hearing officer or arraignment court magistrate shall consider releasing the defendant on his or her own recognizance, or sign own bail (“SOB”), or on a nominal amount of collateral.

(2) If the defendant has a prior history of failing to appear for Traffic Division scheduled hearings, and notice of the hearings was served personally on defendant, the Traffic Division judge, hearing officer or arraignment court magistrate may set collateral in an amount not to exceed the collateral that may be required for the payment of defendant's unadjudicated citations and the balance of outstanding fines and costs owed on adjudicated citations.

Comment

When the collateral is set in a monetary amount, the Traffic Division judge, hearing officer or arraignment court magistrate may permit the defendant to be released from custody when 10% of the amount has been posted.

When determining the amount of collateral to set in paragraph (B)(2), the judge, hearing officer or arraignment court magistrate must take into consideration the defendant's financial resources and ability to post the amount set. The amount of collateral must be reasonable.

See Rule 105 for the procedures for promulgating local rules.

Official Note: Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the May 7, 2014 amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1034 adopted September 9, 2005, effective February 1, 2006, 35 Pa.B. 5239; amended May 7, 2014, effective immediately, 44 Pa.B. 3056. Immediately preceding text appears at serial pages (314400) and (346227).

Rule 1035. Appointment of Counsel.

(A) When the Traffic Division judge or hearing officer has preliminarily determined that there is a likelihood that imprisonment will be imposed at the conclusion of a summary traffic proceeding,

- (1) a hearing may be held if retained or appointed counsel is available; or
- (2) if the defendant is without financial resources or is otherwise unable to employ counsel, the judge shall continue the proceeding, issue a scheduling order, and either appoint counsel or direct the defendant to report for a financial interview to determine eligibility to court-appointed counsel.

(B) When the defendant reports for the financial interview to determine eligibility to court-appointed counsel, the defendant shall provide supporting documentation, such as a driver's license, a DPW card, pay stubs, and any other relevant information. Upon review of the information provided by the defendant during the financial interview, the Traffic Division judge or hearing officer shall enter an appropriate order.

(C) Counsel's appointment shall terminate at the conclusion of the Traffic Division proceeding, unless the Traffic Division judge sentences the defendant to

a period of incarceration, in which case, counsel's appointment shall continue through any appeal for a trial *de novo* in the Court of Common Pleas.

(D) At the time a sentence is imposed that includes a period of incarceration, if the defendant is represented by private counsel, the Traffic Division judge shall advise the defendant that, in the event private counsel ceases to represent the defendant after the imposition of the sentence and before the sentence is carried out, if the defendant is unable to afford counsel, he or she has the right to have counsel appointed to represent the defendant to file an appeal for a trial *de novo*, and if appointed, counsel's appointment shall continue through the trial *de novo* in the Court of Common Pleas.

Comment

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. *See Alabama v. Shelton*, 535 U. S. 654 (2002), *Scott v. Illinois*, 440 U. S. 367 (1979), and *Argersinger v. Hamlin*, 407 U. S. 25 (1972).

See Rules 460, 461, and 462 for the procedures for summary case appeals.

Official Note: Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005)

Final Report explaining the May 7, 2014 amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1035 adopted September 9, 2005, effective February 1, 2006, 35 Pa.B. 5239; amended May 7, 2014, effective immediately, 44 Pa.B. 3056. Immediately preceding text appears at serial pages (346227) to (346228).

Rule 1036. Traffic Court Hearing Officers. [Rescinded].

Official Note: Adopted September 9, 2005, effective February 1, 2006; rescinded and replaced by new Rule 1036.

Committee Explanatory Reports:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the May 7, 2014 rescission of Rule 1036 and adoption of new Rule 1036 published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1036 adopted September 9, 2005, effective February 1, 2006, 35 Pa.B. 5239; rescinded May 7, 2014, effective immediately, 44 Pa.B. 3056. Immediately preceding text appears at serial page (346228).

Rule 1036. Philadelphia Municipal Court Traffic Division Hearing Officers.

(A) As provided in this rule, Philadelphia Municipal Court Traffic Division hearing officers may be appointed to hear cases and issue adjudications in connection with prosecutions for summary offenses arising under Title 75 (relating to vehicles) and ordinances enacted pursuant to Title 75.

(1) Hearing officers are "issuing authorities" only for purposes of conducting summary trials, accepting pleas, conducting trials *in absentia*, setting collateral, and conducting post-trial proceedings, including but not limited to, establishing or re-establishing payment plans, monitoring compliance with payment plans, holding warrant hearings, and performing additional duties as may be identified by local rule.

(2) Hearing officers shall not conduct summary trials or hearings if there is a likelihood that imprisonment will be imposed at the conclusion of a summary traffic proceeding.

