

**Proposed Amendments to Pa.Rs.Crim.P. 135, 403, 407, 408, 412, 413,
422, 423, 430, 454, 455, and 456**

INTRODUCTION

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules of Criminal Procedure 135, 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456. The proposed amendments establish new procedures in summary cases in which a defendant fails to respond to a citation or a summons. 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 Report 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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no later than Wednesday, June 23, 2010.

May 4, 2010

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

Risa Vetri Ferman, Chair

*Anne T. Panfil
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*Jeffrey M. Wasileski
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RULE 135. TRANSCRIPT OF PROCEEDINGS BEFORE ISSUING AUTHORITY.

(A) The issuing authority shall prepare and forward to the court of common pleas a transcript of the proceedings in all summary cases when an appeal is taken **or when a summary case is forwarded after the case is closed pursuant to Rules 455(F) and 456(D)**, and in all court cases when the defendant is held for court.

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

- (1) the date and place of hearings;
- (2) the names and addresses of the prosecutor, defendant, and witnesses;
- (3) the names and office addresses of counsel in the proceeding;
- (4) the charge against the defendant as set forth in the prosecutor's complaint;
- (5) the date of issuance of any citation, summons, or warrant of arrest and the return of service thereon;
- (6) a statement whether the parties and witnesses were sworn and which of these persons testified;
- (7) when the defendant was held for court the amount of bail set;
- (8) the nature of the bail posted and the name and address of the corporate surety or individual surety;
- (9) a notation that the defendant has or has not been fingerprinted;
- (10) a specific description of any defect properly raised in accordance with Rule 109;
- (11) a notation that the defendant was advised of the right to apply for the assignment of counsel;
- (12) the defendant's plea of guilty or not guilty, the decision that was rendered in the case and the date thereof, and the judgment of sentence and place of confinement, if any;

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

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

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

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

NOTE: Formerly Rule 125 adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970, revised January 31, 1970, effective May 1, 1970; renumbered Rule 26 and subparagraphs (b)(5) and (b)(10) amended September 18, 1973, effective January 1, 1974; subparagraph (b)(10) amended April 8, 1982, effective July 1, 1982; previous subparagraph (b)(7) deleted January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; renumbered Rule 135 and amended March 1, 2000, effective April 1, 2001; amended July 10, 2008, effective February 1, 2009 [.] ; **amended _____, 2010, effective _____**
2010.

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the July 10, 2008 amendment adding new paragraph (9) requiring a notation of fingerprinting published with the Court's Order at 38 Pa.B. 3975 (July 26, 2008).

Report explaining the proposed amendments to paragraph (A) concerning closed cases and forwarding them to common pleas court published for comment at 40 Pa.B. (, 2010).

RULE 403. CONTENTS OF CITATION.

(A) Every citation shall contain:

- (1) the name and address of the organization, and badge number, if any, of the law enforcement officer;
- (2) the name and address of the defendant;
- (3) a notation if the defendant is under 18 years of age and whether the parents or guardians have been notified of the charge(s);
- (4) the date and time when the offense is alleged to have been committed, provided however, if the day of the week is an essential element of the offense charged, such day must be specifically set forth;
- (5) the place where the offense is alleged to have been committed;
- (6) a citation of the specific section and subsection of the statute or ordinance allegedly violated, together with a summary of the facts sufficient to advise the defendant of the nature of the offense charged;
- (7) the date of issuance;
- (8) a notation if criminal laboratory services are requested in the case;
- (10) a verification by the law enforcement officer that the facts set forth in the citation are true and correct to the officer's personal knowledge, or information and belief, and that any false statements therein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

(B) The copy delivered to the defendant **also** shall **[also]** contain a notice to the defendant:

- (1) that the original copy of the citation will be filed before the issuing authority of the magisterial district designated in the citation, the address and number of which shall be contained in the citation; and
- (2) that the defendant shall, within 10 days after issuance of the citation:
 - (a) plead not guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the and costs specified in the citation, plus any additional fee required by law. If the amount is not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial; or

(ii) appearing before the proper issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require. If the defendant cannot afford to pay the collateral specified in the citation or the \$50, the defendant must appear before the issuing authority to enter a plea; or

(b) plead guilty by:

(i) notifying the proper issuing authority in writing of the plea and forwarding an amount equal to the fine and costs when specified in the statute or ordinance, the amount of which shall be set forth in the citation; or

