

THE COURTS

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CHS. 1 AND 5]

Proposed Amendments to Pa.Rs.Crim.P. 119 and 500

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule 119 to clarify that two-way audio-visual communications in certain court proceedings may be used absent the defendant's consent if otherwise permitted by law and to revise the Comment to Rule 500 to state that nothing in that rule prevents the taking or preservation of testimony outside the presence of the defendant, if authorized by law. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to the rule precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

Anne T. Panfil, Counsel
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Criminal Procedural Rules Committee
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no later than Friday, September 2, 2011.

By the Criminal Procedural Rules Committee:

RISA VETRI FERMAN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

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

PART A. Business of the Courts

Rule 119. Use of Two-Way Simultaneous Audio-Visual Communication in Criminal Proceedings.

* * * * *

(B) If otherwise authorized by law, two-way simultaneous audio-visual communications may be used in a proceeding specified in (A)(1) through (A)(6).

(C) The defendant may consent to any proceeding being conducted using two-way simultaneous audio-visual communication.

[(C)] (D) When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the proceeding.

Comment

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Notwithstanding the preclusion of the use of two-way simultaneous audio-visual communications in the proceedings listed in paragraph (A)(1) through (A)(6), there may be occasions when such communications may be used, absent the defendant's consent, when otherwise authorized by law. See, e.g., 42 Pa.C.S. § 5985. See also Commonwealth v. Atkinson, 987 A.2d 743 (Pa.Super. 2009).

Within the meaning of this rule, counsel is present when physically with the defendant or with the judicial officer conducting the criminal proceeding.

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Official Note: New Rule 118 adopted August 7, 2003, effective September 1, 2003; renumbered Rule 119 and Comment revised June 30, 2005, effective August 1, 2006; amended January 27, 2006, effective August 1, 2006; Comment revised May 4, 2009, effective August 1, 2009; **amended 2011, effective, , 2011.**

Committee Explanatory Reports:

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Final Report explaining the May 4, 2009 revision to the Comment adding PCRA hearings as a proceeding to which the defendant may consent to be held using ACT published with the Court's Order at 39 Pa.B. [2434] 2435 (May 16, 2009).

Report explaining the proposed amendments concerning witness testimony and allowance by law of using ACT published at 41 Pa.B. 3811 (July 16, 2011).

CHAPTER 5. PRETRIAL PROCEDURES IN COURT CASES

PART A. Preservation of Testimony

Rule 500. Preservation of Testimony After Institution of Criminal Proceedings.

(A) BY COURT ORDER.

(1) At any time after the institution of a criminal [proceedings] proceeding, upon motion of any party, and after notice and hearing, the court may order the taking and preserving of the testimony of any witness who may be unavailable for trial or for any other proceeding, or when due to exceptional circumstances, it is in the interests of justice that the witness' testimony be preserved.

* * * * *

Comment

* * * * *

This rule does not address the admissibility of the preserved testimony. All questions of admissibility must be decided by the court. See, e.g., Judicial Code § 5917,

42 Pa.C.S. § 5917 (1982); *Commonwealth v. Scarborough*, 491 Pa. 300, 421 A.2d 147 ([Pa.] 1980); *Commonwealth v. Stasko*, 471 Pa. 373, 370 A.2d 350 ([Pa.] 1977).

* * * * *

Nothing in this rule is intended to preclude the defendant from waiving his or her presence during the taking of testimony.

Nothing in this rule is intended to prevent the taking or preservation of testimony outside the presence of the defendant, if authorized by law. See 42 Pa.C.S. § 5984.1

* * * * *

Official Note: Rule 9015 adopted November 8, 1982, effective January 1, 1983; amended March 22, 1989, effective July 1, 1989; renumbered Rule 500 and amended March 1, 2000, effective April 1, 2001; **Comment revised** , 2011, **effective** , 2011.

Committee Explanatory Reports:

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Report explaining the proposed Comment revision concerning witness testimony outside the presence of the defendant published at 41 Pa.B. 3811 (July 16, 2011).

REPORT

Proposed Amendments to Pa.R.Crim.P. 119 and Revision of the Comment to Pa.R.Crim.P. 500

Testimony Using Advanced Communications Technology when Authorized by Law

Rule 119 authorizes the use of two-way simultaneous audio-visual communications in many criminal proceedings. However, paragraph (A) of the rule lists six categories of proceedings in which such technology is not permitted. Paragraph (B) permits a defendant to consent to using this technology in any proceeding. It was suggested to the Committee that the use of this technology may be permitted even in these six types of proceedings if there is a strong public policy reason, usually codified by statute, to permit its use, and concluded that a narrow reading of Rule 119 might suggest that the use of such method of testimony would be precluded under the rules unless the defendant consented.

This is concept was recognized by the Superior Court in *Commonwealth v. Atkinson*, 987 A.2d 743 (Pa.Super. 2009). *Atkinson* was a drug trafficking case in which a witness, a co-conspirator who was incarcerated, was permitted to testify at a suppression hearing via a video link to the prison in which he was being held. This was done solely due to transportation difficulties. The Superior Court found that permitting the presentation of this testimony in this manner violated the defendant's confrontation rights without being superseded by a "compelling state interest" that would warrant it.¹

The Committee considered what would be an example of a "compelling state interest." The members noted that 42 Pa.C.S. § 5985 provides that the court may permit the testimony of a child victim or material witness to be taken using the "contemporaneous alternative method." Under this method, a child victim may be permitted to testify before a limited number of people who are actually

physically present during the child's testimony. In particular, the defendant would not be present but must be able to hear and observe the testimony, presumably by audio-visual communication technology. In order to utilize this method of testimony, it must be demonstrated that the child-witness would suffer real harm if compelled to testify in the presence of the defendant; in other words, there is a compelling state interest warranting the use of audio-visual communications technology in these cases.

