RULE 509. USE OF SUMMONS OR WARRANT OF ARREST IN COURT CASES.

If a complaint charges an offense that is a court case, the issuing authority with whom it is filed shall:

(1) issue a summons and not a warrant of arrest in cases in which the most serious offense charged is a misdemeanor of the second degree or a misdemeanor of the first degree in cases arising under 75 Pa.C.S. § 3802, except as set forth in paragraph (2);

(2) issue a warrant of arrest when:

(a) one or more of the offenses charged is a felony or murder; or

(b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons; or

(c) the issuing authority has reasonable grounds for believing that the defendant poses a threat of physical harm to any other person or to himself or herself; or

(d) the summons **was mailed pursuant to Rule 511(A) and** has been returned undelivered**;** or

[(e) a summons has been served and disobeyed by a defendant; or]

[(f)] (e) the identity of the defendant is unknown; or

(3) issue a summons or a warrant of arrest, within the issuing authority's discretion, when the offense charged does not fall within any of the categories specified in paragraphs (1) or (2).

COMMENT: This rule provides for the mandatory use of a summons instead of a warrant in court cases except in the special circumstances enumerated in paragraphs (2) and (3).

Before a warrant may be issued pursuant to paragraph (2) (d) when a summons is returned undelivered, the summons must have been served **upon the defendant by both first class mail and certified mail, return receipt requested** as provided in Rule 511(A), and both the certified mail and the first class mail must have been returned undelivered.

“Undelivered” includes a return receipt that is signed by someone other than the defendant.

Pursuant to Rule 511, a return receipt signed by the defendant or a notation on the transcript that the first class mailing was not returned within 20 days is proof that the defendant received notice of the summons for purposes of paragraph (2)(d). *See also* Rule 543(D)(1).

When a defendant has been released pursuant to Rule 519(B), the issuing authority must issue a summons.

See Rule 1003 (Procedure in Non-Summary Municipal Court Cases), paragraph (C), for the procedures for issuing a summons and a warrant in Philadelphia.

It is expected when a case meets the requirements for the issuance of a summons, the police officer will proceed during the normal business hours of the proper issuing authority except in extraordinary circumstances. *See* Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

The procedure in paragraph (3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, *etc*. However, in all cases in which the defendant has been released pursuant to Rule 519(B), a summons shall be issued.

NOTE: Original Rule 108 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 108 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 102 and amended September 18, 1973, effective January 1, 1974; amended December 14, 1979, effective April 1, 1980; *Comment* revised April 24, 1981, effective July 1, 1981; amended October 22, 1981, effective January 1, 1982; renumbered

Rule 109 and amended August 9, 1994, effective January 1, 1995; renumbered Rule 509 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 24, 2004, effective August 1, 2005; amended June 30, 2005, effective August 1, 2006 **[.]** **; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

Final Report explaining the August 24, 2004 Comment revision adding a new second paragraph elaborating on paragraph (2)(c) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the June 30, 2005 amendments concerning in which cases a summons or a warrant are issued published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the May 1, 2007 amendments amending paragraph (2)(d) and the Comment and deleting paragraph (2)(e) published with the Court's Order at 37 Pa.B. (, 2007).

RULE 510. CONTENTS OF SUMMONS; NOTICE OF PRELIMINARY HEARING.

(A) Every summons in a court case shall command the defendant to appear before the issuing authority for a preliminary hearing at the place and on the date and at the time stated on the summons. The date set for the preliminary hearing shall be not less than 20 days from the date of mailing the summons unless the issuing authority fixes an earlier date upon the request of the defendant or the defendant's attorney with the consent of the affiant.

(B) The summons shall give notice to the defendant:

(1) of the right to secure counsel of the defendant's choice and, for those who are without financial resources, of the right to assigned counsel in accordance with Rule 122;

(2) that bail will be set at the preliminary hearing; and

(3) that if the defendant fails to appear on the date, and at the time and place specified on the summons, the case will proceed in the defendant's absence, and a **bench** warrant will be issued for the defendant's arrest.

(C) A copy of the complaint shall be attached to the summons.

COMMENT: For the summons procedures in non-summary cases in the Municipal Court of Philadelphia, see Rule 1003(C).

When a defendant appears for a preliminary hearing pursuant to a summons under this rule and is held for court, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. It is suggested that these processing procedures be made a condition of bail or release. *See* Criminal History Record Information Act, 18 Pa.C.S. § 9112.

