

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 4]

Order Amending Rules 141, 430, 454, 461 and 462, and Revising the Comment to Rule 460; No. 292 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining the amendments to Rules of Criminal Procedure 141, 430, 454, 461, and 462, and the revision of the Comment to Rule 460. The rule changes 1) clarify an issuing authority may issue an arrest warrant when a defendant fails to appear for the execution of sentence, 2) establish a procedure for the waiver of the stay of execution of sentence in summary cases by a defendant who is represented by counsel, or who has waived counsel, and 3) clarify when an appeal for a trial de novo in a summary case or a contempt adjudication is taken, the case remains in the court of common pleas for the execution of any sentence and collection of any fines and restitution, and collection of any costs. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 28th day of February, 2003, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 29 Pa.B. 4348 (August 14, 1999) and 29 Pa.B. 4860 (September 18, 1999), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vol. 734), and a Final Report to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that:

- 1) Rules of Criminal Procedure 141, 430, 454, 461, and 462 are amended; and
- 2) the Comment to Rule 460 is revised, all in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b), and shall be effective July 1, 2003.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

CHAPTER 1. SCOPE OF RULES, CONSTRUCTION AND DEFINITIONS, LOCAL RULES

PART D. Procedures Implementing 42 Pa.C.S. §§ 4137, 4138, 4129: Criminal Contempt Powers of District Justices, Judges of the Pittsburgh Magistrates Court, and Judges of the Traffic Court of Philadelphia

Rule 141. Appeals from Contempt Adjudications by District Justices, Pittsburgh Magistrates Court Judges, or Philadelphia Traffic Court Judges.

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(F) Upon the filing of the transcript and other papers by the issuing authority, the case shall be heard de novo by the appropriate division of the court of common pleas as the president judge shall direct.

(1) If the judge assigned to hear the matter finds contempt and imposes punishment, the case shall remain in the court of common pleas for execution of any punishment, including the collection of any fines or costs.

(2) If the appellant fails to appear for the de novo hearing, the judge [assigned to hear the matter] may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

(3) If the appellant withdraws the appeal, the judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

Comment

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Paragraph (F) makes it clear that the judge assigned to conduct the de novo hearing may dismiss an appeal of the action of an issuing authority in a contempt proceeding when the judge determines that the appellant is absent without cause from the de novo hearing. If the appeal is dismissed, the judge should enter judgment and order execution of any punishment imposed by the issuing authority. **The procedures set forth in Rule 462 (Trial De Novo) for a trial de novo in a summary case should be followed when a contempt adjudication is appealed to the common pleas court.**

Once punishment for a contempt adjudication is imposed, paragraph (F)(1) makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any fine and costs, and the case may not be returned to the issuing authority.

Official Note: Rule 31 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 141 and Comment revised March 1, 2000, effective April 1, 2001; **amended February 28, 2003, effective July 1, 2003.**

Committee Explanatory Reports:

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

CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Arrest Warrant.

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

(1) 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]

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

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

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

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Comment

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

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

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 (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.

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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.**

Committee Explanatory Reports:

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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).

PART E. General Procedures in Summary Cases

Rule 454. Trial in Summary Cases.

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

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(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

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Comment

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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.

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, would still 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.

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Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; **amended February 28, 2003, effective July 1, 2003.**

Committee Explanatory Reports:

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Final Report explaining the February 28, 2003 amendments published with the Court's Order at 32 Pa.B. 1326 (March 15, 2003).

PART F. Procedures in Summary Cases Under the Vehicle Code

Rule 460. Notice of Appeal.

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Comment

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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 district justice computer system.

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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.**

Committee Explanatory Reports:

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NEW RULE 460:

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

Rule 461. Stays.

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(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.

[(C)] (D) * * *

[(D)] (E) * * *

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.

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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.

Committee Explanatory Reports:

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NEW RULE 461:

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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).

Rule 462. Trial De Novo.

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(H) 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

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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.

Pursuant to paragraph (G), 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).

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

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 February 28, 2003, effective July 1, 2003.