The Committee also examined the history of Rule 119, which was first adopted in 2003. In developing this rule, the Committee at the time focused on the use of the audio-visual communications to permit a defendant who was likely confined to participate in proceedings without the expense and transportation difficulties. The impetus for the Committee's examination of the practice was proposed legislation that provided for a defendant's appearance for proceedings to be handled electronically. Additionally, the Committee was receiving reports of a number of courts across the state that were conducting proceedings in this manner but in a piecemeal fashion. Therefore, the rule was developed to provide for more uniform procedures and prevent legislation that would have unconstitutionally impinged on Court's rulemaking authority.

While the main focus of discussion was upon the defendant's right to be present, the Committee did consider the issues related to testimony of witnesses, including the recording of witness' testimony electronically. The Committee concluded that these types of procedures were addressed adequately in Rules 500 and 501. During this discussion, the Committee also acknowledged the use of audio-visual communications to actually present testimony rather than just record it. The Committee at that time concluded that the consent of the parties would be necessary to handle testimony taken in this fashion due to the impact this procedure might have on a defendant's confrontation rights.

The Final Report issued when Rule 119 was adopted contains the Committee's view that, "when the criminal proceeding is one that requires rigid protection of the defendant's rights and the integrity and fairness of the judicial process, any rule addressing this type of procedure must be one capable of providing two-way simultaneous audio-visual communication, and allow for confidential communications between the defendant and defendant's counsel."² The parameters for utilizing the "contemporaneous alternative method" in 42 Pa.C.S. § 5985, in addition to meeting the "compelling state interest" standard, are consistent with these requirements. The Committee concluded that acknowledgement of the existence of this or similar procedures would be compatible with the Committee's original intentions for Rule 119.

The Committee therefore is proposing to add to Rule 119 a new paragraph (B) to state: "If otherwise authorized by law, two-way simultaneous audio-visual communications may be used in a proceeding specified in (A)(1) through (6)." This language is further clarified in the Comment along with a cross-reference to *Atkinson* and to 42 Pa.C.S. § 5985.

In order to clarify that the same concept also applies to cases in which testimony is preserved prior to trial, the Committee is suggesting an addition to the Rule 500

¹ The Superior Court further held that the error was harmless because it was cumulative of other evidence presented in the hearing.

² Rule 119 Final Report, 33 Pa.B. 830 (August 30, 2003).

Comment to indicate that that rule is not intended to preclude the taking of evidence outside the defendant's presence if otherwise provided by law.

[Pa.B. Doc. No. 11-1172. Filed for public inspection July 15, 2011, 9:00 a.m.]

[234 PA. CODE CH. 4]

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

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456. This Supplemental Report resulted from the Committee's review of the correspondence received after publication of our original Report that explained the Committee's proposal that would establish new procedures in summary cases in which a defendant fails to respond to a citation or a summons. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Supplemental Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Supplemental Report should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to the Rules precedes the Supplemental Report. Additions are shown in bold; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

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By the Criminal Procedural Rules Committee:

RISA VETRI FERMAN,
Chair

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE
CHAPTER 4. PROCEDURES IN SUMMARY CASES

PART B. Citation Procedures

Rule 403. Contents of Citation.

* * * * *

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

* * * * *

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

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

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

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

(6) that failure to pay the fine, costs, and restitution may result in the issuance of a bench warrant for the arrest of the defendant, the referral of the collection of the fines, costs, and restitution to a collection agency, and a contempt proceeding being instituted; and

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

Comment

* * * * *

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

The 2011 amendments to paragraph (B)(4)(a) provide notice to the defendant that one of the consequences of failing to respond to the citation is that the issuing authority will enter a not guilty plea on behalf of the defendant. Thereafter, the case will proceed in the same manner as all other summary cases under the rules.

* * * * *

The 2011 amendments to paragraph (B)(6) provide notice to the defendant of some of the consequences of failing to pay any fine, costs, and restitution following a conviction. In these cases, the issuing authority may issue a bench warrant and may refer the collection of the fines, costs, and restitution of a defendant to a collection agency, or do both, and may institute contempt proceedings.

Paragraph [(B)(6) was amended in 2000 to make] (B)(7) makes it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a guilty plea. See Rule 460 (Notice of Appeal).

* * * * *

Official Note: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986

effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and Comment revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; Comment revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; **amended** , 2011, **effective** , 2011.

Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph (B)(4) and (B)(6) concerning consent to a not guilty plea and consequences of failure to pay published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report explaining the proposed amendments to paragraph (B)(4) and (B)(6) concerning consent to a not guilty plea and consequences of failure to pay published for comment at 41 Pa.B. 3819 (July 16, 2011).

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

Rule 407. Pleas in Response to Citation.

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

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

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

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

Comment

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

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

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

Official Note: Previous Rule 57 adopted September 18, 1973, effective January 1, 1974; title of rule amended January 23, 1975, effective September 1, 1975; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 411—414 and 421—424. Present Rule 57 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 407 and amended March 1, 2000, effective April 1, 2001; **amended** , 2011, **effective** , 2011.

Committee Explanatory Reports:

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Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond published for comment at 40 Pa.B. 2527 (May 15, 2010). Supplemental Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond published for comment at 41 Pa.B. 3819 (July 16, 2011).

Rule 408. Not Guilty Pleas—Notice of Trial.

* * * * *

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

* * * * *

Comment

* * * * *

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

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

Official Note: Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001; **amended** , 2011, **effective** , 2011.

Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph (B) adding entering a not guilty plea published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report published for comment at 41 Pa.B. 3819 (July 16, 2011).

PART B(2). Procedures When Citation Filed

Rule 412. Pleas in Response to Summons.

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

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

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

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

unless service of the summons was by first class mail.

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

Comment

* * * * *

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

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

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

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

Official Note: Previous rule, originally numbered Rule 118 and 118(b), adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered as Rule 62 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 441. Present Rule 62 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 412 and amended March 1, 2000, effective April 1, 2001; **amended** , 2011, **effective** , 2011.

Committee Explanatory Reports:

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Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for comment at 41 Pa.B. 3819 (July 16, 2011).

Rule 413. Not Guilty Pleas—Notice of Trial.

* * * * *

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

* * * * *

Comment

* * * * *

When a defendant fails to respond to the summons as required in Rule 412, the issuing authority

is required to enter a not guilty plea on behalf of the defendant and proceed as provided in paragraph (B).