(ii) appearing before the proper issuing authority for the entry of the plea and imposition of sentence, when the fine and costs are not specified in the citation or when required to appear pursuant to Rule 409(B)(3), 414(B)(3), or 424(B)(3); or

(c) appear before the proper issuing authority to request consideration for inclusion in an accelerated rehabilitative disposition program;

(3) that all checks forwarded for the fine and costs or for collateral shall be made payable to the magisterial district number set forth on the citation;

(4) that failure to respond to the citation as provided above within the time specified:

(a) **[shall result in the issuance of a summons when a violation of an ordinance or any parking offense is charged, or when the defendant is under 18 years of age, and in all other cases shall result in the issuance of a warrant for the arrest of the defendant] shall constitute consent by the defendant to have the issuing authority enter a not guilty plea on behalf of the defendant;** and

(b) shall result in the suspension of the defendant's driver's license when a violation of the Vehicle Code is charged;

(5) that failure to indicate a plea when forwarding an amount equal to the fine and costs specified on the citation shall result in a guilty plea being recorded;

(6) that failure to pay the fine, costs, and restitution may result in the issuance of a bench warrant for the arrest of the defendant, the referral of the collection of the fines, costs, and restitution to a collection agency, a judgment being entered against the defendant, the defendant's wages being attached, or a contempt proceeding being instituted; and

[(6)] (7) that, if the defendant is convicted or has pleaded guilty, the defendant may appeal within 30 days for a trial *de novo*.

COMMENT: A law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously must give the defendant a paper copy of the citation containing all the information required by this rule. Nothing in this rule is intended to require the defendant to sign the citation.

Paragraph (A)(3) requires the law enforcement officer who issues a citation to indicate on the citation if the defendant is a juvenile and, if so, whether the juvenile's parents were notified. See the Judicial Code, 42 Pa.C.S. § 1522, concerning parental notification in certain summary cases involving juveniles.

Paragraph (A)(8) requires the law enforcement officer who issues a citation to indicate on the citation whether criminal laboratory services are requested in the case. This information is necessary to inform the magisterial district judge that, in addition to any fines, restitution, or costs, the magisterial district judge may be required to sentence the defendant to pay a criminal laboratory user fee. See 42 Pa.C.S. § 1725.3 which requires that a defendant be sentenced to pay a criminal laboratory user fee in certain specified cases when laboratory services are required to prosecute the case.

As provided in paragraph (B)(2)(b)(i), the defendant may plead guilty by mail only when the fine and costs are set forth in the citation. The law enforcement officer may specify the fine and costs in the citation only when the penalty provided by law does not include a possible sentence of

imprisonment and the statute or ordinance fixes the specific amount for the fine.

[Paragraph (B)(4)(a) provides for notice to the defendant who is under 18 years of age that a summons will be issued if the defendant fails to respond to the citation.]

The 2010 amendments to paragraph (B)(4)(a) provide notice to the defendant that failure to respond to the citation will result in the issuing authority entering a not guilty plea on behalf of the defendant so the case may proceed in the same manner as all other summary cases.

Paragraph (B)(4)(b) provides notice to the defendant that his or her license will be suspended if the defendant fails to respond to the citation or summons within the time specified in the rules. See 75 Pa.C.S. § 1533.

Paragraph (B)(5) provides a uniform procedure for handling cases in which a defendant returns the fine and costs but fails to sign the citation and, therefore, does not indicate a plea. See Rule 407.

The 2010 amendments to paragraph (B)(6) provide notice to the defendant that, if, following a conviction, the defendant fails to pay any fine, costs, and restitution, the issuing authority may issue a bench warrant, and thereafter may forward the case to the common pleas court where a judgment may be entered, the collection of the fines, costs, and restitution of a defendant may be referred to a collection agency, the defendant's wages may be attached, or contempt proceedings may be instituted.

Paragraph (B)(7) [(6) was amended in 2000 to] makes 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. See Rule 460 (Notice of Appeal).

It is intended that the notice to the defendant, required by paragraph (B) to be on the copy of the citation delivered to

the defendant, shall be simply worded so the plain meaning of the notice is easily understandable.

For consequences of defects in a citation, see Rule 109.

