

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

Proposed Amendments of Rule 452

The Criminal Procedural Rules Committee is planning to propose to the Supreme Court of Pennsylvania the amendment of Rule 452 (Collateral), 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:

*Jeffrey M. Wasileski, Counsel
Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
601 Commonwealth Avenue, Suite 6200
Harrisburg, PA 17106-2635
fax: (717) 231-9521
e-mail: criminalrules@pacourts.us*

All communications in reference to the proposal should be received by **no later than Friday, May 29, 2015**. 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.

April 1, 2015

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

*Paul M. Yatron
Chair*

RULE 452. COLLATERAL.

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

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

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

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

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

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

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

Paragraph (C) was amended in 2015 to clarify that collateral may be forfeited for the payment of restitution as well as for the fine and costs that have been assessed by an issuing authority. See 18 Pa.C.S. §1106(d) for the authority of a magisterial district judge to impose restitution on a defendant.

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

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the May 14, 1999 Comment revisions published with the Court's Order at 29 Pa.B. 2775 (May 29, 1999).

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

Report explaining the proposed addition of "restitution" to the list of items for which collateral may be forfeited after conviction published for comment at 45 Pa.B. (_____, 2015).

REPORT

Proposed Amendments to Pa.R.Crim.P. 452

COLLATERAL RETAINED FOR RESTITUTION IN SUMMARY CASES

Retention of summary case collateral has long been permitted under Rule 452(C) which states, “The collateral deposited may be forfeited after conviction at the summary trial and applied to payment of the fine and costs.” Recently, the Committee has been presented with the question of whether collateral that had been previously set could be similarly applied to pay restitution awarded in summary cases. This question was prompted by the Court’s recent adoption of amendments to Rule 528 (Monetary Condition for Release of Bail) and Rule 535 (Receipt for Deposit; Return of Deposit) that provided procedures in court cases for applying bail that would be otherwise returnable to case assessments including restitution. The suggestion was made to amend Rule 452 to include specific mention of restitution.

The language regarding forfeiture of collateral has been in Rule 452 (then Rule 81) since it was first adopted in 1985. It appears that this provision developed in consideration of the traditional summary citation case, usually involving traffic offenses, where the defendant is permitted to post collateral for a fixed fine and costs while awaiting the summary trial. This collateral then could be applied to the fine and costs if the defendant failed to appear or could be applied directly if the defendant were convicted. In these types of cases, restitution was rarely awarded. However, in developing the rule, the Committee does not appear to have considered other summary cases, such as non-traffic offenses, where there is no fixed fine and restitution can be a factor in the potential sentence.

Additionally, at the time, there was a question among some issuing authorities of their power to impose restitution as part of a summary sentence. Certainly, if there was previously a question on the authority of MDJs to award restitution, that has been addressed statutorily in paragraph (d) of Section 1106 of Title 18, the general restitution provision. Furthermore, the summary case rules contain numerous references to the award of restitution in summary cases. For example, Rule 403 (Contents of Citation), while not requiring restitution to be listed on the citation, contains *Comment* language

making passing reference to the award of restitution as part of a summary sentence. Similarly, Rule 462 (Trial *De Novo*) references restitution as part of the sentence.

Furthermore, based on anecdotal reports, the collection of restitution by magisterial district judges in summary cases appears to have been a long-standing practice, particularly in non-traffic summaries such as criminal mischief, bad checks, retail theft and other crimes where there may have been loss of property or damages.

The allowance under Rule 452(C) that collateral may be forfeited to be applied to case assessments was, until recently, one of the major differences between summary collateral and court case bail. As noted in the *Comment* to Rule 452, collateral has a dual purpose as bail to secure the defendant's appearance at the summary trial, and as security for the payment of fines and costs. With the Court's recent approval of the changes to Rules 528 and 535 which permits returnable bail money to be retained to pay case assessments, that distinction has become less pronounced.

The Committee has concluded that there is not a compelling reason why collateral should not be used to satisfy restitution. Furthermore, it is inconsistent to permit the application of bail money to restitution in court cases but not collateral for restitution in summary cases. This is especially compelling in light of the Committee's recent examination of procedures to enhance the collection of restitution in court cases.¹

Therefore, the proposed rule change would add the word "restitution" to the list of assessments to which collateral may be applied. *Comment* language would provide some additional detail including a cross-reference to the statutory authority for awarding restitution.

¹ See 44 Pa.B. 2369 (April 19, 2014), that contains the Committee's proposal for new Rule 705.1 (Restitution), amendment of Rule 454 (Trial in Summary Cases), and revision of the *Comments* to Rules 455 (Trial in Defendant's Absence) and 704 (Procedure at Time of Sentencing) to standardize the procedures by which restitution is awarded in criminal cases.