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

Official Note: Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001; **amended** , 2011, **effective** , 2011.

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).

Report explaining the proposed amendment to paragraph (B) concerning the addition of entering a not guilty plea published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report published for comment at 41 Pa.B. 3819 (July 16, 2011).

PART C. Procedures in Summary Cases When Complaint Filed

Rule 422. Pleas in Response to Summons.

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

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

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

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

unless service of the summons was by first class mail.

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

Comment

* * * * *

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

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

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

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

Official Note: Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; Comment revised April 24, 1981, effective July 1, 1981; Comment revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001; amended , 2011, effective , 2011.

Committee Explanatory Reports:

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Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for service at 41 Pa.B. 3819 (July 16, 2011).

Rule 423. Not Guilty Pleas—Notice of Trial.

* * * * *

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

* * * * *

(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 and costs and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

Comment

* * * * *

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

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

Official Note: Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12,

1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and amended March 1, 2000, effective April 1, 2001; amended , 2011, effective , 2011.

Committee Explanatory Reports:

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Report explaining the proposed amendment to paragraph (B) concerning the addition of entering a not guilty plea published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report published for comment at 41 Pa.B. 3819 (July 16, 2011).

PART D. Arrest Procedures in Summary Cases

PART D(1). Arrests With a Warrant

Rule 430. Issuance of Warrant.

* * * * *

(B) BENCH WARRANTS

(1) A bench warrant shall be issued when[:] the defendant has failed to appear for the execution of sentence as required in Rule 454(F)(4).

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

* * * * *

Comment

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

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

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

* * * * *

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

(B)(1) makes it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

* * * * *

Official Note Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective February 1, 2008; Comment revised September 18, 2008, effective February 1, 2009; amended , 2011, effective , 2011.

Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph (B)(2) concerning bench warrants for failure to pay fines and costs published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report published for comment at 41 Pa.B. 3819 (July 16, 2011).

PART E. General Procedures in Summary Cases

Rule 454. Trial in Summary Cases.

* * * * *

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

* * * * *

(2) advise the defendant that failure to pay the fines, costs, and restitution may result in the issuance of a bench warrant for the arrest of the defendant, the referral of the collection of the fines, costs, and restitution of a defendant to a collection agency, and a contempt proceeding being instituted;

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

* * * * *

[(3)] (4) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period, and advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

[(4)] (5) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (F)(1) through [(F)(3)] (F)(4), and a copy of the order shall be given to the defendant.

Comment

* * * * *

The 2011 amendments to paragraph (E)(2) provide notice to the defendant of some of the consequences of failing to pay any fine, costs, and restitution following a conviction. In these cases, the issuing authority may issue a bench warrant and

may refer the collection of the fines, costs, and restitution of a defendant to a collection agency, or do both, and may institute contempt proceedings.

Paragraph [(F)(2)(b)] (F)(3)(b) is included in the rule in light of North v. Russell, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

* * * * *

Under paragraph [(F)(2)(a)] (F)(3)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph [(F)(3)] (F)(4), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

* * * * *

Official Note: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; Comment revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; Comment revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and Comment revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; Comment revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 26, 2007, effective February 1, 2008; amended , 2011, effective , 2011.

Committee Explanatory Reports:

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Report explaining the proposed amendments adding new paragraph (E)(2) concerning consequences of failing to pay published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report explaining the proposed amendments adding new paragraph (E)(2) concerning consequences of failing to pay published for comment at 41 Pa.B. 3819 (July 16, 2011).

Rule 455. Trial in Defendant's Absence.

* * * * *

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

* * * * *

(F) If the defendant does not file an appeal or respond [within 10 days] to the notice in paragraph (D) within 30 days, the issuing authority may issue a bench warrant [for the defendant's arrest], refer the collection of the fines, costs, and restitution to a collection agency, or do both, and institute a contempt proceeding.

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

(2) In non-traffic summary cases, upon the expiration of two years after the date of the imposition of fines and costs, if, after a bench warrant has been issued or the case has been turned over to a collection agency, the defendant has not paid the fines, costs, or restitution, the issuing authority shall conduct a review of the case. If the issuing authority determines further action is warranted, the case shall remain open. If the issuing authority determines no further action is warranted, the issuing authority shall do a case balance adjustment to close the case.

(3) In traffic summary cases, upon the expiration of two years after the date of the imposition of fines and costs, if, after a bench warrant has been issued or the case has been turned over to a collection agency, the defendant has not paid the fines, costs, or restitution, the issuing authority shall keep the case open until the defendant appears and pays the fines and costs or a payment plan is established. Any license suspension for failure to respond in effect shall be continued as a suspension for failure to pay the fines and costs.

Comment

* * * * *

If the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the [10-day] 30-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

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

Paragraph (F), amended in 2011, provides when a defendant fails to respond to the 30-day notice in paragraph (D) that the issuing authority has discretion to issue a bench warrant and to refer the collection of the fine and costs to a collection agency, or to both issue a bench warrant and refer to a collection agency. Nothing in this rule is intended to preclude the issuing authority from using other collection tools such as sending courtesy notices to the defendants before issuing a bench warrant or referring the fines and costs to a collection agency. The issuing authority also may conduct a contempt proceeding as provided in 42 Pa.C.S. §§ 4137, 4138, and 4139 and Rule 140(B).

When the collection of the fines, costs, and restitution is referred to a collection agency, if the collection agency is unable to collect the fines, costs, and restitution within 180 days, the collec-

tion agency is statutorily required to cease its efforts to collect and to inform the issuing authority that it no longer is pursuing the collection. See 42 Pa.C.S. § 9730.1(c).

The option to proceed by collection agency as provided in this rule is subject to the judicial district having a contract with a collection agency as provided in 42 Pa.C.S. § 9730.1(b).