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

See Rule 401 for procedures for instituting cases in which there is a parking violation. When the parking violation information is electronically transmitted as permitted by Rule 401(A), only a summons is issued as provided in Rule 411.

NOTE: Previous rule, originally numbered Rule 133(a) and Rule 133(b), adopted January 31, 1970, effective May 1, 1970; renumbered Rule 53(a) and 53(b) September 18, 1973, effective January 1, 1974; amended January 23, 1975, effective September 1, 1975; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and not replaced in these rules. Present Rule 53 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; amended January 31, 1991, effective July 1, 1991; amended June 3, 1993, effective as to new citations printed on or after July 1, 1994; amended July 25, 1994, effective January 1, 1995; renumbered Rule 403 and *Comment* revised March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; *Comment* revised February 6, 2003, effective July 1, 2003; amended August 7, 2003, effective July 1, 2004; amended January 26, 2007, effective February 1, 2007 [.] ; **amended _____, 2010, effective _____, 2010.**

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COMMITTEE EXPLANATORY REPORTS:

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

Report explaining the June 3, 1993 amendments published with the Court's Order at 23 Pa.B. 2809 (June 19, 1993).

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

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

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

Final Report explaining the February 6, 2003 Comment revisions cross-referencing Rule 401 concerning electronic transmission of parking citations published with the Court's Order at 33 Pa.B. 973 (February 22, 2003).

Final Report explaining the August 7, 2003 amendments to paragraph (B)(4)(a) concerning juveniles published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 26, 2007 amendments to paragraph (B)(2)(b)(ii) and revisions to the Comment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Report explaining the proposed amendments to paragraph (B)(4) and (B)(6) concerning consent to a not guilty plea and consequences of failure to pay published for comment at 40 Pa.B. (, 2010).

RULE 407. PLEAS IN RESPONSE TO CITATION.

(A) Within 10 days after issuance of a citation, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

(B) If the defendant fails to notify the issuing authority of his or her plea, the issuing authority shall:

(1) in summary traffic cases, 15 days after issuance of the citation, notify the defendant that failure to respond within 15 days will result in a license suspension, and

(2) 30 days after issuance of the citation, enter a not guilty plea on behalf of the defendant and proceed under Rule 408 et. seq..

COMMENT: [For the consequences of failure to respond as provided in this rule, see Rules 430 and 431.]

To notify the issuing authority of the plea, the defendant should sign and return the citation. When a defendant fails to sign the citation to indicate the plea, the issuing authority should record the unsigned citation as a guilty plea. See Rule 403(B)(5).

Concerning the 15-day notice requirement in paragraph (B)(1), see Rule 470 and 75 Pa.C.S. § 1533.

NOTE: Previous Rule 57 adopted September 18, 1973, effective January 1, 1974; title of rule amended January 23, 1975, effective September 1, 1975; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 411-414 and 421-424. Present Rule 57 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 407 and amended March 1, 2000, effective April 1, 2001 [.] ; **amended _____, 2010, effective _____, 2010.**

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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).

Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond published for comment at 40 Pa.B. (, 2010).

RULE 408. NOT GUILTY PLEAS - NOTICE OF TRIAL.

(A) A defendant may plead not guilty by:

- (1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or
- (2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the citation, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.

(B) The issuing authority, upon receiving a plea of not guilty **or entering a not guilty plea as required in Rule 407**, shall:

- (1) fix a date and hour for trial;
- (2) notify the defendant and the law enforcement officer of the date and hour fixed for trial; and
- (3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine and costs, and the defendant shall have the right to appeal within thirty days for a trial *de novo*.

COMMENT: It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the citation or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. All checks deposited as collateral shall be made payable to the magisterial district number set forth on the citation.

When a defendant fails to respond to the citation as required in Rule 407, the issuing authority is required to enter a not guilty plea on behalf of the defendant and proceed as provided in paragraph (B).

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to

trial as specifically required by statute for purposes of grading the offense charged.

NOTE: Previous Rule 58, adopted September 18, 1973, effective January 1, 1974; amended to correct printing error June 28, 1976, effective immediately; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 58 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 408 and amended March 1, 2000, effective April 1, 2001 [.] ; amended _____, 2010, effective _____, 2010.

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COMMITTEE EXPLANATORY REPORTS:

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

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).

Report explaining the proposed amendment to paragraph (B) adding entering a not guilty plea published for comment at 40 Pa.B. (_____, 2010).

