

RULE 109. DEFECTS IN FORM, CONTENT, OR PROCEDURE.

A defendant shall not be discharged nor shall a case be dismissed because of a defect in the form or content of a complaint, citation, summons, or warrant, or a defect in the procedures of these rules, unless the defendant raises the defect before the conclusion of the trial in a summary case or before the conclusion of the preliminary hearing in a court case, and the defect is prejudicial to the rights of the defendant.

COMMENT: This rule combines and replaces former Rules 90 and 150.

This rule clarifies when a defendant should be discharged or a case dismissed because of a defect; it eliminates disputes as to what is an informal defect or a substantive defect. As a condition of relief regardless of whether the defect is in form, content, or procedure, the court or issuing authority must determine that there is actual prejudice to the rights of the defendant.

A complaint, citation, summons, or warrant may be amended at any time so as to remedy any defect in form or content that is not prejudicial to the rights of the defendant. Nothing in this rule shall prevent the filing of a new complaint or citation and the reissuance of process. Any new complaint or citation must be filed within the time permitted by the applicable statute of limitations.

Ordinarily, if a defendant does not raise a defect at the summary trial or before the conclusion of the preliminary hearing, the defendant cannot thereafter raise the defect as grounds for dismissal or discharge at a later stage in the proceedings. See *Commonwealth v. Krall*, **452 Pa. 215**, 304 A.2d 488 ([Pa.] 1973). In a summary case, however, the provisions of this rule do not preclude a defendant from raising a defect for the first time after the summary trial when the interests of justice require it, as for example, when the defendant was not represented by counsel during the proceedings before the district justice or when the defendant could not reasonably have discovered the defect until after the conclusion of the summary trial.

Any defect properly raised under this rule shall be specifically described on the docket by the issuing authority. See Pa.R.Crim.P. 135.

If the issuing authority determines that a defect is prejudicial, it is intended that the decision recorded on the docket pursuant to Rule 135(B)[~~(12)~~ **(13)**] shall be "discharge of the defendant" or "dismissal of the case," rather than "not guilty."

NOTE: Former Rule 90 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 109. Former Rule 150, formed from former Rule 114 (Informal Defects), and former Rule 115 (Substantive Defects), both adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; both revised January 31, 1970, effective May 1, 1970; combined, renumbered Rule 150 and amended September 18, 1973, effective January 1, 1974; amended April 8, 1982, effective July 1, 1982, *Comment* revised July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; rescinded March 1, 2000, effective April 1, 2001, and replaced by Rule 109. New Rule 109 adopted March 1, 2000, effective April 1, 2001[.]; **Comment revised July 10, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules, and the provisions of Rule 109, published with the Court's Order at 30 Pa.B. 1477 (March 18, 2000).

Final Report explaining the July 10, 2008 revisions to the Comment related to the cross-reference to Rule 135, published with the Court's Order at 38 Pa.B. (, 2008).

RULE 135. TRANSCRIPT OF PROCEEDINGS BEFORE ISSUING AUTHORITY.

(A) The issuing authority shall prepare and forward to the court of common pleas a transcript of the proceedings in all summary cases when an appeal is taken and in all court cases when the defendant is held for court.

(B) The transcript shall contain the following information, where applicable:

- (1) the date and place of hearings;
- (2) the names and addresses of the prosecutor, defendant, and witnesses;
- (3) the names and office addresses of counsel in the proceeding;
- (4) the charge against the defendant as set forth in the prosecutor's complaint;
- (5) the date of issuance of any citation, summons, or warrant of arrest and the return of service thereon;
- (6) a statement whether the parties and witnesses were sworn and which of these persons testified;
- (7) when the defendant was held for court the amount of bail set;
- (8) the nature of the bail posted and the name and address of the corporate surety or individual surety;
- (9) a notation that the defendant has or has not been fingerprinted;**

[(9)] (10) a specific description of any defect properly raised in accordance with Rule 109;

[(10)] (11) a notation that the defendant was advised of the right to apply for the assignment of counsel;

[(11)] (12) the defendant's plea **[or] of** guilty or not guilty, the decision that was rendered in the case and the date thereof, and the judgment of sentence and place of confinement, if any;

[(12)] (13) any other information required by the rules to be in the issuing authority's transcript.

COMMENT: The requirement of a docket was deleted from this rule in 1985 because dockets are now routinely maintained under the supervision of the Administrative Office of Pennsylvania Courts. It is expected that issuing authorities will continue to keep dockets of criminal proceedings. The transcript requirements presuppose an accurate docket to supply the information necessary to prepare **[an] a** transcript.

The procedures regarding the filing of a transcript after appeal in summary cases are set forth in Rule 460(C) and (D). For such procedures after the defendant is held for court in a court case, see Rule 547. With regard to other information required by the rules to be in the transcript, see, *e.g.*, Rule 542.

