

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 **[.] ; and**

**(4) if the case is held for court and if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including the trial, that the defendant's absence may be deemed a waiver of the right to be present, and the proceeding, including the trial, may be conducted in the defendant's absence.**

(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 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 (B)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (“[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent ‘without cause.’”).**

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 **[.] ; amended May 2, 2013, effective June 1, 2013.**

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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. 3971 (July 26, 2008).**

**Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. ( , 2013).**

RULE 540. PRELIMINARY ARRAIGNMENT.

(A) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When 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 preliminary arraignment.

(B) If the defendant is under the age of 18 at the time the complaint is filed and is charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302, the issuing authority shall determine whether the defendant's parents, guardian, or other custodian have been notified of the charge(s). If the parents, guardian, or other custodian have not been notified, the issuing authority shall notify them.

(C) At the preliminary arraignment, a copy of the complaint accepted for filing pursuant to Rule 508 shall be given to the defendant.

(D) If the defendant was arrested with a warrant, the issuing authority shall provide the defendant with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant shall be given copies no later than the first business day after the preliminary arraignment.

(E) If the defendant was arrested without a warrant pursuant to Rule 519, unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

(F) The issuing authority shall not question the defendant about the offense(s) charged but shall read the complaint to the defendant. The issuing authority shall also inform the defendant:

(1) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(2) of the right to have a preliminary hearing, except in cases being presented to an indicting grand jury pursuant to Rule 556.2; and

(3) if the offense is bailable, the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

(G) Unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2, the issuing authority shall:

(1) fix a day and hour for a preliminary hearing which shall not

be later than 14 days after the preliminary arraignment if the defendant is in custody and no later than 21 days if not in custody unless:

(a) extended for cause shown; or

(b) the issuing authority fixes an earlier date upon request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and

(2) give the defendant notice, orally and in writing,

(a) of the date, time, and place of the preliminary hearing, **[and]**

(b) that failure to appear without **[good]** cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and will result in the case proceeding in the defendant's absence and in the issuance of a warrant of arrest **[.] , and**

**(c) if the case is held for court at the time of the preliminary hearing that if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including the trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.**

(H) After the preliminary arraignment, if the defendant is detained, the defendant shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail as provided by law.

(I) If a monetary condition of bail is set, the issuing authority shall accept payment of the monetary condition, as provided in Rule 528, at any time prior to the return of the docket transcript to the court of common pleas.

COMMENT: A preliminary arraignment as provided in this rule bears no relationship to arraignment in criminal courts of record. See Rule 571.

Within the meaning of Rule 540, counsel is present when physically with the defendant or with the issuing authority.

Under paragraph (A), the issuing authority has discretion to order that a defendant appear in person for the preliminary

arraignment.

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

See Rule 130 concerning *venue* when proceedings are conducted using advanced communication technology.

Paragraph (D) requires that the defendant receive copies of the arrest warrant and the supporting affidavit(s) at the time of the preliminary arraignment. See *also* Rules 513(A), 208(A), and 1003.

Paragraph (D) includes a narrow exception that permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 (1987).

When a defendant has not been promptly released from custody after a warrantless arrest, the defendant must be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay. See Rule 519(A).

Under paragraph (E), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before a defendant may be detained. See *Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Pursuant to the 2004 amendment to paragraph (G)(2), at the time of the preliminary arraignment, the defendant must be given notice, both orally and in writing, of the date, time, and place of the preliminary hearing. The notice must also explain that, if the defendant fails to appear without **[good]** cause for the preliminary hearing, the defendant's absence

will constitute a waiver of the right to be present, the case will proceed in the defendant's absence, and a warrant for the defendant's arrest will be issued.

The 2012 amendment to paragraph ~~[(F)]~~ **(G)** conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur.

**Paragraph (G)(2)(b) was amended in 2013 changing the phrase “without good cause” to “without cause” in reference to whether the defendant’s absence at the time of the preliminary hearing permits the preliminary hearing to proceed in the defendant’s absence. This amendment is not intended as a change in the standard for making this determination. The change makes the language consistent with the language in Rule 602 describing the standard by which a defendant’s absence is judged for the trial to proceed in the defendant’s absence. In both situations, the standard is the same.**

**Paragraph (G)(2)(c) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant’s failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (“[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent ‘without cause.’”).**

Nothing in these rules gives the defendant's parents, guardian, or other custodian legal standing in the matter being heard by the court or creates a right of the defendant to have his or her parents, guardian, or other custodian present.

