

CHAPTER 4. PROCEDURES IN SUMMARY CASES

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Committee Introduction to Chapter 4:

The procedures set out in the following rules governing summary cases (as defined in Rule 103) recognize the importance of prompt notice that a summary offense is being alleged, while also taking account of the minor nature of sum-

mary offenses. Although the law recognizes the possibility of an arrest in some summary cases, it is intended under these rules that a citation will be issued to the defendant except in exceptional circumstances (such as those involving violence, or the imminent threat of violence, or those involving a danger that the defendant will flee).

Experience with citation procedures indicates that most defendants will obey summary process in summary cases. The rule procedures here, therefore, are generally designed to favor the least intrusive means of instituting a summary proceeding. The general scheme laid out in these rules is that normally summary cases will be instituted not by arrest, but by a law enforcement officer (as defined in Rule 103) handing a citation to the defendant at the time the offense is committed. There may, however, be situations when it is not feasible to immediately issue a citation to the defendant; in these situations, the law enforcement officer would file a citation with the district justice. In the situations when the affiant is not a law enforcement officer, the affiant would file a complaint with the district justice. When either a citation or a complaint is filed with the district justice, the district justice is expected thereafter to issue a summons to the defendant. Following issuance of process, the rules contemplate that the defendant will respond to the process by either pleading not guilty, after which a summary trial is conducted, or pleading guilty and paying the fine and costs. Unless otherwise provided in Chapter 4 or elsewhere in the Rules of Criminal Procedure, the court case rules are not intended to apply to summary cases. See Committee Reports, 13 Pa.B. 2948 (October 1, 1983) and 15 Pa.B. 2708 (July 27, 1985); 465 A.2d Advance Sheets (October 28, 1983) and 494 A.2d Advance Sheets (August 1985).

Although these rules set forth procedures that are expected to be used in summary cases before a court or issuing authority dismisses a case for failure to comply with these summary case rules, a determination is required that there is actual prejudice to the rights of the defendant by failure to comply with the rules. See Rule 109.

PART A. Instituting Proceedings

Rule 400. Means of Instituting Proceedings In Summary Cases.

Criminal proceedings in summary cases shall be instituted either by:

- (1) issuing a citation to the defendant; or
- (2) filing a citation; or
- (3) filing a complaint; or
- (4) arresting without a warrant when arrest is specifically authorized by law.

Comment

This rule establishes the means of instituting criminal proceedings in summary cases. For general citation procedures, see Chapter 4 Part B, Rules 402 and 403.

For the procedures when a citation is issued to a defendant pursuant to paragraph (1) of this rule, see Chapter 4 Part B(1), Rules 405, 406, 407, 408, and 409.

Electronically transmitting the citation information or parking ticket information to the issuing authority would institute proceedings by filing pursuant to paragraph (2) of this rule.

For the procedures when a citation is filed pursuant to paragraph (2), see Chapter 4 Part B(2), Rules 410, 411, 412, 413, and 414.

For the procedures when a complaint is filed pursuant to paragraph (3), see Chapter 4 Part C, Rules 420, 421, 422, 423, and 424.

For the procedures when there is an arrest without a warrant pursuant to paragraph (4) see Chapter 4 Part D(2), Rules 440 and 441.

For the procedures regarding the use of arrest warrants in summary cases, see Chapter 4 Part D(1), Rules 430 and 431.

For general procedures applicable in all summary cases, see Chapter 4 Part E, Rules 451, 452, 453, 454, 455, 456, 457, and 458.

For the procedures for appealing to the court of common pleas for a trial de novo, see Chapter 4 Part F, Rules 460, 461, and 462.

For the procedures in summary cases charging parking violations, see Chapter 4 Part A, Rule 401. Although a criminal proceeding may be instituted in these cases by issuing a citation either by handing it to a defendant or placing it on a vehicle windshield, it is expected that many parking cases will be disposed of without a criminal proceeding under these rules. A parking ticket, which is not a citation, is used by a political subdivision and the defendant pays the amount specified on the ticket within the time specified.

Summary cases are cases in which all the offenses charged are either summary offenses, as defined in the Crimes Code, 18 Pa.C.S. § 106(c), or violations of ordinances for which imprisonment may be imposed upon conviction or upon failure to pay a fine or penalty. See Rule 103. Criminal proceedings in summary cases are to be brought under this chapter of the rules. If one or more of the offenses charged is a misdemeanor, felony, or murder, the case is a court case (see Rule 103) and proceeds under Chapter 5 of the rules. Ordinarily, any summary offenses in such a case, if known at the time, must be charged in the same complaint as the higher offenses and must be disposed of as part of the court case. See *Commonwealth v. Campana*, 455 Pa. 622, 304 A.2d 432 (1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 454 Pa. 233, 314 A.2d 854 (1974) (compulsory joinder rule) and Crimes Code § 110, 18 Pa.C.S. § 110. See also *Commonwealth v. Cauffman*, 541 Pa. 299, 662 A.2d 1050 (1995).

In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301—1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 275 Pa. Super. 166, 418 A.2d 664 (1980).

The summary case rules are not intended to prohibit or to suspend any acknowledgment of guilt procedures that may be specifically authorized by statute. See, e.g., Section 926 of the Game and Wildlife Code, 34 Pa.C.S. § 926, and Section 925 of the Fish and Boat Code, 30 Pa.C.S. § 925. Furthermore, the use of a field acknowledgment of guilt pursuant to 34 Pa.C.S. § 926 or 30 Pa.C.S. § 925 should not be construed as the issuance of a citation for the purpose of instituting a summary case under these rules. See Rules 405 and 410.

The Rules of Criminal Procedure generally do not apply to juvenile proceedings. But see the Rules of Juvenile Court Procedure 105 (Search Warrants) and 396 (Bail). The Criminal Rules do apply to proceedings in summary cases involving defendants under 18 years of age to the extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act, 42 Pa.C.S. §§ 6302, 6303, and 6326, Vehicle Code, 75 Pa.C.S. § 6303. See also 42 Pa.C.S. §§ 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

See Section 1522 of the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving defendants under 18 years of age.

Official Note: Previous Rule 51 adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001; Comment revised February 6, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; Comment revised March 9, 2006, effective September 1, 2006.

Committee Explanatory Reports:

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

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

Report explaining the June 6, 1997 Comment revision published with the Court's Order at 25 Pa.B. 2923 (June 21, 1997).

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

Final Report explaining the February 6, 2003 Comment revision concerning electronic transmission of citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the August 7, 2003 changes to the last two paragraphs of the Comment concerning the Juvenile Act and the rules published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

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

Final Report explaining the March 3, 2006 Comment revision concerning summary motor vehicle offenses published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Source

The provisions of this Rule 400 amended February 6, 2003, effective July 1, 2003, 33 Pa.B. 969; amended August 11, 2003, effective July 1, 2003, 33 Pa.B. 4289; amended April 1, 2005, effective October 1, 2005, 35 Pa.B. 2210; amended March 9, 2006, effective September 1, 2006, 36 Pa.B. 1385. Immediately preceding text appears at serial pages (310523) to (310525).

Rule 401. Means of Instituting Proceedings in Summary Cases Charging Parking Violations.

(A) Political subdivisions may use parking tickets to inform defendants of parking violations and to offer defendants an opportunity to avoid criminal proceedings by paying an amount specified on the ticket within the time specified on the ticket.

(1) When a political subdivision does use parking tickets and a ticket has been handed to a defendant or placed on a vehicle windshield, a criminal proceeding shall be instituted only if the defendant fails to respond as requested on the ticket.

(2) When a defendant fails to respond to a parking ticket, the criminal proceeding shall be instituted either

(a) by a law enforcement officer filing a citation with the proper issuing authority, or

(b) by having the parking violation information electronically transmitted to the proper issuing authority.

Upon receipt of the citation or the electronically transmitted information, the issuing authority shall proceed as provided in Rule 411, and the case shall proceed in accordance with Rules 411—414.

(B) When a parking ticket has not been used, a criminal proceeding in a summary case charging a parking violation shall be instituted by a law enforcement officer issuing a citation either by handing it to a defendant or by placing it on a vehicle windshield.

(1) Upon the issuance of a citation, the case ordinarily shall proceed in the same manner as other summary cases instituted by issuing a citation to the defendant, in accordance with Rules 405—409.

(2) If the defendant fails to respond to the citation, the issuing authority shall issue a summons and the case shall then proceed in accordance with Rules 411—414 as if the proceedings were instituted by filing a citation, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons, in which case an arrest warrant shall be issued and the case shall proceed in accordance with Rule 431.

Comment

Many political subdivisions use parking tickets and, therefore, many parking cases are disposed of without instituting a criminal proceeding under the procedures of these rules. A parking ticket is a device of convenience to the local government and the defendant. It is not a citation and does not constitute the instituting of a summary proceeding; no enforcement of penalty can be based upon a ticket alone.

The amount specified on a parking ticket cannot exceed the fine authorized for the parking violation alleged. There is no specific time that must be specified on the ticket, although, of course, it is advisable that such time be well within the applicable statute of limitations.

If the defendant pays the amount specified on the parking ticket within the time specified on the ticket, the case will be concluded without the institution of a criminal proceeding. If the defendant makes no response within the suggested time, or if the defendant indicates a desire to plead not guilty, and the subdivision desires to proceed with the case, a law enforcement officer must determine the identity of the vehicle owner from the Department of Transportation and then institute a criminal proceeding by either filing a citation directly with the proper issuing authority, or having the parking violation information electronically transmitted under paragraph (A) of this rule.

Although this rule and Rule 411 do not require that a citation be prepared when the parking violation information is transmitted electronically, a municipality, of course, may continue to have its officers prepare citations as provided in paragraph (A)(2)(a), and also electronically transmit the parking violation information.

When a parking ticket is not used and a criminal proceeding is instituted under paragraph (B) of this rule by issuing a citation to a defendant, if the defendant does not properly respond to the citation, the issuing authority must notify the law enforcement officer, who should obtain from the Department of Transportation the name of the owner of the vehicle. The law enforcement officer should immediately furnish this information to the issuing authority, who must then issue a summons or a warrant.

See Rule 130 for the “proper” issuing authority as used in these rules.