After proceeding by bench warrant or collection agency, or both, if the fines, costs, and restitution have not been collected, pursuant to paragraph (F)(2), in non-traffic summary cases, the issuing authority is required to review the case to see if there is anything else that could be done to locate the defendant and to collect the fines and cost. If the issuing authority wants to continue pursuing the matter, the rule permits the issuing authority to keep the case active. If the issuing authority believes no further action will result in locating the defendant or collecting the fine and costs, the issuing authority is permitted to administratively terminate the case by doing a case balance adjustment.

"Case balance adjustment," as used in this rule, means that the case will no longer have an outstanding balance. However, if the defendant subsequently is located, the case balance should be reinstated to permit payment of the fines and costs.

After proceeding by bench warrant or collection agency or both, if the fines, costs, and restitution have not been collected, pursuant to paragraph (F)(3), in traffic summary cases, the issuing authority is required to keep the case open until the defendant has paid the fines and costs. The license suspension would remain in effect until the fines and costs are paid or until a payment plan is established. See Rule 470 and 75 Pa.C.S. § 1533.

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

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

Official Note Rule 84 adopted July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and Comment revised March 1, 2000, effective April 1, 2001; Comment revised August 7, 2003, effective July 1, 2004; Comment revised April 1, 2005, effective October 1, 2005; amended August 15, 2005 effective February 1, 2006; amended , 2011, effective , 2011.

Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph (F) concerning consequences of failure to pay fines and costs published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report explaining the proposed amendments to paragraph (F) concerning consequences of failure to pay fines and costs published for comment at 41 Pa.B. 3819 (July 16, 2011).

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

* * * * *

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a bench warrant for the defendant's arrest may be issued, the collection of the fines, costs, and restitution may be referred to a collection agency, or both, and a contempt proceeding may be instituted.

* * * * *

(D) If the defendant does not respond within 10 days to the notice in paragraph (B), the issuing authority may issue a bench warrant for the defendant's arrest or refer the collection of the fines, costs, and restitution to a collection agency, or do both, and institute a contempt proceeding.

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

(2) In non-traffic summary cases, upon the expiration of two years after the date of the imposition of fines and costs, if, after a bench warrant has been issued or the case has been turned over to a collection agency, the defendant has not paid the fines, costs, or restitution, the issuing authority shall conduct a review of the case. If the issuing authority determines further action is warranted, the case shall remain open. If the issuing authority determines no further action is warranted, the issuing authority shall do a case balance adjustment to close case.

(3) In traffic summary cases, upon the expiration of two years after the date of the imposition of fines and costs, if, after a bench warrant has been issued or the case has been turned over to a collection agency, the defendant has not paid the fines, costs, or restitution, the issuing authority shall keep the case open until the defendant appears and pays the fines and costs or a payment plan is established. Any license suspension for failure to respond in effect shall be continued as a suspension for failure to pay the fines and costs.

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

Comment

* * * * *

Pursuant to [paragraph] paragraphs (C) and (D), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set bail as provided in Chapter 5 Part C.

* * * * *

Paragraph (D), added in 2011, provides that the issuing authority has discretion to issue a bench warrant and to refer the collection of the fine and

costs to a collection agency, or to both issue a bench warrant and refer to a collection agency. Nothing in this rule is intended to preclude the issuing authority from using other collection tools such as sending courtesy notices to the defendants before issuing a bench warrant or referring the fines and costs to a collection agency. The issuing authority also may conduct a contempt proceeding as provided in 42 Pa.C.S. §§ 4137, 4138, and 4139 and Rule 140(B).

When the collection of the fines, costs, and restitution is referred to a collection agency, if the collection agency is unable to collect the fines, costs, and restitution within 180 days, the collection agency is statutorily required to cease its efforts to collect and to inform the issuing authority that it no longer is pursuing the collection. See 42 Pa.C.S. §§ 9730(b)(1) and (2) and 9730.1(a).

The option to proceed by collection agency as provided in this rule is subject to the judicial district having a contract with a collection agency as provided in 42 Pa.C.S. § 9730.1(b).

After proceeding by bench warrant or collection agency, if the fines, costs, and restitution have not been collected, pursuant to paragraph (D)(2), in non-traffic summary cases, the issuing authority is required to review the case to see if there is anything else that could be done to locate the defendant and to collect the fines and cost. If the issuing authority wants to continue pursuing the matter, the rule permits the issuing authority to keep the case active. If the issuing authority believes no further action will result in locating the defendant or collecting the fine and costs, the issuing authority is permitted to administratively terminate the case by doing a case balance adjustment.

"Case balance adjustment," as used in this rule, means that the case will no longer have an outstanding balance. However, if the defendant subsequently is located, the case balance should be reinstated to permit payment of the fines and costs.

After proceeding by bench warrant or collection agency, if the fines, costs, and restitution have not been collected, pursuant to paragraph (D)(3), in traffic summary cases, the issuing authority is required to keep the case open until the defendant has paid the fines and costs. The license suspension would remain in effect until the fines and costs are paid or until a payment plan is established. See Rule 470 and 75 Pa.C.S. § 1533.

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

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; **amended** , 2011, **effective** 2011.

Committee Explanatory Reports:

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Report explaining the proposed amendments to paragraph (B) and the addition of new paragraph (D) concerning consequences for failure to pay published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report explaining the proposed amendments to paragraph (B) and the addition of new paragraph (D) concerning consequences for failure to pay published for comment at 41 Pa.B. 3819 (July 16, 2011).

SUPPLEMENTAL REPORT

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

Procedures when Defendant Fails to Respond to Citation or Summons

I. Introduction

The Committee is planning to propose to the Supreme Court amendments to Rules of Criminal Procedure 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456 that would establish new procedures in summary cases in which the defendant has failed to respond to a citation or summons. This Supplemental Report explains changes to these rules the Committee is proposing following the publication of the proposal.¹

The purpose of the proposal as explained in the published Report ("initial proposal") is to provide other means within the scope of the existing Criminal Rules to reduce the number of open, inactive cases² by providing issuing authorities with better tools to accomplish this goal, thereby eliminating the need for administrative terminations in summary cases.³ To do this, the initial proposal required the issuing authority to enter a not guilty plea on behalf of the defendant who fails to respond to a citation instead of issuing an arrest warrant when the defendant fails to respond as is required under the current rules. The case would proceed as any other summary case under the rules. If the defendant fails to appear for the summary trial, the trial would be conducted in the defendant's absence. After one year following a trial in the defendant's absence, if the defendant has not been found on a bench warrant or has not paid the fine and costs, the magisterial district judge would be

¹ See 40 Pa.B. 2519 (May 15, 2010).

