

# THE COURTS

## Title 201—RULES OF JUDICIAL ADMINISTRATION

[ 201 PA. CODE CH. 19 ]

**Amendment of Rule 1921 of the Rules of Judicial Administration; No. 445 Judicial Administration Doc.**

### Order

*Per Curiam*

*And Now*, this 7th day of April, 2015, *It Is Ordered* pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 1921 of the Rules of Judicial Administration is amended in the following form.

To the extent that notice of proposed rulemaking would otherwise be required by Pa.R.J.A. No. 103, the immediate promulgation of the amendment is found to be in the interests of justice and efficient administration.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b) and shall be effective immediately.

### Annex A

#### TITLE 201. RULES OF JUDICIAL ADMINISTRATION

##### CHAPTER 19. MISCELLANEOUS ADMINISTRATIVE PROVISIONS

##### CRIMINAL AND DISCIPLINARY MATTERS AGAINST JUDGES

Rule 1921. Notice to the Chief Justice **and to the Judicial Conduct Board**.

Whenever a judge receives notice that he or she is the subject of any federal or state criminal investigation or prosecution through a target letter, a subject letter, a presentment, an indictment, an arrest, a summons, a complaint, or by any other legal process, the judge must report the receipt of such notice in writing to the Chief Justice **and to the Judicial Conduct Board** within five (5) days.

[Pa.B. Doc. No. 15-764. Filed for public inspection April 24, 2015, 9:00 a.m.]

## Title 234—RULES OF CRIMINAL PROCEDURE

[ 234 PA. CODE CHS. 4 AND 10 ]

**Order Amending Rules 431, 441, 452, 456, 461 and 1033 of the Rules of Criminal Procedure; No. 462 Criminal Procedural Rules Doc.**

### Order

*Per Curiam*

*And Now*, this 10th day of April, 2015, upon the recommendation of the Criminal Procedural Rules Committee; the proposal having been published before adoption at 44 Pa.B. 577 (February 1, 2014), and in the

*Atlantic Reporter* (Third Series Advance Sheets, Vol. 81), 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 the amendments to Pennsylvania Rules of Criminal Procedure 431, 441, 452, 456, 461, and 1033 are adopted in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. No. 103(b), and shall be effective July 10, 2015.

### Annex A

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

##### PART D. Arrest Procedures in Summary Cases

##### PART D(1). Arrests With a Warrant

**Rule 431. Procedure When Defendant Arrested With Warrant.**

\* \* \* \* \*

(B) *Arrest Warrants Initiating Proceedings*

\* \* \* \* \*

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

(a) the defendant shall enter a plea; and

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

(i) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, **[ the defendant shall be given the opportunity to deposit collateral for appearance ] the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may fix the amount of collateral to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial; or**

(ii) the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged, in which event **[ the defendant shall be given the opportunity to deposit collateral for ] the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may fix the amount of collateral to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information[ ; ].**

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

(iv) **If collateral has been set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has**

been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

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

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

\* \* \* \* \*

Comment

\* \* \* \* \*

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. See also Commonwealth v. Mason, [ 507 Pa. 396, ] 490 A.2d 421 (Pa. 1985).

\* \* \* \* \*

When the police must detain a defendant pursuant to this rule, 61 P.S. § [ 798 ] 1154 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and [ city or county prisons ] county correctional institutions."

\* \* \* \* \*

Concerning the [ defendant's right to counsel and ] appearance or waiver of counsel, see Rules 121 and 122.

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

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

Committee Explanatory Reports:

\* \* \* \* \*

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

PART D(2). Arrests Without a Warrant

Rule 441. Procedure Following Arrest Without Warrant.

\* \* \* \* \*

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

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

(a) the defendant shall enter a plea.

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

(i) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, [ the defendant shall be given the opportunity to deposit collateral for ] the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may fix the amount of collateral to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial; or

(ii) the defendant's criminal record must be ascertained before trial as specifically required by statute for purposes of grading the offense charged, in which event [ the defendant shall be given the opportunity to deposit collateral for ] the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may fix the amount of collateral to be deposited to ensure the defendant's appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

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

(iv) If collateral has been set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

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

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

Comment

\* \* \* \* \*

On the [ defendant's right to counsel and ] appearance or waiver of counsel, see Rules 121 and 122.