See Rule 1003(D) for the procedures governing preliminary arraignments in the Municipal Court.

See Chapter 5, Part H, Rules 595, 596, 597, and 598, for the procedures governing requests for transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of

18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of “delinquent act” in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302.

NOTE: Original Rule 119 adopted June 30, 1964, effective January 1, 1965; suspended January 31, 1970, effective May 1, 1970. New Rule 119 adopted January 31, 1970, effective May 1, 1970; renumbered Rule 140 September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded August 9, 1994, effective January 1, 1995. New Rule 140 adopted 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 540 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended June 21, 2012, effective in 180 days; amended July 31, 2012, effective November 1, 2012 [.] ; **amended May 2, 2013, effective June 1, 2013.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the provisions of the new Rule 140 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 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 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 August 24, 2004 amendments concerning notice that the case will proceed in defendant's absence published with the Court's Order at 34 Pa.B. 5016 (September 11, 2004).**

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

**Final Report explaining July 31, 2012 amendments concerning defendants under the age of 18 and charged with one of the offenses enumerated in 42 Pa.C.S. § 6302(2)(i), (ii), or (iii) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).**

**Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. ( \_\_\_\_\_, 2013).**

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 issuing authority finds that the Commonwealth has established a *prima facie* case that an offense has been committed and the defendant has committed it, the issuing authority shall hold the defendant for court on the offense(s) on which the Commonwealth established a *prima facie* case. If there is no offense for which a *prima facie* case has been established, the issuing authority shall discharge the defendant.

(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; **and**

**(4) advise the defendant that, if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including the trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.**

(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(G)(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(G)(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).

(G) Except as provided in Rule 541(D), once a case is bound over to the court of common pleas, the case shall not be remanded to the issuing authority.

COMMENT: Paragraph (B) was amended in 2011 to clarify what is the current law in Pennsylvania that, based on the evidence presented by the Commonwealth at the preliminary hearing, the issuing authority may find that the Commonwealth has not made out a *prima facie* case as to the offense charged in the complaint but has made out a *prima facie* case as to a lesser offense of the offense charged. In this case, the issuing authority may hold the defendant for court on that lesser offense only. The issuing authority, however, may not *sua sponte* reduce the grading of any charge.

See Rule 1003 (Procedure In Non-Summary Municipal Court Cases) for the preliminary hearing procedures in Municipal Court, including reducing felony charges at the preliminary hearing in Philadelphia.

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.

**Paragraph (C)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (“[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent ‘without cause.’”).**

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.

**Paragraphs (D)(2) and (D)(3) were amended in 2013 changing the phrase “good cause” to “cause” in reference to whether the defendant’s absence at the time of the preliminary hearing permits the preliminary hearing to proceed in the defendant’s absence. This amendment is not intended as a change in the standard for making this determination. The change makes the language consistent with the language in Rule 602 describing the standard by which a defendant’s absence is judged for the trial to proceed in the defendant’s absence. In both situations, the standard is the same.**

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(G)(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(G).

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(G); 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(F) 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.

Paragraph (G) emphasizes the general rule that once a case has been bound over to the court of common pleas, the case is not permitted to be remanded to the issuing authority. There is a limited exception to the general rule in the situation in which the right to a previously waived preliminary hearing is reinstated and the parties agree, with the consent

of the common pleas judge, that the preliminary hearing be held before the issuing authority. See Rule 541(D).

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.

