

**Proposed New Pa.R.Crim.P. 1036,
Proposed Amendment to Pa.Rs.Crim.P. 105, 1000, 1031-1035, and 1037, and
Proposed Revision of the *Comments* to Pa.Rs.Crim.P. 103, 140, 141, 431, 441, 462
1001, 1002, and 1030**

INTRODUCTION

The Criminal Procedural Rules Committee is considering recommending that the Supreme Court of Pennsylvania adopt new Rule 1036, amend Rules 105, 1000, 1031-1035, and 1037 and revise the Comments to Rules 103, 140, 141, 431, 441, 462 1001, 1002, and 1030 to accommodate the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court Traffic Division. This proposal has not been submitted for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Reports should not be confused with the official Committee Comments to the rules. Also note that the Supreme Court does not adopt the Committee's Comments or the contents of the explanatory Reports.

The text of the proposed amendments to the rules precedes the Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

We request that interested persons submit suggestions, comments, or objections concerning this proposal in writing to the Committee through counsel,

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Criminal Procedural Rules Committee
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no later than Friday, March 7, 2014.

January 29, 2014

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Thomas P. Rogers, Chair

*Jeffrey M. Wasileski
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RULE 103. DEFINITIONS.

The following words and phrases, when used in any Rule of Criminal Procedure, shall have the following meanings:

ADVANCED COMMUNICATION TECHNOLOGY is any communication equipment that is used as a link between parties in physically separate locations, and includes, but is not limited to: systems providing for two-way simultaneous communication of image and sound; closed-circuit television; telephone and facsimile equipment; and electronic mail.

ADVANCED COMMUNICATION TECHNOLOGY SITE is any approved location within Pennsylvania designated by the president judge, or the president judge's designee, with advanced communication technology equipment that is available for parties in a criminal matter to communicate with others in physically separate locations as provided in these rules.

AFFIANT is any responsible person capable of taking an oath who signs, swears to, affirms, or, when permitted by these rules, verifies a complaint and appreciates the nature and quality of that person's act.

ARRAIGNMENT is the pretrial proceeding in the court of common pleas conducted pursuant to Rule 571.

BAIL is the security or other guarantee required and given for the release of a person, conditioned upon a written undertaking, in the form of a bail bond, that the person will appear when required and comply with all conditions set forth in the bail bond.

BAIL AUTHORITY is the magisterial district judge, magistrate, Philadelphia arraignment court magistrate, or the judge with jurisdiction over the case who is authorized by law to set, modify, revoke, or deny bail.

CAPITAL CASE or **CRIME** is one in or for which the death penalty may be imposed.

CARRIER SERVICE includes, but is not limited to, delivery by companies such as Federal Express or United Parcel Service, or a local courier service, and courthouse interoffice mail. The courthouse interoffice mail is a method of delivery used in some judicial districts for transmittal of documents between offices in the courthouse, and between the courthouse and other county facilities, including the county jail facility.

CLERK OF COURTS is that official, without regard to that person's title, in each judicial district who, pursuant to 42 Pa.C.S. §§ 2756 and 2757, has the responsibility and function to maintain the official criminal case file and list of docket entries, and to perform such other duties as required by rule or law.

COLLATERAL is cash or a cash equivalent deposited in summary cases.

COPY is an exact duplicate of an original document, including any required signatures, produced through mechanical or electronic means, and includes, but is not limited to: carbon copies; copies reproduced by using a photocopy machine, by transmission using facsimile equipment, or by scanning into and printing out of a computer.

COURT is a court of record.

COURT ADMINISTRATOR is that official in each judicial district who has the responsibility for case management and such other responsibilities as provided by the court.

COURT CASE is a case in which one or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.

CRIMINAL PROCEEDINGS include all actions for the enforcement of the Penal Laws.

INDICTMENT is a bill of indictment which has been approved by a grand jury and properly returned to court, or which has been endorsed with a waiver as provided in former Rule 215.

INFORMATION is a formal written accusation of an offense made by the attorney for the Commonwealth, upon which a defendant may be tried, which replaces the indictment in all counties since the use of the indicting grand jury has been abolished.

ISSUING AUTHORITY is any public official having the power and authority of a magistrate, a Philadelphia arraignment court magistrate, or a magisterial district judge.

LAW ENFORCEMENT OFFICER is any person who is by law given the power to enforce the law when acting within the scope of that person's employment.

MOTION includes any challenge, petition, application, or other form of request for an order or relief.

ORDINANCE is a legislative enactment of a political subdivision.

PENAL LAWS include all statutes and embodiments of the common law which establish, create, or define crimes or offenses, including any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty.

POLICE OFFICER is any person who is by law given the power to arrest when acting within the scope of the person's employment.

POLITICAL SUBDIVISION shall mean county, city, township, borough, or incorporated town or village having legislative authority.

PRELIMINARY ARRAIGNMENT is the proceeding following an arrest conducted before an issuing authority pursuant to Rule 540 or Rule 1003(D).

SEALED VERDICT is a verdict unanimously agreed upon by the jury, completed, dated, and signed by the foreman of the jury, and closed to open view.

SECURITY shall include cash, certified check, money order, personal check, or guaranteed arrest bond or bail bond certificate.

SIGNATURE, when used in reference to documents generated by the minor judiciary or court of common pleas, includes a handwritten signature, a copy of a handwritten signature, a computer generated signature, or a signature created, transmitted, received, or stored by electronic means, by the signer or by someone with the signer's authorization, unless otherwise provided in these rules.

SUMMARY CASE is a case in which the only offense or offenses charged are summary offenses.

VOIR DIRE is the examination and interrogation of prospective jurors.

COMMENT: The definitions of arraignment and preliminary arraignment were added in 2004 to clarify the distinction between the two proceedings. Although both are administrative proceedings at which the defendant is advised of the charges and the right to counsel, the preliminary arraignment occurs shortly after an arrest before a member of the minor judiciary, while an arraignment occurs in the court of common pleas after a case is held for court and an information is filed.

The definition of information was added to the rules as part of the implementation of the 1973 amendment to PA. CONST. art. I, § 10, permitting the substitution of informations for indictments. The term "information" as used here should not be confused with prior use of the term in Pennsylvania practice as an instrument which served the function now fulfilled by the complaint.

The definition of bill of indictment was deleted in 1993 as no longer necessary because all courts of common pleas have abolished the indicting grand jury and now provide for the initiation of criminal proceedings by information. See PA. CONST. art. I, § 10 and 42 Pa.C.S. § 8931. Some pending cases, however, may have been instituted prior to the abolition of the indicting grand jury. For this reason, the definition of indictment has been retained in this rule.

The definitions of bail authority and issuing authority were amended in 2005 to reflect the provisions of Act 207 of 2004 that changed the phrase "district justice" to "magisterial district judge," effective January 29, 2005. See *also* the Court's January 6, 2005 Order providing that any reference to "district justice" in a court rule shall be deemed a reference to a "magisterial district judge."

The definitions of "bail authority" and "issuing authority" were amended in 2009 to reflect the provisions of Act 98 of 2008 that changed the phrase "bail commissioner" to "arraignment court magistrate," effective December 8, 2008. See *also* the Court's January 21, 2009 Order providing that any reference to "bail commissioner" in a court rule shall be deemed a reference to an "arraignment court magistrate."

Neither the definition of law enforcement officer nor the definition of police officer gives the power of arrest to any person who is not otherwise given that power by law.

See Rule 1036 for the definition of hearing officers of the Philadelphia Municipal Court Traffic Division as "issuing authorities" for limited purposes specified in the rule.

The definition of signature was added in 2004 to make it clear when a rule requires a document generated by the minor judiciary or court of common pleas to include a signature or to be signed, that the signature may be in any of

the forms provided in the definition. In addition, documents that institute proceedings or require the inclusion of an oath ordinarily are not documents generated by the minor courts or courts of common pleas and therefore any signature required on the document would not be included in this definition of signature; however, in the event such a document is generated by the minor courts or the courts of common pleas, the form of "signature" on this document is limited to handwritten, and the other forms of signature provided in the definition are not permitted.

Included in Chapter 5 Part C of the rules are additional definitions of words and phrases that apply specifically to bail in criminal cases. See, e.g., Rule 524, which defines the types of release on bail.

NOTE: Previous Rules 3 and 212 adopted June 30, 1964, effective January 1, 1965, suspended January 31, 1970, effective May 1, 1970; present Rule 3 adopted January 31, 1970, effective May 1, 1970; amended June 8, 1973, effective July 1, 1973; amended February 15, 1974, effective immediately; amended June 30, 1977, effective September 1, 1977; amended January 4, 1979, effective January 9, 1979; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended August 12, 1993, effective September 1, 1993; amended February 27, 1995, effective July 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 103 and *Comment* revised March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended March 2, 2004, effective July 1, 2004; amended April 30, 2004, effective July 1, 2004; amended August 23, 2004, effective August 1, 2005; amended February 4, 2005, effective immediately; amended May 6, 2009, effective immediately **[.] ; amended , 2014, effective , 2014.**

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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 February 27, 1995 amendments published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

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 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 March 2, 2004 amendments defining carrier service, clerk of courts, court administrator, and motion published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the April 30, 2004 amendments defining "signature" published with the Court's Order at 34 Pa.B. 2542 (May 15, 2004).

Final Report explaining the August 23, 2004 amendments adding definitions of arraignment and preliminary arraignment published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the February 4, 2005 amendments modifying the definitions of bail authority and issuing authority published with the Court's Order at 35 Pa.B. 1333 (February 19, 2005).

Final Report explaining the May 6, 2009 amendments modifying the definitions of bail authority and issuing authority published with the Court's Order at 39 Pa.B. 2567 (May 23, 2009).

Report explaining the proposed revision of the Comment cross-referencing Rule 1036 limited definition of Philadelphia Municipal Court Traffic Division hearing officers as "issuing authorities" published for comment at 44 Pa.B. (, 2014).

RULE 105. LOCAL RULES.

(A) For the purpose of this rule, the term "local rule" shall include every rule, administrative order, regulation, directive, policy, custom, usage, form or order of general application, however labeled or promulgated, which is adopted or enforced by a court of common pleas, by the Philadelphia Municipal Court, or by **[the Philadelphia Traffic Court] the Philadelphia Municipal Court Traffic Division** to govern criminal practice and procedure.

(B) Local rules shall not be inconsistent with any general rule of the Supreme Court or any Act of Assembly.

(1) The Criminal Procedural Rules Committee, at any time, may recommend that the Supreme Court suspend, vacate, or require amendment of a local rule.

(2) The Criminal Procedural Rules Committee may suspend that local rule pending action by the Court on that recommendation.

(C) Local rules shall be given numbers that are keyed to the number of the general rules to which the local rules correspond.

(D) All proposed local criminal rules and proposed amendments to local criminal rules shall be submitted in writing to the Criminal Procedural Rules Committee for the Committee to review. The adopting court shall not proceed with the proposed local rule or amendments until the adopting court receives written notification from the Committee that the proposed local rule or amendments are not inconsistent with any general rule of the Supreme Court.