Committee Explanatory Reports:

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NEW RULE 462:

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

FINAL REPORT¹

Amendments to Pa.Rs.Crim.P. 141, 430, 454, 461, and 462, and Revision of the Comment to Rule 460

WARRANTS OF ARREST FOR FAILURE TO APPEAR FOR EXECUTION OF SENTENCE IN SUMMARY CASES; WAIVER OF STAY OF EXECUTION; CASES ON APPEAL FOR TRIAL DE NOVO REMAINING IN COURT OF COMMON PLEAS FOR EXECUTION OF SENTENCE

On February 28, 2003, effective July 1, 2003, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 141 (Appeals From Contempt Adjudications by District Justices, Pittsburgh Magistrates Court Judges, or Philadelphia Traffic Court Judges), 430 (Issuance of Arrest Warrant), 454 (Trial in Summary Cases), 461 (Stays), and 462 (Trial de Novo), and approved the revision of the Comment to Rule 460 (Notice of Appeal). These changes 1) clarify an issuing authority may issue an arrest warrant when a defendant fails to appear for the execution of sentence, 2) establish a procedure for the waiver of the stay of execution of sentence in summary cases by a defendant who is represented by counsel, or who has waived counsel, and 3) clarify when an appeal for a trial de novo in a summary case or a contempt adjudication is taken, the case remains in the court of common pleas for

¹ The Committee's Final Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the Committee's explanatory Final Reports.

the execution of any sentence and collection of any fines and restitution, and collection of any costs.

I. INTRODUCTION

The Committee received correspondence from several individuals asking whether:

- an issuing authority can issue a warrant of arrest when a defendant fails to appear for the execution of sentence in a summary case
- a defendant can waive the stay of execution of sentence under Rule 461
- the court of common pleas judges should “remand back” to the district justices for the execution of sentence, including the collection of any fine, restitution, or other costs, a summary case or a contempt case that is appealed for a trial de novo

The correspondence pointed out there is no uniformity among the judicial districts in how these issues are handled; for example, in some judicial districts, following the disposition of the trial de novo, the court of common pleas judges remand the case to the district justices for the execution of sentence, and in some judicial districts, the court of common pleas retains the case following the trial de novo. In view of these questions, and in furtherance of the Court’s goal to promote uniform, statewide procedures, the Committee reviewed the summary case rules in Chapter 4 of the Criminal Rules and agreed that some changes to the summary case rules are necessary.

II. DISCUSSION

A. Rules 430, 454, and 460: Warrants of Arrest for Failure to Appear for Execution of Sentence in a Summary Case Following Expiration of Appeal Period

1. Discussion

The Committee reexamined the arrest warrant rules in response to correspondence pointing out some district justices are confused concerning the procedures when a sentence of imprisonment has been imposed and a defendant fails to appear on the date set for the execution of sentence in a summary case. Rule 454(E)(3) provides the procedures for trial in summary cases and requires at the time of sentencing the issuing authority is to advise the defendant he or she must appear before the issuing authority on a specified date, which is to be a date that follows the expiration of the 30-day stay period,² for the execution of a sentence of imprisonment. The confusion concerning the procedures when a defendant fails to appear for the execution of sentence in a summary case arises because neither Rules 430 (Issuance of Arrest Warrant) nor 454 (Trial in Summary Cases) specifically authorize the issuing authority to issue an arrest warrant for the defendant. Since district justices are trained to be constrained by the parameters of the rules, and in some cases, are constrained even more by the limitations placed upon their independent actions by the AOPC’s District Justice Computer System, some think they are not authorized to issue a warrant in these cases because the rules do not provide for such a warrant.³

Although the Committee agreed there is no reason why the issuing authority should not issue a warrant in cases in which a defendant has failed to appear for the execution of a sentence of imprisonment when they are

authorized to issue warrants in other cases of failure to appear, see, e.g., Rule 430 (B), in view of the persisting confusion among members of the minor judiciary, the Committee agreed that the rules should be amended to clarify that an issuing authority may issue an arrest warrant when a defendant fails to appear for the execution of sentence.