RULE 412. PLEAS IN RESPONSE TO SUMMONS.

(A) Within 10 days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

(B) **If the defendant fails to notify the issuing authority of his or her plea, the issuing authority shall:**

(1) **in summary traffic cases, 15 days after service of the summons, notify the defendant that failure to respond within 15 days will result in a license suspension, and**

(2) **30 days after service of the summons, enter a not guilty plea on behalf of the defendant and proceed under Rule 413 et. seq.,**

unless service of the summons was by first class mail.

(C) **If service was by first class mail, before proceeding pursuant to paragraph (B), the issuing authority shall cause service to be made upon the defendant personally or by certified mail, return receipt requested.**

COMMENT: To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See Rule 403(B)(5).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

[For the consequences of failure to respond as provided in this rule, see Rule 430(A).]

If service cannot be accomplished under paragraph (C), an arrest warrant will be issued as required in Rule 430(A)(1).

Concerning the 15-day notice requirement in paragraph (B)(1), see Rule 470 and 75 Pa.C.S. § 1533.

NOTE: Previous rule, originally numbered Rule 118 and 118(b), adopted June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; revised January 31, 1970, effective May 1, 1970; renumbered as Rule 62 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended April 24, 1981, effective July 1, 1981; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 441. Present Rule 62 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 412 and amended March 1, 2000, effective April 1, 2001 [.] ; amended
, 2010, effective , 2010.

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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).

Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for comment at 40 Pa.B. (_____ , 2010).

RULE 413. NOT GUILTY PLEAS -- NOTICE OF TRIAL.

(A) A defendant may plead not guilty by:

- (1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or
- (2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the summons, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.

(B) The issuing authority, upon receiving a plea of not guilty **or entering a not guilty plea as required in Rule 412**, shall:

- (1) fix a date and hour for trial;
- (2) notify the defendant and the law enforcement officer of the date and hour fixed for the trial; and
- (3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine and costs and the defendant shall have the right to appeal within thirty days for a trial *de novo*.

COMMENT: It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the summons or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. All checks for collateral shall be made payable to the magisterial district number set forth on the summons.

When a defendant fails to respond to the summons as required in Rule 412, the issuing authority is required to enter a not guilty plea on behalf of the defendant and proceed as provided in paragraph (B).

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because

the defendant's criminal record must be ascertained prior to trial as specifically required by statute for purposes of grading the offense charged.

NOTE: Previous rule, originally numbered Rules 141 and 142, adopted January 31, 1970, effective May 1, 1970; combined, and renumbered Rule 63, and amended September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 454. Present Rule 63 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 413 and amended March 1, 2000, effective April 1, 2001 [.] ; amended
, 2010, effective , 2010.

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COMMITTEE EXPLANATORY REPORTS:

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

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).

Report explaining the proposed amendment to paragraph (B) concerning the addition of entering a not guilty plea published for comment at 40 Pa.B. (, 2010).

RULE 422. PLEAS IN RESPONSE TO SUMMONS.

(A) Within 10 days after receipt of a summons, the defendant shall notify the issuing authority by mail or in person that the defendant either pleads not guilty or pleads guilty.

(B) If the defendant fails to notify the issuing authority of his or her plea, the issuing authority shall:

(1) in summary traffic cases, 15 days after service of the summons, notify the defendant that failure to respond within 15 days will result in a license suspension, and

(2) 30 days after service of the summons, enter a not guilty plea on behalf of the defendant and proceed under Rule 413 et. seq.,

unless service of the summons was by first class mail.

(C) If service was by first class mail, before proceeding pursuant to paragraph (B), the issuing authority shall cause service to be made upon the defendant personally or by certified mail, return receipt requested.

COMMENT: To notify the issuing authority of the plea, the defendant should sign and return the summons. When a defendant fails to sign the summons to indicate the plea, the issuing authority should record the unsigned summons as a guilty plea. See Rule 403(B)(5).

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

[For the consequences of failure to respond as provided in this rule, see Rule 430(A).]

If service cannot be accomplished under paragraph (C), an arrest warrant will be issued as required in Rule 430(A)(1).

Concerning the 15-day notice requirement in paragraph (B)(1), see Rule 470 and 75 Pa.C.S. § 1533.