Official Note: Rule 95 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; renumbered Rule 401 and amended March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003.

Committee Explanatory Reports:

Final Report explaining the July 17, 1996 amendments published with the Court's Order at 26 Pa.B. 3629 (August 3, 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 February 6, 2003 amendments clarifying the procedures for electronically transmitting parking violation information published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Source

The provisions of this Rule 401 amended February 6, 2003, effective July 1, 2003, 33 Pa.B. 969. Immediately preceding text appears at serial pages (264179) to (264180).

Cross References

This rule cited in 17 Pa. Code § 21.111 (relating to parking).

PART B. Citation Procedures

Rule 402. Persons Who Shall Use Citations.

Law enforcement officers shall ordinarily institute summary proceedings by citation.

Comment

It is intended that a wide variety of officials will have the authority to issue citations and shall do so as provided in these rules. Such authority is, of course, limited by the extent of the enforcement power given by law to such officials. "Law enforcement officer" includes "police officer." See Rule 103.

Official Note: Previous rule, originally numbered Rule 132, adopted January 31, 1970, effective May 1, 1970; amended and renumbered Rule 52 September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised April 8, 1982, effective July 1, 1982; rescinded July 12, 1985, effective January 1, 1986 and replaced by present Rule 403. Present Rule 52 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; renumbered Rule 402 and Comment revised 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. 1478 (March 18, 2000).

Rule 403. Contents of Citation.

(A) Every citation shall contain:

- (1) the name and address of the organization, and badge number, if any, of the law enforcement officer;
- (2) the name and address of the defendant;
- (3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);

- (4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;
 - (5) the place where the offense is alleged to have been committed;
 - (6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;
 - (7) the date of issuance;
 - (8) a notation if criminal laboratory services are requested in the case;
 - (9) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and
 - (10) a certification that the citation complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* regarding confidential information and documents.
- (B) The copy delivered to the defendant shall also contain a notice to the defendant:
- (1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and
 - (2) that the defendant shall, within 10 days after issuance of the citation:
 - (a) plead not guilty by:
 - (i) notifying the proper issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial; or
 - (ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require. If the defendant cannot afford to pay the collateral specified in the citation or the \$50, the defendant must appear before the issuing authority to enter a plea; or
 - (b) plead guilty by:
 - (i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or
 - (ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation or when required to appear pursuant to Rules 409(B)(3), 414(B)(3), or 424(B)(3); or
 - (c) appear before the proper issuing authority to request consideration for inclusion in an accelerated rehabilitative disposition program;

- (3) that all checks forwarded for the fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;
- (4) that failure to respond to the citation as provided above within the time specified:
- (a) shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant; and
- (b) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;
- (5) that failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded; and
- (6) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial de novo.

Comment

A law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously must give the defendant a paper copy of the citation containing all the information required by this rule. Nothing in this rule is intended to require the defendant to sign the citation.

See Rule 113.1 regarding the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and the requirements regarding filings and documents that contain confidential information.

Paragraph (A)(3) requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. See the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Paragraph (A)(8) requires the law enforcement officer who issues a citation to indicate on the citation whether criminal laboratory services are requested in the case. This information is necessary to inform the magisterial district judge that, in addition to any fines, restitution, or costs, the magisterial district judge may be required to sentence the defendant to pay a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 which requires that a defendant be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

As provided in paragraph (B)(2)(b)(i), the defendant may plead guilty by mail only when the fine and costs are set forth in the citation. The law enforcement officer may specify the fine and costs in the citation only when the penalty provided by law does not include a possible sentence of imprisonment and the statute or ordinance fixes the specific amount for the fine.

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

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the fine and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 407.

Paragraph (B)(6) was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a guilty plea. See Rule 460 (Notice of Appeal).

It is intended that the notice to the defendant, required by paragraph (B) to be on the copy of the citation delivered to the defendant, shall be simply worded so the plain meaning of the notice is easily understandable.

For consequences of defects in a citation, see Rule 109.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; amended June 1, 2018, effective July 1, 2018.

Committee Explanatory Reports:

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

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

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

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

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

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

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

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

Amendments regarding the Court's public access policy published with the Court's Order at 48 Pa.B. 3575 (June 16, 2018).

Source

The provisions of this Rule 403 amended March 3, 2000, effective July 1, 2000, 30 Pa.B. 1508; amended February 6, 2003, effective July 1, 2003, 33 Pa.B. 969; amended August 11, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended January 16, 2007, effective February 1, 2008, 37 Pa.B. 752; amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3575. Immediately preceding text appears at serial pages (378301) to (378302) and (326471) to (326472).

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

Rule 405. Issuance of Citation.

When a criminal proceeding in a summary case is instituted by issuing a citation to the defendant:

- (1) the law enforcement officer who issues the citation shall exhibit an official sign of the officer's authority; and

(2) the law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule 403.

Comment

A law enforcement officer may prepare, verify, and transmit a citation electronically.

A law enforcement officer may issue a citation based upon information that the defendant has committed a summary violation, which information may be received from a personal observation of the commission of the offense; a witness; another police officer; investigation; or speed-timing equipment, including radar. Contrast *Commonwealth v. Hatfield*, 453 A.2d 671 (Pa. Super. 1982), decided before the adoption of previous Rule 70 (Defects in Form, Content, or Procedure—Summary Cases) and the 1983 revision of the previous Comment.

It is preferable that a law enforcement officer making a stop for a traffic violation be in uniform.

The use of a field acknowledgment of guilt pursuant to Section 926 of the Game and Wildlife Code, 34 Pa.C.S. § 926, and Section 925 of the Fish and Boat Code, 30 Pa.C.S. § 925, should not be construed as the issuance of a citation for the purpose of instituting a summary case under these rules. See Rule 410.

Official Note: Previous rule, originally numbered Rule 135, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 55 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 58. Present Rule 55 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; Comment revised February 11, 1989, effective July 1, 1989; Comment revised January 16, 1996, effective immediately; renumbered Rule 405 and Comment revised March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003.

Committee Explanatory Reports:

Report explaining the January 16, 1996 Comment revisions published with the Court's Order at 26 Pa.B. 437 (February 3, 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 February 6, 2003 amendments concerning issuance of citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Source

The provisions of this Rule 405 amended February 6, 2003, effective July 1, 2003, 33 Pa.B. 969. Immediately preceding text appears at serial pages (264183) to (264184).

Rule 406. Procedure Following Issuance of Citation.

Within 5 days after a citation is issued to the defendant, the citation shall be filed with the proper issuing authority.

Comment

To satisfy the requirements of this rule, the law enforcement officer may prepare, verify, and transmit the citation information electronically.

These rules are not intended to require the law enforcement officer who issued the citation to personally file the citation.

It is intended that the citation be filed as soon as is practical so the issuing authority may process the case. However, failure to comply with the 5-day limit is not intended to be grounds for dismissal, unless the defendant is prejudiced by the delay. See Rule 109.

With regard to the “proper” issuing authority as used in these rules, see Rule 130.

Official Note: Previous rule, originally numbered Rule 137, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 56 and paragraph (d) amended September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rule 59. Present Rule 56 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; renumbered Rule 406 and amended March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003.

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).

Final Report explaining the February 6, 2003 changes concerning the electronic preparation, verification, and transmission of citations published with the Court’s Order at 33 Pa.B. 973 (February 22, 2003).

Source

The provisions of this Rule 406 amended February 6, 2003, effective July 1, 2003, 33 Pa.B. 969. Immediately preceding text appears at serial page (264184).

Rule 407. Pleas in Response to Citation.

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

Comment

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

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

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

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).

Rule 408. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

- (1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or
 - (2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.
- (B) The issuing authority, upon receiving a plea of not guilty, shall:
- (1) fix a date and hour for trial;
 - (2) notify the defendant and the law enforcement officer of the date and hour fixed for trial; and
 - (3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

Comment

It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. *See* Rule 452. All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

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

Paragraph (B)(3) 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* 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

Official Note: Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016.

Committee Explanatory Reports:

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

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).

Source

The provisions of this Rule 408 amended June 10, 2016, effective August 1, 2016, 46 Pa.B. 3235. Immediately preceding text appears at serial pages (326474) and (380191).

Rule 409. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the citation or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

- (4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and
- (5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

See Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

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

For procedures regarding arrest warrants, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

Official Note: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

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

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

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Source

The provisions of this Rule 409 amended August 7, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended January 16, 2007, effective February 1, 2008, 37 Pa.B. 752; amended July 17, 2013, effective August 17, 2013, 43 Pa.B. 4323; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532. Immediately preceding text appears at serial pages (326475) to (326476) and (368071) to (368072).

PART B(2). Procedures When Citation Filed

Rule 410. Filing of Citation.

When it is not feasible to issue the citation to the defendant or when evidence is discovered after the issuance of a citation that gives rise to additional summary charges against the defendant resulting from the same incident, a law enforcement officer shall institute a criminal proceeding in a summary case by filing a citation with the proper issuing authority.

Comment

Filing as used in this rule includes electronically transmitting the citation or parking ticket information.

A law enforcement officer should file a citation with the issuing authority when, due to the circumstances of the case, the law enforcement officer is unable to issue the citation directly to the defendant at the time of the offense. Examples of situations when the law enforcement officer would be unable to issue a citation include, but are not limited to, when the officer receives information that the defendant has committed a summary violation from a witness but the defendant is not then present; when a witness is not present at the scene and the officer wants to question the witness before completing the investigation; or when the officer is summoned to another case that requires prompt action. See Section 902 of the Game and Wildlife Code, 34 Pa.C.S. § 902, which provides, *inter alia*, that "Deputy Wildlife Conservation Officers shall not be authorized to issue citations . . . and shall provide the information to the Wildlife Conservation Officer." Under this statute, it would not be feasible for the Deputy Wildlife Conservation Officer to issue the citation, and, therefore, pursuant to this rule, the citation would be filed.

When a defendant acknowledges guilt pursuant to Section 926 of the Game and Wildlife Code, 34 Pa.C.S. §§ 926, or Section 925 of the Fish and Boat Code, 30 Pa.C.S. § 925, but does not pay the fine and costs or the check issued for the fine and costs cannot be cashed, the officer of the commission should file a citation with the issuing authority to institute a summary criminal proceeding.