2. Proposed Rule Changes

Rule 430 governs the procedures for the issuance of arrest warrants in summary cases. Rule 430 has been amended by the addition of paragraph (A)(4) providing the failure to appear for execution of sentence will result in the issuance of a warrant. Because the failure to appear for execution of sentence occurs post-conviction, and 1) the defendant has been informed that a warrant will issue for failure to appear, see Rule 454, and 2) there is a greater likelihood a defendant will not respond to other less intrusive forms of notice, the Committee agreed this situation should come within the mandatory warrant section of Rule 430. The Rule 430 Comment also has been revised to elaborate on the connection between Rule 430 and the Rule 454 execution of sentence provision.

Rule 454(E) sets forth the post-conviction requirements in summary cases. Paragraph (E)(3) requires the issuing authority to advise the defendant to appear on a date certain for execution of a sentence of imprisonment. This paragraph has been amended to require that in addition to directing the defendant to appear, the issuing authority must advise the defendant that failure to appear on the date scheduled for execution of sentence will result in the issuance of an arrest warrant, thereby ensuring the defendant is apprised fully of his or her responsibilities and the consequences of failing to comply.

Finally, the Rule 460 Comment has been revised by the addition of a cross-reference to Rule 461 to highlight the Rule 461 stay provisions.

B. Rule 461: Waiver of Stay of Execution of Sentence

1. Discussion

The Committee undertook a review of the Rule 461 (Stays) stay of execution provisions in response to correspondence we received pointing out the rules do not provide any guidance in those instances in which a defendant wants to waive the 30-day stay to start serving a sentence of imprisonment immediately upon conviction, such as when the defendant is currently incarcerated on other charges, and the new sentence would run concurrently with the other sentence. As with the issue concerning the procedures when a defendant fails to appear for the execution of sentence discussed above, the Committee was aware that because the rules do not specifically address waivers of stays, some district justices think they do not have the authority to permit a waiver. Furthermore, the AOPC’s District Justice Computer System, in implementing the Rule 461(A) stay provisions, sets the date for the execution of sentence to occur after the expiration of the 30-day appeal period, without any provision for a waiver.

After reviewing the rule history and the practicalities of such a procedure raised in the correspondence, the Committee agreed it makes sense to permit the minor judiciary to exercise some discretion in the area of commencement of sentences. How to accomplish this presented some concerns. We considered the potential for abuse with a procedure that provides the district justices with the discretion to grant a waiver of the stay, such as “unwary” defendants being pressured to waive the 30-day stay and begin serving their sentences immediately,

² Pursuant to Rule 461(A), the district justice must stay a sentence of imprisonment during the 30-day appeal period.

³ In addition, the correspondence noted this situation is not encompassed by Rule 140 (Contempt Proceedings Before District Justices, Pittsburgh Magistrate Court Judges, and Philadelphia Traffic Court Judges) or the statutory provisions for summary case contempt, so there is no authority for the district judges to issue a warrant in these cases based on their contempt powers.

thereby abrogating the purpose of a stay provision. We also were concerned that, if the rules provide for a waiver of the Rule 461 stay, this might be interpreted as a waiver of the right to appeal. The Committee agreed that any procedure to permit a waiver of the stay must also address these issues. In view of these points, Rule 461 has been amended, and the Comments to Rules 454 and 460 have been revised, 1) to establish procedures for permitting a defendant to waive the stay of execution of sentence in a summary case, but only if the defendant is represented by counsel or has waived counsel, and 2) to make it clear that a waiver of the stay does not affect the defendant's right to appeal the conviction.

2. Proposed Rule Changes

Rule 461 (Stays) has been amended by including as new paragraph (C) a waiver of the stay provision. As a means of protecting against potential abuses, the waiver provision is limited to those defendants who are represented by counsel, or who have waived counsel pursuant to Rule 121 (Waiver of Counsel). The Committee strongly believes the waiver of stay should be permitted only for defendants who are represented, but we also recognize the reality of summary case proceedings in which many defendants elect to proceed without counsel, even when there is a likelihood of a sentence of imprisonment. The defendants who proceed pro se, therefore, are given the same benefits of a waiver of a stay as represented defendants, but only in those cases in which it is clear the defendant has waived counsel under Rule 121.