NOTE: Previous Rule 67, adopted September 18, 1973, effective January 1, 1974; amended May 26, 1977, effective July 1, 1977; amended April 26, 1979, effective July 1, 1979; *Comment* revised April 24, 1981, effective July 1, 1981; *Comment* revised January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rules 460, 461, and 462. Present Rule 67 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended February 1, 1989, effective as to cases instituted on or after July 1, 1989; renumbered Rule 422 and amended March 1, 2000, effective April 1, 2001 [.] ; amended _____, 2010, effective _____, 2010.

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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).

Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for comment at 40 Pa.B. (_____, 2010).

RULE 423. NOT GUILTY PLEAS -- NOTICE OF TRIAL.

(A) A defendant may plead not guilty by:

- (1) appearing before the issuing authority, entering the plea, and depositing such collateral for appearance at trial as the issuing authority shall require; or
- (2) notifying the issuing authority in writing of the plea and forwarding as collateral for appearance at trial an amount equal to the fine and costs specified in the summons, plus any additional fee required by law. If the fine and costs are not specified, the defendant shall forward the sum of \$50 as collateral for appearance at trial.

(B) The issuing authority, upon receiving a plea of not guilty **or entering a not guilty plea as required in Rule 422**, shall:

- (1) fix a date and hour for trial;
- (2) notify the defendant and the affiant of the date and hour fixed for the trial; and
- (3) advise the defendant that failure to appear for trial shall constitute consent to trial in the defendant's absence and if the defendant is found guilty, the collateral deposited shall be forfeited and applied toward the fine and costs and the defendant shall have the right to appeal within 30 days for a trial *de novo*.

COMMENT: It is intended that the defendant will appear in person before the issuing authority to plead not guilty when the defendant cannot afford to deposit the amount of collateral specified in the summons or the \$50 when no amount is specified. A plea entered by mail must be accompanied by the full amount of collateral. See Rule 452. All checks for collateral shall be made payable to the magisterial district number set forth on the summons.

When a defendant fails to respond to the summons as required in Rule 422, the issuing authority is required to enter a not guilty plea on behalf of the defendant and proceed as provided in paragraph (B).

When fixing the date and hour for trial, the issuing authority should determine whether the trial must be delayed because the defendant's criminal record must be ascertained prior to

trial as specifically required by statute for purposes of grading the offenses charged.

NOTE: Previous Rule 68 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and not replaced in the present rules. Present Rule 68 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; renumbered Rule 423 and amended March 1, 2000, effective April 1, 2001 [.] ; amended _____, 2010, effective _____, 2010.

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COMMITTEE EXPLANATORY REPORTS:

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

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).

Report explaining the proposed amendment to paragraph (B) concerning the addition of entering a not guilty plea published for comment at 40 Pa.B. (_____, 2010).

RULE 430. ISSUANCE OF WARRANT.

(A) ARREST WARRANTS INITIATING PROCEEDINGS

A warrant for the arrest of the defendant shall be issued when:

- (1) the citation or summons is returned undelivered; or
- (2) the issuing authority has reasonable grounds to believe that the defendant will not obey a summons.

(B) BENCH WARRANTS

(1) A bench warrant shall be issued when **[:] the defendant has failed to appear for the execution of sentence as required in Rule 454(E)(4).**

[(a) the defendant fails to respond to a citation or summons that was served upon the defendant personally or by certified mail return receipt requested or]

[(b) the defendant has failed to appear for the execution of sentence as required in Rule 454(F)(3).]

(2) A bench warrant may be issued when a defendant has entered a not guilty plea, **or the issuing authority has entered a not guilty plea on behalf of the defendant as provided in Rules 407, 412, and 422,** and **the defendant** fails to appear for the summary trial, if the issuing authority determines, pursuant to Rule 455(A), that the trial should not be conducted in the defendant's absence.

(3) A bench warrant may be issued when:

(a) the defendant has entered a guilty plea by mail and the money forwarded with the plea is less than the amount of the fine and costs specified in the citation or summons; or

(b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment; or

(c) the issuing authority has, in the defendant's absence, tried and sentenced the defendant to pay restitution, and/or to pay a fine and costs and the collateral deposited by the defendant is less than the amount of the fine and costs imposed.

(4) No warrant shall issue under paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, and the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant's last known address.