² Inactive summary cases are cases in which a defendant has not responded to a citation or summons, or cases in which the defendant has been convicted and has failed to pay the fine and costs. In either situation, under the current rules, warrants have been issued for these defendants' arrest and the warrants remain unexecuted and active. According to information provided by the Administrative Offices of Pennsylvania Courts (AOPC), for the period from 2000 to 2007, there were 290,595 cases that had active warrants.

³ Concerning administrative termination of cases, see, e.g., Rule of Judicial Administration 1901 (Prompt Disposition of Matters; Termination of Inactive Cases) and the Intergovernmental Task Force to Study the District Justice System's Quality of Justice Subcommittee at <http://www.aopc.org/NR/rdonlyres/E6085C7B-721A-494D-B1B2-06DFE3016B40/0/04qualjust.pdf>.

required to close the case and send it to the common pleas court for further proceedings.⁴

A major concern of the individuals who commented on the Committee's initial proposal was the impact that sending all these open, inactive cases would have on the common pleas court. The respondents believed that the proposal would be too burdensome on the common pleas courts and would create additional work for the clerks of courts and prothonotaries and that additional work would be unfunded. They also opined that sending these cases to common pleas court would result in significantly greater costs for the summary case defendants. They thought imposing these additional cost was unfair when the outstanding balance in many of these cases is relatively small, and would only result in unenforceable judgments.

After reviewing all the publication comments, the Committee agreed, as explained more fully below, that the initial proposal should be modified to address the concerns of the respondents by:

- providing that the case will remain with the issuing authority rather than being sent to the common pleas court;

- providing additional tools, in addition to issuing a bench warrant that was the only option for issuing authorities in the initial proposal, to the issuing authorities for handling these cases including adding the option for the issuing authority to send a case to a collection agency; and to find the defendant in contempt;⁵

- providing that, in non-traffic summary cases, the MDJ has discretion at the conclusion of a two-year period after the imposition of fines and costs if there is no payment to either keep the case open or administratively close the case; and

- providing that the traffic summary cases will remain open in the MDJ's office until payment is made.

II. Discussion

The Committee, after reviewing the publication responses, is appreciative of the input about the impact of the initial proposal and sensitive to the increased burdens being placed on the common pleas courts and the clerk of courts offices statewide. We therefore went back to the drawing board. The members re-examined the various tools that could be made available to the issuing authorities for handling these cases with outstanding fines and costs and agreed if the issuing authorities would be given more options for proceeding, the cases could be successfully resolved without imposing the burden on the common pleas courts. To that end, the members agreed with the suggestion of several respondents that the issuing authorities should be able to send the case to a collection agency in addition to using the bench warrant procedure that was in the initial proposal. In addition, the issuing authorities would be able to use other collection tools, such as courtesy letters, currently in use in some judicial districts. Finally, the issuing authorities may exercise their contempt powers as set forth in Rule 140(B) and 42 Pa.C.S. §§ 4137, 4138, and 4139. To facilitate the efforts to collect the fines and costs and to ensure that all

⁴ The Committee's published Report provides a more detailed explanation of the proposal.

⁵ See 42 Pa.C.S. § 9730.1 (Collection of Court Costs, Restitution and Fines by Private Collection Agency). Other collection strategies, "tools," used in various judicial districts include courtesy notices and warrant sweeps.

reasonable efforts using the tools available to the issuing authorities to collect the outstanding fines and cost are pursued, the one-year outside limit imposed in the initial proposal would be expanded to two years.

The Committee spent a good deal of time considering what would occur with the case at the end of the two-year period, including the feasibility and wisdom of providing for administrative termination of cases as suggested in the publication responses. The members recognize that administrative terminations of the inactive summary cases, particularly those cases with outstanding fines and costs, may have unintended consequences. Although uncomfortable with the concept, the Committee concluded, as a matter of public policy and judicial economy, that an administrative termination is the most realistic option in some cases given the number of these cases that have been pending for years without any action and that are not likely ever to be resolved. However, the members also agreed that administrative terminations should not be mandated, but rather left to the discretion of the MDJ on a case-by-case basis. In view of these considerations, the Committee agreed that, at the end of two years from the date of the imposition of the fines and costs, in cases in which the issuing authority's efforts to collect the fines and costs using the various tool available have been unsuccessful, the issuing authority would be required to review each case. From this review, the MDJ must determine whether to keep the case open longer because the MDJ believes there are reasons to continue to pursue the defendant or to administratively close the case.

A correlative issue related to permitting administrative closure of these cases is whether an administratively closed case could be re-opened. In considering this issue, the members noted, for example, that there may be situations in which a defendant with outstanding fines and costs whose case has been administratively closed subsequently is arrested on other charges. In this situation, should the issuing authority be able to collect on the "closed" case, and if so how procedurally should this be accomplished? In considering this question, the Committee examined a function in the magisterial district judge computer system that permits issuing authorities to do a "case balance adjustment."⁶ The Committee thought this function would be a reasonable means of closing the summary cases subject to administrative termination while providing the issuing authority with the ability to re-open the case to accept a defendant's payment by restoring the balance.

The Committee also considered whether traffic summary cases and non-traffic summary cases should be treated in the same manner under the proposed new procedural scheme. Some members argued that it made no sense to administratively close traffic summary cases because (1) driving is a privilege and (2) the license suspension that is imposed for failure to respond and failure to pay is an effective tool to get defendants to pay.⁷ After further consideration, the Committee agreed with these members. Therefore, the proposal requires that in summary traffic cases, the case will remain open until the defendant pays all outstanding fines and costs.

⁶ A Case Balance Adjustment ("CBA") is a functionality that allows the MDJS user to adjust a case balance to zero, effectively closing the case in certain types of cases. Currently, if a CBA was done in error, the systems allow the user to undo the CBA and restore the case balance.