The amendment also requires the waiver of the stay to be in writing, signed by the defendant and defendant's counsel, if any, and made a part of the record. This requirement is included because the minor judiciary courts are not courts of record, and we agreed it is important to have a written record of all waivers to provide a means to monitor waivers and as a further check on abuses.

The Rule 461 Comment elaborates on the situations when it would be appropriate for a defendant to waive the stay, and makes it clear that the waiver of stay does not affect the defendant's right to appeal. The Comment also makes it clear that the issuing authority is given the discretion to determine the date for the defendant to begin serving the sentence which could be any time from the date of conviction.

C. Rules 141 and 462: Trial de novo: Case Remains in Court of Common Pleas for Execution of Sentence and Collection of any Costs

1. Discussion

When the Committee was working on the first two parts of this proposal, we received correspondence concerning whether the rules contemplate the practice in some judicial districts in summary cases and summary contempt adjudications that had been appealed to the court of common pleas for a trial de novo of returning the case to the district justice for execution of sentence and collection of costs. This practice is "encouraged" by the existence of the AOPC's JCP-generated form "Common Pleas Notification Request" form that includes, when specifically indicated, a directive the "district justice office is to collect remaining fines/costs."

The Committee reviewed Rules 141 (Appeals From Contempt Adjudications by District Justices, Pittsburgh

Magistrates Court Judges, or Philadelphia Traffic Court Judges) and 462 (Trial de Novo) and the history of those rules, and concluded the intent of the rules is once a summary case or contempt adjudication is in the court of common pleas for a trial de novo, the case remains in the common pleas court through execution of sentence, and the judge may not return the case to the district justice for the execution of sentence or collection of costs. Under the current practice, once the appeal is taken, the district justice forwards all the case documentation to the clerk of courts. Therefore, it does not make sense nor does it enhance judicial economy to return the case to the district justice. The Committee also was concerned about the possible mischief that could result, including cases being lost in the transfer and the unnecessary delays in the execution of sentence and collection of costs, when a case is returned to the district justice following the trial de novo. Accordingly, Rules 141 and 462 have been amended to clarify the intention of the rules when a summary case or contempt adjudication is appealed to the court of common pleas for a trial de novo, the case remains in the court of common pleas for execution of sentence and collection of any fines and restitution, and the collection of any costs, and the case is not to be "remanded" to the district justice for such purpose.

2. Proposed Rule Changes

a. Rule 462

Rule 462 provides the procedures for the trial de novo. Rule 462 has been amended by adding as new paragraph (H) the language, "After sentence is imposed by the trial judge, the case shall stay 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."

The Rule 462 Comment has been revised by 1) adding a cross-reference to Rule 704(A)(3) concerning the sentencing procedures following a determination of guilt at a trial de novo in the court of common pleas, and 2) adding a paragraph emphasizing the case remains in the court of common pleas after the imposition of sentence.

b. Rule 141

Rule 141 has been amended to make it clear that if a defendant is found in contempt following an appeal of a finding of contempt pursuant to Rule 140, the case remains in the court of common pleas for execution of sentence, including collection of any fines or costs (see new paragraph (F)(1)). In addition, to conform Rule 141 with the appeal provisions in Rule 460, Rule 141(F) has been amended by the addition of a subparagraph (3) to provide if the defendant withdraws the appeal, the judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

The Comment has been revised to 1) cross-reference Rule 462 and explain that when a contempt adjudication is appealed, the procedures in Rule 462 should be followed, and 2) further emphasize that upon imposition of punishment following a trial de novo for a contempt adjudication, the case may not be returned to the issuing authority.

[Pa.B. Doc. No. 03-440. Filed for public inspection March 14, 2003, 9:00 a.m.]