(E) All local rules shall be published in the *Pennsylvania Bulletin* to be effective and enforceable.

(1) The adopting court shall not publish the local rule in the *Pennsylvania Bulletin* until it has received the statement from the Committee that the proposed local rule is not inconsistent with any general rule of the Supreme Court.

(2) The adopting court shall distribute two certified paper copies of the local rule to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The adopting court also shall distribute to the Legislative Reference Bureau a copy of the local rule on a computer diskette or on a CD-ROM, that complies with the requirements of 1 *Pa.Code* § 13.11(b).

(3) The effective date of the local rule shall not be less than 30 days after the date of publication of the rule in the *Pennsylvania Bulletin*.

(F) Contemporaneously with publishing the local rule in the *Pennsylvania Bulletin*, the adopting court shall:

(1) file one certified copy of the local rule with the Administrative Office of Pennsylvania Courts; and

(2) publish a copy of the local rule on the Unified Judicial System's web site at <http://ujportal.pacourts.us/localrules/ruleselection.aspx>.

(G) The local rules shall be kept continuously available for public inspection and copying in the office of the prothonotary or clerk of courts. Upon request and payment of reasonable costs of reproduction and mailing, the prothonotary or clerk shall furnish to any person a copy of any local rule.

(H) A local rule promulgated before the effective date of this rule shall be filed on or before that effective date with the prothonotary or clerk of courts and shall be kept by the prothonotary or clerk for inspection, copying, and furnishing as provided in paragraph (G).

(I) No pleading or other legal paper shall be refused for filing by the clerk of courts based on a requirement of a local rule. No case shall be dismissed nor request for relief granted or denied because of failure to comply with a local rule. In any case of noncompliance with a local rule, the court shall alert the party to the specific provision at issue and provide a reasonable time for the party to comply with the local rule.

COMMENT: The policy of the Supreme Court as declared in the Order promulgating this rule is "to implement the unified judicial system under the Constitution of 1968, to facilitate the statewide practice of law under this Court's general rules, and to promote the further policy that a general rule of criminal procedure normally preempts the subject covered." In accordance with the Court's policy, it is intended that local rules should not repeat general rules or statutory provisions verbatim or substantially verbatim nor should local rules make it difficult for attorneys to practice law in several counties.

The caption or other words used as a label or designation shall not determine whether something is or establishes a local rule; if the definition in paragraph (A) of this rule is satisfied the matter is a local rule regardless of what it may be called. The provisions of this rule are also intended to apply to any amendments to a "local rule." Nothing in this rule is intended to apply to case-specific orders.

To simplify the use of local rules, local criminal rules are required to be given numbers that are keyed to the number of the general criminal rules to which the local rules correspond. This requirement is not intended to apply to local rules that govern the general business of the court and which do not correspond to a general criminal rule.

Paragraph (D), added in 2008, requires that, before publishing the local rule or proceeding with any of the other requirements in Rule 105(E) and (F), the adopting court must submit all proposed local criminal rules or rule amendments to the Criminal Procedural Rules Committee for review.

The 2000 and 2008 amendments emphasize that the adopting authority must comply with all the provisions of this rule before any local rule, or any amendments to local rules, will be effective and enforceable.

Paragraph (E) requires the local rule to be published in the *Pennsylvania Bulletin* to be effective. Pursuant to 1 *Pa.Code* § 13.11(b)-(f), any documents that are submitted for publication must be accompanied by a diskette or CD-ROM formatted in MS-DOS, ASCII, Microsoft Word, or WordPerfect. The diskette or CD-ROM must be labeled with the court's name and address and the local rule's computer file name.

Paragraph (G) requires that a separate consolidated set of local rules be maintained in the prothonotary's or clerk's office.

The Administrative Office of the Pennsylvania Courts maintains a web site containing the texts of local rules at: <http://www.pacourts.us/T/SpecialCourts/LocalRules.htm>.

The Administrative Office of the Pennsylvania Courts also maintains a web site containing all local criminal rules adopted or amended after February 1, 2009 at: <http://ujportal.pacourts.us/localrules/ruleselection.aspx>

Although under paragraph (E)(3) a local rule shall not be effective until at least 30 days after the date of publication in the *Pennsylvania Bulletin*, when a situation arises that requires immediate action, the local court may act by specific orders governing particular cases in the interim before an applicable local rule becomes effective.

The purpose of paragraph (I) is to (1) require that all documents presented for filing are accepted by the clerk of courts, also see Rule 576(A)(3), and (2) prevent the dismissal of cases, or the grant or denial of requested relief, because a party has failed to comply with a local rule. In addition, paragraph (I) requires that the party be alerted to the local rule, and be given a reasonable amount of time to comply with the local rule.

After the court has alerted the party to the local rule pursuant to paragraph (I), the court may impose a sanction for subsequent noncompliance either on counsel or the defendant if proceeding *pro se*, but may not dismiss the case, or grant or deny relief because of non-compliance.

NOTE: Rule 6 adopted January 28, 1983, effective July 1, 1983; amended May 19, 1987, effective July 1, 1987; renumbered Rule 105 and amended March 1, 2000, effective April 1, 2001; amended October 24, 2000, effective January 1, 2001; *Comment* revised June 8, 2001, effective immediately; amended October 15, 2004, effective January 1, 2005; amended September 9, 2005, effective February 1, 2006; amended January 25, 2008, effective February 1,

2009; amended January 30, 2009, effective February 1, 2009 [.] ; amended , 2014, effective , 2014.

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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 October 24, 2000 amendments published with the Court's Order at 30 Pa.B. 5742 (November 11, 2000).

Final Report explaining the June 8, 2001 Comment revision citing to the AOPC's webpage published with the Court's Order at 31 Pa.B. 3310 (June 23, 2001).

Final Report explaining the October 15, 2004 amendment to paragraph (A), and to paragraph (C)(3) concerning the Legislative Reference Bureau publication requirements, published with the Court's Order at 34 Pa.B. 5893 (October 30, 2004).

Final Report explaining the September 9, 2005 amendments to paragraph (A) published with the Court's Order at 35 Pa.B. 5242 (September 24, 2005).

Final Report explaining the January 25, 2008 changes to Rule 105 concerning submission of local rules for review prior to adoption published with the Court's Order at 38 Pa.B. 746 (February 9, 2008).

Final Report explaining the January 30, 2009 changes to Rule 105 concerning publication of local rules on the UJS Portal published with the Court's Order at 39 Pa.B. 829 (February 14, 2009).

Report explaining the proposed amendments concerning the transfer of the Philadelphia Traffic Court functions to the

Philadelphia Municipal Court published for comment at 44 Pa.B.
(, 2014).

RULE 140. CONTEMPT PROCEEDINGS BEFORE MAGISTERIAL DISTRICT JUDGES, PITTSBURGH MAGISTRATES COURT JUDGES, AND PHILADELPHIA TRAFFIC COURT JUDGES.

(A) CONTEMPT IN THE PRESENCE OF THE COURT

1. An issuing authority may summarily hold an individual in contempt for misbehavior in the presence of the court that obstructs the administration of justice, and, after affording the individual an opportunity to be heard, may impose a punishment of a fine of not more than \$100 or imprisonment for not more than 30 days or both.
2. The issuing authority shall orally advise the contemnor of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that:
 - a. any punishment shall be automatically stayed for a period of 30 days from the date of the imposition of the punishment;
 - b. if the contemnor files an appeal within the 30-day period, the stay will remain in effect pending disposition of the appeal;
 - c. when the punishment is imprisonment, the contemnor has the right to assistance of counsel for the purpose of the *de novo* hearing in the court of common pleas, and, if the contemnor is without financial resources or otherwise unable to employ counsel, counsel will be assigned as provided in Rule 122;
 - d. the contemnor must appear in the court of common pleas for the *de novo* hearing or the appeal may be dismissed; and
 - e. unless a notice of appeal is filed within the 30-day period, on the date specified by the issuing authority, the contemnor must:
 - (1) pay any fine imposed; and
 - (2) appear before the issuing authority for execution of any punishment of imprisonment.
3. The issuing authority shall issue a written order of contempt, in which the issuing authority shall:
 - a. set forth the facts of the case that constitute the contempt;
 - b. certify that the issuing authority saw or heard the conduct constituting the contempt, and that the contempt was committed in the actual

presence of the issuing authority;

c. set forth the punishment imposed, and the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment; and

d. set forth the information specified in paragraph (A)2.

4. The order of contempt shall be signed by the issuing authority, and a copy shall be given to the contemnor.

(B) CONTEMPT NOT IN THE PRESENCE OF THE COURT

1. INSTITUTION OF PROCEEDINGS

a. An issuing authority may institute contempt proceedings by either

(1) giving written notice to the alleged contemnor of the time, date, and place of the contempt hearing, or

(2) when deemed appropriate by the issuing authority, issuing an attachment by means of a warrant,

whenever a person is alleged to have (i) failed to obey a subpoena issued by the issuing authority; (ii) failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order; (iii) failed to comply with an order of an issuing authority directing a defendant to compensate a victim; or (iv) failed to comply with an order of an issuing authority in any case in which the issuing authority is by statute given the power to find the person in contempt.

b. If the proceedings are instituted by notice, the notice shall:

(1) specify the acts or omissions and the essential facts constituting the contempt charged;

(2) advise what the punishment may be for a finding of contempt in the case;

(3) if, in the event of a finding of contempt, there is a likelihood that the punishment will be imprisonment, advise the alleged contemnor of the right to the assistance of counsel and that counsel will be assigned pursuant to Rule 122 if the alleged contemnor is without financial resources or is otherwise unable to employ counsel; and

(4) advise the alleged contemnor that failure to appear at the hearing may result in the issuance of a bench warrant.

c. The notice shall be served in person or by both first class and certified mail, return receipt requested.

2. HEARING

a. The hearing shall be conducted in open court, and the alleged contemnor shall be given a reasonable opportunity to defend.

b. At the conclusion of the hearing:

(1) The issuing authority in open court shall announce the decision, and, upon a finding of contempt, impose punishment, if any.

(2) If the issuing authority finds contempt and imposes punishment, the issuing authority shall orally advise the contemnor of the right to appeal within 30 days for a trial *de novo* in the court of common pleas, and that:

(a) any punishment shall be automatically stayed for a period of 30 days from the date of the imposition of the punishment;

(b) if the contemnor files an appeal within the 30-day period, the stay will remain in effect until disposition of the appeal;

(c) when the punishment is imprisonment, that the contemnor has the right to assistance of counsel for the purpose of the *de novo* hearing in the court of common pleas and, if the contemnor is without financial resources or otherwise unable to employ counsel, that counsel will be assigned as provided in Rule 122;

(d) the contemnor must appear in the court of common pleas for the *de novo* hearing or the appeal may be dismissed; and

(e) unless a notice of appeal is filed within the 30-day period, on the date specified by the issuing authority, the contemnor must:

(i) pay any fine imposed; and

(ii) appear before the issuing authority for execution of any punishment of imprisonment.