When determining whether the filing of a citation was the correct procedure under the rules, the courts have considered whether there was a reasonable basis for filing, whether there were compelling reasons to prevent issuing the citation, and whether the defendant was prejudiced by the filing. See, e.g., *Commonwealth v. Odle*, 16 D.&C. 3d 750 (Cambria County 1980); *Commonwealth v. Lombardo*, 4 D.&C. 3d 106 (Clearfield County 1977). See also Rule 109 that permits discharge or dismissal when the institution of proceedings by incorrect means is prejudicial to the rights of the defendant.

When evidence is discovered after the issuance of a citation that gives rise to additional charges against the defendant resulting from the same incident, the law enforcement officer must file with the issuing authority an additional citation alleging such additional summary offenses, or a complaint when the additional charges include a misdemeanor or felony. For proceedings on such charges when a complaint is filed, see Chapter 5 of these rules.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

Official Note: Previous rule, originally adopted as Rule 116 June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; readopted January 31, 1970, effective May 1, 1970, renumbered as Rule 60 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 76. Present Rule 60 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised August 13, 1999, effective immediately; renumbered Rule 410 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised February 6, 2003, effective July 1, 2003.

Committee Explanatory Reports:

Final Report explaining the August 13, 1999 revision of the Comment concerning 34 Pa.C.S. § 902 published with the Court's Order at 29 Pa.B. 4543 (August 28, 1999).

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

Final Report explaining the February 6, 2003 Comment revision concerning filing published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Source

The provisions of this Rule 410 amended February 6, 2003, effective July 1, 2003, 33 Pa.B. 969. Immediately preceding text appears at serial pages (264187) to (264188).

Rule 411. Procedures Following Filing of Citation—Issuance of Summons.

(A) Upon the filing of the citation, including receipt of electronically transmitted citation or parking violation information, the issuing authority shall issue a summons commanding the defendant to respond within 10 days of receipt of the summons, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons in which case an arrest warrant shall be issued. The summons shall be served as provided in these rules.

(B) A copy of the citation shall be served with the summons, except in cases charging parking violations when the parking violation information is electronically filed.

(C) In cases charging parking violations in which the parking violation information is electronically filed, the summons also shall include:

- (1) the date, time, and location of the parking violation;
- (2) a description of the vehicle and the license number; and
- (3) a description of the parking violation.

Comment

No fine or costs should be specified in the summons in cases in which the issuing authority determines that there is a likelihood of imprisonment.

This rule facilitates the electronic transmission of parking violation information by (1) eliminating the requirement that a copy of the citation be served with the summons in cases in which the parking violation information is electronically filed pursuant to Rule 401(A), and (2) requiring additional information be added to the summons. See Rule 401 (Proceedings in Summary Cases Charging Park-

ing Violations). However, nothing in this rule or Rule 401 is intended to preclude a municipality from continuing to have its officers prepare a citation in addition to electronically transmitting the parking violation information.

Official Note: Previous Rule 117, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 76. Present Rule 61 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; renumbered Rule 411 and Comment revised March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003.

Committee Explanatory Reports:

Final Report explaining the July 17, 1996 amendments published with the Court's Order at 26 Pa.B. 3629 (August 3, 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 February 6, 2003 amendments concerning electronic transmission of citation and parking violation information published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Source

The provisions of this Rule 411 amended February 6, 2003, effective July 1, 2003, 33 Pa.B. 969. Immediately preceding text appears at serial pages (264188) to (264189).

Rule 412. Pleas in Response to Summons.

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

Comment

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

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

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

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).

Rule 413. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the summons, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the law enforcement officer of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

Comment

It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the summons or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. *See* Rule 452. All checks for collateral shall be made payable to the magisterial district number set forth on the summons.

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

Paragraph (B)(3) 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* 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

Official Note: Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016.

Committee Explanatory Reports:

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

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).

Source

The provisions of this Rule 413 amended June 10, 2016, effective August 1, 2016, 46 Pa.B. 3235. Immediately preceding text appears at serial pages (326480) and (380195).

Rule 414. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

See Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

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

For arrest warrant procedures, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

Official Note: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

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

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

Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Source

The provisions of this Rule 414 amended August 11, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended January 16, 2007, effective February 1, 2008, 37 Pa.B. 752; amended July 17, 2013, effective August 17, 2013, 43 Pa.B. 4323; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532. Immediately preceding text appears at serial pages (326481) to (326482) and (368073) to (368074).

PART C. Procedures in Summary Cases When Complaint Filed**Rule 420. Filing of Complaint.**

When the affiant is not a law enforcement officer, the affiant shall institute a criminal proceeding in a summary case by filing a complaint with the proper issuing authority.

Comment

With regard to the “proper” issuing authority as used in these rules, see Rule 130.

Complaints filed pursuant to this rule are public records. However, in addition to restrictions placed by law and rule on the disclosure of confidential information, the filings required by this rule are subject to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* and may require further precautions, such as placing certain types of information in a “Confidential Information Form” or providing both a redacted and unredacted version of the filing. See Rule 113.1.

Official Note: Previous Rule 65 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 409(B), 414(B), 424, 430(D), 431, and 456. Present Rule 65, adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; renumbered Rule 420 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised June 1, 2018, effective July 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).

Amendments regarding the Court’s public access policy published with the Court’s Order at 48 Pa.B. 3575 (June 16, 2018).

Source

The provisions of this Rule 420 amended June 1, 2018, effective July 1, 2018, 48 Pa.B. 3575. Immediately preceding text appears at serial page (382186).

Rule 421. Procedure Following Filing of Complaint—Issuance of Summons.

Upon filing of a complaint, the issuing authority shall decide whether to issue process. If the issuing authority decides to issue process, a summons shall be issued, unless the issuing authority has reasonable grounds to believe that the defendant will not obey a summons, in which case an arrest warrant shall be issued. The summons shall be served as provided in these rules. A copy of the complaint shall be served with the summons.

Comment

The district attorney may in the district attorney’s discretion require review of any summary complaint prior to its being submitted to the issuing authority. The district attorney must undertake such review in court cases under Rule 506.

No fine or costs should be specified in the summons in cases in which the issuing authority determines that there is a likelihood of imprisonment.

Official Note: Previous rule, originally numbered Rule 139, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 66 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 66 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 421 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the August 9, 1994 Comment revisions 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).

Rule 422. Pleas in Response to Summons.

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

Comment

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

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

Official Note: Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; Comment revised April 24, 1981, effective July 1, 1981; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001.

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).

Rule 423. Not Guilty Pleas—Notice of Trial.

(A) A defendant may plead not guilty by:

(1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or

(2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the summons, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.

(B) The issuing authority, upon receiving a plea of not guilty, shall:

(1) fix a date and hour for trial;

(2) notify the defendant and the affiant of the date and hour fixed for the trial; and

(3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine, costs, and restitution, and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

Comment

It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the summons or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full

amount of collateral. *See* Rule 452. All checks for collateral shall be made payable to the magisterial district number set forth on the summons.

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

Paragraph (B)(3) 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* 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

Official Note: Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and amended March 1, 2000, effective April 1, 2001; amended June 10, 2016, effective August 1, 2016.

Committee Explanatory Reports:

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

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

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).

Source

The provisions of this Rule 423 amended June 10, 2016, effective August 1, 2016, 46 Pa.B. 3235. Immediately preceding text appears at serial pages (360843) to (360844).

Rule 424. Guilty Pleas.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail also shall be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

(3) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

(4) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

(5) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

Comment

The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)(4) was added in 2007 to permit an issuing authority to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing, especially when the defendant appears personally to enter a guilty plea.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

See Rule 454(F) for the information that must be included in the sentencing order when restitution is included in the sentence.

For the procedure upon default in payment of the fine or costs, see Rule 456.

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

For procedures regarding arrest warrants, see Rules 430 and 431.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

Official Note: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

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

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

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraphs (A)(2), (B)(3), and (C)(4) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision concerning the Rule 454 restitution procedures published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Source

The provisions of this Rule 424 amended August 7, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended January 16, 2007, effective February 1, 2008, 37 Pa.B. 752; amended July 17, 2013, effective August 17, 2013, 43 Pa.B. 4323; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532. Immediately preceding text appears at serial pages (360844) and (368075) to (368076).

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Warrant.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

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

- (1) the citation or summons is returned undelivered; or
- (2) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

(B) BENCH WARRANTS

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

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

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

(2) A bench warrant may be issued when a defendant has entered a not guilty plea and fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

(3) A bench warrant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of the fine and costs specified in the citation or summons; or

(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of the fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

Comment

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

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

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

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

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (B)(1)(b), formerly paragraph (A)(1)(d), was added in 2003 to make it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence. However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a bench warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The bench warrant issued under paragraph (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. *See* Rule 456.

Except in cases brought pursuant to the Public School Code of 1949, 24 P.S. § 1-102 *et seq.*, in which the defendant is at least 15 years of age but not yet 17, if the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 15 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may refer the defendant for commencement of dependency proceedings under 42 Pa.C.S. § 6303(a)(1). *See* 24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.

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

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

See Rule 431 for the procedures when a warrant of arrest is executed.

Official Note: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective February 1, 2008; Comment revised September 18, 2008, effective February 1, 2009; Comment revised January 17, 2013, effective May 1, 2013; Comment revised December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

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

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

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

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

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

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

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

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

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

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

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

Final Report explaining the January 17, 2013 revision of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 656 (February 2, 2013).

Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).

Source

The provisions of this Rule 430 amended February 28, 2003, effective July 1, 2003, 33 Pa.B. 1324; amended August 11, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended April 1, 2005, effective October 1, 2005, 35 Pa.B. 2210; amended June 30, 2005, effective August 1, 2006, 35 Pa.B. 3901; amended February 16, 2007, effective February 1, 2008, 37 Pa.B. 752; amended September 18, 2008, effective February 1, 2009, 38 Pa.B. 5425; amended January 17, 2013, effective May 1, 2013, 43 Pa.B. 654; amended December 21, 2018, effective May 1, 2019, 49 Pa.B. 190. Immediately preceding text appears at serial pages (380200), (365831) to (365832) and (376755).

