

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT [204 PA. CODE CH. 85]

Amendments to Rules of Organization and Procedure of the Disciplinary Board of the Supreme Court of Pennsylvania; Order No. 58

In this Order, The Disciplinary Board of the Supreme Court of Pennsylvania is amending its Rules of Organization and Procedure to update the addresses of Chief Disciplinary Counsel and the Board's District II Office.

The Disciplinary Board of the Supreme Court of Pennsylvania finds that:

(1) To the extent that 42 Pa.C.S. § 1702 (relating to rule making procedures) and Article II of the act of July 31, 1968 (P. L. 769, No. 240), known as the Commonwealth Documents Law, would otherwise require notice of proposed rulemaking with respect to the amendments adopted hereby, such proposed rulemaking procedures are inapplicable because the amendments adopted hereby relate to agency procedure and are perfunctory in nature.

(2) The amendments to the Rules of Organization and Procedure of the Board adopted hereby are not inconsistent with the Pennsylvania Rules of Disciplinary Enforcement and are necessary and appropriate for the administration of the affairs of the Board.

The Board, acting pursuant to Pa.R.D.E. 205(c)(10), orders:

(1) Title 204 of the *Pennsylvania Code* is hereby amended as set forth in Annex A hereto.

(2) The Secretary of the Board shall duly certify this Order, and deposit the same with the Administrative Office of Pennsylvania Courts as required by Pa.R.J.A. 103(c).

(3) The amendments adopted hereby shall take effect upon publication in the *Pennsylvania Bulletin*.

(4) This Order shall take effect immediately.

By The Disciplinary Board of the Supreme Court of Pennsylvania

ELAINE M. BIXLER,
Executive Director and Secretary

Annex A

TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS

PART V. PROFESSIONAL ETHICS AND CONDUCT

Subpart C. DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

CHAPTER 85. GENERAL PROVISIONS

§ 85.5. Location of Office of Disciplinary Counsel.

(a) *Chief Disciplinary Counsel*. The location of the headquarters of the Office of Disciplinary Counsel and the office of the Chief Disciplinary Counsel is:

Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania

[501 Grant Street
Suite 3710
One Oxford Centre
Pittsburgh, Pennsylvania 15219
(412) 565-2300
(fax: (412) 565-7833)]
Suite 1400
200 North Third Street
Harrisburg, PA 17101
(717) 783-0990
(fax: 717-783-4963)

(b) *Disciplinary District Offices*. The present locations of the district offices of the Office of Disciplinary Counsel and the office of the Assistant Disciplinary Counsel for each such disciplinary district are:

* * * * *

(2) District II Office

Office of Disciplinary Counsel
The Disciplinary Board of the Supreme Court of Pennsylvania

[Suite 6000
One Sentry Parkway
Blue Bell, PA 19422
(215) 270-1896
(fax: (215) 270-1006)]
Suite 170
820 Adams Avenue
Trooper, PA 19403
(610) 650-8210
(fax: 610-650-8213)

* * * * *

[Pa.B. Doc. No. 03-310. Filed for public inspection February 21, 2003, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

[234 PA. CODE CH. 1]

Attorneys—Appearances and Withdrawals

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Pa.R.Crim.P. 120 (Attorneys—Appearance and Withdrawals) to clarify the duration of retained counsel's obligation. 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 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 rule changes precedes the Report. Additions are shown in bold; deletions are in bold and brackets.

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

Anne T. Panfil, Chief Staff Counsel
 Supreme Court of Pennsylvania
 Criminal Procedural Rules Committee
 5035 Ritter Road, Suite 800
 Mechanicsburg, PA 17055
 fax: (717) 795-2106
 e-mail: criminal.rules@supreme.court.state.pa.us

no later than Friday, March 28, 2003.

By the Criminal Procedural Rules Committee:

JOHN J. DRISCOLL,
Chair

Annex A

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

PART B. Counsel

Rule 120. Attorneys—Appearances and Withdrawals.