See Rule 511 for service of the summons and proof of service.

See Rule 543(D) for the procedures when a defendant fails to appear for the preliminary hearing.

For the consequences of defects in a summons in a court

case, see Rule 109.

NOTE: Original Rule 109 **[,]** adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 109 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 110 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended August 9, 1994, effective January 1, 1995; renumbered Rule 510 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005 **[.]** **; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

Final Report explaining the August 24, 2004 amendments concerning notice that case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments paragraph (B)(3) published with the Court's Order at 37 Pa.B. (, 2007).

RULE 511. SERVICE OF SUMMONS; PROOF OF SERVICE.

(A) The summons shall be served upon the defendant by both first class mail and certified mail, return receipt requested. A copy of the complaint shall be served with the summons.

(B) Proof of service of the summons by mail shall include:

(1) a return receipt signed by the defendant; or

(2) **the returned summons showing that the certified mail was not signed by the defendant and a notation on the transcript that the first class mailing of the summons was not returned to the issuing authority within 20 days after the mailing.**

[if the certified mail is returned for whatever reason, the returned summons with the notation that the certified mail was undelivered and evidence that the first class mailing of the summons was not returned to the issuing authority within 15 days after mailing.]

COMMENT: This rule was amended in 2004 to require that the summons be served by both first class mail and certified mail, return receipt requested.

Paragraph (B) sets forth what constitutes proof of service of the summons by mail in a court case for purposes of these rules.

NOTE: Original Rule 111, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 111 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 112 September 18, 1973, effective January 1, 1974; renumbered Rule 511 March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005 **[.]** **; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the August 24, 2004 amendments adding new paragraph (B) concerning proof of service published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments amending paragraph (B)(2) concerning proof of service published with the Court's Order at 37 Pa.B. (, 2007).

RULE 512. PROCEDURE IN COURT CASES FOLLOWING ISSUANCE OF SUMMONS.

The defendant shall appear before the issuing authority for a preliminary hearing on the date, and at the time and place specified in the summons. If the defendant fails to appear, the issuing authority shall **[issue a warrant for the arrest of the defendant and]** proceed as provided in Rule 543(D).

COMMENT: For the proper time for the preliminary hearing, see Rule 510.

When a defendant appears for a preliminary hearing pursuant to a summons and is held for court, the issuing authority should require that the defendant submit to administrative processing and identification procedures (fingerprinting, for example) as authorized by law. It is recommended that this requirement be made a condition of bail or release. *See* Criminal History Record Information Act, 18 Pa.C.S. § 9112.

For the procedures in non-summary cases in the Municipal Court, see Chapter **[1000]** **10**.

NOTE: Rule 113 adopted September 18, 1973, effective January 1, 1974; amended August 9, 1994, effective January 1, 1995; renumbered Rule 512 and *Comment* revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005 **[.]** **; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30

Pa.B. ***1478 (March 18, 2000)***.

Final Report explaining the August 24, 2004 amendments cross-referencing Rule 543(D) published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments deleting the warrant language published with the Court's Order at 37 Pa.B. (_____, 2007).

RULE 536. PROCEDURES UPON VIOLATION OF CONDITIONS: REVOCATION OF RELEASE AND FORFEITURE; BAIL PIECES; EXONERATION OF SURETY.

(A) SANCTIONS

(1) *Revocation of Release*

(a) A person who violates a condition of the bail bond is subject to a revocation of release and/or a change in the conditions of the bail bond by the bail authority.

(b) When a violation of a condition occurs, the bail authority may issue a bench warrant for the defendant's arrest. When the bench warrant is executed, the bench warrant proceedings shall be conducted pursuant to Rule 150.

(c) The bail authority also may order the defendant or the defendant's surety to explain why the defendant's release should not be revoked or why the conditions of release should not be changed. A copy of the order shall be served on the defendant and the defendant's surety, if any.

(d) When the bail authority changes the conditions of the bail bond and/or revokes the defendant's release, the bail authority shall state in writing or on the record the reasons for so doing.

(2) *Forfeiture*

(a) When a monetary condition of release has been imposed and the defendant has violated a condition of the bail bond, the bail authority may order the cash or other security forfeited and shall state in writing or on the record the reasons for so doing.

(b) Written notice of the forfeiture shall be given to the defendant and any surety, either personally or by both first class and certified mail at the defendant's and the surety's last known addresses.