The requirement that there be a notation indicating whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is to alert the district attorney and the court whether it is necessary to have the defendant fingerprinted after the case is held for court.

NOTE: Formerly Rule 125 adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970, revised January 31, 1970, effective May 1, 1970; renumbered Rule 26 and subparagraphs (b)(5) and (b)(10) amended September 18, 1973, effective January 1, 1974; subparagraph (b)(10) amended April 8, 1982, effective July 1, 1982; previous subparagraph (b)(7) deleted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 135 and amended March 1, 2000, effective April 1, 2001 **[.] ; amended July 10, 2008, effective February 1, 2009.**

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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. 1477 (March 18, 2000).

Final Report explaining the July 10, 2008 amendment adding new paragraph (9) requiring a notation of fingerprinting published with the Court's Order at 38 Pa.B. (_____, 2008).

RULE 504. CONTENTS OF COMPLAINT.

Every complaint shall contain:

- (1) the name of the affiant;
- (2) the name and address of the defendant, or if unknown, a description of the defendant as nearly as may be;
- (3) a direct accusation to the best of the affiant's knowledge, or information and belief, that the defendant violated the penal laws of the Commonwealth of Pennsylvania;
- (4) the date when the offense is alleged to have been committed; provided, however:
 - (a) if the specific date is unknown, or if the offense is a continuing one, it shall be sufficient to state that it was committed on or about any date within the period of limitations; and
 - (b) if the date or day of the week is an essential element of the offense charged, such date or day must be specifically set forth;
- (5) the place where the offense is alleged to have been committed;
- (6)
 - (a) in a court case, a summary of the facts sufficient to advise the defendant of the nature of the offense charged, but neither the evidence nor the statute allegedly violated need be cited in the complaint. However, a citation of the statute allegedly violated, by itself, shall not be sufficient for compliance with this subsection; or
 - (b) in a summary case, a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;
- (7) a statement that the acts of the defendant were against the peace and dignity of the Commonwealth of Pennsylvania or in violation of an ordinance of a political subdivision;
- (8) a notation if criminal laboratory services are requested in the case;

(9) a notation that the defendant has or has not been fingerprinted;

[(9)] (10) a request for the issuance of a warrant of arrest or a summons, unless an arrest has already been effected;

[(10)] (11) a verification by the affiant that the facts set forth in the complaint are true and correct to the affiant's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities; and

[(11)] (12) the signature of the affiant and the date of the execution of the complaint.

COMMENT: This rule sets forth the required contents of all complaints whether the affiant is a law enforcement officer, a police officer, or a private citizen. When the affiant is a private citizen, the complaint must be submitted to an attorney for the Commonwealth for approval. See Rule 506. When the district attorney elects to proceed under Rule 507 (Approval of Police Complaints and Arrest Warrant Affidavits by Attorney for the Commonwealth - **Local Option**), the police officer must likewise submit the complaint for approval by an attorney for the Commonwealth.

Ordinarily, whenever a misdemeanor, felony, or murder is charged, any summary offense in such a case, if known at the time, should be charged in the same complaint, and the case should proceed as a court case under Chapter 5 Part B. See *Commonwealth v. Cauffman*, 541 Pa. 299, 662 A.2d 1050 (1995) and *Commonwealth v. Campana*, 455 Pa. 622, 304 A.2d 432 ([Pa.] 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 454 Pa. 233, 314 A.2d 854 (1974) (compulsory joinder rule). In judicial districts in which there is a traffic court established pursuant to 42 Pa.C.S. §§ 1301-1342, when a summary motor vehicle offense within the jurisdiction of the traffic court arises in the same criminal episode as another summary offense or a misdemeanor, felony, or murder offense, see 42 Pa.C.S. § 1302 and *Commonwealth v. Masterson*, 275 Pa.Super. 166, 418 A.2d 664 (1980).

Paragraph (8) requires the affiant who prepares the complaint to indicate on the complaint whether criminal laboratory services are requested in the case. This information is necessary to alert the magisterial district judge, the district attorney, and the court that the defendant in the case may be liable for a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 that requires a defendant to be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

The requirement that the affiant who prepares the complaint indicate whether the defendant has been fingerprinted as required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, is included so that the issuing authority knows whether it is necessary to issue a fingerprint order with the summons as required by Rule 510.