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

For the procedure in court cases initiated by arrest without warrant, see Rule [ 518 ] 519.

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

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

When the police must detain a defendant pursuant to this rule, 61 P.S. § [ 798 ] 1154 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and [ city or county prisons ] county correctional institutions."

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

*Committee Explanatory Reports:*

\* \* \* \* \*

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

**PART E. General Procedures in Summary Cases**

**Rule 452. Collateral.**

[ (A) The issuing authority shall fix the amount of collateral, if any, to be deposited to insure a defendant's appearance at the summary trial, which amount shall not exceed the full amount of the fine and costs. ]

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

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

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

(D) If collateral is set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

(E) To be released on recognizance or to request a lower amount of collateral, the defendant must

**appear personally before the issuing authority to enter a plea, as provided in Rules 408, 413, and 423.**

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

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

**Comment**

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

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

**[ Although this rule permits an issuing authority to fix collateral in an amount up to the full amount of fine and costs the issuing authority is not required to fix collateral or any particular amount of collateral, and may set an amount less than the fine and costs. The issuing authority may also release the defendant on recognizance when the issuing authority has reasonable grounds to believe that the defendant will appear or the defendant is without adequate resources to deposit collateral. To request a lower amount of collateral or to be released on recognizance, the defendant must appear personally before the issuing authority to enter a plea, as provided in Rules 408, 413, and 423. ]**

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

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

*Committee Explanatory Reports:*

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

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

\* \* \* \* \*

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

(1) **If the hearing cannot be held immediately, the issuing authority shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will**

not appear, in which case, the issuing authority may set collateral as provided in Rule 523.

(2) If collateral is set, the issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

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

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

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

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

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

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

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

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

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

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

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

[ (D) ] (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

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Pursuant to paragraph (C), the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately, the issuing authority may set [ bail ] collateral as provided in [ Chapter 5 Part C ] Rule 523. However, the issuing authority should only set

monetary collateral when he or she has determined that less restrictive conditions of release will not be effective in ensuring the defendant's appearance.

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

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). **No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979). See also *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983) (Whenever there is a likelihood in a proceeding that imprisonment will be imposed, counsel must be assigned) and (*Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa. Cmmw. 2002) (defendant is entitled to appointed counsel when tried for violation of municipal ordinance that permits imprisonment upon default of payment of the fine). See also Rules 121 and 122 (dealing with [ the right to ] appearance or waiver of counsel).**

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

This rule contemplates that when there has been an appeal pursuant to paragraph [ (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; Comment revised September 21, 2012, effective November 1, 2012; Comment revised January 17, 2013, effective May 1, 2013; amended April 10, 2015, effective July 10, 2015.

Committee Explanatory Reports:

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

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

Rule 461. Stays.

\* \* \* \* \*

(D) Whenever the execution of sentence is stayed pursuant to this rule, the issuing authority [ may set collateral ] shall release the defendant on recognizance unless the issuing authority has reasonable grounds to believe that the defendant will not appear, in which case, the issuing authority may set collateral as provided in Rule 523.

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

(2) The issuing authority shall state in writing the reason(s) why any collateral other than release on recognizance has been set and the facts that support a determination that the defendant has the ability to pay monetary collateral.

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

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

Comment

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

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

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

Committee Explanatory Reports:

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NEW RULE 461:

\* \* \* \* \*

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

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

PART B. Philadelphia Municipal Court Traffic Division Procedures

Rule 1033. Procedures When Defendant Arrested with Warrant.

\* \* \* \* \*

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

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

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

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

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

(2) If the matter is ready to proceed,

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

Committee Explanatory Reports:

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

**FINAL REPORT<sup>1</sup>*****Amendments to Pa.Rs.Crim.P. 431, 441, 452, 456, 461, and 1033*****Incarceration for Failure to Post Summary Case Collateral**

On April 10, 2015, effective July 10, 2015, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules 431 (Procedures When Defendant Arrested with Warrant), 441 (Procedures When Defendant Arrested without Warrant), 452 (Collateral), 456 (Default Procedures: Restitution, Fines, and Costs), 461 (Stays), and 1033 (Procedures When Defendant Arrested with Warrant) to provide guidance for the setting of collateral in summary cases.