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; amended February 12, 2010, effective April 1, 2010; amended January 27, 2011, effective in 30 days; *Comment* revised July 31, 2012, effective November 1, 2012; amended October 1, 2012, effective July 1, 2013 **[.]**; **amended May 2, 2013, effective June 1, 2013.**



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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. 3971 (July 26, 2008).**

**Final Report explaining the February 12, 2010 amendments adding new paragraph (G) prohibiting remands to the issuing authority published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).**

**Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(F)(2) to Rule 540(G)(2) published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).**

**Final Report explaining the October 1, 2012 amendments to paragraphs (D)(2) and (D)(3)(d) adding "place" to "date and time" for preliminary hearing notices published with the Court's Order at 42 Pa.B. 6622 (October 20, 2012).**

**Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. ( \_\_\_\_\_, 2013).**

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) **of** the right to be represented by counsel;

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

(3) **of** the right to file motions, including a Request for a Bill of Particulars, a Motion for Pretrial Discovery and Inspection, a Motion Requesting Transfer from Criminal Proceedings to Juvenile Proceedings Pursuant to 42 Pa.C.S. § 6322, and an Omnibus Pretrial Motion, and the time limits within which the motions must be filed **[.] ; and**

**(4) if the defendant fails to appear without cause at any proceeding for which the defendant's presence is required, including trial, that the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence.**

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.

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 (C)(4) requires that the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant's failure to appear for trial; see also *Commonwealth v. Bond*, 693 A.2d 220, 223 (Pa. Super. 1997) (“[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent ‘without cause.’”).**

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.

See Rule 596 for the procedures for requesting transfer from criminal proceedings to juvenile proceedings pursuant to 42 Pa.C.S. § 6322 in cases in which the defendant was under the age of 18 at the time of the commission of the alleged offense and charged with one of the offenses excluded from the definition of "delinquent act" in paragraphs (2)(i), (2)(ii), and (2)(iii) of 42 Pa.C.S. § 6302. See *also* Rules 595 (mandatory status conference), 597 (procedures when motion filed), and 598 (place of detention).

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; amended July 31, 2012, effective **November 1, 2012 [.] ; amended May 2, 2013, effective June 1, 2013.**

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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. 2503 (June 2, 2007).**

**Final Report explaining the July 31, 2012 amendments concerning requests for transfer from criminal proceedings to juvenile proceedings published with the Court's Order at 42 Pa.B. 5340 (August 18, 2012).**

**Final Report explaining the May 2, 2013 amendments concerning notice of consequences of failing to appear published the Court's Order at 43 Pa.B. ( \_\_\_\_\_, 2013).**

RULE 602. PRESENCE OF THE DEFENDANT.

(A) The defendant shall be present at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule. The defendant's absence without cause **at the time scheduled for the start of trial or during trial** shall not preclude proceeding with the trial, including the return of the verdict and the imposition of sentence.

(B) A corporation may appear by its attorney for all purposes.

COMMENT: **This rule was amended in 2013 to clarify that, upon a finding that the absence was without cause, the trial judge may conduct the trial in the defendant's absence when the defendant fails to appear without cause at the time set for trial or during trial. The burden of proving that the defendant's absence is without cause is upon the Commonwealth by a preponderance of the evidence. See Commonwealth v. Scarborough, 491 Pa. 300, 421 A.2d 147 (1980) (when a constitutional right is waived, the Commonwealth must show by a preponderance of the evidence that the waiver was voluntary, knowing and intelligent); Commonwealth v. Tizer, 454 Pa.Super. 1, 684 A.2d 597 (1996). See also Commonwealth v. Bond, 693 A.2d 220, 223 (Pa. Super. 1997) ("[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent 'without cause.'")**.

**This rule applies to all cases, including capital cases.**

**A defendant's presence may be deemed waived by the defendant intentionally failing to appear at any stage of the trial after proper notice. See Commonwealth v. Wilson, 551 Pa. 593, 712 A.2d 735 (1998) (a defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present); Commonwealth v. Sullens, 533 Pa. 99, 619 A.2d 1349 (1992) (when a defendant is absent without cause at the time his or her trial is scheduled to begin, the defendant may be tried *in absentia*).**

Nothing in this rule is intended to preclude a defendant from

affirmatively waiving the right to be present at any stage of the trial, *see, e.g., Commonwealth v. Vega*, 553 Pa. 255, 719 A.2d 227 (1998) (plurality) (requirements for a knowing and intelligent waiver of a defendant's presence at trial includes a full, on-the-record colloquy concerning consequences of forfeiture of the defendant's right to be present) [or] Once a defendant appears before the court, he or she cannot waive his or her right to appear in capital case. See *Commonwealth v. Ford*, 539 Pa. 85, 650 A.2d 433 (1994) (right of defendant to be present at trial of capital offense is transformed into obligation due to gravity of potential outcome).