(5) When the issuing authority issues a bench warrant for the failure to pay fines, costs, and restitution as provided in Rules 455 and 456, the bench warrant shall expire 365 days after the date of issuance.

COMMENT: [Personal service of a citation under paragraph (B)(1) is intended to include the issuing of a citation to a defendant as provided in Rule 400(A) and the rules of Chapter 4, Part B(1).]

[When the defendant is under 18 years of age, and the defendant has failed to respond to the citation, the issuing authority must issue a summons as provided in Rule 403(B)(4)(a). If the juvenile fails to respond to the summons, the issuing authority should issue a warrant as provided in either paragraph (A)(1) or (B)(1).]

[A bench warrant may not be issued under paragraph (B)(1) when a defendant fails to respond to a citation or summons that was served by first class mail. See Rule 451.]

Nothing in this rule is intended to preclude a judicial district from utilizing the United States Postal Service's return receipt electronic option, or any similar service that electronically provides a return receipt, when using certified mail, return receipt requested.

Rule 454 provides that the issuing authority is to direct any defendant who is sentenced to a term of imprisonment to appear for the execution of sentence on a date certain following the expiration of the 30-day stay required by Rule 461. Paragraph (B)(1) [(b), formerly paragraph (A)(1)(d), **was added in 2003 to**] makes it clear that an issuing authority should issue a warrant for the arrest of any defendant who fails to appear for the execution of sentence.

Ordinarily, pursuant to Rule 455, the issuing authority must conduct a summary trial in the defendant's absence.

However, if the issuing authority determines that there is a likelihood that the sentence will include imprisonment or that there is other good cause not to conduct the summary trial, the issuing authority may issue a bench warrant for the arrest of the defendant pursuant to paragraph (B)(2) in order to bring the defendant before the issuing authority for the summary trial.

The bench warrant issued under paragraph (B)(3) should state the amount required to satisfy the sentence.

When a defendant is arrested pursuant to paragraph (B)(3), the issuing authority must conduct a hearing to determine whether the defendant is able to pay the amount of restitution, fine, and costs that is due. See Rule 456.

If the defendant is under 18 years of age and has not paid the fine and costs, the issuing authority must issue the notice required by paragraph (B)(4) to the defendant and the defendant's parents, guardian, or other custodian informing the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv). Thereafter, the case will 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.

When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants.

See Rule 431 for the procedures when a warrant of arrest is executed.

NOTE: Rule 75 adopted July 12, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended January 31, 1991, effective July 1, 1991; amended April 18, 1997, effective July 1, 1997; amended October 1, 1997,

effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 430 and amended March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; *Comment* revised August 7, 2003, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005; amended June 30, 2005, effective August 1, 2006; amended January 26, 2007, effective February 1, 2008; *Comment* revised September 18, 2008, effective February 1, 2009 [.] ; **amended _____, 2010, effective _____, 2010.**

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the April 18, 1997 amendments concerning arrest warrants when defendant fails to appear for trial published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments in paragraph (3) and the provisions of new paragraph (4) published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the July 2, 1999 amendments to paragraph (3)(c) and the Comment 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 February 28, 2003 amendments adding paragraph (A)(1)(d) published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 new Comment language concerning failure to pay fines and costs by juveniles 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 warrants that initiate proceedings and bench warrants in summary cases published with the Court's Order at 35 Pa.B. 3911 (July 16, 2005).

Final Report explaining the January 26, 2007 change to the Rule 454 reference in paragraph (B)(1)(b) published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Final Report explaining the September 18, 2008 revision of the Comment concerning the United States Postal Service's return receipt electronic option published with the Court's Order at 38 Pa.B. 5428 (October 4, 2008).

Report explaining the proposed amendments to paragraph (B)(2) and (B)(5) concerning bench warrants for failure to pay fines and costs published for comment at 40 Pa.B. (, 2010).

RULE 454. TRIAL IN SUMMARY CASES.

(A) Immediately prior to trial in a summary case:

(1) the defendant shall be advised of the charges in the citation or complaint;

(2) if, in the event of a conviction, there is a reasonable likelihood of a sentence of imprisonment or probation, the defendant shall be advised of the right to counsel and

(a) upon request, the defendant shall be given a reasonable opportunity to secure counsel, or

(b) if the defendant is without financial resources or is otherwise unable to employ counsel, counsel shall be assigned as provided in Rule 122; and

(3) 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 issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

(C) 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.