⁷ See 75 Pa.C.S. § 1533 and Pa.R.Crim.P. 470 concerning license suspensions for failure to respond and to pay fines and costs. In addition, 42 Pa.C.S. § 5553 provides for a 3-year statute of limitations in traffic summary cases. In *Commonwealth v. Marra*, the Superior Court held that the statute of limitations in Section 5553 does not apply when there are outstanding fines and costs.

III. Explanation of the Changes to the Published Version of Rules⁸

Rule 135 (Transcript of Proceedings Before Issuing Authority)

Rule 135 has been deleted from the package of rule changes because the only change that had been proposed to the rule related to sending the case to the court of common pleas that will not take place under the new procedures.

Rule 403 (Contents of Citation)

Rule 403(B)(4) has been revised with the addition of notice that once a not guilty plea is entered on behalf of the defendant, the case will proceed in the same manner as all other summary cases. Paragraph (B)(6) has been revised by deleting the provisions for a judgment to be entered or wages to be attached because these two functions are statutorily permitted only at the common pleas level. The correlative explanatory provision in the Comment has been similarly revised.

Rules 407 (Pleas in Response to Citation), 412 (Pleas in Response to Summons), and 422 (Pleas in Response to Summons)

The only change to Rules 407, 412, and 422 is the addition in paragraph (B)(2) of "in all summary cases" at the beginning of the sentence to make the rules clear that the 30-day time period applies to both traffic and non-traffic summary cases.

Rules 408 (Not Guilty Pleas—Notice of Trial), 413 (Not Guilty Pleas—Notice of Trial), and 423 (Not Guilty Pleas—Notice of Trial)

There are no changes to the versions of Rules 408, 413, or 423 published as part of the initial proposal.

Rule 430 (Issuance of Warrant)

The version of Rule 430 published as part of the initial proposal contained a new paragraph (B)(5) that provided for the automatic expiration of the bench warrant at the end of a one-year period. This paragraph has been deleted as no longer necessary because under the proposed new procedural scheme the bench warrant will not have a one-year time limit and will not expire.

Rule 454 (Trial In Summary Cases)

The version of Rule 454 published as part of the initial proposal contained a new paragraph (E)(2) that provided a judgment to be entered or wages to be attached. These two functions have been deleted because they are statutorily permitted only at the common pleas level.

Rules 455 (Trial in Defendant's Absence) and 456 (Default Procedures: Restitution, Fines, and Costs)

Rules 455 and 456 have been substantially reworked to reflect the Committee's decision to change the procedural scheme that had been set forth in the published version of the rules in the initial proposal.

Rule 455(D) and Rule 456(B) have been revised so the notice that is sent to a defendant before action is taken after a trial in the defendant's absence or after a defendant defaults in paying the fines and costs advises the defendant of the collection agency option and the possibility of contempt proceedings.

Rule 455(F) and Rule 456(D) have been revised to require the issuing authority to either issue a bench warrant or refer the collection of the fines and costs to a

⁸ Except for the changes to the proposal described in this section, the proposed rule changes remain the same as published.

collection agency, or to do both. The Comments to both rules elaborate on this provision noting that it is expected that the issuing authority would be able to use other collection tools such as sending courtesy notices to the defendant in addition to issuing a bench warrant or referring the fines and costs to a collection agency. The issuing authority also may conduct a contempt proceeding as provided 42 Pa.C.S. §§ 4137, 4138, and 4139 and Rule 140(B).

The Committee reasoned that the issuing authority is the most familiar with the case, and in most cases with the defendant, and is in the best position to determine what collection tools to utilize. Therefore, the decision of how to proceed in a given case is left to the issuing authority with the expectation that the issuing authority will use all the collection tools available to him or her necessary to collect the outstanding fines and costs. Finally, the version of these paragraphs published as part of the initial proposal concerning the expiration of the bench warrant has been deleted as unnecessary under the new procedures.

As explained above, the Committee agreed that the rules should provide different procedures for handling non-traffic and traffic summary cases when the defendant has failed to pay the fines and costs and the two-year period has expired. These new procedures are set forth in Rules 455(F)(2) and 456(D)(2) for non-traffic summary cases, and Rules 455(F)(3) and 456(D)(3) for traffic summaries.

The versions of Rule 455(F)(2) and Rule 456(D)(2) published as part of the initial proposal had provided for the closure of the case at the magisterial district court level and the forwarding of the case to the common pleas court for further proceedings. These paragraphs have been deleted, and are replaced by new language that sets forth the new procedures for non-traffic summary cases. Paragraphs (F)(2) and (D)(2) now provide that upon the expiration of the two-year period from the date of the imposition of fines and costs, if the defendant has not appeared and paid the fines and cost, the issuing authority must conduct a review of the case. The purpose of this review is to determine whether to keep the case open to take further action to find the defendant and collect the outstanding fines and cost or to do a case balance adjustment and administratively close the case.

The versions of Rule 455(F)(3) and Rule 456(D)(3) that were published as part of the initial proposal provided that any license suspension for failure to respond that was in effect at the time the bench warrant expired would be continued as a license suspension for failure to pay. Because the bench warrant expiration provisions have been deleted from the rules, the bench warrant expiration language in these paragraphs has been deleted, but the provision for continuing the license suspension for failure to pay in traffic summary cases has been retained. In addition, paragraphs (F)(3) and (D)(3) have been modified to include the procedures for traffic summary cases when the defendant has not paid at the end of the two-year period. As explained above, the summary traffic cases must remain open until the fines and costs have been paid and may not be administratively terminated.

The Comments to both rules provide further elaboration about the new procedures and explain the functionality of the "case balance adjustment." The Comments also include cross-references to correlative statutory provisions such as 42 Pa.C.S. § 9730.1(c) concerning the procedures

relative to collection agencies and 42 Pa.C.S. §§ 4137, 4138, and 4139 concerning contempt powers of issuing authorities.

[Pa.B. Doc. No. 11-1173. Filed for public inspection July 15, 2011, 9:00 a.m.]