Rule 431. Procedure When Defendant Arrested With Warrant.

(A) When a warrant is issued pursuant to Rule 430 in a summary case, the warrant shall be executed by a police officer as defined in Rule 103.

(1) If the warrant is executed between the hours of 6 a.m. and 10 p.m., the police officer shall proceed as provided in paragraphs (B) or (C).

(2) If the warrant is executed outside the hours of 6 a.m. and 10 p.m., unless the time period is extended by the president judge by local rule enacted pursuant to Rule 105, the police officer shall call the proper issuing authority to determine when the issuing authority will be available pursuant to Rule 117.

(B) *Arrest Warrants Initiating Proceedings*

(1) When an arrest warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant; or

(c) if the defendant is unable to pay, cause the defendant to be taken without unnecessary delay before the proper issuing authority.

(2) When the police officer accepts fine and costs, or collateral under paragraphs (B)(1)(a) or (b), the officer shall issue a receipt to the defendant setting forth the amount of fine and costs, or collateral received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant is taken before the issuing authority under paragraph (B)(1)(c),

(a) the defendant shall enter a plea; and

(b) if the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

(i) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, the issuing authority 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 to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial; or

(ii) the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged, in which event the issuing authority 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 to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

(iii) In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority shall consider the factors listed in Rule 523. The amount of collateral shall not exceed the full amount of the fine and costs.

(iv) If collateral has been set, the issuing authority 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.

(v) 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.

(c) If the defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

(C) Bench Warrants

(1) When a bench warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant;

(c) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; or

(d) if the defendant is unable to pay, promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(3).

(2) When the defendant pays the restitution, fine, and costs, or collateral pursuant to paragraph (C)(1), the police officer shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant does not pay the restitution, fine, and costs, or collateral, the defendant promptly shall be taken before the proper issuing authority when available pursuant to Rule 117 for a bench warrant hearing. The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

Comment

For the procedure in court cases following arrest with a warrant initiating proceedings, see Rules 516, 517, and 518. *See also* the Comment to Rule 706 (Fines or Costs) that recognizes the authority of a common pleas court judge to issue a bench warrant for the collection of fines and costs and provides for the execution of the bench warrant as provided in either paragraphs (C)(1)(c) or (C)(1)(d) and (C)(2) of this rule.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. *See also Commonwealth v. Mason*, 490 A.2d 421 (Pa. 1985).

Nothing in paragraph (A) is intended to preclude the issuing authority when issuing a warrant pursuant to Rule 430 from authorizing in writing on the warrant that the police officer may execute the warrant at any time and bring the defendant before that issuing authority for a hearing under these rules.

For what constitutes a "proper" issuing authority, see Rule 130.

Delay of trial under paragraph (B)(3)(b)(ii) is required by statutes such as 18 Pa.C.S. § 3929 (pre-trial fingerprinting and record-ascertainment requirements).

Although the defendant's trial may be delayed under this rule, the requirement that an arrested defendant be taken without unnecessary delay before the proper issuing authority remains unaffected.

When the police must detain a defendant pursuant to this rule, 61 P.S. § 1154 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and county correctional institutions."

In cases in which a defendant who is under 18 years of age has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. See the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302. Following the certification, the case is to proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

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

For the procedures required before a bench warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 430(B)(4). When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

For the procedures when a bench warrant is issued in court cases, see Rule 150.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Pursuant to Rule 117(B), when establishing the system of coverage best suited for the judicial district, the president judge may require defendants arrested on summary case bench warrants after hours to be taken to the established night court where the defendant would be given a notice to appear in the proper issuing authority's office the next business day or be permitted to pay the full amount of fines and costs.

Concerning the appearance or waiver of counsel, see Rules 121 and 122.

For the procedures in summary cases within the jurisdiction of the Philadelphia Municipal Court and the Philadelphia Municipal Court Traffic Division, see Chapter 10.

Official Note: Rule 76 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; Comment revised March 9, 2006, effective August 1, 2006; Comment revised May 7, 2014, effective immediately; amended April 10, 2015, effective July 10, 2015.

Committee Explanatory Reports:

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

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

Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

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

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

Final Report explaining the August 7, 2003 changes to paragraph (D) and Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

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

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

Final Report explaining the March 9, 2006, Comment revision adding the cross-reference to Rule 706 published with the Court's Order at 36 Pa.B. 1396 (March 25, 2006).

Final Report explaining the May 7, 2014 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of 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 431 amended August 11, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended April 1, 2005, effective October 1, 2005, 35 Pa.B. 2210; amended June 30, 2005, effective August 1, 2006, 35 Pa.B. 3901; amended March 9, 2006, effective August 1, 2006, 36 Pa.B. 1396; 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 (372119) to (372122).

PART D(2). Arrests Without a Warrant

Rule 440. Arrest Without Warrant.

When an arrest without a warrant in a summary case is authorized by law, a police officer who exhibits some sign of authority may institute proceedings by such an arrest.

Comment

Only a police officer, as defined in Rule 103, may institute a summary criminal proceeding by arrest. It is intended that these proceedings will be instituted by arrest only in exceptional circumstances such as those involving violence, or the imminent threat of violence, or those involving a danger that the defendant will flee.

The Vehicle Code provides the procedures for arresting a defendant without a warrant for a summary offense under that Code.

It is preferable that the officer making a stop for a traffic violation be in uniform.

Official Note: Previous Rule 70 adopted April 8, 1982, effective July 1, 1982; rescinded July 12, 1985, effective January 1, 1986 and replaced by present Rule 109. Present Rule 70 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; renumbered Rule 440 and Comment revised 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. 1478 (March 18, 2000).

Rule 441. Procedure Following Arrest Without Warrant.

(A) When a defendant has been arrested without a warrant, the defendant shall be either released from custody pursuant to paragraph (B) or taken before the proper issuing authority under paragraph (C).

(B) When a defendant has been arrested without a warrant, the arresting officer shall promptly release the defendant from custody when the following conditions have been met:

- (1) the defendant poses no threat of immediate physical harm to any other person or to himself or herself; and
- (2) the arresting officer has reasonable grounds to believe that the defendant will appear as required.

A citation shall be issued to the defendant at the time of release and thereafter the case shall proceed in accordance with Rules 405—409 as if the proceedings had been instituted by issuing a citation to the defendant.

(C) When the defendant has not been released from custody under paragraph (B),

(1) the defendant shall be taken without unnecessary delay before the issuing authority when available pursuant to Rule 117 where a citation shall be filed against the defendant, and

(a) the defendant shall enter a plea.

(b) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

(i) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, the issuing authority 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 to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial; or

(ii) the defendant's criminal record must be ascertained before trial as specifically required by statute for purposes of grading the offense charged, in which event the issuing authority 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 to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

(iii) In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority shall consider the factors listed in Rule 523. The amount of collateral shall not exceed the full amount of the fine and costs.

(iv) If collateral has been set, the issuing authority 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.

(v) 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 defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

Comment

This rule was amended in 2005 to require the arresting police officer to promptly arrange for the defendant's release if the two criteria set forth in paragraph (B) are met.

"Reasonable grounds" as used in paragraph (B)(2) would include such things as concerns about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the police officer's personal knowledge of the defendant.

Delay of trial under paragraph (C)(1)(b)(ii) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements). Although the defendant's trial may be delayed under this paragraph, the requirement that the defendant be taken without unnecessary delay before the proper issuing authority remains unaffected. See also Rules 408, 413, and 423.

On the appearance or waiver of counsel, see Rules 121 and 122.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

For the procedure in court cases initiated by arrest without warrant, see Rule 519.

For the procedures in summary cases within the jurisdiction of the Philadelphia Municipal Court and the Philadelphia Municipal Court Traffic Division, see Chapter 10.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

When the police must detain a defendant pursuant to this rule, 61 P. S. § 1154 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and county correctional institutions."

Official Note: Rule 71 adopted July 12, 1985, effective January 1, 1986; Comment revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995; amended May 14, 1999, effective July 1, 1999; renumbered Rule 441 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; amended June 30, 2005, effective August 1, 2006; Comment revised May 7, 2014, effective immediately; amended April 10, 2015, effective July 10, 2015.

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 May 14, 1999 amendments to paragraph (C)(1) and the Comment published with the Court's Order at 29 Pa.B. 2775 (May 29, 1999).

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

Final Report explaining the August 7, 2003 changes the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the June 30, 2005 changes concerning release of defendant following arrest and procedures when defendant is not released published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the May 7, 2014 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of 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 441 amended August 7, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended June 30, 2005, effective August 1, 2006, 35 Pa.B. 3901; 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 (372123) to (372125).

PART E. General Procedures in Summary Cases**Rule 450. Motions [Reserved].****Rule 451. Service.**

(A) Citations, summonses, and trial notices in summary cases may be served either personally upon the defendant or by mail to the defendant's last known address.

(B) When service of a summons has been made by first class mail and the defendant fails to respond or appear within the time specified by these rules, the issuing authority shall cause service to be made upon the defendant personally or by certified mail, return receipt requested. Thereafter, the case shall proceed as provided in these rules.

Comment

This rule provides the procedures for service in summary cases. These procedures are different from those provided by Rule 576 for motions and documents in court cases. See also Rule 114, which sets forth, *inter alia*, the procedures for providing notice to a defendant of court proceedings requiring the defendant's presence in court cases and in summary cases on appeal for a trial *de novo*.

A citation is served personally upon the defendant within the meaning of this rule when the citation is issued to the defendant as provided in Rule 400(A) and the rules of Chapter 4 Part (B1).

Paragraph (B) makes it clear that the issuing authority must only provide additional notice to a defendant by personal service or certified mail when a defendant fails to respond to a summons. It is intended that, when a defendant fails to appear for trial pursuant to a trial notice served by first class mail, the issuing authority need provide no further notice, but should proceed to conduct the trial in the defendant's absence pursuant to Rule 455.

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

Official Note: Rule 80 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; Comment revised June 2, 1994, effective September 1, 1994; renumbered Rule 451 and amended March 1, 2000, effective April 1, 2001; Comment revised March 3, 2004, effective July 1, 2004; Comment revised September 18, 2008, effective February 1, 2009.