(A) Counsel for defendant shall [enter an appearance in writing] file an entry of appearance with the clerk of courts promptly after being retained or appointed, and serve a copy [thereof] of the entry of appearance on the attorney for the Commonwealth.

(1) If a firm name is entered, the name of an individual lawyer shall be designated as being responsible for the conduct of the case.

(2) The entry of appearance shall include the attorney's address, phone number, and attorney ID number.

(B) Counsel shall not be permitted to represent a defendant following a preliminary hearing unless an entry of appearance is [entered] filed with the clerk of courts.

(C) An attorney who has been retained or appointed by the court shall continue such representation through direct appeal or until relieved by the court.

(D) Counsel for a defendant may not withdraw his or her appearance except by leave of court. Such leave shall be granted only upon motion made and served on the attorney for the Commonwealth and the client, unless the interests of justice otherwise require.

Comment

* * * * *

Ordinarily, counsel remains in the case until permitted to withdraw or final judgment, which includes all avenues of appeal through the Supreme Court of Pennsylvania. In making the decision whether to file a petition for allowance of appeal, counsel must review the standards set forth in Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal) and the note following that rule. However, this rule does not require counsel to file a petition for allowance of appeal in every case, or, if a petition is filed, for counsel to include every reviewable issue. Concerning counsel's obligations as appointed counsel, see *Jones v. Barnes*, 463 U.S. 745 (1983). See also *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

Under paragraph [(C)] (D), the court should make a determination of the status of a case before permitting counsel to withdraw. **A factor that must be considered by the court in determining whether there is good cause to permit the withdrawal of counsel is the defendant's failure to meet his or her financial obligations to pay for the attorney's services. See *Commonwealth v. Roman. Appeal of Zaiser*, 549 A.2d 1320 (Pa. Super. 1988).**

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Official Note: Adopted June 30, 1964, effective January 1, 1965; formerly Rule 303, renumbered Rule 302 and amended June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; amended March 22, 1993, effective January 1, 1994; renumbered Rule 120 and amended March 1, 2000, effective April 1, 2001; **amended** , 2003, **effective** , 2003.

Committee Explanatory Reports:

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Report explaining the proposed amendments clarifying the procedures concerning entry of appearance and duration of counsel's obligation published at 33 Pa.B. 968 (February 22, 2003).

REPORT

Proposed amendments to Rule 120

CLARIFICATION OF DURATION OF COUNSEL'S OBLIGATION

I. INTRODUCTION

At the request of the Supreme Court's Common Pleas Court Management System (CPCMS) Project¹ staff, during the past year, the Committee has been reviewing the procedures related to the entry and withdrawal of retained and appointed counsel's appearance. The changes being proposed² are intended to clarify the issue of the duration of retained counsel's obligation, an issue the Committee agreed should be addressed in the rules because it continues to arise in the case law.³

II. DISCUSSION

A. *Duration of Obligation*

The issue of counsel's obligation has two parts—the length of time the attorney is obligated to stay in a case and the nature of the obligation. New paragraph (C) addresses the first part, the duration of representation under Rule 120, and requires that both appointed and retained counsel must stay in the case through direct appeal or until relieved by the court. As explained in the Comment, the courts have determined that “direct appeal” includes “all avenues of appeal through the Supreme Court of Pennsylvania.” See, e.g., *Commonwealth v. Daniels*, 420 A.2d 1323 (Pa. 1980) (a person seeking allowance of appeal is entitled to the assistance of counsel). See also Rule 122 (Assignment of Counsel).

The Comment also incorporates the principles espoused in the case law with regard to the withdrawal of counsel;

¹ The CPCMS Project is developing a statewide automated case management system for the common pleas criminal courts.