Title 25—LOCAL COURT RULES

ADAMS COUNTY

Amendment of Rule of Civil Procedure 1901; Administrative Order No. 21 of 2011

Order of Court

And Now, this 28th day of June, 2011, the Court hereby Orders that Rule 1901 of the Adams County Rules of Civil Procedure shall be amended as follows:

Rule 1901. Commencement and Referral.

The Prothonotary and any Magisterial District Judge shall provide written and oral referrals to any person desiring to file a pro se petition under the Protection From Abuse Act, 23 Pa.C.S. § 6101 et seq. to Legal Services, Inc. and Survivors, Inc. at their Adams County Offices, and the Adams County Bar Association referral service. They shall also maintain sample forms and written instructions, in both Spanish and English, and give clerical assistance in completing forms.

The Prothonotary shall accept petitions without requiring the prepayment of filing fees and transmit copies to the Court Administrator for presentment to a judge for the entry of an order. Upon further request by plaintiff, the Court may direct that the petition be served upon defendant by the Sheriff.

[In the event an emergency petition is to be filed during a business day when the courthouse is open but a Judge is unavailable as contemplated under 23 Pa.C.S.A. Section 6110(a)(1)(iii), such emergency petition shall be filed with the Magisterial District Judge in the district where the petitioner is residing either temporarily or permanently.

Pursuant to the provisions of Section 6110 of the Protection from Abuse Act, 23 Pa.C.S.A. § 6110, and Pennsylvania Magisterial District Judges Rule of Civil Procedure 1203, a petition for emergency relief shall be filed with the Court, on any day that the Court is open for business, but not later than 3:30 p.m., after such time the Court shall be deemed unavailable. At all times that the Court is deemed unavailable, a petition for emergency relief shall be filed with the Magisterial District Judge assigned for such duty pursuant to Rule 112 of the Rules Governing Standards of Conduct of Magisterial District Judges.

This/These rule(s) shall become effective thirty (30) days after publication in the *Pennsylvania Bulletin*.

It is further directed that:

a. This Order shall be filed in the Office of the Prothonotary of Adams County and a copy thereof shall be filed with the Adams County Clerk of Courts and the Adams County Law Library for inspection and copying;

b. Seven (7) certified copies of this Order shall be forwarded to the Administrative Office of the Pennsylvania Courts for distribution in accordance with the provisions of Pa.R.J.A. No. 103(c)(2); and

c. Two (2) certified copies of this Order together with a computer diskette that complies with the requirement of 1 Pa. Code § 13.11(b) containing the test of the local rule(s) adopted hereby shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

By the Court

JOHN D. KUHN,
President Judge

[Pa.B. Doc. No. 11-1174. Filed for public inspection July 15, 2011, 9:00 a.m.]

SCHUYLKILL COUNTY

Amending Civil Rule of Procedure 1303(e); S-1383-11

Order of Court

And Now, this 27th day of June, 2011 at 1:30 p.m., Schuylkill County Civil Rule of Procedure No. 1303(e) is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File one (1) certified copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts.
- 2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau.
- 3) Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.
- 4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.
- 5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Rule of Civil Procedure

Rule 1303. Hearing, Notice and Continuances.

(e) Arbitrators may not grant continuances. Applications for continuances of any scheduled arbitration hearing shall be on the Application for Continuance Form available from the Prothonotary or Court Administrator's Office. The Application for Continuance must be filed with the Prothonotary and the Continuance Fee must be paid upon filing. Continuance requests should be submitted to the Prothonotary at least twenty (20) days before

such hearing and after written notice of such application has been provided to the opposing counsel. The application shall indicate the number of continuances previously requested, and whether or not the continuance is opposed.

The Prothonotary shall promptly serve the Continuance Form upon the Court Administrator.

[Pa.B. Doc. No. 11-1175. Filed for public inspection July 15, 2011, 9:00 a.m.]

SCHUYLKILL COUNTY

Amending Civil Rule of Procedure 1915.4(f) and Adopting Civil Rule of Procedure 1915.4(f)-(1), (2), (3), (4); S-1381-11

Order of Court

And Now, this 27th day of June, 2011 at 1:30 p.m., Schuylkill County Civil Rule of Procedure No. 1915.4(f) is amended and Civil Rule of Procedure 1915.4(f)-(1), (2), (3), (4) is adopted for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the *Pennsylvania Bulletin*.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File one (1) certified copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts.
- 2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau.
- 3) Forward one (1) certified copy of this Order and Rule with the Domestic Relations Procedural Rules Committee of the Supreme Court of Pennsylvania.
- 4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the *Schuylkill Legal Record*.
- 5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further *Ordered* that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

Schuylkill County Rule of Civil Procedure

Rule 1915.4. Prompt Disposition of Custody Cases.

(f) If at the conclusion of the conciliation process the case remains contested, the custody Conciliation Officer shall transfer the case to the Court for assignment to a Judge; except that actions for partial custody shall be assigned to a hearing officer and shall proceed in accordance with Pa.R.C.P. 1915.4-2. As part of that transfer, the custody Conciliation Officer shall prepare and file a report to the Court with copies to the parties. The report shall include such information about the case as shall be directed by the court. Any report by the Conciliation Officer will be filed with the Prothonotary, who shall seal the report to all except the court and the Parties.

Rule 1915.4(f).

(1) Within five (5) days of filing Exceptions to the Report of the Custody Conciliation Officer, Pursuant to Pa.R.C.P. 1910.12(f), the party raising exceptions shall request a transcript of all the testimony, pursuant to Pa.R.J.A. 5000.5, and shall thereupon make a deposit with the Court Reporter for the cost of said transcript pursuant to Pa.R.J.A. 5000.6.

(2) If both parties file Exceptions to the Report of the Custody Conciliation Officer, they shall equally bear the cost of the transcript of the testimony.

(3) In the event of the failure of an excepting party within the time allowed either to order the transcript, or to pay for the same, or to file a memorandum of law, the exceptions may be deemed to have been withdrawn and may be dismissed by the Court.