(3) If the issuing authority finds contempt and imposes punishment, the issuing authority shall issue a written order of contempt setting forth:

- (a) the facts of the case that constitute the contempt;
- (b) the punishment imposed, and the date on which the contemnor is to pay any fine or to appear for the execution of any punishment of imprisonment; and
- (c) the information specified in paragraph (B)2.b(2).

(4) The order of contempt shall be signed by the issuing authority, and a copy given to the contemnor.

(5) Whether or not the issuing authority finds an individual in contempt for failure to comply with an order to pay restitution or to pay fines and costs, the issuing authority may alter or amend the order. If the issuing authority alters or amends the order, the issuing authority shall:

- (a) issue a written order setting forth the amendments and the reasons for the amendments, make the order a part of the transcript, and give a copy of the order to the defendant; and
- (b) advise the defendant that the defendant has 30 days within which to file a notice of appeal of the altered or amended order pursuant to Rule 141.

c. The issuing authority shall not hold a contempt hearing in the absence of the alleged contemnor. If the alleged contemnor fails to appear for the contempt hearing, the issuing authority may continue the hearing and issue a bench warrant.

3. PUNISHMENT

Punishment for contempt may not exceed the limits set forth as follows:

- a. Whenever a person is found to have failed to obey a subpoena issued by the issuing authority, punishment may be a fine of not more than \$100.

Failure to pay the fine within a reasonable time may result in imprisonment for not more than 10 days.

b. Whenever a person is found to have failed to comply with an order of the issuing authority directing a defendant to pay fines and costs in accordance with an installment payment order, punishment may be imprisonment for not more than 90 days.

c. Whenever a person is found to have failed to comply with an order of an issuing authority directing a defendant to compensate a victim, punishment may be a fine of not more than \$100 or imprisonment for not more than 30 days, or both.

COMMENT: This rule sets forth the procedures to implement 42 Pa.C.S. §§ 4137, 4138, and 4139 concerning contempt powers of the minor judiciary, as well as any other statutes subsequently enacted that would provide for findings of contempt by the minor judiciary. It is not intended to supplant the procedures set forth in 23 Pa.C.S. § 6110 *et seq.* concerning violations of protection from abuse orders.

The scope of the contempt powers of magisterial district judges, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges is governed by 42 Pa.C.S. §§ 4137, 4138, and 4139 respectively. Therefore, as used in this rule, "issuing authority" refers only to magisterial district judges, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers. However, 42 Pa.C.S. §§ 4137(c), 4138(c), and 4139(c) contain limitations upon the punishment that a minor court may impose for contempt. Legislative limitations on a court's power to sentence for contempt were held to be unconstitutional in *Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842 (2008).

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County

magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

Pursuant to Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013), the jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division. The terminology is retained in these rules because the Philadelphia Traffic Court, which is created by the Pennsylvania Constitution, has not been disestablished by constitutional amendment. Hearing officers of the Philadelphia Municipal Court Traffic Division do not have contempt powers of Philadelphia Traffic Court judges under 42 Pa.C.S. § 4139(d)

All contempt proceedings under this rule are to be entered on the issuing authority's miscellaneous docket, and a separate docket transcript for the contempt proceeding is to be prepared. If an appeal is taken, the issuing authority is required to forward the transcript and the contempt order to the clerk of courts. See Rule 141.

Paragraph (A) sets forth the procedures for handling contempt proceedings when the misbehavior is committed in the presence of the court and is obstructing the administration of justice. See 42 Pa.C.S. §§ 4137(a)(1), 4138(a)(1), and 4139(a)(1). This type of contempt is commonly referred to as "direct" or "summary" contempt. The issuing authority may immediately impose punishment without a formal hearing because prompt action is necessary to maintain or restore order in the courtroom and to protect the authority and dignity of the court. Although immediate action is permitted in these cases, the alleged contemnor is ordinarily given an opportunity to be heard before the imposition of punishment. See *Commonwealth v. Stevenson*, 482 Pa. 76, 393 A.2d 386 (1978).

Customarily, individuals are not held in summary contempt for misbehavior before the court without prior oral warning by the presiding judicial officer.

Paragraph (B) provides the procedures for instituting and conducting proceedings in all other cases of alleged

contemptuous conduct subject to the minor judiciary's statutory contempt powers, which are commonly referred to as "indirect criminal contempt" proceedings.

For purposes of this rule, the phrase "failed to obey a subpoena issued by the issuing authority" in paragraph (B)(1)(a) is intended to include the failure to obey any other lawful process ordering the person to appear before an issuing authority.

Pursuant to 42 Pa.C.S. §§ 4137(a)(2), (3), and (4), 4138(a)(2) and (3), and 4139(a)(2) and (3) only issuing authorities have the power to impose punishment for contempt of court for failure to comply with an order directing a defendant to compensate a victim. See paragraph (B)1.a.

"Indirect criminal contempt" proceedings must be instituted either by serving the alleged contemnor with a notice of the contempt hearing, or by issuing an attachment in the form of a warrant. The alleged contemnor must be afforded the same due process protections that are normally provided in criminal proceedings, including notice of the charges, an opportunity to be heard and to present a defense, and counsel. See, e.g., *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), and *Bloom v. Illinois*, 391 U.S. 194 (1968).

When a warrant is executed under this rule, the alleged contemnor should be taken without unreasonable delay before the proper issuing authority.

Although 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3) permit an issuing authority to impose summary punishments for indirect criminal contempt when a defendant fails to comply with an order of the issuing authority directing the defendant to pay fines and costs in accordance with an installment payment order, nothing in this rule is intended to preclude an issuing authority from proceeding pursuant to Rule 456 (Default Procedures: Restitution, Fines, and Costs).

No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the contempt hearing. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25

(1972). Also see Rule 454 concerning counsel in summary cases. The Supreme Court in *Commonwealth v. Abrams*, 461 Pa. 327, 336 A.2d 308 (1975) held that the right to counsel applies in cases of criminal contempt. See also *Commonwealth v. Crawford*, 466 Pa. 269, 352 A.2d 52 (1976).

For the assignment of counsel, follow the Rule 122 procedures for summary cases.

For waiver of counsel, follow the Rule 121 procedures for proceedings before an issuing authority.

For the procedures for taking, perfecting, and handling an appeal from an order entered pursuant to this rule, see Rule 141.

If a contemnor defaults in the payment of a fine imposed as punishment for contempt pursuant to this rule, the matter is to proceed as provided in Rule 142.

See Chapter 5 Part C concerning bail before a contempt hearing. See 42 Pa.C.S. § 4137(e) concerning a magisterial district judge's authority to set bail after an adjudication of contempt.

Paragraphs (A)2.e and (B)2.b(2)(e) require the issuing authority to set a date for the contemnor to pay any fine or to appear for execution of any punishment of imprisonment. This date should be at least 35 days from the date of the contempt proceeding to allow for the expiration of the 30-day automatic stay period and the 5-day period within which the clerk of courts is to serve a copy of the notice of appeal on the issuing authority. See Rule 141.

Paragraph (B)2.b(5) requires that the case be reviewed at the conclusion of a contempt hearing to determine whether the restitution order or the fines and costs installment order should be altered or amended, rather than scheduling another hearing. This review should be conducted whether or not the issuing authority finds an individual in contempt for failure to comply with an order to pay restitution, or whether or not the issuing authority finds an individual in contempt for failure to comply with an installment order to pay fines and

costs. For the authority to alter or amend a restitution order, see 18 Pa.C.S. § 1106(c)(3).

NOTE: Rule 30 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 140 and amended March 1, 2000, effective April 1, 2001; *Comment* revised March 26, 2004, effective July 1, 2004; amended March 1, 2012, effective July 1, 2012 [.] **Comment revised _____, 2014, effective _____, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of new Rule 30 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

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

Final Report explaining the March 26, 2004 Comment revision concerning right to counsel published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the March 1, 2012 amendments concerning limitations on punishment for contempt published with the Court's Order at 42 Pa.B. 1364 (March 17, 2012).

Report explaining the proposed Comment revision concerning the transfer of the Philadelphia Traffic Court functions to the Philadelphia Municipal Court published for comment at 44 Pa.B. (_____, 2014).

RULE 141. APPEALS FROM CONTEMPT ADJUDICATIONS BY MAGISTERIAL DISTRICT JUDGES, PITTSBURGH MAGISTRATES COURT JUDGES, OR PHILADELPHIA TRAFFIC COURT JUDGES.

(A) An appeal authorized by 42 Pa.C.S. §§ 4137(d), 4138(d), or 4139(d) of the action of an issuing authority in a contempt proceeding shall be perfected by filing a notice of appeal within 30 days after the action of the issuing authority with the clerk of courts and by appearing in the court of common pleas for the *de novo* hearing.

(B) In all cases, the punishment imposed for contempt shall be stayed for 30 days from the imposition of the punishment. If an appeal is filed within the 30-day period, the stay shall remain in effect pending disposition of the appeal.

(C) 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 heard the case;
- (3) the magisterial district number where the case was heard;
- (4) the date of the imposition of punishment;
- (5) the punishment imposed;
- (6) the type or amount of bail furnished to the issuing authority, if any; and
- (7) the name and address of the attorney, if any, filing the notice of appeal.

(D) Within 5 days after the filing of the notice of appeal, the clerk of courts shall serve a copy either personally or by mail upon the issuing authority.

(E) 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) either the notice of the hearing or a copy of the attachment;
- (3) the contempt order; and
- (4) any bench warrant.

(F) Upon the filing of the transcript and other papers by the issuing authority, the case shall be heard *de novo* by the appropriate division of the court of common pleas as the

president judge shall direct.

- (1) If the judge assigned to hear the matter finds contempt and imposes punishment, the case shall remain in the court of common pleas for execution of any punishment, including the collection of any fines or costs.
- (2) If the appellant fails to appear for the *de novo* hearing, the judge assigned to hear the matter may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.
- (3) If the appellant withdraws the appeal, the judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

COMMENT: This rule provides the procedures for taking an appeal from a finding of contempt by a magisterial district judge, a Pittsburgh Magistrates Court judge, or a Philadelphia Traffic Court judge.

As used in this rule, "issuing authority" refers only to magisterial district judges, Pittsburgh Magistrates Court judges, and Philadelphia Traffic Court judges when acting within the scope of their contempt powers. See 42 Pa.C.S. §§ 4137, 4138, and 4139.

By Orders dated November 29, 2004, 34 Pa.B. 6507 (December 11, 2004) and February 25, 2005, 35 Pa.B. 1662 (March 12, 2005), the Pennsylvania Supreme Court created an administrative judicial unit referred to as the Pittsburgh Municipal Court and assigned all matters within the jurisdiction of the Pittsburgh Magistrates Court to the Pittsburgh Municipal Court. As a result of these orders, the Pittsburgh Magistrates Court is no longer staffed while the Pittsburgh Municipal Court is staffed by Allegheny County magisterial district judges assigned on a rotating basis. The terminology is retained in these rules because the Pittsburgh Magistrates Court, which is created by statute, has not been disestablished by the statute.