Committee Explanatory Reports:

Report explaining the June 2, 1994 Comment revision published at 23 Pa.B. 5008 (October 23, 1993).

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

Final Report explaining the March 3, 2004 Comment revision updating the cross-references correlative to the March 3, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

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

Source

The provisions of this Rule 451 amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended September 18, 2008, effective February 1, 2009, 38 Pa.B. 5425. Immediately preceding text appears at serial page (326497).

Rule 452. Collateral.

(A) The issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear.

(B) If the issuing authority has reasonable grounds to believe that the defendant will not appear, the issuing authority may fix the amount of collateral to be deposited to ensure a defendant's appearance at the summary trial, which amount shall not exceed the full amount of the fine and costs.

(C) In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority shall consider the factors listed in Rule 523.

(D) If collateral is set, the issuing authority 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.

(E) To be released on recognizance or to request a lower amount of collateral, the defendant must appear personally before the issuing authority to enter a plea, as provided in Rules 408, 413, and 423.

(F) The collateral deposited shall be in United States currency or a cash equivalent.

(G) The collateral deposited may be forfeited after conviction at the summary trial and applied to payment of the fine, costs, and restitution.

Comment

The term "collateral" is intended to convey the dual purpose of the amount of money that is deposited. First, the amount deposited is used as bail to secure the defendant's appearance at the summary trial. Second, the amount deposited is used as security, and may be forfeited in the event of a conviction to satisfy any fine, costs, and restitution.

A defendant may not be penalized or denied a hearing because he or she cannot pay the full amount of the fine and costs as collateral.

For the purpose of paragraph (F), any guaranteed arrest bond certificate issued by an automobile club or association pursuant to 40 P.S. § 837 (1959) would constitute a "cash equivalent."

Paragraph (G) 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* 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

Official Note: Rule 81 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised May 14, 1999, effective July 1, 1999; renumbered Rule 452 and Comment revised March 1, 2000, effective April 1, 2001; amended April 10, 2015, effective July 10, 2015; amended June 10, 2016, effective August 1, 2016.

Committee Explanatory Reports:

Final Report explaining the May 14, 1999 Comment revisions published with the Court's Order at 29 Pa.B. 2775 (May 29, 1999).

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

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

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 452 amended April 10, 2015, effective July 10, 2015, 45 Pa.B. 2040; amended June 10, 2016, effective August 1, 2016, 46 Pa.B. 3235. Immediately preceding text appears at serial pages (376763) to (376764).

Rule 453. Joinder of Offenses and Defendants.

(A) When more than one person is alleged to have participated in the commission of a summary offense, the issuing authority shall accept one citation or complaint for each person charged. The citations or complaints against such persons may be consolidated for trial.

(B) When more than one summary offense is alleged to have been committed by one person arising from the same incident, the matter shall proceed as a single case and the issuing authority shall receive only one set of costs.

Comment

This rule is based upon comparable provisions in Rule 505 that apply in court cases.

Paragraph (A) is intended to make clear that the costs in a summary case in which there are multiple defendants would be assessed against each individual defendant even when the defendants' cases are consolidated for trial.

Official Note: Rule 82 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; Comment revised August 9, 1994, effective January 1, 1995; renumbered Rule 453 and amended March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Report explaining the August 9, 1994 Comment revisions 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).

Rule 454. Trial in Summary Cases.

(A) Immediately prior to trial in a summary case:

(1) the defendant shall be advised of the charges in the citation or complaint;

(2) if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and

(a) upon request, the defendant shall be given a reasonable opportunity to secure counsel; or

(b) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

(3) the defendant shall enter a plea.

(B) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising

under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

(C) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, except as provided in paragraph (E).

(E) If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.

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

- (1) if the defendant's sentence includes restitution, a fine, or costs, state:
 - (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 issuing authority may provide for installment payments and shall state the date on which each installment is due;

- (2) advise the defendant of the right to appeal within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed:
 - (a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and
 - (b) the defendant must appear for the de novo trial or the appeal may be dismissed;
- (3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and
- (4) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (F)(1) through (F)(3), and a copy of the order shall be given to the defendant.

Comment

No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). See Rules 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 457 (Withdrawal of Charges in Summary Cases).

Paragraph (F)(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth, or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

Under paragraph (F)(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph (F)(3), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461, the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would be able to pursue an appeal under Rules 460—462.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iii), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

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

Paragraph (E) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension) but only if they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

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

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule 456(A).

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective as to cases instituted on or after January 1, 1995.

tive July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; Comment revised July 17, 2013, effective August 17, 2013; amended March 9, 2016, effective July 1, 2016.

Committee Explanatory Reports:

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).

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

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

Final Report explaining the August 7, 2003 changes to the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 26, 2004 changes concerning *Alabama v. Shelton* published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

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

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 amendments to paragraph (F) 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 454 amended February 28, 2003, effective July 1, 2003, 33 Pa.B. 1324; amended August 11, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended March 26, 2004, effective July 1, 2004, 34 Pa.B. 1929; amended January 16, 2007, effective February 1, 2008, 37 Pa.B. 752; amended July 17, 2013, effective August 17, 2013, 43 Pa.B. 4323; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532. Immediately preceding text appears at serial pages (376764) to (376767).

Rule 455. Trial in Defendant's Absence.

(A) If the defendant fails to appear for trial in a summary case, the trial shall be conducted in the defendant's absence, unless the issuing authority 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 issuing authority may issue a warrant for the defendant's arrest.

(B) At trial, the issuing authority shall proceed to determine the facts and render a verdict.

(C) If the defendant is found not guilty, any collateral previously deposited shall be returned.

(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall give notice by first class mail to the defendant of the conviction

and sentence, and of the right to file an appeal within 30 days for a trial *de novo*. In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within 10 days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due may result in the issuance of an arrest warrant.

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

(F) If the defendant does not respond within 10 days to the notice in paragraph (D), the issuing authority may issue a warrant for the defendant's arrest.

Comment

In those cases in which the issuing authority 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, the issuing authority may issue a warrant for the arrest of the defendant in order to have the defendant brought before the issuing authority for the summary trial. *See* Rule 430(B). The trial would then be conducted with the defendant present as provided in these rules. *See* Rule 454.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. *See* 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

Paragraph (D) provides notice to the defendant of conviction and sentence after trial in absentia to alert the defendant that the time for filing an appeal has begun to run. *See* Rules 408(B)(3), 413(B)(3), and 423(B)(3).

See Rule 454(F) for what information must be included in a sentencing order when restitution is included in the sentence.

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least 15 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 15 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (D) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may refer the defendant for commencement of dependency proceedings under 42 Pa.C.S. § 6303(a)(1). *See* 24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.

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

Paragraph (E) 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* 18 Pa.C.S. § 1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

Concerning the appointment or waiver of counsel, see Rules 121 and 122.

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

Official Note: Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended August 15, 2005, effective February 1, 2006; Comment revised January 17, 2013, effective May 1, 2013; Comment revised July 17, 2013, effective August 17, 2013; Comment revised March 9, 2016, effective July 1, 2016; amended June 10, 2016, effective August 1, 2016; Comment revised December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

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

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

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

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

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

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

Final Report explaining the January 17, 2013 revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 656 (February 2, 2013).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4325 (August 3, 2013).

Final Report explaining the March 9, 2016 Comment revision cross-referencing the sentencing provisions in Rule 454(F) published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).

Final Report explaining the June 10, 2016 amendments clarifying that forfeited collateral may be applied to restitution published with the Court's Order at 46 Pa.B. 3238 (June 25, 2016).

Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).

Source

The provisions of this Rule 455 amended August 7, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended April 1, 2005, effective October 1, 2005, 35 Pa.B. 2210; amended August 15, 2005, effective February 1, 2006, 35 Pa.B. 4914; amended January 17, 2013, effective May 1, 2013, 43 Pa.B. 654; amended July 17, 2013, effective August 17, 2013, 43 Pa.B. 4323; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532; amended June 10, 2016, effective August 1, 2016, 46 Pa.B. 3235; amended December 21, 2018, effective May 1, 2019, 49 Pa.B. 190. Immediately preceding text appears at serial pages (382193) to (382195).

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

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

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to

explain why the defendant should not be imprisoned for nonpayment as provided by law, a warrant for the defendant's arrest may be issued.

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

(1) If the hearing cannot be held immediately, the issuing authority 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 set collateral as provided in Rule 523.

(2) If collateral is set, the issuing authority 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.

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

(D) When a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C):

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

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

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

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

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

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

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

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

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (D)(3)(a) through (D)(3)(c), and a copy of the order shall be given to the defendant.

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

Comment

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

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

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

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(B)(4).

Except in cases under the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*, in which the defendant is at least 15 years of age but not yet 17, if the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is charged with a violation of the compulsory attendance requirements of the Public School Code of 1949, 24 P.S. § 1-102, *et seq.*; has attained the age of 15 but is not yet 17; and has failed to pay the fine, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority may refer the defendant for commencement of dependency proceedings under 42 Pa.C.S. § 6303(a)(1). See 24 P.S. § 13-1333.3(f)(2) that provides for the adoption of a local policy for the referral of a case where a child has failed to satisfy a fine or costs to a juvenile probation officer for the commencement of dependency proceedings.

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

Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set collateral as provided in Rule 523. However, the issuing authority should only set monetary collateral when he or she has determined that less restrictive conditions of release will not be effective in ensuring the defendant's appearance.

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

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). 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) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also Rules 121 and 122 (dealing with appearance or waiver of counsel).

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

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

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

Official Note: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; Comment revised September 21, 2012, effective November 1, 2012; Comment revised January 17, 2013, effective May 1, 2013; amended April 10, 2015, effective July 10, 2015; Comment revised December 21, 2018, effective May 1, 2019.

Committee Explanatory Reports:

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

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

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

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

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

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

Final Report explaining the September 21, 2012 Comment revision correcting the typographical error in the fourth paragraph published with the Court's Order at 42 Pa.B. 6251 (October 6, 2012).

Final Report explaining the January 17, 2013 revisions of the Comment concerning the Public School Code of 1949 published with the Court's Order at 43 Pa.B. 656 (February 2, 2013).

Final Report explaining the April 10, 2015 amendments concerning the setting of collateral published with the Court's Order at 45 Pa.B. 2045 (April 25, 2015).

