

**SUPREME COURT OF PENNSYLVANIA  
CRIMINAL PROCEDURAL RULES COMMITTEE  
NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.Rs.Crim.P. 135, 460, and 547**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rules 135 (Transcript of Proceedings before Issuing Authority), 460 (Notice of Appeal), and 547 (Return of Transcript and Original Papers) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **no later than Friday, October 30, 2020**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

*September 14, 2020*

*BY THE CRIMINAL PROCEDURAL RULES  
COMMITTEE:*

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*Margherita Patti-Worthington  
Chair*

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;
- (10) a specific description of any defect properly raised in accordance with Rule 109;
- (11) a notation that the defendant was advised of the right to apply for the assignment of counsel;
- (12) the defendant's plea 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;
- (13) any other information required by the rules to be in the issuing authority's transcript.

**(D) Electronic Forwarding of the Transcript**

**(1) The president judge may order the transcript and any associated documents to be electronically scanned and forwarded to the clerk of courts in an electronic format in lieu of forwarding the physical paper transcript and associated documents.**

**(2) The electronically scanned transcript and associated documents shall constitute the original documents for purposes of these rules.**

**(3) The issuing authority shall retain the physical paper transcript and associate documents as may be required by rule of court or records retention policies.**

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 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 [.]; **amended \_\_\_\_\_, 2020, effective \_\_\_\_\_, 2020.**

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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).**

**Report explaining the proposed amendments regarding the electronic transfer of the transcript published for comment at 50 Pa.B. ( \_\_\_\_\_, 2020).**

RULE 460. NOTICE OF APPEAL.

(A) When an appeal is authorized by law in a summary proceeding, including an appeal following a prosecution for violation of a municipal ordinance that provides for imprisonment upon conviction or upon failure to pay a fine, an appeal shall be perfected by filing a notice of appeal within 30 days after the entry of the guilty plea, the conviction, or other final order from which the appeal is taken. The notice of appeal shall be filed with the clerk of courts.

(B) The notice of appeal shall contain the following information:

- (1) the name and address of the appellant;
- (2) the name and address of the issuing authority who accepted the guilty plea or heard the case;
- (3) the magisterial district number in which the case was heard;
- (4) the name and mailing address of the affiant as shown on the complaint or citation;
- (5) the date of the entry of the guilty plea, the conviction, or other final order from which the appeal is taken;
- (6) the offense(s) of which convicted or to which a guilty plea was entered, if any;
- (7) the sentence imposed, and if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;
- (8) the type or amount of bail or collateral, if any, furnished to the issuing authority;
- (9) the name and address of the attorney, if any, filing the notice of appeal; and
- (10) except when the appeal is from a guilty plea or a conviction, the grounds relied upon for appeal.

(C) Within 5 days after filing the notice of appeal, a copy shall be served either personally or by mail by the clerk of courts upon the issuing authority, the affiant, and the appellee or appellee's attorney, if any.

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

- (1) the transcript of the proceedings;
- (2) the original complaint or citation, if any;
- (3) the summons or warrant of arrest, if any; and
- (4) the bail bond, if any.

(E) **Electronic Forwarding of the Transcript**

**(1) The president judge may order the transcript and any associated documents to be electronically scanned and forwarded to the clerk of courts in an electronic format in lieu of forwarding the physical paper transcript and associated documents.**

**(2) The electronically scanned transcript and associated documents shall constitute the original documents for purposes of these rules.**

**(3) The issuing authority shall retain the physical paper transcript and associate documents as may be required by rule of court or records retention policies.**

**[(E)] (F)** This rule shall provide the exclusive means of appealing from a summary guilty plea or conviction. Courts of common pleas shall not issue writs of *certiorari* in such cases.

**[(F)] (G)** This rule shall not apply to appeals from contempt adjudications.

COMMENT: This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

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

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea.

Appeals from contempt adjudications are governed by Rule 141.

The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

See Rule 461 for the procedures for executing a sentence of imprisonment when there is a stay.

"Entry," as used in this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 456, the matter must be heard *de novo* by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

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

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

See Rule 462(F) regarding the retention of a case at the court of common pleas when a petition to file an appeal *nunc pro tunc* has been denied.

*Certiorari* was abolished by the Criminal Rules in 1973 pursuant to Article V Schedule Section 26 of the Constitution

of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this Schedule section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The abolition of *certiorari* continues with this rule.

NOTE: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; amended March 3, 2000, effective July 1, 2000; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460 adopted March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003; *Comment* revised February 28, 2003, effective July 1, 2003; *Comment* revised December 29, 2017, effective April 1, 2018 [.] ; **amended \_\_\_\_\_, 2020, effective \_\_\_\_\_, 2020.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Former Rule 86:**

**Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).**

**Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).**

**Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).**

**Final Report explaining the October 1, 1997 amendments to former Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997.)**

**Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order 30 Pa.B. 1509 (March 18, 2002).**

New Rule 460:

**Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 460 published at 30 Pa.B. 1478 (March 18, 2000).**

**Final Report explaining the February 6, 2003 changes concerning electronically transmitted parking citations published at 33 Pa.B. 969 (February 22, 2003).**

**Final Report explaining the February 28, 2003 Comment revision cross-referencing Rule 461 published with the Court's Order at 33 Pa.B. 1324 (March 15, 2003).**

**Final Report explaining the December 29, 2017 Comment revision cross-referencing Rule 462(F) published with the Court's Order at 48 Pa.B. ( , 2018).**

**Report explaining the proposed amendments regarding the electronic transfer of the transcript published for comment at 50 Pa.B. ( , 2020).**

## RULE 547. RETURN OF TRANSCRIPT AND ORIGINAL PAPERS.

(A) When a defendant is held for court, or after the issuing authority receives notice that the case will be presented to the indicting grand jury and closes out the case, 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 or after closing out the case upon receipt of the notice that the case will be presented to the indicting grand jury.