² This is the second proposal to be developed as the result of the Committee's review of the rules addressing counsel. The first proposal developed as a result of the Committee's review addressed the entry of appointed counsel's appearance, and was published in the February 23, 2003 *Pennsylvania Bulletin*, volume 33 at page 1039. These proposed changes are not shown in this current proposal.

³ The Committee has pending with the Court a recommendation for changes to Rules 122 and 904 that clarify the duration of appointed counsel's obligation. The Committee's Report explaining the proposed changes was published in 30 Pa.B. 5533 (October 28, 2000).

that the primary consideration of the judge when determining whether to permit a withdrawal by counsel is ensuring that the defendant has counsel to proceed with direct appeal, and to proceed in a timely manner. Before permitting an attorney to withdraw from a case, the judge must look to where the case is in the process and whether a new attorney has entered an appearance. Another factor the judge must consider is whether there is good cause, including whether the defendant is able to meet his or her financial obligations to pay for the attorney's services. See, e.g., *Commonwealth v. Roman, Appeal of Zaiser*, 549 A.2d 1320 (Pa. Super. 1988).

The second part, the nature of the obligation, is more complicated. Although the scope of Rule 120 does not include the nature of counsel's obligation specifically, several members expressed concern that without some clarification, the rule would be interpreted to require an attorney to file a petition for allowance of appeal in every case, even when the attorney's professional judgment indicates it is inappropriate. The Committee therefore agreed to include in the second paragraph of the Comment an explanation emphasizing that the attorney, when determining whether to file a petition for allowance of appeal, must review Pa.R.A.P. 1114 (Considerations Governing Allowance of Appeal), and would only file a petition if there is a substantial basis for filing and the case meets the standards in the appellate rule. See *Jones v. Barnes*, 463 U.S. 745 (1983) and *Commonwealth v. Padden*, 783 A.2d 299 (Pa. Super. 2001).

B. Entry of Appearance Requirements

In addition to addressing the issues concerning the duration of counsel's obligation, the Committee also is proposing some changes to bring Rule 120 in line with the motions rules. Paragraph (A) would be amended by replacing "enter an appearance in writing" with "file an entry of appearance," which conforms to the filing terminology in Rule 576 (Filing). In addition, the Committee is proposing that the entry of appearance be required to include the attorney's address, phone number, and attorney ID number so this information is readily available to the clerk of courts who is responsible for including this information in the list of docket entries.

[Pa.B. Doc. No. 03-311. Filed for public inspection February 21, 2003, 9:00 a.m.]

[234 PA. CODE CH. 4]

Order Amending Rules 401, 405, 406, 411 and 460, and Revising the Comments to Rules 400, 403 and 410; No. 291 Criminal Procedural Rules; Doc. No. 2

The Criminal Procedural Rules Committee has prepared a Final Report explaining amendments to Rules of Criminal Procedure 401, 405, 406, 411, and 460, and revisions of the Comments to Rules 400, 403, and 410. These changes clarify and fill in gaps in the procedures in the rules for electronically transmitting parking violation information to institute proceedings in cases in which a defendant has failed to respond to a parking ticket, and provide the procedures for electronically preparing, verifying, and transmitting citation information generally. The Final Report follows the Court's Order.

Order

Per Curiam:

Now, this 6th day of February, 2003, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 29 Pa.B. 2770 (May 28, 1999) and 32 Pa.B. 3891 (August 10, 2002), and in the *Atlantic Reporter* (Second Series Advance Sheets, Vols. 800/801), 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 401, 405, 406, 411, and 460 are amended; and

2) the Comments to Rules 400, 403, and 410 are 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 4. PROCEDURES IN SUMMARY CASES**

PART A. Instituting Proceedings

Rule 400. Means of Instituting Proceedings in Summary Cases.