Final Report explaining the December 21, 2018 revision of the Comment concerning commencement of dependency proceedings published with the Court's Order at 49 Pa.B. 196 (January 12, 2019).

Source

The provisions of this Rule 456 amended August 7, 2003, effective July 1, 2004, 33 Pa.B. 4289; amended March 3, 2004, effective July 1, 2004, 34 Pa.B. 1547; amended April 1, 2005, effective October 1, 2005, 35 Pa.B. 2210; amended September 21, 2012, effective November 1, 2012, 42 Pa.B. 6247; amended January 17, 2013, effective May 1, 2013, 43 Pa.B. 654; amended April 10, 2015, effective July 10, 2015, 45 Pa.B. 2040; amended December 21, 2018, effective May 1, 2019, 49 Pa.B. 190. Immediately preceding text appears at serial pages (382195) to (382196) and (376771) to (376772).

Rule 457. Withdrawal of Charges in Summary Cases.

(A) In any summary case pending before an issuing authority, at any time before the completion of the summary trial or acceptance of a guilty plea, the issuing authority may permit the affiant, or the affiant's designee, to withdraw one or more of the charges.

(B) When an issuing authority permits an affiant or the affiant's designee to withdraw one or more of the charges, the issuing authority shall record the withdrawal on the transcript, and promptly shall notify the defendant in writing.

Comment

This rule permits the withdrawal of charges in summary cases pending before an issuing authority.

To ensure that an adequate record is made of any withdrawals, the issuing authority is required to include in the transcript of the case the fact that he or she permitted the withdrawal. In addition, the issuing authority must give the defendant written notice of the withdrawal.

For the procedures for withdrawal of charges in a court case pending before an issuing authority, see Rule 551.

Official Note: Rule 87 adopted April 18, 1997, effective July 1, 1997; renumbered Rule 457 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

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 458. Dismissal In Summary Cases Upon Satisfaction or Agreement.

(A) When a defendant is charged with a summary offense, the issuing authority may dismiss the case upon a showing that:

- (1) the public interest will not be adversely affected;
- (2) the attorney for the Commonwealth, or in cases in which no attorney for the Commonwealth is present at the summary proceeding, the affiant, consents to the dismissal;
- (3) satisfaction has been made to the aggrieved person or there is an agreement that satisfaction will be made to the aggrieved person; and
- (4) there is an agreement as to who shall pay the costs.

(B) When an issuing authority dismisses a case pursuant to paragraph (A), the issuing authority shall record the dismissal on the transcript.

Comment

This rule permits an issuing authority to dismiss a summary case when the provisions of paragraph (A) are satisfied.

Paragraphs (A)(1) through (4) set forth those criteria that a defendant must satisfy before the issuing authority has the discretion to dismiss the case under this rule.

The requirement in paragraph (A)(2) that, when the attorney for the Commonwealth is present at the summary proceeding, he or she must consent to the dismissal, is one of the criteria, along with

the other enumerated criteria, which gives the issuing authority discretion to dismiss a case under this rule, even when the affiant refuses to consent.

The requirement in paragraph (B) that the issuing authority include in the transcript of the case the fact that he or she dismissed the case is intended to ensure that an adequate record is made of any dismissals under this rule.

For dismissal upon satisfaction or agreement in a court case charging a misdemeanor that is pending before an issuing authority, see Rule 546.

For dismissal upon satisfaction or agreement by a judge of the court of common pleas, see Rule 586.

Official Note: Rule 88 adopted April 18, 1997, effective July 1, 1997; renumbered Rule 458 and Comment revised March 1, 2000, effective April 1, 2001.

Committee Explanatory Reports:

Final Report explaining the provisions of new Rule 88 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

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).

**PART F. Procedures in Summary Cases for Appealing to Court of
Common Pleas for a Trial *De Novo***

Rule 460. Notice of Appeal.

(A) When an appeal is authorized by law in a summary proceeding, including an appeal following a prosecution for violation of a municipal ordinance that provides for imprisonment upon conviction or upon failure to pay a fine, an appeal shall be perfected by filing a notice of appeal within 30 days after the entry of the guilty plea, the conviction or other final order from which the appeal is taken. The notice of appeal shall be filed with the clerk of courts.

(B) The notice of appeal shall contain the following information:

- (1) the name and address of the appellant;
- (2) the name and address of the issuing authority who accepted the guilty plea or heard the case;
- (3) the magisterial district number in which the case was heard;
- (4) the name and mailing address of the affiant as shown on the complaint or citation;
- (5) the date of the entry of the guilty plea, the conviction, or other final order from which the appeal is taken;
- (6) the offense(s) of which convicted or to which a guilty plea was entered, if any;
- (7) the sentence imposed, and if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;
- (8) the type or amount of bail or collateral, if any, furnished to the issuing authority;

- (9) the name and address of the attorney, if any, filing the notice of appeal; and
- (10) except when the appeal is from a guilty plea or a conviction, the grounds relied upon for appeal.
- (C) Within 5 days after filing the notice of appeal, a copy shall be served either personally or by mail by the clerk of courts upon the issuing authority, the affiant, and the appellee or appellee's attorney, if any.
- (D) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:
- (1) the transcript of the proceedings;
 - (2) the original complaint or citation, if any;
 - (3) the summons or warrant of arrest, if any; and
 - (4) the bail bond, if any.
- (E) This rule shall provide the exclusive means of appealing from a summary guilty plea or conviction. Courts of common pleas shall not issue writs of certiorari in such cases.
- (F) This rule shall not apply to appeals from contempt adjudications.

Comment

This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

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

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea.

Appeals from contempt adjudications are governed by Rule 141.

The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

See Rule 461 for the procedures for executing a sentence of imprisonment when there is a stay.

"Entry," as used in this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 456, the matter must be heard *de novo* by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

Paragraph (D) was amended in 2003 to align this rule with Rule 401(A), which permits the electronic transmission of parking violation information in lieu of filing a citation. Therefore, in electronically transmitted parking violation cases only, because there is no original citation, the issuing authority would file the summons with the clerk of courts pursuant to paragraph (D)(3).

Rule 462(D) provides for the dismissal of an appeal when the defendant fails to appear for the trial *de novo*.

See Rule 462(F) regarding the retention of a case at the court of common pleas when a petition to file an appeal *nunc pro tunc* has been denied.

Certiorari was abolished by the Criminal Rules in 1973 pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The abolition of *certiorari* continues with this rule.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; amended March 3, 2000, effective July 1, 2000; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460 adopted March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003; Comment revised February 28, 2003, effective July 1, 2003; Comment revised December 29, 2017, effective April 1, 2018.

Committee Explanatory Reports:

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

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

NEW RULE 460:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 460 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 6, 2003 changes concerning electronically transmitted parking citations published at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the February 28, 2003 Comment revision cross-referencing Rule 461 published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the December 29, 2017 Comment revision cross-referencing Rule 462(F) published with the Court's Order at 48 Pa.B. 226 (January 13, 2018).

Source

The provisions of this Rule 460 amended March 3, 2000, effective July 1, 2000, 30 Pa.B. 1508; amended February 28, 2003, effective July 1, 2003, 33 Pa.B. 969 and 1324; amended December 29, 2017, effective April 1, 2018, 48 Pa.B. 224. Immediately preceding text appears at serial pages (376774) to (376776).

Rule 461. Stays.

(A) In all summary cases in which a sentence of imprisonment has been imposed, execution of sentence shall be stayed until the time for appeal expires.

(B) In any summary case in which a notice of appeal is filed, the execution of sentence shall be stayed.

(C) A defendant who is represented by counsel, or a defendant who has waived counsel as provided in Rule 121, may waive the stay. The waiver must be in writing, signed by the defendant and defendant's counsel, if any, and made a part of the record.

(D) Whenever the execution of sentence is stayed pursuant to this rule, the issuing authority 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 set collateral as provided in Rule 523.

(1) In determining whether it is necessary to set collateral and what amount of collateral should be set, the issuing authority shall consider the factors listed in Rule 523 and the length of sentence in relation to the length of the stay.

(2) The issuing authority 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.

(3) If the defendant is incarcerated during the period of a stay for failure to post collateral, in no event shall the defendant be incarcerated for a period greater than the period of imprisonment awarded in the original sentence.

(E) During the 30-day appeal period, failure to pay fine and costs, or restitution, shall not be grounds for imprisonment, and shall not be grounds to preclude the taking of an appeal.

Comment

This rule is derived from former Rule 86(B) and (C).

The stay of the sentence of imprisonment in summary cases recognizes the limited length of the terms of imprisonment. However, there may be situations when the defendant would want the sentence to begin to run immediately following the conviction, and forego the benefits of the stay. To accommodate these extraordinary cases, this rule was amended in 2003 to permit a defendant who is represented by counsel, or who has waived counsel, to waive the stay of the execution of sentence. The waiver of the stay in no way is to be construed as a waiver of the right to appeal.

When a defendant has waived the stay of execution of sentence under this rule, the issuing authority has discretion to determine the date to set for the beginning of the sentence of imprisonment.

Under paragraph (B), the stay applies to all "sentences" imposed after conviction, including sentences of imprisonment, fines and costs, or restitution, and sentences of imprisonment for defaults in payment pursuant to Rule 456.

Paragraph (D) permits an issuing authority to require the defendant to post collateral during the stay pending appeal. However, given the potentially short sentences in such cases, imprisoning a defendant during the stay period for failure to post collateral is contrary to the intent of the stay provision of this rule.

Official Note: Formerly Rule 86(B) and (C), adopted October 1, 1997, effective October 1, 1998; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (B) and (C) replaced by Rule 461. New Rule 461 adopted March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; amended April 10, 2015, effective July 10, 2015.

Committee Explanatory Reports:

FORMER RULE 86(B) AND (C):

Final Report explaining the October 1, 1997 addition of paragraphs (B) and (C) to Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

NEW RULE 461:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 461 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 28, 2003 amendment concerning the addition of paragraph (C) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

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

Source

The provisions of this Rule 461 amended February 28, 2003, effective July 1, 2003, 33 Pa.B. 1324; amended April 10, 2015, effective July 10, 2015, 45 Pa.B. 2040. Immediately preceding text appears at serial pages (372130) to (372131).