*Background*

The Committee had received a number of reports from various sources, including the Court Administrator of Pennsylvania, several magisterial district judges, and press reports, raising concerns regarding the practice of issuing authorities incarcerating summary case defendants for failure to post collateral. The two areas where these problems arose most frequently were while a defendant is awaiting summary trial or while a defendant is awaiting a payment determination hearing. Additionally, there were reported problems with incarceration resulting from collateral set during the stay period pending appeal under Rule 461. The reports suggest that this practice is increasing and has resulted in hardship for defendants in relatively minor cases, such as parking violation cases.

The Committee recognized that the increased use of incarceration for failure to post collateral results from the frustration of the courts with scofflaw defendants, both for failing to appear for summary trials and for failing to pay appropriately awarded fines and costs. Nonetheless, the Rules of Criminal Procedure have always reflected the view that summary cases, because of their relatively minor nature, are not deserving of extended imprisonment, especially when the incarceration is the result of financial obligations that the defendant may not have the financial ability to pay.

The Committee concluded that the rules should be amended to more equitably balance the interests of the courts in ensuring that a defendant meets his or her obligations with the need to avoid unduly harsh methods of enforcement. Proposed amendments to address these concerns were published for comment on January 21, 2014. *See* 44 Pa.B. 577 (February 1, 2014).

*Collateral in Pre-Disposition Summary Cases*

While the rules generally permit an issuing authority to set collateral in a summary case to the full amount of fines and costs to ensure a defendant's appearance at summary trial, the preference under the rules always has been that less restrictive alternatives, such as release on recognizance (ROR), are preferable. As the original Comment to Rule 452 (Collateral) noted, ROR release is appropriate when the issuing authority has reasonable grounds to believe that the defendant will appear for trial.

The Rule 452 Comment language expressing this policy has been moved into the rule itself to give it greater weight. Based upon publication comments, the Committee concluded that the defendant should be released on recognizance and that collateral be set only if the issuing

authority has reasonable grounds to believe that the defendant would not appear. This concept has been incorporated into new paragraph (A). The language of original paragraph (A) is now contained in paragraph (B) and provides that, where there are reasonable grounds to believe the defendant will not appear, collateral may be set.

The Committee initially considered adding language stating that the issuing authority should release the defendant if he or she is without adequate resources to deposit collateral. However, the Committee believes that this restriction should not be absolute. Instead, the Committee considered adding to the Rule 452 Comment a cross-reference to Rule 523 for the factors that the issuing authority should consider in making the determination as to whether to set collateral and, if so, what amount the collateral should be. Since these factors include "the defendant's employment status and history, and financial condition," as provided in Rule 523(A)(2), the Committee believed that this would address the defendant's ability to deposit the collateral. Based on publication responses, the Committee determined that this provision should be strengthened by making the reliance on the Rule 523 factors a mandatory provision in the rule rather than merely a cross-reference in the Comment. This provision is contained in new paragraph (C).

The Committee also concluded that the rule should include a requirement that the issuing authority state in writing their reasons why collateral has been set. This provides for a more thoughtful consideration for setting collateral. New paragraph (D) sets forth this requirement. New paragraph (E) contains the remainder of the substance of the original third paragraph of the Comment, relating to requests to modify collateral.

Similar language also has been added to Rules 431(B)(3)(b), 441(C)(1)(b) and 1033(D)(1). These rules provide the procedures when a defendant is arrested in summary cases. A defendant who has been arrested is most likely to have collateral set while awaiting trial. The three rules have been amended to provide that the defendant must be released on recognizance unless there are reasonable grounds to believe the defendant will not appear and that, if collateral is set, the issuing authority must consider the Rule 523 factors and state the reasons for setting collateral in writing.