Pursuant to Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013), the jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division. The terminology is retained in these rules because the Philadelphia Traffic

Court, which is created by the Pennsylvania Constitution, has not been disestablished by constitutional amendment. Hearing officers of the Philadelphia Municipal Court Traffic Division do not have contempt powers of Philadelphia Traffic Court judges under 42 Pa.C.S. §4139(d)

As the Pennsylvania Supreme Court stated in *Commonwealth v. McMullen*, 599 Pa. 435, 961 A.2d 842 (2008), legislative limitations on a court's power to sentence for contempt are unconstitutional.

Pursuant to paragraph (B), any punishment imposed for contempt will be automatically stayed for 30 days from the date of the imposition of the punishment, during which time a notice of appeal may be filed with the clerk of courts. To the extent that 42 Pa.C.S. §§ 4137(d), 4138(d), and 4139(d) are inconsistent with this rule, they are suspended by Rule 1101 (Suspension of Acts of Assembly).

If no notice of appeal is filed within the 30-day period following imposition of the punishment, Rule 140 requires the issuing authority to direct the contemnor on a date certain to pay any fine imposed or to appear for execution of any punishment of imprisonment.

See 42 Pa.C.S. § 4137(e) concerning the imposition of bail as a condition of release by a magisterial district judge.

The procedures set forth in Rule 462 (Trial *De Novo*) for a trial *de novo* on a summary case should be followed when a contempt adjudication is appealed to the common pleas court.

No defendant may be sentenced to imprisonment if the right to counsel was not afforded at the *de novo* contempt hearing. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Paragraph (F) makes it clear that the judge assigned to conduct the *de novo* hearing may dismiss an appeal of the action of an issuing authority in a contempt proceeding when the judge determines that the appellant is absent without cause from the *de novo* hearing. If the appeal is dismissed,

the judge should enter judgment and order execution of any punishment imposed by the issuing authority.

Once punishment for a contempt adjudication is imposed, paragraph (F)(1) makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any fine and costs, and the case may not be returned to the issuing authority.

NOTE: Rule 31 adopted October 1, 1997, effective October 1, 1998; renumbered Rule 141 and *Comment* revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; *Comment* revised March 26, 2004, effective July 1, 2004; amended March 1, 2012 effective July 1, 2012 [.] **Comment revised _____, 2014, effective _____, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of new Rule 31 published with the Court's Order at 27 Pa.B. 5405 (October 18, 1997).

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 February 28, 2003 amendments concerning contempt appeals published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the March 26, 2004 Comment revision concerning right to counsel published with the Court's Order at 34 Pa.B.1931 (April 10, 2004).

Final Report explaining the March 1, 2012 amendments regarding limitations on punishment for contempt published with the Court's Order at 42 Pa.B. 1364 (March 17, 2012).

Report explaining the proposed Comment revision concerning the transfer of the Philadelphia Traffic Court functions to the

Philadelphia Municipal Court published for comment at 44 Pa.B.
(, 2014).

RULE 431. PROCEDURE WHEN DEFENDANT ARRESTED WITH WARRANT.

(A) When a warrant is issued pursuant to Rule 430 in a summary case, the warrant shall be executed by a police officer as defined in Rule 103.

(1) If the warrant is executed between the hours of 6 a.m. and 10 p.m., the police officer shall proceed as provided in paragraphs (B) or (C).

(2) If the warrant is executed outside the hours of 6 a.m. and 10 p.m., unless the time period is extended by the president judge by local rule enacted pursuant to Rule 105, the police officer shall call the proper issuing authority to determine when the issuing authority will be available pursuant to Rule 117.

(B) Arrest Warrants Initiating Proceedings

(1) When an arrest warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant; or

(c) if the defendant is unable to pay, cause the defendant to be taken without unnecessary delay before the proper issuing authority.

(2) When the police officer accepts fine and costs, or collateral under paragraphs (B)(1)(a) or (b), the officer shall issue a receipt to the defendant setting forth the amount of fine and costs, or collateral received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant is taken before the issuing authority under paragraph (B)(1)(c),

(a) the defendant shall enter a plea; and

(b) if the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

- (i) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial; or
- (ii) the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged, in which event the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

(c) If the defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

(C) Bench Warrants

(1) When a bench warrant is executed, the police officer shall either:

(a) accept from the defendant a signed guilty plea and the full amount of the fine and costs if stated on the warrant;

(b) accept from the defendant a signed not guilty plea and the full amount of collateral if stated on the warrant;

(c) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction; or

(d) if the defendant is unable to pay, promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(3).

(2) When the defendant pays the restitution, fines, and costs, or collateral pursuant to paragraph (C)(1), the police officer shall issue a receipt to the defendant setting forth the amount of restitution, fine, and costs received and return a copy of the receipt, signed by the defendant and the police officer, to the proper issuing authority.

(3) When the defendant does not pay the restitution, fines, and costs, or collateral, the defendant promptly shall be taken before the proper issuing authority when available pursuant to Rule 117 for a bench warrant hearing. The bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

COMMENT: For the procedure in court cases following arrest with a warrant initiating proceedings, see Rules 516, 517, and 518. See also the *Comment* to Rule 706 (Fines or Costs) that recognizes the authority of a common pleas court judge to issue a bench warrant for the collection of fines and costs and provides for the execution of the bench warrant as provided in either paragraphs (C)(1)(c) or (C)(1)(d) and (C)(2) of this rule.

Section 8953 of the Judicial Code, 42 Pa.C.S. § 8953, provides for the execution of warrants of arrest beyond the territorial limits of the police officer's primary jurisdiction. See also *Commonwealth v. Mason*, 507 Pa. 396, 490 A.2d 421 (1985).

Nothing in paragraph (A) is intended to preclude the issuing authority when issuing a warrant pursuant to Rule 430 from authorizing in writing on the warrant that the police officer may execute the warrant at any time and bring the defendant before that issuing authority for a hearing under these rules.

For what constitutes a "proper" issuing authority, see Rule 130.

Delay of trial under paragraph (B)(3)(b)(ii) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements).

Although the defendant's trial may be delayed under this rule, the requirement that an arrested defendant be taken without unnecessary delay before the proper issuing authority remains unaffected.

When the police must detain a defendant pursuant to this rule, 61 P.S. § 798 provides that the defendant may be

housed for a period not to exceed 48 hours in “the borough and township lockups and city or county prisons.”

In cases in which a defendant who is under 18 years of age has failed to "comply with a lawful sentence" imposed by the issuing authority, the Juvenile Act requires the issuing authority to certify notice of the failure to comply to the court of common pleas. See the definition of "delinquent act," paragraph (2)(iv), in 42 Pa.C.S. § 6302. Following the certification, the case is to proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

If the defendant is 18 years of age or older when the default in payment occurs, the issuing authority must proceed under these rules.

For the procedures required before a bench warrant may issue for a defendant's failure to pay restitution, a fine, or costs, see Rule 430(B)(4). When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

For the procedures when a bench warrant is issued in court cases, see Rule 150.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail). Pursuant to Rule 117(B), when establishing the system of coverage best suited for the judicial district, the president judge may require defendants arrested on summary case bench warrants after hours to be taken to the established night court where the defendant would be given a notice to appear in the proper issuing authority's office the next business day or be permitted to pay the full amount of fines and costs.

Concerning the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.

For the procedures in summary cases within the jurisdiction of **[Philadelphia Traffic Court or] Philadelphia Municipal Court [.] and the Philadelphia Municipal Court Traffic Division**, see Chapter 10

NOTE: Rule 76 adopted July 12, 1985, effective January 1, 1986; *Comment* revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; *Comment* revised January 31, 1991, effective July 1, 1991; amended August 9, 1994, effective January 1, 1995; amended October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 431 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; *Comment* revised March 9, 2006, effective August 1, 2006 [.] ; amended , 2014, effective , 2014.

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the January 31, 1991 revision published at 20 Pa.B. 4788 (September 15, 1990); Supplemental Report published at 21 Pa.B. 621 (February 16, 1991).

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

Final Report explaining the October 1, 1997 amendments published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraphs (B)(3) and (C) concerning restitution published with the Court's Order at 29 Pa.B. 3718 (July 17, 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 7, 2003 changes to paragraph (D) and Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the April 1, 2005 Comment revision concerning application of the Juvenile Court Procedural Rules published with the Court's Order at 35 Pa.B. 2213 (April 16, 2005).

Final Report explaining the June 30, 2005 changes distinguishing between procedures for warrants that initiate proceedings and bench warrants procedures in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the March 9, 2006 Comment revision adding the cross-reference to Rule 706 published with the Court's Order at 36 Pa.B. 1396 (March 25, 2006).

Report explaining the proposed Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published for comment at 44 Pa.B. _____ (_____, 2014).

RULE 441. PROCEDURE FOLLOWING ARREST WITHOUT WARRANT.

(A) When a defendant has been arrested without a warrant, the defendant shall be either released from custody pursuant to paragraph (B) or taken before the proper issuing authority under paragraph (C).

(B) When a defendant has been arrested without a warrant, the arresting officer shall promptly release the defendant from custody when the following conditions have been met:

- (1) the defendant poses no threat of immediate physical harm to any other person or to himself or herself; and
- (2) the arresting officer has reasonable grounds to believe that the defendant will appear as required.

A citation shall be issued to the defendant at the time of release and thereafter the case shall proceed in accordance with Rules 405-409 as if the proceedings had been instituted by issuing a citation to the defendant.

(C) When the defendant has not been released from custody under paragraph (B),

(1) the defendant shall be taken without unnecessary delay before the issuing authority when available pursuant to Rule 117 where a citation shall be filed against the defendant, and

(a) the defendant shall enter a plea.

(b) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the defendant shall be given an immediate trial unless:

(i) the Commonwealth is not ready to proceed, or the defendant requests a postponement or is not capable of proceeding, and in any of these circumstances, the defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial; or

(ii) the defendant's criminal record must be ascertained before trial as specifically required by statute for purposes of grading the offense charged, in which event the

defendant shall be given the opportunity to deposit collateral for appearance on the new date and hour fixed for trial, which shall be after the issuing authority's receipt of the required information.

(2) If the defendant is under 18 years of age and cannot be given an immediate trial, the issuing authority promptly shall notify the defendant and defendant's parents, guardian, or other custodian of the date set for the summary trial, and shall release the defendant on his or her own recognizance.

COMMENT: This rule was amended in 2005 to require the arresting police officer to promptly arrange for the defendant's release if the two criteria set forth in paragraph (B) are met.

"Reasonable grounds" as used in paragraph (B)(2) would include such things as concerns about the validity of the defendant's address, the defendant's prior contacts with the criminal justice system, and the police officer's personal knowledge of the defendant.