(D) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial, except as provided in paragraph (E).

(E) If the defendant may be sentenced to intermediate punishment, the issuing authority may delay imposing sentence pending confirmation of the defendant's eligibility for intermediate punishment.

(F) At the time of sentencing, the issuing authority 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 issuing authority may provide for installment payments and shall state the date on which each installment is due;

(2) advise the defendant that failure to pay the fines, costs, and restitution may result in the issuance of a bench warrant for the arrest of the defendant, the referral of the collection of the fines, costs, and restitution of a defendant to a collection agency, a judgment being entered against the defendant, the defendant's wages being attached, or a contempt proceeding being instituted;

[(2)] (3) advise the defendant of the right to appeal within 30 days for a trial de novo in the court of common pleas, and that if an appeal is filed:

(a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the de novo trial or the appeal may be dismissed;

[(3)] (4) 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 advise that, if the defendant fails to appear on that date, a warrant for the defendant's arrest will be issued; and

[(4)] (5) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (F)(1) through (F)**[(3)] (4)**, and a copy of the order shall be given to the defendant.

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 (2002), *Scott v. Illinois*, 440 U.S. 367 (1979), and *Argersinger v. Hamlin*, 407 U.S. 25 (1972). See Rules 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule 457 (Withdrawal of Charges in Summary Cases).

Paragraph (F)~~[(2)]~~ **(3)**(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules 460, 461, and 462.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth, or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

Under paragraph (F)~~[(2)]~~ **(3)**(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph (F)~~[(3)]~~ **(4)**, the issuing authority should set the

earliest possible date for sentencing after the appeal period expires.

When a defendant has waived the stay of the sentence of imprisonment pursuant to Rule 461, the issuing authority may fix the commencement date of the sentence to be the date of conviction, rather than after the 30-day stay period has expired. The defendant, of course, still would be able to pursue an appeal under Rules 460-462.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iv), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

Paragraph (E) permits an issuing authority to delay imposing sentence in summary cases in order to investigate a defendant's eligibility for intermediate punishment. For example, under 42 Pa.C.S. § 9763 and § 9804, defendants may be sentenced to 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 they meet certain eligibility requirements, such as undergoing a drug and alcohol assessment. Often this information will not be available to the issuing authority at the time of sentencing.

See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule 456(A).

NOTE: Rule 83 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; *Comment* revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; *Comment* revised February 13, 1998, effective July 1, 1998; renumbered Rule 454 and *Comment* revised March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; *Comment* revised August 7, 2003, effective July 1, 2004; amended March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective February 1, 2008 [.] ; amended _____, 2010, effective _____, 2010.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).

Final Report explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).

Final Report explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 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 February 28, 2003 amendments published with the Court's Order at 33 Pa.B. 1326 (March 15, 2003).

Final Report explaining the August 7, 2003 changes to 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 March 26, 2004 changes concerning Alabama v. Shelton published with the Court's Order at 34 Pa.B. 1929 (April 10, 2004).

Final Report explaining the January 26, 2007 amendments adding paragraph (E) concerning intermediate punishment published with the Court's Order at 37 Pa.B. 760 (February 17, 2007).

Report explaining the proposed amendments adding new paragraph (E)(2) concerning consequences of failing to pay published for comment at 40 Pa.B. (_____, 2010).

RULE 455. TRIAL IN DEFENDANT'S ABSENCE.

(A) If the defendant fails to appear for trial in a summary case, the trial shall be conducted in the defendant's absence, unless the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence. If the trial is not conducted in the defendant's absence, the issuing authority may issue a warrant for the defendant's arrest.

(B) At trial, the issuing authority shall proceed to determine the facts and render a verdict.

(C) If the defendant is found not guilty, any collateral previously deposited shall be returned.

(D) If the defendant is found guilty, the issuing authority shall impose sentence, and shall give notice by first class mail to the defendant of the conviction and sentence, and of the right to file an appeal within 30 days for a trial *de novo*. In those cases in which the amount of collateral deposited does not satisfy the fine and costs imposed or the issuing authority imposes a sentence of restitution, the notice shall also state that failure within **[10] 30** days of the date on the notice to pay the amount due or to appear for a hearing to determine whether the defendant is financially able to pay the amount due **[may] shall** result in the issuance of **[an arrest] a bench** warrant.