(c) The forfeiture shall not be executed until 20 days after notice of the forfeiture order.

(d) The bail authority may direct that a forfeiture be set aside or remitted if justice does not require the full enforcement of the forfeiture order.

(e) When a magisterial district judge orders bail forfeited pursuant to this rule, the magisterial district judge shall generate a check in the amount of the bail monies he or she has on deposit in the case, and shall send the check and a copy of the docket transcript to the clerk of courts for processing and disbursement as provided by law.

(B) BAIL PIECES

(1) A surety or bail agency may apply to the court for a bail piece.

(2) If the court is satisfied that a bail piece is required, it may issue a bail piece authorizing the surety or bail agency to apprehend and detain the defendant, and to bring the defendant before the bail authority without unnecessary delay.

(C) EXONERATION

(1) A bail authority, in his or her discretion, may exonerate a surety who deposits cash in the amount of any forfeiture ordered or who surrenders the defendant in a timely manner.

(2) When the conditions of the bail bond have been satisfied, or the forfeiture has been set aside or remitted, the bail authority shall exonerate the obligors and release any bail.

COMMENT: This rule does not apply when a defendant has been arrested pursuant to extradition proceedings. *See generally* Uniform Criminal Extradition Act, 42 Pa.C.S. §§ 9121-9148, and particularly Section 9139 concerning forfeiture proceedings in such cases. *See also* the Crimes Code, 18 Pa.C.S. § 5124, which imposes criminal sanctions for failing to appear in a criminal case when required.

Paragraph (A)(1)(b) was amended and paragraph (A)(1)(d) was deleted in 2005 to make it clear that a warrant for the arrest of the defendant for failure to comply with a condition of bail is a bench warrant. For the procedures when a paragraph (A)(1)(b) bench warrant is executed, see Rule 150 (Bench Warrants). **For the**

procedures for issuing a bench warrant when a defendant fails to appear for a preliminary hearing, see paragraph (D) of Rule 543 (Disposition of Case at Preliminary Hearing).

Once bail has been modified by a common pleas judge pursuant to Rule 529, only the common pleas judge subsequently may change the conditions of release, even in cases that are pending before a magisterial district judge. *See* Rules 543 and 529.

Whenever the bail authority is a judicial officer in a court not of record, pursuant to paragraph (A)(2)(a), that officer should set forth in writing his or her reasons for ordering a forfeiture, and the written reasons should be included with the transcript.

Paragraph (A)(2)(c) provides an automatic 20-day stay on the execution of the forfeiture to give the surety time to produce the defendant or the defendant time to appear and comply with the conditions of bail.

"Conditions of the bail bond" as used in this rule include the conditions set forth in Rule 526(A) and the conditions of release defined in Rules 524, 527, and 528.

NOTE: Former Rule 4016 adopted July 23, 1973, effective 60 days hence, replacing prior Rule 4012; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rule 4016. Present Rule 4016 adopted September 13, 1995, effective January 1, 1996. The January 1, 1996 effective dates extended to April 1, 1996; the April 1, 1996 effective dates extended to July 1, 1996; renumbered Rule 536 and *Comment* revised March 1, 2000, effective April 1, 2001; amended March 2, 2004, effective July 1, 2004; *Comment* revised August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006 **[.]** **; *Comment* revised May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).

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

Final Report explaining the March 3, 2004 rule changes deleting "show cause" published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the August 24, 2004 Comment revision published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the December 30, 2005 amendments concerning bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the May 1, 2007 Comment revision concerning bench warrants following a failure to appear at a preliminary hearing published with the Court's Order at 37 Pa.B. (_____, 2007).

RULE 542. PRELIMINARY HEARING; CONTINUANCES.

(A) The attorney for the Commonwealth may appear at a preliminary hearing and:

(1) assume charge of the prosecution; and

(2) recommend to the issuing authority that the defendant be discharged or bound over to court according to law.

(B) When no attorney appears on behalf of the Commonwealth at a preliminary hearing, the affiant may be permitted to ask questions of any witness who testifies.

(C) The defendant shall be present at any preliminary hearing except as provided in these rules, and may:

(1) be represented by counsel;

(2) cross-examine witnesses and inspect physical evidence offered against the defendant;

(3) call witnesses on the defendant's behalf, other than witnesses to the defendant's good reputation only;

(4) offer evidence on the defendant's own behalf, and testify; and

(5) make written notes of the proceedings, or have counsel do so, or make a stenographic, mechanical, or electronic record of the proceedings.