Nothing in this rule is intended to preclude a defendant from waiving the right to be present by his or her actions, *see, e.g., [Commonwealth v. Wilson*, 551 Pa. 593, 712 A.2d 735 (1998) (defendant, who fled courthouse after jury was impaneled and after subsequent plea negotiations failed, was deemed to have knowingly and voluntarily waived the right to be present)] *Illinois v. Allen*, 397 U.S. 337, 343 (1970) (“[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom.”) and *Commonwealth v. Wilson, supra*.

The defendant's right to be present in the courtroom is not absolute. See *Commonwealth v. Boyle*, 498 Pa. 486, 491, n.7, 447 A.2d 250, 253, n.7 (1982) (defendant's presence in chambers and at sidebar is not required where he is represented by counsel.) and *Commonwealth v. Hunsberger*, -- Pa. --, 58 A.3d 32, 39-40 (2012) (“[A]lthough a defendant has the clear right to participate in the jury selection process, that right is not compromised where . . . the defendant, who was in the courtroom, was not present at sidebar where his counsel was questioning several venirepersons outside the range of his hearing.”)

[Former Rule 1117(c) was moved to Rule 462 (Trial *de novo*) in 2000 as part of the reorganization of the rules.]



NOTE: Rule 1117 adopted January 24, 1968, effective August 1, 1968; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; renumbered Rule 602 and amended March 1, 2000, effective April 1, 2001; amended December 8, 2000, effective January 1, 2001, *Comment* revised September 21, 2012, effective November 1, 2012 [.] ; **amended May 2, 2013, effective June 1, 2013.**

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**COMMITTEE EXPLANATORY REPORTS:**

**Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 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 December 8, 2000 amendments published with the Court's Order at 30 Pa.B. 6546 (December 23, 2000).**

**Final Report explaining the September 21, 2012 revision to the second paragraph of the Comment correcting a typographical error published with the Court's Order at 42 Pa.B. 6247 (October 6, 2012).**

**Final Report explaining the May 2, 2013 amendments concerning trials conducted in the defendant's absence published with the Court's Order at 43 Pa.B. ( \_\_\_\_\_ , 2013).**

RULE 1003. PROCEDURE IN NON-SUMMARY MUNICIPAL COURT CASES.

(A) INITIATION OF CRIMINAL PROCEEDINGS

(1) Criminal proceedings in court cases shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a felony or misdemeanor is committed in the presence of the police officer making the arrest; or

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law; or

(c) an arrest without a warrant upon probable cause when the offense is a felony.

(2) Private Complaints

(a) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the attorney for the Commonwealth:

- i. approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;
- ii. disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the President Judge of Municipal Court, or the President Judge's designee, for review of the decision. Appeal of the decision of the Municipal Court shall be to the Court of Common Pleas.

(B) CERTIFICATION OF COMPLAINT

Before an issuing authority may issue process or order further proceedings in a Municipal Court case, the issuing authority shall ascertain and certify on the complaint that:

(1) the complaint has been properly completed and executed; and

(2) when prior submission to an attorney for the Commonwealth is required, an

attorney has approved the complaint.

The issuing authority shall then accept the complaint for filing, and the case shall proceed as provided in these rules.

### (C) SUMMONS AND ARREST WARRANT PROCEDURES

When an issuing authority finds grounds to issue process based on a complaint, the issuing authority shall:

(1) issue a summons and not a warrant of arrest when the offense charged is punishable by imprisonment for a term of not more than 1 year, except as set forth in paragraph (C)(2);

(2) issue a warrant of arrest when:

(a) the offense charged is punishable by imprisonment for a term of more than 5 years;

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

(c) the summons has been returned undelivered;

(d) a summons has been served and disobeyed by a defendant;

(e) the identity of the defendant is unknown;

(f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or

(3) when the offense charged does not fall within the categories specified in paragraph (C)(1) or (2), the issuing authority may, in his or her discretion, issue a summons or a warrant of arrest.