In addition, the Committee determined that there should be a limitation placed on the length of time that a defendant can be incarcerated for failure to post collateral while awaiting summary trial. This was similar to the time limitation, described below, that has been added for the payment determination hearing. The Committee concluded that protection against excessive incarceration is even more compelling in the pre-trial situation since the defendant, unlike in the payment determination hearing situation, has not yet been convicted. As with the time limitation for payment determination hearings, the defendant shall not be incarcerated for more than 72 hours from the time the defendant was brought before the issuing authority without the summary trial being held. The amendment also provides that if the 72 hours expires on a non-business day, the trial must be held by the close of next business day, a provision based on the procedures for bench warrant hearings under Rule 150. The consequence of failing to hold the summary trial in the time-period would be that the defendant be released ROR pending trial.

<sup>1</sup> 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.

*Collateral in Payment Determination Hearing Cases*

Another problem the Committee considered was the lengthy periods of time that it takes in some cases for a payment determination hearing to be held, during which a defendant who fails to post collateral is incarcerated. The original Rule 456 Comment requires that a payment determination hearing be held "immediately." When first adopted, the Committee's assumption was that there should not be a significant delay between the defendant's arrest and the default hearing. The Committee did not place a specific time limit on when the hearing must be held because of the concern that the time limit would become the normal period for the holding of such hearings and the Committee did not want to preclude earlier hearings.

Since the reports suggest that there are often lengthy periods of delay in holding the payment determination hearing, the Committee concluded that the rule should be amended to provide more detailed requirements for the timing of the hearing. Therefore, the "held immediately" language has been moved from the Comment into the rule text. Additionally, the rule has been amended to state that, when the hearing cannot be held immediately, ROR is the preferred form of release unless there are reasonable grounds to believe the defendant will not appear. Further, the rule has been amended to place a specific outer time limit of 72 hours for when this hearing must be held. A 72-hour time limit would be consistent with the time limit for a bench warrant hearing under Rule 150.

As published, the proposal added the 72-hour time limitation for when a payment determination hearing must be held in all cases. However, one of the publication responses suggested that the issuing authority should have more flexibility in scheduling the hearing when the defendant is not incarcerated since often the issuing authority will work with the defendant in dealing with default in payments. Therefore, the rule has been amended to apply the time limitations only to the situation where the defendant was incarcerated and the only consequence for failing to meet the limitation is release of the defendant ROR.

A requirement to consider the Rule 523 factors in setting collateral also has been added to Rule 456 similar to those added to Rules 431, 441, 452, and 1033. Rule 456 also has been amended to include the requirement that the issuing authority state in writing why collateral other than ROR has been set. This requirement is intended to encourage the issuing authority to engage in a more thoughtful analysis of the form of release.

Finally, the Committee concluded that current Rule 456 did not make it clear that the same procedures related to collateral that are followed after the issuance of a notice of payment hearing should be followed when a warrant is issued. Therefore, the rule has been amended to include a new paragraph (D) clarifying that the procedures apply both "when a defendant appears pursuant to the notice in paragraph (B) or pursuant to an arrest warrant issued for failure to respond to the notice as provided in paragraph (C)."

The Committee also considered whether the rules should address the issue of the right to counsel for payment determination hearings. Initially, the Committee believed that this question was more amenable to definition by case law. However, following publication, the Committee reconsidered this question. The Committee concluded that counsel should be afforded to a defendant

at a payment determination hearing when there was a likelihood of incarceration. The Committee agreed that the rules should provide some guidance on this question. Therefore, a cross-reference to the general case law concerning the right to counsel cases has been added to the Rule 456 Comment. In addition to the seminal right to counsel cases of *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Scott v. Illinois*, 440 U.S. 367 (1979), the Comment includes cross-reference to two additional cases. The first case is *Commonwealth v. Farmer*, 466 A.2d 677 (Pa. Super. 1983), that held that a defendant was improperly incarcerated because she was not afforded counsel at an "informal" proceeding following her arrest for failing to respond to traffic citations at which she indicated she would not be able to pay any money towards the fines. The other case is *Commonwealth v. Spontarelli*, 791 A.2d 1254 (Pa.Cmmw. 2002) that held that the defendant had the right to counsel in a summary trial for violation of a municipal ordinance where the default on payment of a fine could result in incarceration. While neither of these cases is directly on point, the Committee believes they are sufficiently analogous to the situation of a defendant facing incarceration for failure to pay a summary fine to be instructional.