NOTE: Original Rule 104 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 104 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 132 September 18, 1973, effective January 1, 1974; amended October 22, 1981, effective January 1, 1982; amended November 9, 1984, effective January 2, 1985; amended July 25, 1994, effective January 1, 1995; renumbered Rule 104 and *Comment* revised August 9, 1994, effective January 1, 1995; renumbered Rule 504 and *Comment* revised March 1, 2000, effective April 1, 2001; *Comment* revised March 9, 2006, effective September 1, 2006 [.]; **amended July 10, 2008, effective February 1, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the July 25, 1994 amendment published with Court's Order at 24 Pa.B. 4068 (August 13, 1994).

Report explaining the August 9, 1994 Comment revisions 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 March 9, 2006 Comment revision published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).

Final Report explaining the July 10, 2008 amendments adding new paragraph (9) requiring a notation concerning fingerprinting published with the Court's Order at 38 Pa.B. (, 2008).

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.]

(C) The following items shall be attached to the summons:

(1) a copy of the complaint; and

(2) an order directing the defendant to submit to fingerprinting in all cases in which the defendant has not been fingerprinted, except cases initiated by private complaint.

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.]

When a case proceeds by summons, the issuing authority also must issue an order requiring the defendant to submit to the administrative processing and identification procedures as authorized by law (such as fingerprinting) that ordinarily occur following an arrest.

Paragraph (C)(2), added in 2008, requires that the fingerprint order be sent to the defendant with the summons. The purpose of this change is to ensure that the fingerprinting process in summons cases is completed. See the Criminal History Record Information Act, 18 Pa.C.S. § 9112.

The requirement in paragraph (C)(2) that a fingerprint order be attached to the summons does not apply to cases that have been initiated by private complaint or cases in which the defendant has been processed for fingerprinting and other identification procedures prior to being released pursuant to Rule 519.

If a defendant has not complied with the fingerprint order by the time of the preliminary hearing, the issuing authority must make compliance a condition of release on bail.

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 [.]; **amended July 10, 2008, effective February 1, 2009.**

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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 to paragraph (B)(3) published with the Court's Order at 37 Pa.B. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraph (C) concerning the fingerprint order published with the Court's Order at 38 Pa.B. (_____, 2008).

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 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.]

When a case proceeds by summons, the issuing authority must require that the defendant submit to the administrative processing and identification procedures as authorized by law (such as fingerprinting) that ordinarily occur following an arrest. See, e.g., Criminal History Record Information Act, 18 Pa.C.S. § 9112. If these processing procedures are not completed by the time of the preliminary hearing, they must be made a condition of bail or release. Concerning fingerprinting, see Rule 510(C)(2) that requires the issuing authority to send the fingerprint order with the summons.

For the procedures in non-summary cases in the Municipal Court, see Chapter 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 [.] ; Comment revised July 10, 2008, effective February 1, 2009.

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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. 5016 (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. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 Comment revisions concerning administrative processing and identification procedures published with the Court's Order at 38 Pa.B. (_____ , 2008).

RULE 527. NONMONETARY CONDITIONS OF RELEASE ON BAIL.

(A) When the bail authority determines that, in addition to the conditions of the bail bond required in every case pursuant to Rule 526(A), nonmonetary conditions of release on bail are necessary, the categories of nonmonetary conditions that the bail authority may impose are:

- (1) reporting requirements;
- (2) restrictions on the defendant's travel; and/or
- (3) any other appropriate conditions designed to ensure the defendant's appearance and compliance with the conditions of the bail bond.

(B) The bail authority shall state with specificity on the bail bond any nonmonetary conditions imposed pursuant to this rule.

COMMENT: When the bail authority determines that, in addition to the conditions of the bail bond set forth in Rule 526(A), it is necessary to impose nonmonetary conditions of release on bail in order to reasonably ensure the defendant's appearance and compliance, the bail authority should consider what the specific circumstances are that relate to the likelihood that the defendant will appear and comply and should tailor the conditions of release for the defendant's specific circumstances. In addition, the bail authority must determine whether the conditions being considered are reasonably capable of being enforced.

Section 2711 of the Crimes Code, 18 Pa.C.S. § 2711, requires that in domestic violence cases, if the bail authority determines that the defendant poses a threat of danger to the victim, he or she must impose the additional conditions of bail that the defendant "refrain from entering the residence or household of the victim or the victim's place of employment," and that the defendant "refrain from committing any further criminal conduct against the victim."

The bail authority should clearly state on the bail bond all conditions of release in specific detail.

The bail authority should consider any reasonable suggestions for nonmonetary conditions of release on bail in an effort to establish what would be the most suitable conditions for a particular defendant. It would be appropriate in some circumstances for the defendant and counsel to offer suggestions about types of conditions that would help the defendant appear and comply with the conditions of the bail bond.

The following sets forth a few examples of conditions that might be imposed to address specific situations. In some circumstances, a combination of such conditions might also be considered. This is not intended to be an exhaustive list of appropriate conditions.