* * * * *

Comment

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

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

* * * * *

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

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

* * * * *

The Rules of Criminal Procedure generally do not apply to juvenile proceedings, but these rules do apply to proceedings in summary cases involving juveniles to the extent that the Juvenile Act does not apply to such proceedings. See, e.g., Juvenile Act §§ 6302—6303, 42 Pa.C.S. §§ 6302—6303; Vehicle Code § 6303, 75 Pa.C.S. § 6303. See also 42 Pa.C.S. §§ 1515(a)(1) and 6303(a)(5) concerning jurisdiction of summary offenses arising out of the same episode or transaction involving a delinquent act for which a petition alleging delinquency is filed.

* * * * *

Official Note: Previous Rule 51[,] adopted January 23, 1975, effective September 1, 1975; Comment revised January 28, 1983, effective July 1, 1983; Comment revised December 15, 1983, effective January 1, 1984; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rules [**103, 400, 401, 402, 405, 410,**

420, 440, and 430] 3, 51, 52, 55, 60, 65, 70, 75, and 95. Present Rule 51 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised January 31, 1991, effective July 1, 1991; Comment revised January 16, 1996, effective immediately; Comment revised June 6, 1997, effective immediately; renumbered Rule 400 and amended March 1, 2000, effective April 1, 2001; **Comment revised February 6, 2003, effective July 1, 2003.**

Committee Explanatory Reports:

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

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

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

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

(2) [In that event,] When a defendant fails to respond to a parking ticket, the criminal proceeding shall be instituted either

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

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

Upon [the filing of the citation,] receipt of the citation or the electronically transmitted information, the issuing authority shall proceed as provided in Rule 411, and the case shall proceed [in the same manner as other summary cases instituted by filing a citation,] in accordance with Rules 411—414.

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

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

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

[(C) The filing of a citation charging a parking violation may be accomplished by electronic filing.]

Comment

* * * * *

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

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

[Paragraph (C) was added in 1996 to specifically authorize that a citation charging a parking violation may be filed electronically.]

* * * * *

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

Committee Explanatory Reports:

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

PART B. Citation Procedures

Rule 403. Contents of Citation.

* * * * *

Comment

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

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

* * * * *

Paragraph (B)(6) was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial de novo following the entry of a

guilty plea. See Rule [86] 460 (Notice of [Appeals] Appeal).

* * * * *

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

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

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

Committee Explanatory Reports:

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

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

Rule 405. Issuance of Citation.

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

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

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

Comment

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

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

* * * * *

Official Note: Previous rule, originally numbered Rule 135, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 55 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule [408] 58. Present Rule 55 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; Comment revised February 11, 1989, effective July 1, 1989; Comment revised January 16, 1996, effective immediately; renumbered Rule 405 and Comment revised March 1, 2000, effective April 1, 2001; **amended February 6, 2003, effective July 1, 2003.**

Committee Explanatory Reports:

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

Rule 406. Procedure Following Issuance of Citation.

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

Comment

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

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

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

* * * * *

Official Note: Previous rule, originally numbered Rule 137, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 56 and paragraph (d) amended September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986; and replaced by present Rule [409] 59. Present Rule 56 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; renumbered Rule 406 and amended March 1, 2000, effective April 1, 2001; **amended February 6, 2003, effective July 1, 2003.**

Committee Explanatory Reports:

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

PART B(2). Procedures When Citation Filed

Rule 410. Filing of Citation.

* * * * *

Comment

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

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

* * * * *

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

* * * * *

Official Note: Previous rule, originally adopted as Rule 116 June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; readopted January 31, 1970, effective May 1, 1970 [,] ; renumbered as Rule 60 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule [**431**] **76**. Present Rule 60 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; Comment revised February 1, 1989, effective July 1, 1989; Comment revised August 13, 1999, effective immediately; renumbered Rule 410 and Comment revised March 1, 2000, effective April 1, 2001; **Comment revised February 6, 2003, effective July 1, 2003.**

Committee Explanatory Reports:

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

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

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

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

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

* * * * *
Comment
* * * * *

This rule [**was amended in 1996 to**] facilitates the electronic [**filing**] transmission of [**citations charging**] parking [**violations**] violation information by (1) **eliminating the requirement that a copy of the citation be served with the summons in cases in which the parking violation information is electronically filed pursuant to Rule 401(A), and (2) requiring additional information be added to the summons.** See Rule 401 (Proceedings in Summary Cases Charging Parking Violations). **However, nothing in this rule or Rule 401 is intended to preclude a municipality from continuing to have its officers prepare a citation in addition to electronically transmitting the parking violation information.**

Official Note: Previous Rule 117, adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule [**431**] **76**. Present Rule 61 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended July 17, 1996, effective January 1, 1997; renumbered Rule 411 and Comment revised March 1, 2000, effective April 1, 2001; **amended February 6, 2003, effective July 1, 2003.**

Committee Explanatory Reports:

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

PART F. Procedures in Summary Cases under the Vehicle Code

Rule 460. Notice of Appeal.

* * * * *

(D) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

* * * * *

(2) the original complaint or citation, **if any**;

* * * * *

* * * * *

Comment

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

* * * * *

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

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

* * * * *

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.**

Committee Explanatory Reports:

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New Rule 460:

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

FINAL REPORT¹

Amendments to Pa.Rs. Crim.P. 401, 405, 406, 411, and 460; Revision of the Comments to Pa.Rs. Crim.P. 400, 403, and 410

**ELECTRONIC PREPARATION, VERIFICATION,
AND TRANSMISSION OF PARKING VIOLATION
INFORMATION AND CITATION INFORMATION
GENERALLY**

On February 6, 2003, effective July 1, 2003, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 401 (Proceedings In Summary Cases Charging Parking Violations), 405 (Issuance of Citation), 406 (Procedure Following Issuance of Citation), 411 (Procedures Following Filing of Citation—Issuance of Summons), and 460 (Notice of Appeal), and revised the Comments to Rules 400 (Means of Instituting Proceedings in Summary Cases), 403 (Contents of Citation), and 410 (Filing of Citation). These changes 1) clarify and fill in gaps in the

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.

procedures in the rules for electronically transmitting parking violation information to institute proceedings in cases in which a defendant has failed to respond to a parking ticket, and 2) provide the procedures for electronically preparing, verifying, and transmitting citation information generally.

I. BACKGROUND

a. Phase I

The Committee in 1998 and 1999 received several inquiries concerning the interplay between the electronic filing provisions of Rule 401 and the summons procedures in Rule 411, the citations procedures in Rule 403, and the appeals procedures in Rule 460. The inquiries questioned: 1) when a parking citation is filed electronically, does there have to be a paper copy of the citation; and 2) when the parking ticket information has been filed electronically, what documentation must be transmitted from the issuing authority to the clerk of courts when an appeal is filed.²

The Committee reviewed the summary case rules (Chapter 4) and the history of the electronic filing provisions. In 1996, when the Court adopted the initial changes concerning electronic filing of citations charging parking violations, this was considered a first step toward integrating advanced communication technology³ into the Criminal Rules.⁴ Rule 401 was changed to provide in those limited cases in which a defendant fails to respond to a parking ticket, that the political subdivision may institute a criminal proceeding by filing a citation with the proper issuing authority, see paragraph (A), and the filing of such a citation *may be accomplished by* electronic filing, see paragraph (C) (emphasis added). In addition, in cases charging a parking violation when the citation is filed electronically, Rule 411 provides that the information that ordinarily appears on the citation be included in the summons. Although the concepts of electronic filing and advanced communication technology were novel to the rules, these 1996 changes have had little substantive impact on defendants—a parking violation is never filed unless the defendant fails to respond to a parking ticket, and the summons a defendant receives in these cases provides the defendant with all the relevant information concerning the parking violation charged.