Additionally, the original Rule 456 Comment contained the language, "See also Rules 121 and 122 (dealing with the right to counsel)." The Committee concluded that this was a misleading statement since neither of those rules deal with the right to counsel but rather provide for the appointment and waiver of counsel. The Comment language has been revised to provide a correct description. Similar corrections have been made to the Rule 431 and 441 Comments.

*Incarceration during the Stay Period Pending Appeal*

The Committee also considered the situation when the defendant has been sentenced to imprisonment and then is ordered to post bail/collateral during the automatic stay period for the appeal pursuant to Rule 461. Although the report that prompted the Committee's consideration of this issue concerned appeals from a sentence of imprisonment following a payment determination hearing, it is also a concern in cases involving the automatic stay provisions following summary trial.

In some cases, when the defendant is unable to post this collateral, he or she is incarcerated for the entire period of the stay. As a result, it appears that the defendants in some cases are being incarcerated for periods longer than the period for which they have been sentenced. The Committee concluded that there is no reason why a defendant should be held for a longer period than the original sentence pending the appeal. Even with that correction however, this process renders the right to appeal and its associated stay moot. The defendant may win the appeal, by, for example, being found to have not been able to pay, but has still served the period of incarceration.

The Committee also noted that similar concerns apply when a defendant is sentenced to pay fines and costs. During the 30-day time period the defendant has to take an appeal, the rule permits the magisterial district judge to collect the fines and costs. If the defendant files an appeal, the stay provisions apply and the rule provides for collateral to be imposed. The Committee concluded that the same principles for setting collateral should be applied to these situations as well.

Furthermore, when the stay provisions of Rule 461 were adopted, the Committee did not consider that it

would be a regular practice to incarcerate a defendant pending such an appeal and the stay provision contemplates that the defendant would remain at liberty pending the appeal. However, the Committee recognized that there may be the occasional case in which assurances of the defendant's presence would be necessary. Therefore, the amendments do not contain a complete prohibition of setting collateral at this stage. However, to ensure that there is a demonstrated rationale for setting collateral in these situations, the Rule 461(D) provision that permits the setting of collateral has been amended to require the issuing authority to state in writing why collateral other than ROR has been set. As with the other proposed amendments, a requirement to consider the factors in Rule 523 for setting bail must be used as a model in determining whether and what amount of collateral should be set. Additionally, the factors to be considered also include the length of the potential sentence. Finally, an explicit statement has been added to the rule that a period of incarceration due to a failure to post collateral shall not exceed the original sentence of imprisonment.

[Pa.B. Doc. No. 15-765. Filed for public inspection April 24, 2015, 9:00 a.m.]

## Title 25—LOCAL COURT RULES

### FAYETTE COUNTY

#### Local Rule 1915.2 and Local Rule 1915.3; No. 632 of 2015 GD

##### Order

*And Now*, this 2nd day of April, 2015, pursuant to Rule 239 of the Pennsylvania Rules of Civil Procedure, it is hereby ordered that Local Rules 1915.2 and 1915.3 are amended as set forth in the following.

The Prothonotary is directed as follows:

- (1) One certified copy of the Local Rule shall be filed with the Administrative Office of Pennsylvania Courts.
- (2) Two certified copies and diskette of the Local Rule shall be distributed to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
- (3) One certified copy of the Local Rule shall be sent to the State Domestic Relations Procedural Rules Committee.
- (4) One certified copy shall be sent to the Fayette County Law Library.
- (5) One certified copy shall be sent to the Editor of the *Fayette Legal Journal*.

This Local Rule shall be continuously available for public inspection and copying in the Office of the Prothonotary. Upon request and payment of reasonable costs of reproduction and mailing, the Prothonotary shall furnish to any person a copy of any local rule.

This Local Rule shall be effective 30 days after the date of publication in the *Pennsylvania Bulletin*.