### (D) PRELIMINARY ARRAIGNMENT

(1) When a defendant has been arrested within Philadelphia County in a Municipal Court case, with or without a warrant, the defendant shall be afforded a preliminary arraignment by an issuing authority without unnecessary delay. If the defendant was arrested without a warrant pursuant to paragraph (A)(1)(a) or (b), unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

(2) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual

communication. When 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 preliminary arraignment.

(3) At the preliminary arraignment, the issuing authority:

(a) shall not question the defendant about the offense(s) charged;

(b) shall give the defendant's attorney, or if unrepresented the defendant, a copy of the certified complaint;

(c) if the defendant was arrested with a warrant, the issuing authority shall provide the defendant's attorney, or if unrepresented the defendant, with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant's attorney, or if unrepresented the defendant, shall be given copies no later than the first business day after the preliminary arraignment; and

(d) also shall inform the defendant:

(i) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(ii) of the day, date, hour, and place for the trial, which shall not be less than 20 days after the preliminary arraignment, unless the issuing authority fixes an earlier date for the trial **[or the preliminary hearing]** upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth, **and that failure to appear without cause at any proceeding for which the defendant's presence is required, including trial, may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence, and a warrant of arrest shall be issued;**

(iii) in a case charging a felony, unless the preliminary hearing is waived by a defendant who is represented by counsel, or the attorney for the Commonwealth is presenting the case to an indicting grand jury pursuant to Rule 556.2, of the date, time, and place of the preliminary hearing, which shall not be less than 14 nor more than 21 days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney for the Commonwealth; and that failure to appear without **[good]** cause for the preliminary hearing will be deemed a waiver by the defendant of

the right to be present at any further proceedings before the issuing authority, and that the case shall proceed in the defendant's absence, and a warrant of arrest shall be issued; **[and]**

(iv) **if a case charging a felony is held for court at the time of the preliminary hearing, that failure to appear without cause at any proceeding for which the defendant's presence is required, including trial, the defendant's absence may be deemed a waiver of the right to be present, and the proceeding may be conducted in the defendant's absence, and a warrant of arrest shall be issued; and**

(v) of the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

(4) After the preliminary arraignment, if the defendant is detained, he or she shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail, as provided by law.

#### (E) PRELIMINARY HEARING IN CASES CHARGING A FELONY

(1) Except as provided in paragraphs (E)(2) and (E)(3), in cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 542 (Preliminary Hearing; Continuances) and Rule 543 (Disposition of Case at Preliminary Hearing).

(2) At the preliminary hearing, the issuing authority shall determine whether there is a *prima facie* case that an offense has been committed and that the defendant has committed it.

(a) Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established.

(b) Hearsay evidence shall be sufficient to establish any element of an offense including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

(3) If a *prima facie* case is not established on any felony charges, but is established on any misdemeanor or summary charges, the judge shall remand the case to Municipal Court for trial.

#### (F) ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Courts shall accept bail at any time prior to the Municipal Court trial.

COMMENT: The 2004 amendments make it clear that Rule 1003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 1001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.

See Chapter 5 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.

The 2004 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the statewide procedures in Rule 502 (Means of Instituting Proceedings in Court Cases).

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary cases in Municipal Court with the statewide procedures for private complaints in Rule 506 (Approval of Private Complaints). In all cases in which the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

The procedure set forth in paragraph (C)(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.*

If the attorney for the Commonwealth exercises the options provided by Rule 202, Rule 507, or both, the attorney must file the certifications required by paragraphs (B) of Rules 202

and 507 with the Court of Common Pleas of Philadelphia County and with the Philadelphia Municipal Court.

For the contents of the complaint, see Rule 504.

Under paragraphs (A) and (D), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before the defendant may be detained. See *Riverside v. McLaughlin*, 500 U.S. 44 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Within the meaning of paragraph (D)(2), counsel is present when physically with the defendant or with the issuing authority.

Under paragraph (D)(2), the issuing authority has discretion to order that a defendant appear in person for the preliminary arraignment.

Under paragraph (D)(2), two-way simultaneous audio-visual communication is a form of advanced communication technology.