(C) In addition to this transcript the issuing authority also shall 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;
- (5) a request for the court of common pleas to issue a bench warrant as required in Rule 543(D)(3)(b);
- (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); and
- (7) a copy of the notice that the case will be presented to the indicting grand jury.

### **(D) Electronic Forwarding of the Transcript**

**(1) The president judge may order the transcript and any associated documents to be electronically scanned and forwarded to the clerk of courts in an electronic format in lieu of forwarding the physical paper transcript and associated documents.**

**(2) The electronically scanned transcript and associated documents shall constitute the original documents for purposes of these rules.**

**(3) The issuing authority shall retain the physical paper transcript and associate documents as may be required by rule of court or records retention policies.**

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). See Rule 543(D)(3)(b)(ii). The court of common pleas must take whatever actions deemed appropriate to address this non-compliance.

See Chapter 5 Part E for the procedures governing indicting grand juries. Pursuant to Rule 556.2(A)(3), the judge is required to notify the issuing authority that the case will be presented to the indicting grand jury. Pursuant to Rule 556.11(A), upon receipt of the notice, the issuing authority is required to close out the case in his or her office, and forward it to the court of common pleas for all further proceedings. When the case is transmitted to the court of common pleas, the clerk of courts should associate the transcript and other documents transmitted by the issuing authority with the motion and order filed pursuant to Rule 556.2(A)(5).

When arrest warrant information has been sealed pursuant to Rule 513.1, the arrest warrant information already will have been filed with the clerk of courts. When the case is transmitted to the court of common pleas, the clerk of courts should associate the transcript and other documents transmitted by the issuing authority with the original file created for the sealing procedure.

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, 1981, 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; amended June 21, 2012, effective in 180 days; amended December 23, 2013, effective March 1, 2014 [.] ; **amended**  
**, 2020, effective** , **2020.**

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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 38 **Pa.B.** 3971 (July 26, 2008).

**Final Report** explaining June 21, 2012 amendments to paragraph (A) and adding paragraph (C)(7) concerning indicting grand juries published with the Court's Order at 42 **Pa.B.** 4140 (July 7, 2012).

**Final Report** explaining the December 23, 2013 Comment revisions concerning sealed arrest warrant documents published with the Court's Order at 44 **Pa.B.** 239 (January 11, 2014).

**Report explaining the proposed amendments regarding the**

**electronic transfer of the transcript published for comment at 50  
Pa.B. ( , 2020).**

## REPORT

### *Proposed Amendment of Pa.Rs.Crim.P. 135, 460, and 547*

#### ELECTRONIC TRANSFER OF RECORDS FROM MAGISTERIAL DISTRICT JUDGE COURT TO COMMON PLEAS COURT

The Committee recently examined a question regarding the forwarding of original case records from the minor courts to clerk of courts' offices. Currently, the rules require the physical documents to be transferred from one office to another. With the increased use of technology for the electronic filing of documents, the question was whether this physical transfer is necessary.

The Magisterial District Judge System (MDJS) currently provides scanning capabilities, through the Electronic Records Management System ("ERMS"), to all magisterial district judge (MDJ) offices throughout the Commonwealth. MDJs are capturing images of documents filed in their courts that potentially could be used to transfer the required documents solely by electronic means. The rules currently do not contemplate such an exclusively electronic transfer.

This question had been examined by the Committee while the original electronic filing rules were being developed. At the time, the Committee concluded that, because electronic filing as a whole was new, it would be best to continue to require paper documents to be retained in the case file and to continue the physical sending of these papers to mark the transfer of the case from the MDJ court to the common pleas court. It was felt that the retention of this long-established practice would avoid any confusion during the process of transfer.

Electronic filing rules have been in place for several years now, with considerable success and popularity. There is a growing interest in many courts to "go paperless" and the technology has advanced to the point where this is becoming increasingly practical. The *Comment* to the Rule 576.1 (Electronic Filing and Service of Legal Papers) recognizes the advantages of paperless files and does not preclude their use, at least once the case is at the common pleas level:

A file in physical paper format is not required by this rule. If the local rule requires a file in physical paper format, the requirement may extend to all cases or only to certain specified cases. For example, the court may require files in physical paper format for cases listed for trial or scheduled for argument while maintaining only electronic files for all other cases.

Since the advent of Common Pleas Case Management System (CPCMS), most of the case information has been sent electronically from the MDJ courts to the common pleas courts. The introduction of the ERMS scanning technology into the MDJS has added electronic copies of the actual documents to that transfer. Currently, there are a number of judicial districts that transfer both a scanned electronic file and the physical file.

The Committee concluded that there was not a compelling reason for mandating the transfer of the physical file between the two levels of court in all cases. At a minimum, relying on an electronic transfer would save the costs associated with mailing of the physical file. However, the Committee believes that the practice should be voluntary and only those judicial districts that were comfortable with the practice should avail themselves of this method of transfer. The physical file would be maintained and retained at the MDJ offices to effectuate compliance with the Court's Record Retention Policy.

Therefore, language would be added to Rules 135 and 547 that would permit a judicial district to "opt in" to using scanned electronic documents to constitute the file that was transferred from the MDJ court to the common pleas court by order of the president judge. These electronically transferred documents would be deemed the "original" documents.

Although the original question presented to the Committee regarded records in court cases, the Committee concluded that there is no reason why the transfer of the records in summary appeal cases should be handled differently than court case transfers. Therefore, the proposed amendments to Rule 135 do not distinguish between summary and court case. Additionally, the language similar to that to be added to Rule 547 would be added in Rule 460, regarding summary case appeals.