Rule 462. Trial *De Novo*.

(A) When a defendant appeals after the entry of a guilty plea or a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard *de novo* by the 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 the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(C) In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, 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, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

(E) If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

(F) If the defendant has petitioned the trial judge to permit the taking of an appeal *nunc pro tunc* and this petition is denied, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

(G) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, or, in cases in which the defendant may be sentenced to intermediate punishment, the trial judge may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment.

(H) At the time of sentencing, the trial 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 trial 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 trial 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 trial judge. The order shall include the information specified in paragraphs (H)(1) through (H)(3), and a copy of the order shall be given to the defendant.

(I) After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

Comment

This rule is derived from former Rule 86(G) and former Rule 1117(c).

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea.

“Entry,” as used in paragraph (A) of this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.

The procedures for conducting the trial *de novo* in the court of common pleas set forth in paragraphs (B), (G), and (H) are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).

Pursuant to paragraph (B), the decision whether to appear and assume control of the prosecution of the trial *de novo* is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial *de novo* on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge also may permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

The provisions of paragraph (C) that permit the court to continue the case if there is good cause for the officer’s unavailability were added in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995).

Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

New paragraph (F) was added in 2017 to clarify that in a case in which a defendant seeks to file an appeal *nunc pro tunc*, and the common pleas judge denies that petition, the case will remain at the court of common pleas. This is consistent with the long-standing policy under the rules that once a case has moved from the minor judiciary to the court of common pleas, the case remains at common pleas.

Paragraph (G) was amended in 2008 to permit a trial judge to delay imposition of sentence in order to investigate a defendant’s eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. § 1543(b) (driving while license is under a DUI-related suspension), but only if he or she meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial *de novo* at the time of sentencing.

Pursuant to paragraph (H), if the defendant is convicted, the trial judge must impose sentence, and advise the defendant of the payment schedule, if any, and the defendant’s appeal rights. See Rule 704(A)(3) and Rule 720(D). 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).

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

Once sentence is imposed, paragraph (I) 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 magisterial district judge. The execution of sentence includes the collection of any fines and restitution.

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

For the procedures for appeals from the Philadelphia Municipal Court Traffic Division, see Rule 1037.

Official Note: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1,

2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 28, 2003, effective July 1, 2003; Comment revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009; Comment revised October 16, 2009, effective February 1, 2010; Comment revised May 7, 2014, effective immediately; amended March 9, 2016, effective July 1, 2016; amended December 29, 2017, effective April 1, 2018.

Committee Explanatory Reports:

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 concerning stays published with the Court's Order at 27 Pa.B. 5413 (October 18, 1997).

Final Report explaining the May 14, 1999 amendments to former Rule 86, paragraph (G), concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2776 (May 29, 1999).

NEW RULE 462:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 462 published at 30 Pa.B. 1478 (March 18, 2000).

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

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

Final Report explaining the March 26, 2004 Comment revision published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the January 18, 2007 amendment to paragraph (G)(2) published with the Court's Order at 37 Pa.B. 526 (February 3, 2007).

Final Report explaining the December 16, 2008 amendments to permit delay in sentencing for determination of intermediate punishment status published with the Court's Order at 39 Pa.B. 8 (January 3, 2009).

Final Report explaining the October 16, 2009 Comment revision regarding new Rule 1037 and 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 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3065 (May 24, 2014).

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

Final Report explaining the December 29, 2017 amendments regarding appeals *nunc pro tunc* published with the Court's Order at 48 Pa.B. 226 (January 13, 2018).

Source

The provisions of this Rule 462 amended March 3, 2000, effective July 1, 2000, 30 Pa.B. 1508; amended February 28, 2003, effective July 1, 2003, 33 Pa.B. 1324; amended March 26, 2004, effective July 1, 2004, 34 Pa.B. 1929; amended February 2, 2007, effective August 1, 2007; amended October 16, 2009, effective February 1, 2010, 39 Pa.B. 6327; amended May 7, 2014, effective immediately, 44 Pa.B. 3056; amended March 9, 2016, effective July 1, 2016, 46 Pa.B. 1532; amended December 29, 2017, effective April 1, 2018, 48 Pa.B. 224. Immediately preceding text appears at serial pages (380208) to (380211).

**PART G. Special Procedures In Summary Cases
Under The Vehicle Code**

Rule 470. Procedures Related to License Suspension After Failure to Respond to Citation or Summons or Failure to Pay Fine and Costs.

(A) When a defendant fails to comply with the 10-day response period set forth in Rules 407, 412, 422, and 456, the issuing authority shall notify the defendant in writing that, pursuant to Section 1533 of the Vehicle Code, the defendant's license will be suspended if the defendant fails to respond to the citation or summons or fails to pay all fines and costs imposed or enter into an agreement to make installment payments for the fines and costs within 15 days of the date of the notice.

(B) Service of the notice required in paragraph (A) shall be by first class mail, and a copy shall be made part of the record.

(C) If the defendant does not respond by the fifteenth day, the issuing authority shall so notify the Pennsylvania Department of Transportation. The notice shall be sent by electronic transmission in the form prescribed by the Pennsylvania Department of Transportation. The issuing authority shall print out and sign a copy of the notice, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

(D) If the defendant responds to the citation or summons or pays all fines and costs imposed or enters into an agreement to make installment payments for the fines and costs imposed after notice has been sent pursuant to paragraph (C), the issuing authority shall so notify the Pennsylvania Department of Transportation and request the withdrawal of the defendant's license suspension. The notice and request shall be sent by electronic transmission. The issuing authority shall print out and sign a copy of the notice and request, which shall include the date and time of the transmission, and the signed copy shall be made part of the record.

(E) Upon request of the defendant, the attorney for the Commonwealth, or any other government agency, the issuing authority's office shall provide a certified copy of any notices or any request form required by this rule.

Comment

This rule was adopted in 1993, and amended in 2011, to implement the notice requirements of 75 Pa.C.S. § 1533 and to insure uniform, prompt transmissions to the Department of Transportation. It does not change the other procedural requirements contained in the summary case rules generally. See, e.g., paragraph (B)(1)(a) of Rule 430 (Issuance of Warrant) and Rule 456 (Default Procedures: Restitution, Fines, and Costs).

This rule is not intended to address the admissibility of evidence. See the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 6101 et seq. concerning the Rules of Evidence for documents.

Under paragraph (E), the issuing authority is required to provide a certified copy of the report, but only if the request is made within the period that the issuing authority is required to retain the records.

Electronic transmissions are to be made from the Magisterial District Judge System or other computer system used by issuing authorities.

Official Note: Previous Rule 91, formerly Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986. The January 1, 1986 effective date is extended to July 1, 1986. Readopted and renumbered Rule 91 February 1, 1989, effective July 1, 1989; rescinded June 3, 1993, effective July 1, 1993, and replaced by new Rule 92. New Rule 91 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 470 and amended March 1, 2000, effective April 1, 2001; amended February 18, 2011, effective March 18, 2011.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 2811 (June 19, 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 February 18, 2011 amendments to paragraphs (A) and (D) adding failure to pay fines and costs published with the Court's Order at 41 Pa.B. 1168 (March 5, 2011).

Source

The provisions of this Rule 470 amended February 18, 2011, effective March 18, 2011, 41 Pa.B. 1167. Immediately preceding text appears at serial pages (346214) and (353007).

Rule 471. Disposition Report.

(A) The issuing authority shall report to the Pennsylvania Department of Transportation the disposition of all summary cases arising under the Vehicle Code. The report shall be sent by electronic transmission in the form prescribed by the Department.

(B) The issuing authority shall print out and sign a copy of the report, which shall include the date and time of the transmission, and a certification as to the adjudication, the sentence, if any, and the final disposition. The copy shall be made part of the record.

(C) Upon the request of the defendant, the attorney for the Commonwealth, or any other government agency, the issuing authority's office shall provide a certified copy of the report required by this rule.

Comment

See Rule 1101 for suspension of Acts of Assembly.

This rule does not address the admissibility of evidence. See the Pennsylvania Rules of Evidence and 42 Pa.C.S. § 6101 et seq. concerning the Rules of Evidence for documents.

Under paragraph (C), the issuing authority is required to provide a certified copy of the report, but only if the request is made within the period that the issuing authority is required to retain the records.

Official Note: Rule 92 adopted June 3, 1993, effective July 1, 1993; renumbered Rule 471 and amended March 1, 2000, effective April 1, 2001; Comment revised June 16, 2014, effective July 16, 2014.

Committee Explanatory Reports:

Report explaining the provisions of the new rule published with the Court's Order at 23 Pa.B. 2811 (June 19, 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 June 16, 2014 Comment revision published with the Court's Order at 44 Pa.B. 4169 (July 5, 2014).

Source

The provisions of this Rule 471 amended June 16, 2014, effective July 16, 2014, 44 Pa.B. 4168. Immediately preceding text appears at serial pages (356211) to (356212).

PART H. Summary Case Expungement Procedures

Rule 490. Procedure for Obtaining Expungement in Summary Cases; Expungement Order.

(A) PETITION FOR EXPUNGEMENT

(1) Except as provided in Rule 320, an individual who satisfies the requirements of 18 Pa.C.S. § 9122 and 18 Pa.C.S. § 9123(a) for expungement of a summary case may request expungement by filing a petition with the clerk of the courts of the judicial district in which the charges were disposed.

(2) The petition shall set forth:

- (a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;
- (b) the name and address of the issuing authority who accepted the guilty plea or heard the case;
- (c) the name and mailing address of the affiant as shown on the complaint or citation, if available;
- (d) the magisterial district court number;
- (e) the docket number;
- (f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;
- (g) the specific charges, as they appear on the charging document, to be expunged;
- (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;
- (i) the reason(s) for expungement; and
- (j) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) Unless the attorney for the Commonwealth agrees to waive this requirement, a current copy of the petitioner's Pennsylvania State Police criminal history report shall be attached to the petition. The copy shall be obtained from the Pennsylvania State Police within 60 days before filing the petition. Absent a waiver by the attorney for the Commonwealth, the judge shall not rule upon the petition until the Pennsylvania State Police criminal history report is filed.