*By the Court*

JOHN F. WAGNER, Jr.,  
*President Judge*

PENNSYLVANIA BULLETIN, VOL. 45, NO. 17, APRIL 25, 2015

#### Rule 1915.2. Procedure.

a. A party who is requesting a child custody mediation conference must file, after filing an appropriate complaint/petition, with the Prothonotary a "Request to Schedule Child Custody Mediation" form, along with the \$100.00 filing fee, in accordance with F.C.R. 1915.3. The requesting party must also serve on the Administrative Office of Fayette County Courts a copy of the Request for Child Custody Mediation Conference, along with a copy of the receipt for the filing fee. The Administrative Office of Fayette County Courts shall refer the request form to Child Custody Services and a mediation conference shall be scheduled. All parties must attend this child custody mediation conference unless excused by the child custody mediator/hearing officer. Children shall not attend the conference, unless directed by the Court or directed by the Child Custody Mediator/Hearing Officer.

b. The child custody mediator/hearing officer shall conduct the conference as an informational and conciliatory proceeding. Upon the filing of any complaint, petition, or motion, relating to child custody, partial custody or visitation, the parties are required to attend at least one session of a child custody education program, the cost of which may be assessed against a party or parties, unless the court waives the requirement upon petition filed for good cause shown. A defaulting party may be subject to sanctions by the Court. The child custody mediator/hearing officer may require the parties to attend additional sessions of a child custody program and shall monitor attendance.

c. Attorneys and pro se litigants shall adhere to the custody instructions and shall specifically use the forms which accompany those instructions that are available in the Fayette County Law Library or on the website at [www.co.fayette.pa.us/ChildCustody](http://www.co.fayette.pa.us/ChildCustody).

#### Rule 1915.3. Fees and Costs.

Upon the filing of any complaint, petition, or motion relating to child custody, partial custody, visitation, or contempt, where there is at the time of filing no agreed-upon Order disposing of the issues, the moving party shall file and serve a Request to Schedule Child Custody Mediation and pay to the Prothonotary (in addition to any other required fees), a non-refundable conciliation fee in the amount of One Hundred (\$100.00) Dollars, or shall file to proceed in forma pauperis with Court approval in accordance with Pa.R.C.P. No. 240. Attorneys and pro se litigants shall adhere to the instructions and shall specifically use the form which accompanies the instructions to proceed in forma pauperis that are available in the Fayette County Law Library or on the website at [www.co.fayette.pa.us/CourtAdmin](http://www.co.fayette.pa.us/CourtAdmin).

[Pa.B. Doc. No. 15-766. Filed for public inspection April 24, 2015, 9:00 a.m.]

### YORK COUNTY

#### Local Rule of Judicial Administration 4009; AD 18 2015; 6715-0601; 2015-MI-000056-55

#### Administrative Order Adopting York County Local Rule of Judicial Administration 4009

*And Now*, this 1st day of April, 2015, it is *Ordered* that the following York County Local Rule of Judicial Administration 4009 is hereby adopted in the Court of Common Pleas of York County, Pennsylvania, effective June 1, 2015.



Any part of any Administrative Order which is in conflict with any portion of this Rule is vacated and repealed.

The District Court Administrator shall distribute and publish this Order and the following Rule to:

(a) Administrative Office of Pennsylvania Courts, and the Pennsylvania Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*, in accordance with the requirements of Pa.R.J.A. No. 103(c);

(b) Judges of this Court;

(c) York County Bar Association for publication in the *York Legal Record*;

(d) York County Department of Human Resources and York County Controller;

(e) Chief Court Reporter and Teamsters Union Steward for the Court Reporters' collective bargaining unit.

*By the Court*

STEPHEN P. LINEBAUGH,  
*President Judge*

**YCJA 4009. Fees Payable to the Court Reporter or Transcriptionist.**

The Court shall, by separate administrative order, periodically establish a schedule of fees to be paid to court reporters and transcriptionists as required by Pa.R.J.A. No. 4009.

[Pa.B. Doc. No. 15-767. Filed for public inspection April 24, 2015, 9:00 a.m.]

## DISCIPLINARY BOARD OF THE SUPREME COURT

### Notice of Administrative Suspension

Notice is hereby given that the following attorneys have been Administratively Suspended by Order of the Supreme Court of Pennsylvania dated March 10, 2015, pursuant to Rule 111(b) Pa.R.C.L.E., which requires that every active lawyer shall annually complete, during the compliance period for which he or she is assigned, the continuing legal education required by the Continuing Legal Education Board. The Order became effective April 9, 2015 for Compliance Group 2.