Delay of trial under paragraph (C)(1)(b)(ii) is required by statutes such as 18 Pa.C.S. § 3929 (pretrial fingerprinting and record-ascertainment requirements). Although the defendant's trial may be delayed under this paragraph, the requirement that the defendant be taken without unnecessary delay before the proper issuing authority remains unaffected. See *also* Rules 408, 413, and 423.

On the defendant's right to counsel and waiver of counsel, see Rules 121 and 122.

With regard to the "proper" issuing authority as used in these rules, see Rule 130.

For the procedure in court cases initiated by arrest without warrant, see Rule 518.

For the procedures in summary cases within the jurisdiction of **[Philadelphia Traffic Court or]** Philadelphia Municipal

Court [.] and the Philadelphia Municipal Court Traffic Division, see Chapter 10.

Concerning an issuing authority's availability, see Rule 117 (Coverage: Issuing Warrants; Preliminary Arraignments and Summary Trials; and Setting and Accepting Bail).

When the police must detain a defendant pursuant to this rule, 61 P.S. § 798 provides that the defendant may be housed for a period not to exceed 48 hours in "the borough and township lockups and city or county prisons."

NOTE: Rule 71 adopted July 12, 1985, effective January 1, 1986; *Comment* revised September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended August 9, 1994, effective January 1, 1995; amended May 14, 1999, effective July 1, 1999; renumbered Rule 441 and amended March 1, 2000, effective April 1, 2001; amended August 7, 2003, effective July 1, 2004; amended June 30, 2005, effective August 1, 2006 [.] ; **amended _____, 2014, effective _____, 2014.**

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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 May 14, 1999 amendments to paragraph (C)(1) and the Comment 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 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the August 7, 2003 changes the Comment concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the June 30, 2005 changes concerning release of defendant following arrest and procedures when defendant is not released published with the Court's Order at 35 Pa.B. 3901 (July 16, 2005).

Report explaining the proposed Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published for comment at 44 Pa.B. (, 2014).

RULE 462. TRIAL *DE NOVO*.

(A) When a defendant appeals after the entry of a guilty plea or a conviction by an issuing authority in any summary proceeding, upon the filing of the transcript and other papers by the issuing authority, the case shall be heard *de novo* by the judge of the court of common pleas sitting without a jury.

(B) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(C) In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(1) the defendant waives the presence of the law enforcement officer in open court on the record;

(2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(D) If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

(E) If the defendant withdraws the appeal, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

(F) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, or, in cases in which the defendant may be sentenced to intermediate punishment, the trial judge may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment.

(G) At the time of sentencing, the trial judge shall:

(1) if the defendant's sentence includes restitution, a fine, or costs, state the date on which payment is due. If the defendant is without the financial means to pay the amount in a single remittance, the trial judge may provide for installment

payments and shall state the date on which each installment is due;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the trial judge may set bail;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the trial judge. The order shall include the information specified in paragraphs (G)(1) through (G)(3), and a copy of the order shall be given to the defendant.

(H) After sentence is imposed by the trial judge, the case shall remain in the court of common pleas for the execution of sentence, including the collection of any fine and restitution, and for the collection of any costs.

COMMENT: This rule is derived from former Rule 86(G) and former Rule 1117(c).

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.

'Entry,' as used in paragraph (A) of 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.

The procedures for conducting the trial *de novo* in the court of common pleas set forth in paragraphs (B), (F), and (G) are comparable to the summary case trial procedures in Rule 454 (Trial in Summary Cases).

Pursuant to paragraph (B), the decision whether to appear and assume control of the prosecution of the trial *de novo* is solely within the discretion of the attorney for the Commonwealth. When no attorney appears at the trial *de novo* on behalf of the Commonwealth or a municipality, the trial judge may ask questions of any witness who testifies, and the affiant may request the trial judge to ask specific questions. In the appropriate circumstances, the trial judge also may permit the affiant to question Commonwealth

witnesses, cross-examine defense witnesses, and make recommendations about the case to the trial judge.

The provisions of paragraph (C) that permit the court to continue the case if there is good cause for the officer's unavailability were added in response to *Commonwealth v. Hightower*, 438 Pa. Super. 400, 652 A.2d 873 (1995).

Paragraph (D) makes it clear that the trial judge may dismiss a summary case appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the trial judge should enter judgment and order execution of any sentence imposed by the issuing authority.

Paragraph (F) was amended in 2008 to permit a trial judge to delay imposition of sentence in order to investigate a defendant's eligibility for intermediate punishment for certain offenses, including summary violations of 75 Pa.C.S. §1543(b) (driving while license is under a DUI-related suspension), but only if he or she meets certain eligibility requirements, such as undergoing a drug and alcohol assessment. Potentially this information may not be available to the trial judge following a trial *de novo* at the time of sentencing.

Pursuant to paragraph (G), if the defendant is convicted, the trial judge must impose sentence, and advise the defendant of the payment schedule, if any, and the defendant's appeal rights. See Rule 704(A)(3) and Rule 720(D). No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. See *Alabama v. Shelton*, 535 U.S. 654 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

Once sentence is imposed, paragraph (H) makes it clear that the case is to remain in the court of common pleas for execution of the sentence and collection of any costs, and the case may not be returned to the magisterial district judge. The execution of sentence includes the collection of any fines and restitution.

For the procedures for appeals from the **[Philadelphia Traffic Court] Philadelphia Municipal Court Traffic Division**, see Rule 1037.

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; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 28, 2003, effective July 1, 2003; *Comment* revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009; *Comment* revised October 16, 2009, effective February 1, 2009 [.] ; amended _____, 2014, effective _____, 2014.

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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 concerning stays published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

Final Report explaining the May 14, 1999 amendments to former Rule 86, paragraph (G), concerning the police officer's presence published with the Court's Order at 29 Pa.B. 2776 (May 29, 1999).

NEW RULE 462:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 462 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1508 (March 18, 2003).

Final Report explaining the February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the March 26, 2004 Comment revision published with the Court's Order at 34 Pa.B. 1931 (April 10, 2004).

Final Report explaining the January 18, 2007 amendment to paragraph (G)(2) published with the Court's Order at 37 Pa.B. 523 (February 3, 2007).

Final Report explaining the December 16, 2008 amendments to permit delay in sentencing published with the Court's Order at 39 Pa.B. 8 (January 3, 2008).

Final Report explaining the October 16, 2009 Comment revision regarding new Rule 1037 and procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. 6327 (October 31, 2009).

Report explaining the proposed Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published for comment at 44 Pa.B. (, 2014).

CHAPTER 10

RULES OF CRIMINAL PROCEDURE FOR THE PHILADELPHIA MUNICIPAL COURT
AND **[THE PHILADELPHIA TRAFFIC COURT] THE PHILADELPHIA MUNICIPAL
COURT TRAFFIC DIVISION**

RULE 1000. SCOPE OF RULES.

(A) The rules in this chapter govern all proceedings in the Philadelphia Municipal Court, including summary cases; Municipal Court cases, as defined in Rule 1001(A); the filing of appeals from Municipal Court cases; the filing of petitions for writs of *certiorari*; and the preliminary proceedings in criminal cases charging felonies, Part A, and govern proceedings in summary traffic cases in **[Traffic Court] Municipal Court Traffic Division**, Part B.

(B) Any procedure that is governed by a statewide Rule of Criminal Procedure that is not specifically covered in Chapter 10 or by a Philadelphia local rule authorized by these rules and adopted pursuant to Rule 105 shall be governed by the relevant statewide rule.

COMMENT: The 2004 amendments make it clear that, except as otherwise provided in the rules, Chapter 10 governs all proceedings in the Philadelphia Municipal Court, including the procedures for instituting criminal cases charging felonies, preliminary arraignments, and preliminary hearings. See 42 Pa.C.S. § 1123 (Jurisdiction and Venue).

NOTE: Rule 6000 adopted December 30, 1968, effective January 1, 1969; amended March 28, 1973, effective March 28, 1973; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1000 and amended March 1, 2000, effective April 1, 2001; amended August 24, 2004, effective August 1, 2005; amended June 30, 2005, effective August 1, 2006; amended September 9, 2005, effective February 1, 2006 **[.] ; amended _____, 2014, effective _____, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the August 24, 2004 amendments clarifying the scope of Chapter 10 published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).

Final Report explaining the June 30, 2005 amendments to paragraph (B) concerning local rules published with the Court's Order at 35 Pa.B. (, 2005).

Final Report explaining the September 9, 2005 amendments adding new rules governing Philadelphia Traffic Court published with the Court's Order at 35 Pa.B. 5239 (September 24, 2005).

Report explaining the proposed amendments concerning the abolition of the Philadelphia Traffic Court transfer of functions to the Philadelphia Municipal Court published for comment at 44 Pa.B. (, 2014).

RULE 1001. DISPOSITION OF CRIMINAL CASES -- PHILADELPHIA
MUNICIPAL COURT.

(A) A Municipal Court case is any case in which the only offense or offenses charged are misdemeanors under the Crimes Code or other statutory criminal offenses for which no prison term may be imposed or which is punishable by a term of imprisonment of not more than 5 years, including any offense under the Vehicle Code other than a summary offense.

(B) When one or more such offenses are charged in a single complaint or series of complaints against one defendant, all shall be joined in the same Municipal Court case, regardless of the length of the cumulative sentence which could be imposed on all charges.

(C) A Municipal Court case may be transferred from the Municipal Court to the Court of Common Pleas by order of the President Judge of the Court of Common Pleas, or the President Judge's designee, upon the President Judge's approval of:

(1) a certification by defense counsel that trial in the Municipal Court will unduly delay defendant's access to a trial by jury; or

(2) a certification by both defense counsel and the attorney for the Commonwealth that the trial of the case will be so time consuming as to unduly disrupt the business of the Municipal Court.

(D) The attorney for the Commonwealth may file with the Municipal Court Clerk of Courts a written certification to exercise the Commonwealth's right to a jury trial in a Municipal Court case. The attorney for the Commonwealth shall serve a copy of the certification on counsel for the defendant, or the defendant if unrepresented, and on the President Judge of Municipal Court. Upon receipt of the certification, the President Judge promptly shall schedule a preliminary hearing, and the case shall be conducted as provided in Rules 541, 542, 543, and 1003(E). When a case is held for court, the case shall remain in the Common Pleas Court through final disposition.

COMMENT: This rule, which defines "Municipal Court case," is intended to ensure that the Municipal Court will take dispositive action, including trial and verdict when appropriate, in any criminal case that does not involve a felony, excluding summary cases under the Vehicle Code. The latter are under the jurisdiction of the **[Philadelphia**

Traffic Court, see 42 Pa.C.S. §§ 1301-1303, 1321]
Municipal Court Traffic Division, the successor of the
Philadelphia Traffic Court, see Act 17 of 2013, P.L. 55,
No. 17 (June 19, 2013) and 42 Pa.C.S. §102, 325, 1121,
1127, 1302, 1321.