After reviewing the history of the 1996 rule changes permitting electronic filing and the rule provisions themselves, and based on the members' experience with electronic filings, the Committee agreed some additional rule changes were necessary to address the questions brought to our attention, but these changes only were needed to clarify the earlier amendments providing for the utilization of electronic filing for parking violation information. Accordingly, the Committee in 1999 published a proposal intended to clarify the procedures for electronically filing parking violation information in cases in which a defendant has failed to respond to a parking ticket. See 29 Pa.B. 2770 (May 29, 1999).

b. Phase II

Following the Committee's publication of the 1999 proposal, we received communications from the Administrative Offices of Pennsylvania Courts' Information Tech-

² The initial inquiries to the Committee also raised the question whether there must be a verification of the information electronically filed. After fully discussing the merits of this type of verification requirement, the Committee agreed that it is unnecessary.

³ See Rule 103 for the definition of advanced communication technology.
⁴ The changes also were intended to (1) provide a cost-effective and efficient means for municipalities and issuing authorities to transmit documents, and (2) reduce the amount of paperwork that flows between the respective offices. See Committee Final Report at 26 Pa.B. 3629 (August 3, 1996).

nology Staff, representatives of the Pennsylvania State Police and the Justice Network (JNET), and representatives of Philadelphia Traffic Court concerning the development of electronic data management systems that would permit the electronic issuance of citations and the electronic transmission of citation information generally. The Committee agreed that implementation of the proposed electronic data management systems described by these various organizations should be pursued as long as the procedural requirements in the Criminal Rules are satisfied.⁵ However, during the Committee's consideration of the use of electronic data managing systems in general, the members expressed concern that the 1999 proposal clarifying the procedures for the electronic filing of parking violation information could be misconstrued as limiting electronic filing to only transmission of parking violation information if the general citation rules are not similarly amended to include specific provisions for the electronic transmission of citation information.

In view of the points raised in these communications, the Committee's review of the rules as they relate to the new technologies, the Court's goals of statewide uniformity, and the potential for unintended consequences that could result from not including specific provisions for the electronic transmission of citation information, the Committee published a Supplemental Report proposing changes to the Criminal Rules that supplement the 1999 proposal for the electronic filing of parking violation information by including the procedures for the electronic preparation of the citation and the electronic transmission of citation information generally. See 32 Pa.B. 3891 (August 10, 2002).⁶

II. DISCUSSION OF RULE CHANGES

a. Rule 400 (*Means of Instituting Proceedings in Summary Cases*)

Rule 400 provides the means of instituting proceedings in summary cases. The term "filing" in paragraph (2) is intended to be broad and include both traditional filing methods and electronic transmission of citation and parking violation information. Accordingly, the Rule 400 Comment has been revised by explaining in a new third paragraph that filing may be accomplished by electronically transmitting the citation information or parking ticket information to the issuing authority.

b. Rule 401 (*Proceedings in Summary Cases Charging Parking Violations*)

Rule 401 has been amended to more clearly incorporate advanced communication technology principles by removing the "citation" concept from the electronic transmission provisions within the context of parking tickets.⁷ Para-

⁵ The Committee strongly believes the use of technology should be encouraged when feasible because this promotes the Court's goals of statewide uniformity in the practice of law, and the use of technology has been shown to result in a more efficient use of the court's limited resources.

⁶ The changes in the 2002 proposal largely incorporated the changes in the 1999 proposal, but in some places language was modified or was deleted as no longer necessary.