Notice with respect to attorneys having Pennsylvania registration addresses, which have been transferred to inactive status by said Order, was published in the appropriate county legal journal.

BELL, HARRIET I.  
Houston, TX

BOUNDAS, JOHN THEODORE  
Houston, TX

BROWN, MARIANNE REBEL  
Glassboro, NJ

COSTELLO, CHRISTOPHER F.  
Burlington, NJ

DEMERS, DAVID JAMES  
New Albany, OH

DOCKEN, ANDREW WILLIAM  
Attleboro, MA

DUGAN, MICHAEL J.  
Simsbury, CT

FANTT, MICHELE AVIS  
Washington, DC

FORNIAS, III, EDWARD J.  
Wilmington, DE

FUHRER, ROBERT ANDREW  
Herndon, VA

GUY, SHALONDA LAKAY  
Tucson, AZ

HUGHES, JR., WILLIAM JOHN  
Atlantic City, NJ

JACKSON-WOODS, CATHERINE  
Collingswood, NJ

KARSON, III, MILES K.  
Washington, DC

KELLY, III, THOMAS PATRICK  
Westampton, NJ

KERN, CHRISTOPHER JOSEPH  
Cherry Hill, NJ

MASCIO, DAVID ANTHONY  
Weirton, WV

McGEE, KEVIN LEO  
Moorestown, NJ

MORE, JOSEPH M.  
Kissimmee, FL

MURDACO, JAMES RICHARD  
Runnemede, NJ

OMOLOYIN, ESTHER FOLAKE  
Ewing, NJ

POE, DAVE LOUIS  
Frisco, TX

PRIDGEN, LAKEMA N.  
Alexandria, VA

QUINSEY, CARMEN DENISE  
Carolina, Puerto Rico

ROAZEN, MATTHEW DANIEL  
New York, NY

ROSENBERG, KENNETH W.  
Arlington, VA

SCHMID, KRISTA AYN  
Medford, NJ

STEVENS, WALTER S.  
Vista, CA

SWITZER, LINDSAY SCARBOROUGH  
Atlantic City, NJ

WENGER, III, DAVID EARL  
Boardman, OH

YAN, DAVID  
New York, NY

SUZANNE E. PRICE,  
*Attorney Registrar*  
*The Disciplinary Board of the*  
*Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 15-768. Filed for public inspection April 24, 2015, 9:00 a.m.]

**Notice of Disbarment**

Notice is hereby given that Gilbert Baber having been disbarred from the practice of law in the District of Columbia by Opinion and Order of the District of Columbia Court of Appeals dated January 15, 2015, the Supreme Court of Pennsylvania issued an Order on April 14, 2015, disbaring Gilbert Baber from the Bar of this Commonwealth, effective May 14, 2015. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary of the Board  
 The Disciplinary Board of the  
 Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 15-769. Filed for public inspection April 24, 2015, 9:00 a.m.]

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**Notice of Disbarment**

Notice is hereby given that Alan Scott Gregory (# 46214), having been disbarred from the practice of law in the District of Columbia by Order of the District of Columbia Court of Appeals filed January 8, 2015, the Supreme Court of Pennsylvania issued an Order on April 6, 2015, disbaring Alan Scott Gregory from the Bar of this Commonwealth, effective May 6, 2015. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted

attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary of the Board  
 The Disciplinary Board of the  
 Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 15-770. Filed for public inspection April 24, 2015, 9:00 a.m.]

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**Notice of Disbarment**

Notice is hereby given that Gregory Scott Weisman (# 78068), having been disbarred by Order of the Supreme Court of New York, Appellate Division, First Judicial Department, filed November 20, 2014, the Supreme Court of Pennsylvania issued an Order on April 7, 2015, disbaring Gregory Scott Weisman from the Bar of this Commonwealth, effective May 7, 2015. In accordance with Rule 217(f), Pa.R.D.E., since this formerly admitted attorney resides outside of the Commonwealth of Pennsylvania, this notice is published in the *Pennsylvania Bulletin*.

ELAINE M. BIXLER,  
*Secretary of the Board  
 The Disciplinary Board of the  
 Supreme Court of Pennsylvania*

[Pa.B. Doc. No. 15-771. Filed for public inspection April 24, 2015, 9:00 a.m.]

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