(D) In any case in which a summary offense is joined with a misdemeanor, felony, or murder charge, the issuing authority shall not proceed on the summary offense except as provided in Rule 543(F).

(E) CONTINUANCES

(1) The issuing authority may, for cause shown, grant a continuance and shall note on the transcript every continuance together with:

(a) the grounds for granting each continuance;

(b) the identity of the party requesting such continuance; and

(c) the new date and time for the preliminary hearing, and the reasons that the particular date was chosen.

(2) The issuing authority shall give notice of the new date and time for the preliminary hearing to the defendant, the defendant's attorney of record, if any, and the attorney for the Commonwealth.

(a) The notice shall be in writing.

(b) Notice shall be served on the defendant either in person or by **[both]** first class mail **[and certified mail, return receipt requested]**.

(c) Notice shall be served on defendant's attorney of record and the attorney for the Commonwealth either by personal delivery, or by leaving a copy for or mailing a copy to the attorneys at the attorneys' offices.

COMMENT: As the judicial officer presiding at the preliminary hearing, the issuing authority controls the conduct of the preliminary hearing generally. When an attorney appears on behalf of the Commonwealth, the prosecution of the case is under the control of that attorney. When no attorney appears at the preliminary hearing on behalf of the Commonwealth, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Paragraph (C)(3) is intended to make clear that the defendant may call witnesses at a preliminary hearing only to negate the existence of a *prima facie* case, and not merely for the purpose of discovering the Commonwealth's case. The modification changes the language of the rule interpreted by the Court in *Commonwealth v. Mullen*, 460 Pa. 336, 333 A.2d 755 (1975). This amendment was made to preserve the limited function of a preliminary hearing.

Former paragraph (D) concerning the procedures when a *prima facie* case is found was deleted in 2004 as unnecessary because the same procedures are set forth in Rule 543 (Disposition of Case at Preliminary Hearing).

For the procedures when a defendant fails to appear for the preliminary hearing, see Rule 543(D).

[The proof of service by mail on the defendant of the notice of the continued preliminary hearing is comparable to proof of service under Rule 511(B), and must include :]

> **[(1) a return receipt signed by the defendant, or**
>
> **[(2) if the certified mail is returned for whatever reason, the returned notice with the notation that the certified mail was undelivered and evidence that the first class mailing of the notice was not returned to the issuing authority within 15 days after mailing.]**

In cases in which summary offenses are joined with misdemeanor, felony, or murder charges, pursuant to paragraph (D), during the preliminary hearing, the issuing authority is prohibited from proceeding on the summary offenses, including the taking of evidence on the summary offenses, or adjudicating or disposing of the summary offenses except as provided in Rule 543(F).

For the contents of the transcript, see Rule 135.

NOTE: Former Rule 141, previously Rule 120, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered Rule 141 and amended September 18, 1973, effective January 1, 1974; amended June 30, 1975, effective July 30, 1975; amended October 21, 1977, effective January 1, 1978; paragraph (D) amended April 26, 1979, effective July 1, 1979; amended February 13, 1998, effective July 1, 1998; rescinded October 8, 1999, effective January 1, 2000. Former Rule 142, previously Rule 124, adopted June 30, 1964, effective January 1, 1965, suspended effective May 1, 1970; present rule adopted January 31, 1970, effective May 1, 1970; renumbered Rule 142 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; effective date extended to July 1, 1982; amended July 12, 1985, effective January 1, 1986, effective date extended to July 1, 1986; rescinded October 8, 1999,

effective January 1, 2000. New Rule 141, combining former Rules 141 and 142, adopted October 8, 1999, effective January 1, 2000; renumbered Rule 542 and *Comment* revised March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended March 9, 2006, effective September 1, 2006 **[.]** **; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining new Rule 141 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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

Final Report explaining the August 24, 2004 amendments concerning notice published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the March 9, 2006 amendments to paragraph (D) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 1, 2007 amendments deleting the certified mail service requirement from paragraph (D)(2)(b) published with the Court's Order at 37 Pa.B. (, 2007).

RULE 543. DISPOSITION OF CASE AT PRELIMINARY HEARING.