See Rule 130 concerning *venue* when proceedings are conducted pursuant to this rule using advanced communication technology.

Paragraph (D)(3)(c) requires that the defendant's attorney, or if unrepresented the defendant, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 540(C). See *also* Rules 208(A) and 513(A).

Paragraph (D)(3)(c) includes a narrow exception which permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 (1987).

The 2012 amendment to paragraph (D)(3)(d)(iii) conforms this rule with the new procedures set forth in Chapter 5, Part E, permitting the attorney for the Commonwealth to proceed to an indicting grand jury without a preliminary hearing in cases in which witness intimidation has occurred, is occurring, or is likely to occur. See Rule 556.2. See also Rule 556.11 for the procedures when a case will be presented to the indicting grand jury.

**Paragraphs (D)(3)(d)(ii) and (D)(3)(d)(iv) require that, in all cases at the preliminary arraignment, the defendant be advised of the consequences of failing to appear for any court proceeding. See Rule 602 concerning a defendant's failure to appear for trial. See also Commonwealth v. Bond, 693 A.2d 220 (Pa. Super. 1997) (“[A] defendant who is unaware of the charges against him, unaware of the establishment of his trial date or is absent involuntarily is not absent ‘without cause.’”)**

Under paragraph (D)(4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

Paragraphs (D)(3)(d)(iii) and (E) make it clear that, with some exceptions, the procedures in Municipal Court for both preliminary hearings and cases in which the defendant fails to appear for the preliminary hearing are the same as the procedures in the other judicial districts.

Paragraph (E) was amended in 2013 to reiterate that traditionally our courts have not applied the law of evidence in its full rigor in proceedings such as preliminary hearings, especially with regard to the use of hearsay to establish the elements of a *prima facie* case. See the Pennsylvania Rules of Evidence generally, but in particular, Article VIII. Accordingly, hearsay, whether written or oral, may establish the elements of any offense. The presence of witnesses to establish these elements is not required at the preliminary hearing. *But compare Commonwealth ex rel. Buchanan v. Verbonitz*, 525 Pa. 413, 581 A.2d 172 (1990) (plurality) (disapproving reliance on hearsay testimony as the sole



basis for establishing a prima facie case). See *also* Rule 542.

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

NOTE: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; *Comment* revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted 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; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended August 15, 2005, effective February 1, 2006; amended April 5, 2010, effective April 7, 2010; amended January 27, 2011, effective in 30 days; amended June 21, 2012, effective in 180 days, *Comment* revised July 31, 2012, effective November 1, 2012; amended April 25, 2013, effective June 1, 2013 [.] ; **amended May 2, 2013, effective June 1, 2013.**

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**COMMITTEE EXPLANATORY REPORTS:**

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

**Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).**

**Final Report explaining the August 28, 1998 amendments published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).**

**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 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 August 24, 2004 changes clarifying preliminary arraignment and preliminary hearing procedures in Municipal Court cases published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Final Report explaining the August 15, 2005 amendments to paragraphs (A)(2)(b)(ii) and (D)(3)(d)(ii) published with the Court's Order at 35 Pa. B. 4918 (September 3, 2005).**

**Court's Order adopting the April 5, 2010 amendments to paragraph (D)(3)(d) published at 40 Pa.B. 2012 (April 17, 2010).**

**Court's Order of January 27, 2011, amending paragraph (E) concerning hearsay and reducing felony charges at preliminary hearing published at 41 Pa.B. 834 (February 12, 2011).**

**Final Report explaining the June 21, 2012 amendments to paragraph (D)(3)(d)(iii) concerning indicting grand juries published with the Court's Order at 42 Pa. B. 4153 (July 7, 2012).**

**Final Report explaining the July 31, 2012 revision of the Comment changing the citation to Rule 540(B) to Rule 540(C) published with the Court's Order at 42 Pa.B. 5333 (August 8, 2012).**

**Final Report explaining the April 25, 2013 amendments to paragraph (E) concerning hearsay published with the Court's Order at 43 Pa.B. ( , 2013).**

**Final Report explaining the May 2, 2013 amendments concerning proceedings conducted in the defendant's absence published with the Court's Order at 43 Pa.B. ( \_\_\_\_\_, 2013).**