Paragraph (D) was added in 2007 in accord with the 1998 amendment to article I, § 6 of the Pennsylvania Constitution that provides that “the Commonwealth shall have the same right to trial by jury as does the accused.” See *Commonwealth v. Hargraves*, 883 A.2d 616 (Pa. Super. 2005), *allocatur denied*, 587 Pa. 711, 898 A.2d 1069 (2006). The filing and service requirement in paragraph (D) must be accomplished as provided in Rule 576. Once a case is bound over to Common Pleas Court, the trial judge may not remand the case to the Municipal Court for any reason, even if the right to jury trial is waived.

NOTE: Present Rule 6001 adopted March 28, 1973, effective March 28, 1973, replacing prior Rule 6001; amended June 28, 1974, effective July 1, 1974; paragraph (C) added February 10, 1975, effective immediately; title amended July 1, 1980, effective August 1, 1980; *Comment* revised January 28, 1983, effective July 1, 1983; amended June 19, 1996, effective July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1001 and *Comment* revised March 1, 2000, effective April 1, 2001 ; amended August 24, 2004, effective August 1, 2005; amended January 5, 2007, effective March 6, 2007; amended January 27, 2011, effective in 30 days [.] ; **amended _____, 2014, effective _____, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the June 19, 1996 amendments published with the Court's Order at 26 Pa.B. 3128 (July 6, 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 August 24, 2004 amendments clarifying the definition of "Municipal Court Case" published with the Court's Order at 34 Pa.B. 5016 (September 11, 2004).

Final Report explaining the January 5, 2007 amendments adding paragraph (D) concerning the Commonwealth's right to a jury trial in a Municipal Court case published with the Court's Order at 37 Pa.B. 313 (January 20, 2007).

Report explaining the proposed Comment revision the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. _____ (_____, 2014).

RULE 1002. PROCEDURE IN SUMMARY CASES.

(A) Except as provided in this rule or by local rule authorized by this rule, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused only of one or more non-traffic summary offenses or violations of municipal criminal ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

(B) Non-traffic summary proceedings shall be instituted either by a citation issued to the defendant or arresting without a warrant when arrest is specifically authorized by law.

(1) Issuance of Citation

(a) The law enforcement officer shall issue the citation to the defendant pursuant to Rule 405 (Issuance of Citation), together with a notice to appear, unless required to proceed pursuant to paragraph (B)(1)(e). The notice to appear shall direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room.

(b) When authorized by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule 403(A) (Contents of Citation) and a notice to appear. The notice to appear shall direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room.

(c) Within 5 days after issuance of the citation and notice to appear, the citation shall be filed with the clerk of Municipal Court.

(d) When the defendant appears before the judge or trial commissioner as provided in paragraph (B)(1)(a) or (B)(1)(b), the judge or trial commissioner shall explain the process to the defendant.

- (i) If the defendant enters a guilty plea, the judge or trial commissioner shall impose the fines and costs.
- (ii) If the defendant enters a not guilty plea, the judge or trial commissioner shall set a date for trial before a judge and issue a subpoena to the defendant.
- (iii) If applicable, after paying any fee imposed, the

defendant may be accepted into the Municipal Court's summary case diversionary program, or any other diversionary program offered pursuant to local rule promulgated pursuant to Rule 105 (Local Rules). When the defendant successfully completes the Municipal Court's summary case diversionary program, the defendant's arrest record automatically will be expunged.

(e) When required by local rule promulgated pursuant to Rule 105 (Local Rules), the law enforcement officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the law enforcement officer or a superior officer shall prepare and issue the citation to the defendant. Thereafter, the law enforcement officer without unnecessary delay shall transport the defendant to the Municipal Court for proceedings before a judge, and the case shall proceed as provided by local rule promulgated pursuant to Rule 105 (Local Rules).

(f) The defendant shall not be slated, fingerprinted, or photographed, except as provided by law.

(2) Arrest Without a Warrant

(a) When an arrest without a warrant in a non-traffic summary case is authorized by law, the police officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the police officer or a superior officer shall prepare and issue a citation to the defendant.

(b) Except when the police officer is required to proceed pursuant to paragraph (B)(1)(e), or as otherwise provided in this rule, the case shall proceed as provided in Rule 441.

(c) If the defendant is to be released pursuant to Rule 441(B), the defendant shall be released on his or her own recognizance and given a notice to appear on a date and at a time certain in a specified court room.

(d) If the defendant is not released under Rule 441(B), the defendant without unnecessary delay shall be brought before a judge, who shall proceed as provided in Rule 441(C).

(C) If the defendant fails to appear pursuant to the notice to appear or a subpoena, a bench warrant shall be issued.

(D) When the same conduct is proscribed under an Act of Assembly and a municipal criminal ordinance, the charge shall be brought under the Act of Assembly and not under the ordinance.

COMMENT: This rule, which replaced former Rule 1002 in 2005, was developed to accommodate the procedures Philadelphia Municipal Court has implemented to address the issues in non-traffic summary cases unique to Philadelphia to more efficiently handle the vast number of non-traffic summary cases, to protect the defendants' rights to a fair and prompt disposition of their cases, and, when appropriate, to provide the necessary rehabilitation or social services. Municipal Court is required to implement local rules pursuant to Rule 105 (Local Rules) enumerating the details of the summary proceedings following the issuance of a citation or a summons. For purposes of this rule, "local rule" includes all memoranda of understanding and administrative orders that affect non-traffic summary case procedures.

Once a summary case is appealed to the Court of Common Pleas for trial *de novo*, the case shall remain in the Court of Common Pleas. See also Rule 462 and its *Comment*.

The 2009 amendments to paragraph (B) conform the non-traffic summary citation procedures in Philadelphia with the statewide procedures governing the institution of a non-traffic summary case by issuing a citation to the defendant in person or arresting the defendant without a warrant. See Rules 405 (Issuance of Citation) and 440 (Arrest Without Warrant). The amendments require the police officer to issue a citation as provided in Rule 405 and proceed pursuant to paragraph (B)(1)(a) or (B)(1)(b), unless the case falls within the jurisdiction of one of Philadelphia Municipal Court's Nuisance Night Courts or Community Courts, or to arrest without a warrant when such an arrest is authorized by law.

The contents of the citation must comply with the requirements of Rule 403(A). The notice to appear required by paragraphs (B)(1)(a), (B)(1)(b), and (B)(2)(c) may be added to the citation form.

Arrests without a warrant in summary cases are authorized only in exceptional circumstances, such as cases involving enhanced penalties, or when the defendant fails to produce identification, or when there is violence or the imminent threat of violence, or when there is a likelihood that the defendant will flee.

Nothing in this rule prevents the filing of a citation pursuant to Rules 410 and 411.

The 2009 amendments do not modify the current procedures governing Philadelphia Municipal Court's Nuisance Night Courts and Community Courts that are implemented by paragraph (B)(1)(e).

Although defendants in summary cases ordinarily are not slated, photographed, or fingerprinted, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. See, e.g., 18 Pa.C.S. § 3929(g) concerning fingerprinting in retail theft cases.

All summary offenses under the motor vehicle laws and parking violations are under the jurisdiction of the **[Philadelphia Traffic Court. See 42 Pa.C.S. §§ 1301-1303, 1321] Municipal Court Traffic Division, the successor of the Philadelphia Traffic Court, see Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §102, 325, 1121, 1127, 1302, 1321.**

NOTE: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; *Comment* revised January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January

1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002 ; amended May 6, 2009, effective February 1, 2010; *Comment* revised February 12, 2010, effective April 1, 2010 [.] ; amended _____, 2014, effective _____, 2014.

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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 provisions of the new rule published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Final Report explaining the May 12, 2009 changes to paragraph (B) concerning issuing citations and arrest without warrants in summary cases published at 39 Pa.B. 2568 (May 23, 2009).

Final Report explaining the February 12, 2010 Comment revision concerning the disposition of summary offenses at the court of common pleas published with the Court's Order at 40 Pa.B. 1068 (February 27, 2010).

Report explaining the proposed Comment revisions concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. (_____, 2014).

PART B

**PHILADELPHIA [TRAFFIC COURT] MUNICIPAL COURT TRAFFIC DIVISION
PROCEDURES**

RULE 1030. SCOPE OF SUMMARY TRAFFIC COURT RULES.

Except as provided in these rules or by local rule authorized by these rules, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused of one or more summary traffic offenses only or violations of municipal traffic ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

COMMENT: These rules were developed in 2005 to accommodate the procedures Philadelphia Traffic Court has implemented to address the issues in summary traffic cases unique to Philadelphia, to more efficiently handle the vast number of summary traffic cases, and to protect the defendants' rights to a fair and prompt disposition of their cases.

The jurisdiction and functions of the Philadelphia Traffic Court were transferred to the Philadelphia Municipal Court Traffic Division in 2013, see Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §102, 325, 1121, 1127, 1302, 1321.

See Rule 105 for the procedures for promulgating local rules.

NOTE: Adopted September 9, 2005, effective February 1, 2006 [.] ; **amended _____, 2014, effective _____, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

*REPORT: RULE CHANGES IN LIGHT OF THE PHILADELPHIA TRAFFIC COURT ABOLITION
01/29/2014*

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5329 (September 24, 2005).

Report explaining the proposed Comment revision concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. (_____, 2014).

RULE 1031. INSTITUTION OF PROCEEDINGS IN SUMMARY TRAFFIC CASES.

(A) Summary traffic cases in Philadelphia shall be instituted by:

- (1) issuing a citation to the defendant as provided in Rules 405-409;
- (2) filing a citation with the **[Traffic Court] Philadelphia Municipal Court Traffic Division** as provided in Rules 410-414; or
- (3) arresting without a warrant when arrest is specifically authorized by law as provided in Rules 440 and 441.

(B) **[The Administrative Judge of Traffic Court, or in the event the position of Administrative Judge is vacant, the Traffic Court President Judge, may provide by local rule, as an exception to the trial notice procedures in Rule 408(B), when a citation is issued to the defendant as provided in Rule 405, that the law enforcement officer also shall give the defendant written notice of the date and time and location set for the summary trial.] When provided by local rule as an exception to the trial notice procedures in Rule 408(B), the law enforcement officer also shall give the defendant written notice of the date and time and location set for the summary trial when a citation is issued to the defendant as provided in Rule 405.**

- (1) The trial notice shall include an explanation that if the defendant enters a guilty plea and pays the fine and costs indicated on the citation within the specified time, the summary trial will be cancelled.
- (2) The trial notice also shall include notice to the defendant that:
 - (a) failure to appear for the trial shall constitute consent for the trial to be conducted in the defendant's absence;
 - (b) if the defendant is found guilty, the collateral deposited will be forfeited and applied toward the fine and costs; and
 - (c) the defendant will have the right to appeal within 30 days for a trial *de novo* in the court of common pleas.

COMMENT: See Rule 403 for the contents of the citation.

The trial notice permitted in paragraph (B) may be added to the citation form.

See Rule 105 for the procedures for promulgating local rules.