(4) A copy of the petition shall be served on the attorney for the Commonwealth concurrently with filing.

(B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The attorney for the Commonwealth's consent or objection shall be filed with the clerk of courts, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the judge shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the parties shall be afforded an opportunity to be heard. Following the hearing, the judge promptly shall enter an order granting or denying the petition.

(4) If the judge grants the petition for expungement, the judge shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) Except when the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the judge denies the petition for expungement, the judge shall enter an order denying the petition and stating the reasons for the denial.

(C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(g) the specific charges, as they appear on the charging document, to be expunged;

- (h) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;
- (i) the reason(s) for expungement; and
- (j) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The clerk of courts shall serve a certified copy of the Order to each criminal justice agency identified in the court's Order.

Comment

This rule, adopted in 2010, provides the procedures for requesting and ordering expungement in summary cases. Any case in which a summary offense is filed with a misdemeanor, felony, or murder of the first, second, or third degree is a court case (see Rule 103). The petition for expungement of the summary offense in such a case would proceed under Rule 790.

This rule was amended in 2019 to clarify that the procedures under this rule are to be used for summary convictions for offenses committed when the defendant is under 18 years of age. This would include any summary conviction that also has been certified to juvenile court pursuant to Pa.R.J.C.P. 200(3) and 42 Pa.C.S. § 6304.1. In such cases, two expungement petitions would need to be filed: one would be filed pursuant to Pa.R.J.C.P. 170 to expunge the record of the juvenile proceeding and the second would be filed pursuant to Pa.R.Crim.P. 490 to expunge the underlying summary conviction.

See also Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

Paragraph (A)(3) requires the petitioner to attach a copy of his or her criminal history report to the petition. The attorney for the Commonwealth may waive the requirement that the criminal history report be attached to the petition. The Commonwealth's agreement to the waiver may be made orally or in writing, or averred in the petition.

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

"Petition," as used in this rule, is a "motion" for purposes of Rules 575, 576, and 577.

The "reason for expungement" in paragraph (A)(2)(i) and (C)(1)(i) means, for example, acquittal, arrest or prosecution free for five years following the conviction for that summary offense, or age.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, "criminal justice agency" includes police departments, county detectives, and other law enforcement agencies. See also 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

Official Note: Adopted September 22, 2010 effective in 90 days; amended November 1, 2016, effective November 14, 2016; amended March 1, 2019, effective July 1, 2019.

Committee Explanatory Reports:

Final Report explaining the September 22, 2010 promulgation of new Rule 490 providing the procedures for expungements in summary cases published with the Court's Order at 40 Pa.B. 5740 (October 9, 2010).

Final Report explaining the November 9, 2016 amendment regarding the stay of expungement when the Commonwealth has consented and petition and order forms published for comment at 46 Pa.B. 7442 (November 26, 2016).

Final Report explaining the March 1, 2019 amendment regarding expungement of summary offenses when the defendant is under 18 years of age published with the Court's Order at 49 Pa.B. 1121 (March 16, 2019).

Source

The provisions of this Rule 490 amended November 1, 2016, effective November 14, 2016, 46 Pa.B. 7439; amended March 1, 2019, effective July 1, 2019, 49 Pa.B. 1118. Immediately preceding text appears at serial pages (395862) and (395825) to (395826).

Rule 490.1. Procedure for Obtaining Expungement of Truancy Cases; Expungement Order.

(A) PETITION FOR EXPUNGEMENT

(1) An individual who satisfies the requirements of 24 P.S. § 13-1333.3(h) for expungement of a summary truancy case may request expungement by filing a petition with the issuing authority by whom the charges were disposed.

(2) The petition shall set forth:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the school from which the petitioner had been found to be truant;

(g) the date on the citation or complaint, or the date of arrest, and, if available, and the criminal justice agency that made the arrest;

(h) the specific charges, as they appear on the charging document, to be expunged;

(i) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(j) that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(k) a verification by the petitioner that facts set forth in the petition are true and correct to the best of the petitioner's personal knowledge or information and belief. The verification may be by a sworn affidavit or by an unsworn written statement that the facts are verified subject to the penalties for unsworn falsification to authorities under the Crimes Code § 4904, 18 Pa.C.S. § 4904.

Additional information shall not be required by local rule or practice.

(3) A copy of the petitioner's high school diploma, a Commonwealth secondary school diploma or another department of education-approved equivalent, or documentation that the petitioner is subject to an exception to compulsory attendance under 24 P.S. § 13-1330 shall be attached to the petition.

(4) A copy of the petition shall be served on the affiant, the attorney for the Commonwealth and the school from which the petitioner had been found to be truant concurrently with filing.

(B) OBJECTIONS; HEARING

(1) Within 30 days after service of the petition, the school, the affiant, or the attorney for the Commonwealth shall file a consent or objection to the petition or take no action. The school's, affiant's, or attorney for the Commonwealth's consent or objection shall be filed with the issuing authority, and copies shall be served on the petitioner's attorney, or the petitioner if unrepresented.

(2) Upon receipt of the school, the affiant, or the attorney for the Commonwealth's response, or no later than 14 days after the expiration of the 30-day period in paragraph (B)(1), the issuing authority shall grant or deny the petition or shall schedule a hearing.

(3) At the hearing, if any, the petitioner, the affiant and the attorney for the Commonwealth and the school from which the petitioner had been found to be truant shall be afforded an opportunity to be heard. Following the hearing, the issuing authority promptly shall enter an order granting or denying the petition.

(4) If the issuing authority grants the petition for expungement, the issuing authority shall enter an order directing expungement.

(a) The order shall contain the information required in paragraph (C).

(b) Except when the school, the affiant, or the attorney for the Commonwealth has filed a consent to the petition pursuant to paragraph (B)(1), the order shall be stayed for 30 days pending an appeal. If a timely notice of appeal is filed, the expungement order is stayed pending the disposition of the appeal and further order of court.

(5) If the issuing authority denies the petition for expungement, the issuing authority shall enter an order denying the petition and stating the reasons for the denial.

(6) The issuing authority shall issue the order granting or denying the petition in writing, with copies to the school, the affiant, or the attorney for the Commonwealth, and shall make the order a part of the docket.

(C) ORDER

(1) Every order for expungement shall include:

(a) the petitioner's name and any aliases that the petitioner has used, address, date of birth, and social security number;

(b) the name and address of the issuing authority who accepted the guilty plea or heard the case;

(c) the name and mailing address of the affiant as shown on the complaint or citation, if available;

(d) the magisterial district court number;

(e) the docket number;

(f) the school from which the petitioner had been found to be truant;

(g) the date on the citation or complaint, or the date of arrest, and, if available, the criminal justice agency that made the arrest;

(h) the specific charges, as they appear on the charging document, to be expunged;

(i) the disposition and, if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;

(j) a statement that the petitioner has satisfied the requirements of 24 P.S. § 13-1333.3(h) for expungement; and

(k) the criminal justice agencies upon which certified copies of the order shall be served.

Additional information shall not be required by local rule or practice.

(2) The issuing authority shall serve a certified copy of the order to the school from which the petitioner had been found to be truant, the Pennsylvania Department of Transportation and to each criminal justice agency identified in the order.

Comment

This rule, adopted in 2018, provides the procedures for requesting and ordering expungement in summary truancy cases as provided in 24 P.S. § 13-1333.3(h). If the issuing authority finds the petitioner has satisfied the statutory conditions, the issuing authority shall grant the petition.

As provided by statute, expungement petitions in truancy cases may be filed in a magisterial district court, a court of common pleas, or the Philadelphia Municipal Court. *See* 24 P.S. § 13-1333.2. The use of the term “issuing authority” in this rule is intended to encompass all of these courts.

Although magisterial district courts are not courts of record, provisions requiring certain occurrences, such as the entry of the expungement order, to be made “on the record” may be accomplished in the magisterial district court by documentation of these occurrences in the case record and the case docket. *See* Rule 135.

Paragraph (A)(4) provides for service of the petition upon the affiant, or the attorney for the Commonwealth, and the school from which the petitioner had been found to be truant. This is to provide an opportunity to challenge the petition and the facts supporting the petition.

See Rule 490 for the procedures for expungement of summary cases other than truancy, including those cases in which a summary case has resulted in the filing of a delinquency or dependency petition in juvenile court as a result of a failure to comply with the summary case sentence. *See also* Rule 320 for the procedures for expungement following the successful completion of an ARD program in a summary case and Rule 790 for court case expungement procedures.

This rule sets forth the only information that is to be included in every expungement petition and order.

A form petition and form order of expungement has been created by the Administrative Office of Pennsylvania Courts, in consultation with the Committee, and is available at the following website: <http://www.pacourts.us/forms/for-the-public>.

“Petition,” as used in this rule, is a “motion” for purposes of Rules 575, 576, and 577. The term “petition” is used in recognition that motion practice usually is not conducted in magisterial district courts and that the expungement procedure under this rule is an exception to this general concept.

For the procedures for filing and service of petitions, see Rule 576.

For the procedures for filing and service of orders, see Rule 114.

For purposes of this rule, “criminal justice agency” includes police departments, county detectives, and other law enforcement agencies. *See also* 18 Pa.C.S. § 9102.

Concerning standing, see *In Re Administrative Order No. 1-MD-2003*, 936 A.2d 1 (Pa. 2007); *Commonwealth v. J.H.*, 759 A.2d 1269 (Pa. 2000).

Official Note: Adopted December 20, 2018, effective April 1, 2018; Comment revised March 1, 2019, effective July 1, 2019.

Committee Explanatory Reports:

Final Report explaining new Rule 490.1 regarding procedures for expungement in truancy cases published with the Court’s Order at 49 Pa.B. 196 (January 12, 2019).

Final Report explaining the March 1, 2019 Comment revision regarding procedures for expungement in non-truancy cases published with the Court’s Order at 49 Pa.B. 1121 (March 16, 2019).

234 Rule 490.1

CRIMINAL PROCEDURE

Source

The provisions of this Rule 490.1 adopted December 21, 2018, effective May 1, 2019, 49 Pa.B. 190; amended March 1, 2019, effective July 1, 2019, 49 Pa.B. 1118. Immediately preceding text appears at serial pages (395826) to (395829).

[Next page is 5-1.]

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