⁷ The questions that were addressed to the Committee focused on the use of advanced communication technology in transmitting the parking violation information to the issuing authority, including whether a paper copy of the parking violation information electronically transmitted should be maintained. When filing is accomplished by electronic transmission, only the transmission of the parking violation information is required because 1) a parking ticket already will have been issued to a defendant, 2) a summons setting forth all the relevant information about the parking violation will be issued to institute the criminal proceeding in cases in which the defendant has failed to respond to the parking ticket, and 3) requiring a citation is redundant and inefficient. Furthermore, when the initial electronic filing provisions had been developed in 1995, there was little practical experience with advanced communication technology in the context of criminal proceedings, and the amendments to former Rules 61 and 95 (renumbered Rules 411 and 401 respectively), therefore, merely applied the existing concept of filing a parking citation to the electronic filing provisions.

graph (A) has been divided into subparagraphs,⁸ and paragraph (C) and its corresponding paragraph in the Comment have been deleted. Paragraph (A)(2) covers the cases in which a defendant fails to respond to a parking ticket, and distinctly provides for the two methods of providing the issuing authority with the necessary information to issue a summons under Rule 411: 1) filing the citation by traditional methods directly with the issuing authority; or 2) filing the parking violation information by electronic transmission to the issuing authority. This change makes it clear what is transmitted electronically is the information, not a citation. The Comment has been revised to clarify that the new language does not preclude the traditional practice of preparing citations.

c. Rule 403 (*Contents of Citation*)

Rule 403 provides the requirements for the contents of the citation. To tie this rule into the concept of using electronic means for the preparation, verification, and transmission of citation information generally, the Rule 403 Comment has been revised to: 1) make it clear that the preparation, verification, and transmission of the citation information can be accomplished electronically by the law enforcement officer⁹ and that the defendant must be given a paper copy of the citation; 2) explain that nothing in the rule is intended to require the defendant sign the citation;¹⁰ and 3) include a cross-reference to Rule 401 concerning the procedures for instituting cases in which there is a parking violation.

d. Rule 405 (*Issuance of Citation*)

Rule 405 provides the procedures for instituting a summary case proceeding by issuing a citation to the defendant. The rule has been amended to make it clear that the law enforcement officer who issues the citation must exhibit an official sign of his or her authority (see new paragraph (1)), and to add the requirement that the law enforcement officer at the time of issuance of the citation give the defendant a paper copy of the citation (see new paragraph (2)). Although the law enforcement officer may electronically prepare and transmit the citation to the issuing authority, the law enforcement officer must ensure the defendant receives a paper copy of the citation to ensure proper and timely notice of the charges and of the defendant's rights and obligations.

e. Rule 406 (*Procedure Following Issuance of Citation*)

Rule 406 has been amended by changing the term "original" to "citation" to accommodate the other proposed changes allowing the filing of the citation by electronically transmitting the citation information to the issuing authority.

f. Rule 410 (*Filing of Citation*)

Rule 410 provides the procedures when a summary case is instituted by the filing of a citation. The Comment has been revised by including as a new first paragraph the language, "Filing as used in this rule includes electronically transmitting the citation information or parking ticket information."

⁸ Paragraph (B) also is divided into subparagraphs to more clearly set forth the procedures covered by this paragraph.

⁹ This conforming change has also been added to the Comments to Rules 405 and 406.

¹⁰ Traditionally, although the rules have never required the defendant sign the citation, law enforcement officers have had the defendant sign the citation to acknowledge receipt, and a signature line has been on the citation form.

*g. Rule 411 (Procedures Following Filing of Citation—
Issuance of Summons)*

Conforming changes have been made to Rule 411 by distinguishing between cases when parking violation information is transmitted electronically and all other summary cases. These changes make it clear 1) when the parking violation information is transmitted electronically, a citation in these limited cases is not required, and 2) the rule requires the issuing authority to issue a summons when a citation is filed or parking information is filed electronically. A correlative revision has been made to the Comment emphasizing there is no citation

requirement in those cases in which parking violation information is filed electronically.

h. Rule 460 (Notice of Appeal)

Rule 460 (Notice of Appeal) has been amended by adding the language “if any” after “citation” at the end of paragraph (D)(2) to accommodate cases in which the parking violation information has been filed by electronic transmission and there is no citation, and the Comment has been revised further explaining this paragraph.

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