(B) The Philadelphia Municipal Court Traffic Division by local rule shall establish the qualifications and educational requirements for the position of Traffic Division hearing officer.

(C) The Code of Conduct for Employees of the Unified Judicial System shall be applicable to the Philadelphia Municipal Court Traffic Division hearing officers.

Comment

The position of “*Philadelphia Municipal Court Traffic Division hearing officer*” was established by legislation in 2013 as part of the transfer of jurisdiction and functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court Traffic Division. *See* Act 17 of 2013, P. L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §§ 102, 325, 1121, 1127, 1302, 1321.

Official Note: New Rule 1036 adopted May 7, 2014, effective immediately.

Committee Explanatory Reports:

Final Report explaining new Rule 1036 concerning hearing officers of the Philadelphia Municipal Court Traffic Division published with the Court’s Order at 44 Pa.B. 3065 (May 24, 2014).

Source

The provisions of this Rule 1036 adopted May 7, 2014, effective immediately, 44 Pa.B. 3056.

Rule 1037. Appeal from Summary Conviction.

(A) When a defendant appeals after the entry of a guilty plea or a conviction in any Traffic Division summary proceeding, upon the filing of the transcript and other papers by the Traffic Division, the Court of Common Pleas may schedule a status or settlement conference prior to the *de novo* summary trial.

(1) In the event the attorney for the Commonwealth or a designee and the defendant reach a negotiated plea, the plea may be entered before a Trial Commissioner and, upon approval by a judge of the Court of Common Pleas, the negotiated sentence will be recorded.

(2) In the event a negotiated plea is not approved by the court, the case shall be heard *de novo* by a judge of the Court of Common Pleas sitting without a jury.

(B) The attorney for the Commonwealth may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(C) In appeals from Traffic Division summary proceedings, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(1) the defendant waives the presence of the law enforcement officer in open court on the record;

(2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(3) the trial judge determines that good cause exists for the law enforcement officer’s unavailability and grants a continuance.

(D) If the defendant fails to appear for the trial *de novo*,

(1) when the appeal is from a mandatory sentence of imprisonment, the Court of Common Pleas judge shall dismiss the appeal, enter judgment in the Court of Common Pleas on the judgment of the Traffic Division judge, and issue a bench warrant and a commitment for the defendant. Execution of the sentence shall commence immediately upon defendant’s arrest; and

(2) in all other cases, the Common Pleas Court judge shall dismiss the appeal and enter the judgment in the Court of Common Pleas on the judgment of the Traffic Division judge or hearing officer.

(E) If the defendant withdraws the appeal, the Court of Common Pleas judge shall enter the judgment in the Court of Common Pleas on the judgment of the Traffic Division judge or hearing officer.

(F) At the time of sentencing, the Court of Common Pleas judge shall:

(1) if the defendant's sentence includes a fine or costs and the defendant has the financial means to pay the amount in a single remittance, the judge shall instruct the defendant to make the payment at the Philadelphia Municipal Court Traffic Division. If the defendant is without the financial means to pay the amount in a single remittance, the judge shall instruct the defendant to contact the Traffic Division to establish an installment payment plan;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the judge may set bail;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the judge. The order shall include the information specified in paragraphs (F)(1)—(3), and a copy of the order shall be given to the defendant and to the Traffic Division.

(G) After sentence is imposed by the Court of Common Pleas judge, and either after the expiration of the time to file an appeal to the appellate courts, or, if a sentence of imprisonment has been imposed, after the execution of the sentence of imprisonment, the case shall be returned to the Traffic Division for the collection of any outstanding fine and costs and for all other appropriate action.

Comment

This rule was adopted in 2009 to provide the procedures for appeals from the Traffic Division to the Court of Common Pleas of the First Judicial District. Except as provided in this rule, the procedures of Rules 460, 461 and 462, governing appeals for a trial *de novo* in summary cases, shall apply to summary case appeals in the Traffic Division.

For purposes of this rule, "judgment" means the determination of guilty and any sentence imposed on the defendant.

The date upon which payment is due upon a sentence of a fine or costs ordinarily will be 30 days following imposition of sentence.

Official Note: Rule 1037 adopted October 16, 2009, effective February 1, 2010; amended May 7, 2014, effective immediately.

Committee Explanatory Reports:

Final Report explaining new Rule 1037 concerning procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. 6329 (October 31, 2009).

Final Report explaining the May 7, 2014 amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

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CRIMINAL PROCEDURE

Source

The provisions of this Rule 1037 adopted October 16, 2009, effective February 1, 2010, 39 Pa.B. 6327; amended May 7, 2014, effective immediately, 44 Pa.B 3056. Immediately preceding text appears at serial pages (346228) to (346230).

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