NOTE: Adopted September 9, 2005, effective February 1, 2006 [.] ; amended _____, 2014, effective _____, 2014.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5239 (September 24, 2005).

Report explaining the proposed amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. (_____, 2014).

RULE 1032. PLEAS IN RESPONSE TO CITATION.

In addition to the procedures in Rules 407 and 412 for entering a plea in a summary traffic case, the defendant, by means of electronic transmission as provided by local rule, may notify the **[Traffic Court] Municipal Court Traffic Division** of his or her plea, and either pay the fines and costs or post the requisite collateral.

COMMENT: See Rule 105 for the procedures for promulgating local rules.

NOTE: Adopted September 9, 2005, effective February 1, 2006 [.] ; amended _____, 2014, effective _____, 2014.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5239 (September 24, 2005).

Report explaining the proposed amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. (_____, 2014).

RULE 1033. PROCEDURES WHEN DEFENDANT ARRESTED WITH WARRANT.

(A) When a defendant is arrested pursuant to a warrant issued as provided in Rule 430, the police officer without unnecessary delay shall take the defendant before the proper issuing authority and shall proceed as provided in this rule and by local rule.

(B) When the defendant appears in person or appears by means of two-way simultaneous audio-video equipment, the judge or **[bail commissioner] arraignment court magistrate** shall:

(1) inform the defendant concerning the specific citations to which the defendant has not entered a plea as required by Rules 407 and 412;

(2) inform the defendant concerning the specific citations that have been adjudicated that have outstanding fines or costs for which the defendant is in default of a payment order or a payment plan; and

(3) advise the defendant of the right to retain counsel, and if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment and the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic **[Court] Division** as provided in Rule 1035.

(C) When the defendant appears before **[bail commissioner] an arraignment court magistrate**, the **[bail commissioner] arraignment court magistrate** shall schedule the next court proceeding before the Traffic **[Court] Division** and give the defendant a hearing notice or subpoena, set collateral as provided in Rule 1034 and local rule, and release the defendant, or if the defendant is unable to post the collateral, commit the defendant.

(D) When the defendant appears before a Traffic **[Court] Division** judge **or hearing officer**,

(1) if the matter is not ready to proceed, the Traffic **[Court] Division** judge **or hearing officer** shall schedule the next court proceeding and give the defendant a scheduling order, set collateral as provided in Rule 1034 and local rule, and release the defendant, or if the defendant is unable to post the collateral, commit the defendant.

(2) If the matter is ready to proceed,

(a) when the defendant is arrested pursuant to a warrant issued as provided in Rule 430(A) or (B)(1)(a) or (B)(2), the defendant shall enter a plea. If the defendant pleads guilty, the Traffic **[Court] Division** judge **or hearing officer** shall impose sentence. If the defendant pleads not guilty, the summary trial shall be conducted.

(b) When the defendant is arrested following a trial *in absentia* pursuant to a warrant issued as provided in Rule 430(B)(3)(c) and (B)(4),

(i) the Traffic **[Court] Division** judge **or hearing officer** shall conduct an immediate hearing to determine defendant's financial ability to pay the full amount due.

(ii) If the Traffic **[Court] Division** judge **or hearing officer** determines the defendant is financially unable to pay the full amount due, the judge may order an installment payment plan as provided in Rule 456(C)(2).

(iii) If the judge **or hearing officer** determines the defendant is financially able to pay the full amount due, and that there is a likelihood that imprisonment will be imposed at the conclusion of the hearing, the judge **or hearing officer** shall advise the defendant of the right to retain counsel, and, if the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic **[Court] Division** as provided in Rule 1035. A hearing may be held if retained or appointed counsel is available; otherwise, the hearing shall be rescheduled for a date certain, and the defendant shall be released on collateral as provided in Rule 1034.

(iv) At the conclusion of the hearing, the Traffic **[Court] Division** judge **or hearing officer** shall proceed as provided in Rule 456(C)(3).

(c) When the defendant is arrested after defaulting on the payment of fine or costs or restitution pursuant to a warrant issued as provided in Rule 430(B)(3)(b) and (B)(4),

(i) the Traffic **[Court] Division** judge **or hearing officer** shall conduct an immediate hearing to determine whether the defendant

is financially able to pay the outstanding fines and costs as previously ordered.

(ii) If the judge **or hearing officer** determines the defendant is financially unable to pay as previously ordered, the judge may issue a revised payment order or payment plan.

(iii) If the judge **or hearing officer** determines the defendant is financially able to pay as previously ordered, and that there is a likelihood that imprisonment will be imposed at the conclusion of the hearing, the judge shall advise the defendant of the right to retain counsel, and if, the defendant does not have the financial ability to retain counsel, advise the defendant that counsel will be appointed by Traffic Court as provided in Rule 1035. A hearing may be held if retained or appointed counsel is available; otherwise the hearing shall be rescheduled for a date certain, and the defendant shall be released on collateral as provided in Rule 1034.

(iv) At the conclusion of the hearing, the Traffic **[Court] Division** judge **or hearing officer** shall proceed as provided in Rule 456(C)(3).

(d) When the defendant is arrested on multiple warrants in cases involving both unadjudicated citations and adjudicated citations with outstanding balances, the matter shall proceed as provided in paragraph (D)(2)(a) (summary trial), or paragraphs (D)(2)(b) or (D)(2)(c) (default hearings). These cases may be joined and the proceeding scheduled before the same Traffic **[Court] Division** judge **or hearing officer**.

COMMENT: Pursuant to **Philadelphia** Municipal Court Local Rule 540 and Traffic **[Court] Division** Local Rule 1033, when a defendant is arrested outside the normal business hours of Traffic **[Court] Division**, the defendant is to be taken without unnecessary delay before a Philadelphia Municipal Court **[bail commissioner] arraignment court magistrate** who shall proceed as provided in paragraph (C) and in Traffic **[Court] Division** Local Rule 1033.

"Proper issuing authority" as used in this rule is the **[traffic court] Traffic Division** judge or **[bail commissioner] arraignment court magistrate** assigned to conduct these proceedings as provided in this rule, Municipal Court Local Rule 540, and Traffic **[Court] Division** Local Rule 1033.

For the procedures for contempt proceedings in Traffic **[Court] Division** cases, see Rules 140, 141, and 142.

For the summary appeal procedures, see Rules 460, 461, and 462.

See Rule 105 for the procedures for promulgating local rules.

NOTE: Adopted September 9, 2005, effective February 1, 2006 [.] ; amended , 2014, effective , 2014.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5239 (September 24, 2005).

Report explaining the proposed amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. (, 2014).

RULE 1034. COLLATERAL

(A) Except as provided in this rule, the procedures for collateral shall be as provided in Rule 452.

(B) When determining the amount of collateral, if any,

(1) if the defendant does not have a prior history of failure to appear for scheduled hearings, or there are other reasonable grounds to believe that the defendant will appear, or the defendant is without adequate resources to deposit collateral, the Traffic **[Court] Division judge, hearing officer or **[bail commissioner] arraignment court magistrate** shall consider releasing the defendant on his or her own recognizance, or sign own bail ("SOB"), or on a nominal amount of collateral.**

(2) If the defendant has a prior history of failing to appear for Traffic **[Court] Division** scheduled hearings, and notice of the hearings was served personally on defendant, the Traffic **[Court] Division judge, hearing officer or **[bail commissioner] arraignment court magistrate** may set collateral in an amount not to exceed the collateral that may be required for the payment of defendant's unadjudicated citations and the balance of outstanding fines and costs owed on adjudicated citations.**

COMMENT: When the collateral is set in a monetary amount, the Traffic **[Court] Division judge, hearing officer or **[bail commissioner] arraignment court magistrate** may permit the defendant to be released from custody when 10% of the amount has been posted.**

When determining the amount of collateral to set in paragraph (B)(2), the judge, **hearing officer** or **[bail commissioner] arraignment court magistrate** must take into consideration the defendant's financial resources and ability to post the amount set. The amount of collateral must be reasonable.

See Rule 105 for the procedures for promulgating local rules.

NOTE: Adopted September 9, 2005, effective February 1, 2006 [.] ; amended , 2014, effective , 2014.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5239 (September 24, 2005).

Report explaining the proposed amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. (, 2014).

RULE 1035. APPOINTMENT OF COUNSEL.

A) When the Traffic **[Court] Division** judge **or hearing officer** has preliminarily determined that there is a likelihood that imprisonment will be imposed at the conclusion of a summary traffic proceeding,

(1) a hearing may be held if retained or appointed counsel is available; or

(2) if the defendant is without financial resources or is otherwise unable to employ counsel, the judge shall continue the proceeding, issue a scheduling order, and either appoint counsel or direct the defendant to report for a financial interview to determine eligibility to court-appointed counsel.

(B) When the defendant reports for the financial interview to determine eligibility to court-appointed counsel, the defendant shall provide supporting documentation, such as a driver's license, a DPW card, pay stubs, and any other relevant information. Upon review of the information provided by the defendant during the financial interview, the Traffic **[Court] Division** judge **or hearing officer** shall enter an appropriate order.

(C) Counsel's appointment shall terminate at the conclusion of the Traffic **[Court] Division** proceeding, unless the Traffic **[Court] Division** judge sentences the defendant to a period of incarceration, in which case, counsel's appointment shall continue through any appeal for a trial *de novo* in the court of common pleas.

(D) At the time a sentence is imposed that includes a period of incarceration, if the defendant is represented by private counsel, the Traffic **[Court] Division** judge shall advise the defendant that, in the event private counsel ceases to represent the defendant after the imposition of the sentence and before the sentence is carried out, if the defendant is unable to afford counsel, he or she has the right to have counsel appointed to represent the defendant to file an appeal for a trial *de novo*, and if appointed, counsel's appointment shall continue through the trial *de novo* in the court of common pleas.

COMMENT: No defendant may be sentenced to imprisonment or probation if the right to counsel was not afforded at trial. *See Alabama v. Shelton*, 535 U.S. 654, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002), *Scott v. Illinois*, 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972).

See Rules 460, 461, and 462 for the procedures for summary case appeals.

REPORT: RULE CHANGES IN LIGHT OF THE PHILADELPHIA TRAFFIC COURT ABOLITION
01/29/2014

NOTE: Adopted September 9, 2005, effective February 1, 2006 [.] ; amended _____, 2014, effective _____, 2014.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5239 (September 24, 2005).

Report explaining the proposed amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. (_____, 2014).

[RULE 1036. TRAFFIC COURT HEARING OFFICERS

(A) The Administrative Judge of Traffic Court, or in the event the position of Administrative Judge is vacant, the President Judge of Traffic Court, may appoint Traffic Court hearing officers to conduct post-hearing proceedings, including but not limited to, establishing or re-establishing payment plans, monitoring compliance with payment plans, holding warrant hearings, and performing additional duties as may be identified by local rule.

(B) The Administrative Judge by local rule shall establish the qualifications and educational requirements for the position of Traffic Court hearing officer.