(4) Upon filing of the transcript of testimony, the file shall be delivered to the Court for disposition pursuant to Pa.R.C.P. 1910.12(h). Within ten (10) days of receiving notice of such filing with the Court, the moving party shall file a memorandum of law related to the issues raised in the exceptions, and shall within three (3) days serve a copy of such memorandum upon counsel or upon the opposing party, if not represented by counsel, the opposing party may within ten (10) days file an opposing memorandum.

[Pa.B. Doc. No. 11-1176. Filed for public inspection July 15, 2011, 9:00 a.m.]

SCHUYLKILL COUNTY

Amending Civil Rule of Procedure 1915.15 Form of Complaint; S-1382-11

Order of Court

And Now, this 27th day of June, 2011 at 1:30 p.m., Schuylkill County Civil Rule of Procedure No. 1915.15 Form of Complaint, is amended for use in the Court of Common Pleas of Schuylkill County, Pennsylvania, Twenty-First Judicial District, Commonwealth of Pennsylvania, effective thirty days after publication in the Pennsylvania Bulletin.

The Prothonotary of Schuylkill County is Ordered and Directed to do the following:

- 1) File one (1) certified copy of this Order and Rule with the Administrative Office of the Pennsylvania Courts.
2) Forward two (2) certified copies of this Order and Rule and a computer diskette containing the text of the local rules to the Legislative Reference Bureau.
3) Forward one (1) certified copy of this Order and Rule with the Civil Procedural Rules Committee of the Supreme Court of Pennsylvania.
4) Forward one (1) copy to the Law Library of Schuylkill County for publication in the Schuylkill Legal Record.
5) Copies shall be kept continuously available for public inspection in the Office of the Schuylkill County Prothonotary and the Schuylkill County Law Library.

It is further Ordered that said rule as it existed prior to the amendment is hereby repealed and annulled on the effective date of said rule as amended, but no right acquired thereunder shall be disturbed.

By the Court

WILLIAM E. BALDWIN,
President Judge

THE COURT OF COMMON PLEAS OF
SCHUYLKILL COUNTY
TWENTY-FIRST JUDICIAL DISTRICT OF
PENNSYLVANIA

Plaintiff : No: S-
vs. : Custody
Defendant :

ORDER OF COURT

AND NOW, this ___ day of ___, 20___, at ___ o'clock ___m.; you are hereby ORDERED to appear as follows:

You have been sued in Court to obtain Custody or Partial Custody of the child(ren) named in the Complaint.

I. PARENT EDUCATION PROGRAM

1. ALL PARTIES NAMED ABOVE SHALL ATTEND AND COMPLETE THE "KIDS FIRST" PROGRAM. THE PROGRAM IS REQUIRED FOR ALL PARTIES PARTICIPATING IN A CUSTODY ACTION. PARTICIPATION IS REQUIRED WHETHER OR NOT AN AGREEMENT IS SUBMITTED.

2. EACH OF YOU SHALL CONTACT "KIDS FIRST" WITHIN TEN (10) DAYS OF RECEIVING THIS ORDER TO REGISTER AND ATTEND THE NEXT AVAILABLE PROGRAM. IF YOU FAIL TO COMPLY WITH THE PROVISIONS OF THIS ORDER, CONTEMPT CHARGES AGAINST YOU SHALL BE FILED WITH THE COURT.

TO SCHEDULE AND REGISTER FOR THE "KIDS FIRST" PROGRAM CONTACT ANTHONY LIBASSI BY ONE OF THE FOLLOWING:

- (a) internet: WWW.LIBASSIMEDIATION.COM
(b) telephone: 570-558-1002
888-215-7445 (toll free)
(c) mail: ANTHONY LIBASSI
200 Adams Avenue, First Floor
Scranton, PA 18503

YOU ARE EACH REQUIRED TO PAY A FEE OF FORTY DOLLARS (\$40.00) DIRECTLY TO THE "KIDS FIRST" PROGRAM AT THE TIME OF REGISTRATION.

3. LOCATION OF "KIDS FIRST" PROGRAMS:

SCHUYLKILL COUNTY COURTHOUSE
401 N. 2ND STREET
POTTSVILLE, PA 17901

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN FINES, IMPRISONMENT OR OTHER SANCTIONS.

II. CUSTODY CONCILIATION CONFERENCE

You are ORDERED to appear in person at the Custody Conciliation Office, of the Schuylkill County Courthouse on ___, for a Custody Conciliation Conference.

You are further ORDERED to bring with you the fully completed conciliation questionnaire provided by the Court.

If you fail to appear as provided by the Order, an Order of Custody or Partial Custody may be entered against you or the Court may issue a Warrant for your arrest.

III. GENERAL PROVISIONS

YOU SHOULD TAKE THIS PAPER (and the attached papers) TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Pennsylvania Bar Association Lawyer Referral Service
100 South Street, P. O. Box 186, Harrisburg, PA 17108
1-800-692-7375

Counsel and pro se litigants without counsel are ORDERED to immediately consult their schedules for conflicts and to promptly request a continuance where necessary because of a prior attachment or emergency situation. All requests for a continuance of a Custody Conciliation Conference must be made on the APPLICATION FOR CONTINUANCE form available from the offices of the Court Administrator, Custody Conciliator or Prothonotary in the Schuylkill County Courthouse. The

application must be filed in the Prothonotary Office. A continuance will be granted only upon good cause shown.

The moving party shall immediately serve on all interested parties a copy of the original pleading, this order, "Kids First" registration and information, and a custody conciliation questionnaire; and shall further file an affidavit verifying service.

Americans With Disabilities Act of 1990: The court of Common Pleas of Schuylkill County is required by law to comply with the Americans with Disabilities Act of 1990. For information about accessible facilities and reasonable accommodations available to disabled individuals having business before the court, please contact our office. All arrangements must be made at least 72 hours prior to any hearing or business before the court. You must attend the scheduled conference or hearing.

BY THE COURT,

Date: _____

WILLIAM E. BALDWIN, P.J.

[Pa.B. Doc. No. 11-1177. Filed for public inspection July 15, 2011, 9:00 a.m.]