(1) When, for example, the defendant lacks family supervision, is very young, or has recently moved into the community, the bail authority could require that the defendant report by phone or in person at specified times to a designated probation department or bail agency, or that the defendant be supervised by a designated probation department or bail agency, or a designated person or private organization. The supervisor would maintain close contact with the defendant, assist the defendant in making arrangements to appear in court, and, if appropriate, accompany the defendant to court. However, the designated individual, organization, probation department, or bail agency would not be a surety for the defendant unless specifically so designated by the bail authority. It might also be helpful to require that the defendant maintain employment or continue an educational program.

(2) When, for example, the defendant is known to have an alcohol or a drug problem, the bail authority could require that the defendant submit to drug or alcohol testing. The bail authority could also require that the defendant refrain from excessive use of alcoholic beverages or from any use of illegal drugs.

(3) When, for example, the defendant has a history of failing to appear or failing to comply with the conditions of the bail bond, the bail authority might consider restricting the defendant to his or her residence or a supervised halfway house, and permitting the defendant to leave the residence or halfway house to work or attend school, or require that the defendant comply with a curfew.

(4) There may be cases in which the defendant and counsel should suggest to the bail authority that an appropriate condition of release on bail would be to require that the defendant undergo counseling and/or treatment, for example, when the defendant has a history of mental illness or drug or alcohol addiction.

(5) There may be cases when the relationship between the defendant and another person is such that the bail authority might require that the defendant refrain from contact with that other person.

(6) When a case proceeds by summons, the issuing authority must require that the defendant submit to required administrative processing and identification procedures, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. §9112, that ordinarily occur following an arrest. Rule 510(C)(2) requires an order directing the defendant to be fingerprinted be issued with the summons. If the defendant has not completed fingerprinting by the date of the preliminary hearing, completion of these processing procedures must be made a condition of release.

NOTE: Former Rule 4006 adopted July 23, 1973, effective 60 days hence, replacing prior Rules 4008 and 4010; amended January 28, 1983, effective July 1, 1983; rescinded September 13, 1995, effective January 1, 1996, and replaced by Rules 524 and 528. Present Rule 4006

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 527 and amended March 1, 2000,
effective April 1, 2001 [.] ; **Comment revised July 10, 2008,
effective February 1, 2009.**

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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 July 10, 2008 Comment revisions adding
paragraph (6) concerning administrative processing and
identification procedures published with the Court's Order at 38
Pa.B. (, 2008).**

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(A) [.] ; **and**

(3) if the defendant has not submitted to the administrative processing and identification procedures as authorized by law, such as fingerprinting pursuant to Rule 510(C)(2), make compliance with these processing procedures a condition of bail.

(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).

(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(E)(2). The issuing authority shall not issue a bench warrant.

(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.

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

(b) 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
- (ii) 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 **and, if the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), with a notice to the court of common pleas of the defendant's noncompliance.**

(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.

(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).

(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.

If the administrative processing and identification procedures as authorized by law, such as fingerprinting required by the Criminal History Record Information Act, 18 Pa.C.S. § 9112, that ordinarily occur following an arrest are not completed previously, when bail is set at the conclusion of the preliminary hearing, the issuing authority must order the defendant to submit to the administrative processing and identification procedures as a condition of bail. See Rule 527 for nonmonetary conditions of release on bail.

If a case initiated by summons is held for court after the preliminary hearing is conducted in the defendant's absence pursuant to paragraph (D)(2) and the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2), the issuing authority must include with the transmittal of the transcript a notice to the court of common pleas that the defendant has not complied with the fingerprint order. See Rule 547.

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. 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)(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 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)(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), (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 must send the required notice of the new date to the defendant, thus providing the defendant with another opportunity to appear.

Paragraph (D)(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.

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

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 [.] ; **amended July 10, 2008, effective February 1, 2009.**

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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. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraphs (C) and (D)(2)(c) concerning administrative processing and

identification procedures published with the Court's Order at 38 Pa.B. (, 2008).

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;
- (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) **[.] ; and**

(6) notice informing the court of common pleas that the defendant has failed to comply with the fingerprint order as required in Rule 543(D)(3)(b)(ii).

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.

When the case is held for court pursuant to Rule 543(D)(3)(b)(ii), the issuing authority must include with the transcript transmittal a notice to the court of common pleas that the defendant has not complied with the fingerprint order issued pursuant to Rule 510(C)(2). The court of common pleas must take whatever actions deemed appropriate to address this non-compliance.

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 [.] ; **amended July 10, 2008, effective February 1, 2009.**

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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. 2496 (June 2, 2007).

Final Report explaining the July 10, 2008 amendments to paragraph (C)(6) concerning the fingerprint order published at 37 Pa.B. (_____, 2007).