COMMENT: See Pa.R.Crim.P. 105 for the procedures for promulgating local rules.

NOTE: Adopted September 9, 2005, effective February 1, 2006 [.] ; amended _____, 2014, effective _____, 2014.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the provisions of the new rule published with the Court's Order at 35 Pa.B. 5239 (September 24, 2005).]

(This is an entirely new rule.)

RULE 1036. PHILADELPHIA MUNICIPAL COURT TRAFFIC DIVISION HEARING OFFICERS

(A) As provided in this rule, Philadelphia Municipal Court Traffic Division hearing officers may be appointed to hear cases and issue adjudications in connection with prosecutions for summary offenses arising under Title 75 (relating to vehicles) and ordinances enacted pursuant to Title 75.

(1) Hearing officers are “issuing authorities” only for purposes of conducting summary trials, accepting pleas, conducting trials *in absentia*, setting collateral, and conducting post-trial proceedings, including but not limited to, establishing or re-establishing payment plans, monitoring compliance with payment plans, holding warrant hearings, and performing additional duties as may be identified by local rule.

(2) Hearing officers shall not conduct summary trials or hearings if there is a likelihood that imprisonment will be imposed at the conclusion of a summary traffic proceeding.

(B) The Philadelphia Municipal Court Traffic Division by local rule shall establish the qualifications and educational requirements for the position of Traffic Division hearing officer.

(C) The Code of Conduct for Employees of the Unified Judicial System shall be applicable to the Philadelphia Municipal Court Traffic Division hearing officers.

COMMENT: The position of “*Philadelphia Municipal Court Traffic Division hearing officer*” was established by legislation in 2013 as part of the transfer of jurisdiction and functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court Traffic Division. See Act 17 of 2013, P.L. 55, No. 17 (June 19, 2013) and 42 Pa.C.S. §102, 325, 1121, 1127, 1302, 1321.

NOTE: New Rule 1036 adopted _____, 2014, effective _____, 2014.

Report explaining proposed new Rule 1036 concerning hearing officers of the Philadelphia Municipal Court Traffic Division published for comment at 44 Pa.B. (, 2014).

RULE 1037. APPEAL FROM SUMMARY CONVICTION.

(A) When a defendant appeals after the entry of a guilty plea or a conviction in any **Traffic Division** summary proceeding **[in the Philadelphia Traffic Court]**, upon the filing of the transcript and other papers by the Traffic **[Court] Division**, the Court of Common Pleas may schedule a status or settlement conference prior to the *de novo* summary trial.

(1) In the event the attorney for the Commonwealth or a designee and the defendant reach a negotiated plea, the plea may be entered before a Trial Commissioner and, upon approval by a judge of the Court of Common Pleas, the negotiated sentence will be recorded.

(2) In the event a negotiated plea is not approved by the court, the case shall be heard *de novo* by a judge of the Court of Common Pleas sitting without a jury.

(B) The attorney for the Commonwealth may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(C) In appeals from **Traffic Division** summary proceedings **[in the Philadelphia Traffic Court]**, the law enforcement officer who observed the alleged offense must appear and testify. The failure of a law enforcement officer to appear and testify shall result in the dismissal of the charges unless:

(1) the defendant waives the presence of the law enforcement officer in open court on the record;

(2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or

(3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

(D) If the defendant fails to appear for the trial *de novo*,

(1) when the appeal is from a mandatory sentence of imprisonment, the Court of Common Pleas judge shall dismiss the appeal, enter judgment in the Court of Common Pleas on the judgment of the Traffic **[Court] Division** judge, and issue a bench warrant and a commitment for the defendant. Execution of the sentence shall commence immediately upon defendant's arrest; and

(2) in all other cases, the Common Pleas Court judge shall dismiss the appeal and enter the judgment in the Court of Common Pleas on the judgment of the

Traffic **[Court] Division** judge or hearing officer.

(E) If the defendant withdraws the appeal, the Court of Common Pleas judge shall enter the judgment in the Court of Common Pleas on the judgment of the Traffic **[Court] Division** judge or hearing officer.

(F) At the time of sentencing, the Court of Common Pleas judge shall:

(1) if the defendant's sentence includes a fine or costs and the defendant has the financial means to pay the amount in a single remittance, the judge shall instruct the defendant to make the payment at the Philadelphia **[Traffic Court] Municipal Court Traffic Division**. If the defendant is without the financial means to pay the amount in a single remittance, the judge shall instruct the defendant to contact the **[Philadelphia] Traffic [Court] Division** to establish an installment payment plan;

(2) advise the defendant of the right to appeal to the Superior Court within 30 days of the imposition of sentence, and that, if an appeal is filed, the execution of sentence will be stayed and the judge may set bail;

(3) if a sentence of imprisonment has been imposed, direct the defendant to appear for the execution of sentence on a date certain unless the defendant files a notice of appeal within the 30-day period; and

(4) issue a written order imposing sentence, signed by the judge. The order shall include the information specified in paragraphs (F)(1) through (F)(3), and a copy of the order shall be given to the defendant and to the Traffic Court.

(G) After sentence is imposed by the Court of Common Pleas judge, and either after the expiration of the time to file an appeal to the appellate courts, or, if a sentence of imprisonment has been imposed, after the execution of the sentence of imprisonment, the case shall be returned to the **[Philadelphia] Traffic [Court] Division** for the collection of any outstanding fines and costs and for all other appropriate action.

COMMENT: This rule was adopted in 2009 to provide the procedures for appeals from the **[Philadelphia] Traffic [Court] Division** to the Court of Common Pleas of the First Judicial District. Except as provided in this rule, the procedures of Rules 460, 461, and 462, governing appeals for a trial *de novo* in summary cases, shall apply to summary case appeals **[in the Philadelphia] Traffic [Court] Division**.

For purposes of this rule, "judgment" means the determination of guilty and any sentence imposed on the

defendant.

The date upon which payment is due upon a sentence of a fine or costs ordinarily will be 30 days following imposition of sentence.

NOTE: Rule 1037 adopted October 16, 2009, effective February 1, 2010 [.] ; **amended _____, 2014, effective _____, 2014.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining new Rule 1037 concerning procedures for the appeal from the Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. 6327 (October 31, 2009).

Report explaining the proposed amendments concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published for comment at 44 Pa.B. (_____, 2014).

REPORT

*Proposed New Pa.R.Crim.P. 1036,
Proposed Amendment to Pa.Rs.Crim.P. 105, 1000, 1031-1035, and 1037, and
Proposed Revision of the Comments to Pa.Rs.Crim.P. 103, 140, 141, 431, 441, 462
1001, 1002, and 1030*

RULE CHANGES IN LIGHT OF THE ABOLITION OF THE PHILADELPHIA TRAFFIC COURT

On June 19, 2013, Act 17 of 2013 was signed into law by the Governor, effectively abolishing the Philadelphia Traffic Court.¹ By the terms of the Act, most of its functions have been transferred to a new Traffic Division of the Philadelphia Municipal Court. Given that there are numerous statewide rules that discuss procedures in the Traffic Court, correlative changes will be necessary. Additionally, certain structural changes, particularly the creation of the new office of hearing officer of the Municipal Court Traffic Division, will need to be incorporated into the rules.

The Committee has determined that the following rules listed below would need to be modified. Following each rule title is a brief description of the nature of the proposed changes:

103 (Definitions)

Would add a cross-reference to the Comment to new Rule 1036 regarding the limited definition of hearing officer as an “issuing authority” under that rule;

105 (Local Rules)

Would change the court’s name in the rule text;

140 (Contempt Proceedings Before Magisterial District Judges, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges)

Would add language to the Comment regarding the abolition of the Traffic Court and its impact on contempt powers;

¹ As the Philadelphia Traffic Court is provided in the Pennsylvania Constitution, a constitutional amendment will be necessary before the Traffic Court is formally abolished in its entirety. That process is ongoing as of this publication.

141(Appeals from Contempt Adjudications Before Magisterial District Judges, Pittsburgh Magistrates Court Judges, and Philadelphia Traffic Court Judges)

Would add language to the Comment regarding the abolition of the Traffic Court and its impact on contempt powers;

431(Procedures When Defendant Arrested with Warrant)

Would change the court's name in a cross-reference in the Comment;

441 (Procedures Following Arrest Without Warrant)

Would change the court's name in a cross-reference in the Comment;

462 (Trial *De Novo*)

Would change the court's name in a cross-reference in the Comment;

Chapter 10 (Rules of Criminal Procedure For the Philadelphia Municipal Court and the Philadelphia Traffic Court)

Would change the title of the Chapter;

1000 (Scope of Rules)

Would change the court's name in the rule text;

1001 (Disposition of Criminal Cases -- Philadelphia Municipal Court)

Would change the court's name in the Comment;

1002 (Procedures in Summary Cases)

Would change the court's name in the Comment;

Chapter 10 Part B (Philadelphia Traffic Court Procedures)

Would change the title of the Part;

1030 (Scope of Summary Traffic Court Rules)

Would add a Comment provision regarding the abolition of the Traffic Court and transfer of function and jurisdiction to the Traffic Division;

1031 (Institution of Proceedings in Summary Traffic Cases)

Would reorganize the structure of paragraph (A) of the rule to remove references to the Administrative Judge of Traffic Court;

1032 (Pleas in Response to Citation)

Would change the court's name in the rule text;

1033 (Procedures When Defendant Arrested with Warrant)

Would change the court's name and the terminology of the presiding officers in the rule text and Comment;

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1034 (Collateral)

Would change the court's name and the terminology of the presiding officers in the rule text and Comment;

1035 (Appointment of Counsel)

Would change the court's name and the terminology of the presiding officers in the rule text;

1036 (Traffic Court Hearing Officers)

New rule describing appointment, qualifications, and duties of Traffic Division Hearing Officers

1037 (Appeals from Summary Convictions)

Would change the court's name and the terminology of the presiding officers in the rule text and Comment;

The majority of the proposed rule changes are correlative changes to terminology resulting from the transfer of the Traffic Court functions to the Traffic Division of the Philadelphia Municipal Court.

As noted above, the greatest change is the creation of the office of hearing officer of the Philadelphia Municipal Court Traffic Division. The position was created by Act 17 as the primary officer for proceedings before the Traffic Division. Therefore, current Rule 1036, which provides for the hearing officers of the Traffic Court, would be rescinded and replaced by a new Rule 1036 that would provide for the appointment, qualifications, and duties of Traffic Division Hearing Officers. Hearing officers would be defined as "issuing authorities" for the limited purposes of the proceedings in the Traffic Division but would be precluded from conducting hearings in which there is a likelihood of imprisonment. Consistent with Act 17, hearing officers may be either lawyers or non-lawyers who would be governed by the Code of Conduct for Employees of the Unified Judicial System. Also consistent with Act 17, the responsibility for hearing officer training would be developed by local rule.²

² The Committee anticipates that the First Judicial District may need to adopt additional local rules to accommodate the transfer of the functions. These local rules would be subject to the Committee's approval pursuant to Rule 105.