(A) At the conclusion of the preliminary hearing, the decision of the issuing authority shall be publicly pronounced.

(B) If the Commonwealth establishes a *prima facie* case of the defendant's guilt, the issuing authority shall hold the defendant for court. Otherwise, the defendant shall be discharged.

(C) When the defendant **has appeared and** has been held for court, the issuing authority shall:

(1) set bail as permitted by law if the defendant did not receive a preliminary arraignment; or

(2) continue the existing bail order, unless the issuing authority modifies the order as permitted by Rule 529.

(D) In any case in which the defendant fails to appear for the preliminary hearing:

(1) if the issuing authority finds that the defendant did not receive notice **of the preliminary hearing by a summons served pursuant to Rule 511, a warrant of arrest shall be issued pursuant to Rule 509(2)(d).** **[, or]**

(2) If the issuing authority finds that there was good cause explaining the defendant's failure to appear, the issuing authority shall continue the preliminary hearing to a specific date and time, and shall give notice of the new date and time as provided in Rule 542**[(D)](E)**(2). **The issuing authority shall not issue a bench warrant.**

[(2)] **(3)** If the issuing authority finds that the defendant's absence is without good cause and after notice, the absence shall be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority. **[In these cases, the issuing authority shall:]**

(a) **In these cases, the issuing authority shall** proceed with the case in the same manner as though the defendant were present **[;]** **.**

(b) **[if]** **If** the preliminary hearing is conducted **[,]** **and the case held for court, the issuing authority shall**

(i) give the defendant notice by first class mail of the results of the preliminary hearing **and that a bench warrant has been requested**; and

[c] <u>(ii)</u> [if the case is held for court or the preliminary hearing is continued, issue a warrant for the arrest of the defendant] <u>pursuant to Rule 547, transmit the transcript to the clerk of courts with a request that a bench warrant be issued by the court of common pleas.</u>

<u>(c) If the preliminary hearing is conducted and the case is dismissed, the issuing authority shall give the defendant notice by first class mail of the results of the preliminary hearing.</u>

<u>(d) If a continuance is granted, the issuing authority shall give the parties notice of the new date and time as provided in Rule 542(E)(2), and may issue a bench warrant. If a bench warrant is issued and the warrant remains unserved for the continuation of the preliminary hearing, the issuing authority shall vacate the bench warrant. The case shall proceed as provided in paragraphs (D)(3)(b) or (c).</u>

[(3) When the issuing authority issues a bench warrant pursuant to paragraph (D)(2)(c), the issuing authority retains jurisdiction to dispose of the warrant until:

(a) the arraignment occurs; or

(b) the defendant fails to appear for the arraignment and the common pleas judge issues a bench warrant for the defendant.

Upon receipt of notice that the arraignment has occurred or a bench warrant has been issued, the issuing authority promptly shall recall and cancel the issuing authority's bench warrant.]

(E) If the Commonwealth does not establish a *prima facie* case of the defendant's guilt, and no application for a continuance is made and there is no reason for a continuance, the issuing authority shall dismiss the complaint.

(F) In any case in which a summary offense is joined with misdemeanor, felony, or murder charges:

(1) If the Commonwealth establishes a *prima facie* case pursuant to paragraph (B), the issuing authority shall not adjudicate or dispose of the summary offenses, but shall forward the summary offenses to the court of common pleas with the charges held for court.

(2) If the Commonwealth does not establish a *prima facie* case pursuant to paragraph (B), upon the request of the Commonwealth, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

(3) If the Commonwealth withdraws all the misdemeanor, felony, and murder charges, the issuing authority shall dispose of the summary offense as provided in Rule 454 (Trial In Summary Cases).

COMMENT: Paragraph (C) reflects the fact that a bail determination will already have been made at the preliminary arraignment, except in those cases in which, pursuant to a summons, the defendant's first appearance is at the preliminary hearing. *See* Rules 509 and 510.

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. *See* Rule 571.

When a defendant fails to appear for the preliminary hearing, before proceeding with the case as provided in paragraph (D), the issuing authority must determine (1) whether the defendant received notice of the time, date, and place of the preliminary hearing either in person at a preliminary arraignment as provided in Rule 540(F)(2) or in a summons served as provided in Rule 511, and (2) whether the defendant had good cause explaining the absence.

If the issuing authority determines that the defendant did not receive notice**, the issuing authority must issue an arrest warrant as provided in Rule 509, and the case will proceed pursuant to Rules 516 or 517. [or]** ***See*** **paragraph (D)(1).**

If the issuing authority determines that there is good cause explaining why the defendant failed to appear, the preliminary hearing must be continued and rescheduled for a date certain. *See* paragraph (D)**[(1)] (2)**. For the procedures when a preliminary hearing is continued, see Rule 542(E).

If the issuing authority determines that the defendant received **service of the summons as defined in Rule 511 [notice]** and has not provided good cause explaining why he or she failed to appear, the defendant's absence constitutes a waiver of the defendant's right to be present for subsequent proceedings before the issuing authority. The duration of this waiver only extends through those proceedings that the defendant is absent.

When the defendant fails to appear after notice and without good cause, paragraph (D)**[(2)]** **(3)**(a) provides that the case is to proceed in the same manner as if the defendant were present. The issuing authority either would proceed with the preliminary hearing as provided in Rule 542(A), (B), (C) and Rule 543(A), (B), **[and]** (C)**, and (D)(3)(b) or (c)**; or, if the issuing authority determines it necessary, continue the case to a date certain as provided in Rule 542(E); or, in the appropriate case, convene the preliminary hearing for the taking of testimony of the witnesses who are present, and then continue the remainder of the hearing until a date certain. When the case is continued, the issuing authority **may issue a bench warrant as provided in paragraph (D)(3)(d), and** **[still should]** **must** send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)**[(2)][(c)]** **(3)(b)(ii)** requires the issuing authority to **include with the Rule 547 transmittal a request that the court of common pleas** issue a bench warrant if the case is held for court **[or when the preliminary hearing is continued]**.

In addition to the paragraph (D)(3)(b) notice requirements, the notice may include the date of the arraignment in common pleas court.

[Pursuant to paragraph (D)(3), the defendant must be taken before the issuing authority for resolution of the bench warrant, counsel, and bail in those cases in which a defendant is apprehended on the issuing authority's bench warrant prior to the arraignment or the issuance of a common pleas judge's bench warrant. *See* Rule 150

for the procedures in a court case after a bench warrant is executed.]

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

See Rule 571 (Arraignment) for notice of arraignment requirements.

Rule 542(D) specifically prohibits an issuing authority at a preliminary hearing from proceeding on any summary offenses that are joined with misdemeanor, felony, or murder charges, except as provided in paragraph (F) of this rule. Paragraph (F) sets forth the procedures for the issuing authority to handle these summary offenses at the preliminary hearing. These procedures include the issuing authority (1) forwarding the summary offenses together with the misdemeanor, felony, or murder charges held for court to the court of common pleas, or (2) disposing of the summary offenses as provided in Rule 454 by accepting a guilty plea or conducting a trial whenever (a) the misdemeanor, felony, and murder charges are withdrawn, or (b) a *prima facie* case is not established at the preliminary hearing and the Commonwealth requests that the issuing authority proceed on the summary offenses.

Under paragraph (F)(2), in those cases in which the Commonwealth does not intend to refile the misdemeanor, felony, or murder charges, the Commonwealth may request that the issuing authority dispose of the summary offenses. In these cases, if all the parties are ready to proceed, the issuing authority should conduct the summary trial at that time. If the parties are not prepared to proceed with the summary trial, the issuing authority should grant a continuance and set the summary trial for a date and time certain.

In those cases in which a *prima facie* case is not established at the preliminary hearing, and the Commonwealth does not request that the issuing authority proceed on the summary offenses, the issuing authority should dismiss the complaint, and discharge the defendant unless there are outstanding detainers against

the defendant that would prevent the defendant's release.

Nothing in this rule would preclude the refiling of one or more of the charges, as provided in these rules.

See Rule 313 for the disposition of any summary offenses joined with misdemeanor or felony charges when the defendant is accepted into an ARD program on the misdemeanor or felony charges.

See Rule 1003 (Procedure in Non-Summary Municipal Court Cases) for the preliminary hearing procedures in Municipal Court.

NOTE: Original Rule 123, adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970. New Rule 123 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 143 September 18, 1973, effective January 1, 1974; amended January 28, 1983, effective July 1, 1983; amended August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; renumbered Rule 142 October 8, 1999, effective January 1, 2000; renumbered Rule 543 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended December 30, 2005, effective August 1, 2006; amended March 9, 2006, effective September 1, 2006 **[.]** **;** **amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

Final Report explaining the September 13, 1995 amendments

published with the Court's Order at 25 Pa.B. 4116 (September 30, 1995).

Final Report explaining the October 8, 1999 renumbering of Rule 143 published with the Court's Order at 29 Pa.B. 5509 (October 23, 1999).

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

Final Report explaining the August 24, 2004 changes concerning the procedures when a defendant fails to appear published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the December 30, 2005 changes adding references to bench warrants published with the Court's Order at 36 Pa.B. 184 (January 14, 2006).

Final Report explaining the March 9, 2006 amendments adding new paragraphs (E) and (F) published with the Court's Order at 36 Pa.B. 1392 (March 25, 2006).

Final Report explaining the May 19, 2006 amendments correcting cross-references to Rule 529 published with the Court's Order at 36 Pa.B. 2633 (June 3, 2006).

Final Report explaining the May 1, 2007 changes clarifying the procedures when a defendant fails to appear published with the Court's Order at 37 Pa.B. (, 2007).

RULE 547. RETURN OF TRANSCRIPT AND ORIGINAL PAPERS.

(A) When a defendant is held for court, the issuing authority shall prepare a transcript of the proceedings. The transcript shall contain all the information required by these rules to be recorded on the transcript. It shall be signed by the issuing authority, and have affixed to it the issuing authority's seal of office.

(B) The issuing authority shall transmit the transcript to the clerk of the proper court within 5 days after holding the defendant for court.

(C) In addition to this transcript the issuing authority shall also transmit the following items:

(1) the original complaint;

(2) the summons or the warrant of arrest and its return;

(3) all affidavits filed in the proceeding; **[and]**

(4) the appearance or bail bond for the defendant, if any, or a copy of the order committing the defendant to custody **[.]** **; and**

(5) a request for the court of common pleas to issue a bench warrant as required in Rule 543(D)(3)(b).

COMMENT: *See* Rule 135 for the general contents of the transcript. There are a number of other rules that require certain things to be recorded on the transcript to make a record of the proceedings before the issuing authority. *See, e.g.*, Rules 542 and 543.

When the case is held for court pursuant to Rule 543(D)(3), the issuing authority must include with the transcript transmittal a request for the court of common pleas to issue a bench warrant.

NOTE: Formerly Rule 126, adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970; revised January 31, 1970; effective May 1, 1970; renumbered Rule 146 and amended September 18, 1973, effective January 1, 1974; amended October 22, 1982, effective January 1, 1982; amended July

12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 547 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005 **[.]** **; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the August 24, 2004 changes published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 amendments concerning the request for a bench warrant published with the Court's Order at 37 Pa.B. (, 2007).

PART E

[INFORMATIONS]

PROCEDURES FOLLOWING A CASE HELD FOR COURT

[This is an entirely new rule.]

RULE 559. REQUEST FOR BENCH WARRANT.

In any case held for court following a preliminary hearing conducted in the defendant's absence pursuant to Rule 543(D), upon receipt of a request by the issuing authority for the common pleas court to issue a bench warrant, the court promptly shall act upon the request.

COMMENT: For the requirement that the issuing authority request a bench warrant from the court of common pleas in cases in which the defendant has failed to appear for the preliminary hearing, see Rule 543(D)(3)(b)(i) and (ii). *See also* Rule 547(C)(5) that requires the issuing authority to transmit the request for a bench warrant with the transcript of the proceedings before the issuing authority.

NOTE: Adopted May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 559 published with the Court's Order at 37 Pa.B. (, 2007).

RULE 571. ARRAIGNMENT.

(A) Except as otherwise provided in paragraph (D), arraignment shall be in such form and manner as provided by local court rule. Notice of arraignment shall be given to the defendant as provided in Rule 114 or by first class mail. Unless otherwise provided by local court rule, or postponed by the court for cause shown, arraignment shall take place no later than 10 days after the information has been filed.

(B) In the discretion of the court, the arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When the counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the arraignment.

(C) At arraignment, the defendant shall be advised of:

(1) the right to be represented by counsel;

(2) the nature of the charges contained in the information; and

(3) the right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed.

If the defendant or counsel has not received a copy of the information(s) pursuant to Rule 562, a copy thereof shall be provided.

(D) A defendant may waive appearance at arraignment if the following requirements are met:

(1) the defendant is represented by counsel of record and counsel concurs in the waiver; and

(2) the defendant and counsel sign and file with the clerk of courts a waiver of appearance at arraignment that acknowledges the defendant:

(a) understands the nature of the charges;

(b) understands the rights and requirements contained in paragraph (C) of this rule; and

(c) waives his or her right to appear for arraignment.

[(E) At the conclusion of the arraignment, or after the common pleas judge issues a bench warrant because the defendant fails to appear for the

arraignment, in cases held for court following a preliminary hearing in the defendant's absence, the clerk of courts promptly shall notify the issuing authority that the arraignment has occurred or a bench warrant has been issued.]

COMMENT: The main purposes of arraignment are: to ensure that the defendant is advised of the charges; to have counsel enter an appearance, or if the defendant has no counsel, to consider the defendant's right to counsel; and to commence the period of time within which to initiate pretrial discovery and to file other motions. Although the specific form of the arraignment is not prescribed by this rule, judicial districts are required to ensure that the purposes of arraignments are accomplished in all court cases.

Concerning the waiver of counsel, see Rule 121.

Nothing in this rule is intended to preclude judicial districts from providing written notice of the arraignment to the defendant at the conclusion of the preliminary hearing when a case is held for court. *See* Rule 543.

Under paragraph (A), in addition to other instances of "cause shown" for delaying the arraignment, the arraignment may be delayed when the defendant is unavailable for arraignment within the 10-day period after the information is filed.

Within the meaning of paragraph (B), counsel is present when physically with the defendant or with the judicial officer presiding over the arraignment.

Under paragraph (B), the court has discretion to order that a defendant appear in person for the arraignment.

Under paragraph (B), two-way simultaneous audio-visual communication is a form of advanced communication technology.

Paragraph (D) is intended to facilitate, for defendants represented by counsel, waiver of appearance at arraignment through procedures such as arraignment by mail. For the procedures to provide notice of court

proceedings requiring the defendant's presence, see Rule 114.

[In cases that are held for court following a preliminary hearing in the defendant's absence, paragraph (E) requires that, following the arraignment or the issuance of a bench warrant, the clerk of courts must inform the issuing authority in the most expedient manner, such as by telephone, or by facsimile or electronic transmission. In addition, the clerk should complete and return the notification form provided by the issuing authority. *See* Rule 543(D) (Disposition of Case at Preliminary Hearing).]

NOTE: Formerly Rule 317, adopted June 30, 1964, effective January 1, 1965; paragraph (b) amended November 22, 1971, effective immediately; paragraphs (a) and (b) amended and paragraph (e) deleted November 29, 1972, effective 10 days hence; paragraphs (a) and (c) amended February 15, 1974, effective immediately. Rule 317 renumbered Rule 303 and amended June 29, 1977, amended and paragraphs (c) and (d) deleted October 21, 1977, and amended November 22, 1977, all effective as to cases in which the indictment or information is filed on or after January 1, 1978; *Comment* revised January 28, 1983, effective July 1, 1983; amended October 21, 1983, effective January 1, 1984; amended August 12, 1993, effective September 1, 1993; rescinded May 1, 1995, effective July 1, 1995, and replaced by new Rule 303. New Rule 303 adopted May 1, 1995, effective July 1, 1995; renumbered Rule 571 and amended March 1, 2000, effective April 1, 2001; amended November 17, 2000, effective January 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 3, 2004, effective July 1, 2004; amended August 24, 2004, effective August 1, 2005 **[.]** **; amended May 1, 2007, effective September 4, 2007, and May 1, 2007 Order amended May 15, 2007.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 12, 1993 amendments published at 22 Pa.B. 3826 (July 25, 1992).

Final Report explaining the May 1, 1995 changes published with the Court's Order at 25 Pa.B. 1944 (May 20, 1995).

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

Final Report explaining the November 17, 2000 amendments concerning a defendant's waiver of appearance at arraignment published with the Court's Order at 30 Pa.B. 6184 (December 2, 2000).

Final Report explaining the May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa.B. 2591 (May 25, 2002).

Final Report explaining the March 3, 2004 amendments updating the cross-references correlative to the March 2, 2004 changes to the motions rules published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the August 24, 2004 addition of paragraph (E) and the correlative Comment provisions published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the May 1, 2007 deletion of paragraph (E) and the correlative Comment provisions published with the Court's Order at 37 Pa.B. (, 2007).