(E) Any collateral previously deposited shall be forfeited and applied only to the payment of the fine and costs. When the amount of collateral deposited is more than the fine and costs, the balance shall be returned to the defendant.

(F) If the defendant does not **file an appeal or** respond **[within 10 days]** to the notice in paragraph (D) **within 30 days**, the issuing authority **[may] shall** issue **a bench** warrant **[for the defendant's arrest]**. **The bench warrant shall expire 365 days after the date of issuance.**

(1) When the defendant appears before the issuing authority following an arrest, the case shall proceed as provided in Rule 456.

(2) When the bench warrant expires, the issuing authority shall close the case and forward it to the clerk of courts.

(a) The issuing authority shall prepare and forward a transcript of the proceedings with the case pursuant to Rule 135. The issuing authority shall include a request for the attachment of defendant's wages as permitted in 42 Pa.C.S. § 8127(a)(5).

(b) Once a case has been forwarded pursuant to this paragraph, the case shall remain in the court of common pleas for any further proceedings. Further proceedings include the entry of a judgment for the fines, costs, restitution, and any interest or additional costs that may accrue; the referral of the collection of the fines, costs, and restitution to a collection agency; the attachment of defendant's wages; and a contempt proceeding being instituted.

(3) Any license suspension for failure to respond in effect at the time the bench warrant expires shall be continued pursuant to Rule 470 and 75 Pa.C.S. § 1533 as a suspension for failure to pay the fines and costs.

COMMENT: In those cases in which the issuing authority determines that there is a likelihood that the sentence will be imprisonment or that there is other good cause not to conduct the trial in the defendant's absence, the issuing authority may issue a warrant for the arrest of the defendant in order to have the defendant brought before the issuing authority for the summary trial. See Rule 430(B). The trial would then be conducted with the defendant present as provided in these rules. See Rule 454.

When the defendant was under 18 years of age at the time of the offense, if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority may not conduct the trial, but must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

Paragraph (D) provides notice to the defendant of conviction and sentence after trial *in absentia* to alert the defendant that the time for filing an appeal has begun to run. See Rule 413(B)(3).

If the defendant is under 18 years of age, the notice in paragraph (D) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the **[10] 30**-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will 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 and fails to pay or appear as required in paragraph (D), the issuing authority must proceed under these rules.

Paragraph (F), amended in 2010, provides when a defendant fails to respond to the 30-day notice in paragraph (D) that the issuing authority issue a bench warrant. The bench warrant in this case will expire at the end of 365 days.

If the bench warrant expires, the issuing authority must close the case and transfer it to the clerk of courts. When a case is transferred, all further proceedings will be in the court of common pleas.

Once the case is in the court of common pleas, a judgment must be entered as provided in 42 Pa.C.S. § 9728(a)(1) for the amount of the outstanding fines, costs, and restitution, even if the amount is less than \$1000.00 notwithstanding the provisions of 42 Pa.C.S. § 9728(b)(2). Other actions that may be taken in the common pleas court include collection of fines, costs, and restitution by a collection agency, see 42 Pa.C.S. § 9730.1, and attachment of wages, see 42 Pa.C.S. § 8127. Contempt proceedings for failure to pay fines and cost also may be instituted in the court of common pleas as provided by law.

To transfer the case, the issuing authority must prepare and forward a transcript of the proceedings pursuant to Rule 135.

For the defendant's right to counsel, see Rule 122.

For arrest warrant procedures in summary cases, see Rules 430 and 431.

NOTE: Rule 84 adopted 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 April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; renumbered Rule 455 and *Comment* revised March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005; amended August 15, 2005 effective February 1, 2006 [.] ; amended _____, 2010, effective _____, 2010.

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the April 18, 1997 amendments mandating a summary trial *in absentia* with certain exceptions published with the Court's Order at 27 Pa.B. 2117 (May 3, 1997).

Final Report explaining the October 1, 1997 amendments to paragraphs (D) and (E) published with the Court's Order at 27 Pa.B. 5414 (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 August 7, 2003 changes to the *Comment* concerning failure to pay and juveniles 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 August 15, 2005 amendments to paragraph (D) concerning notice of right to appeal published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Report explaining the proposed amendments to paragraph (F) concerning consequences of failure to pay fines and costs published for comment at 40 Pa.B. (_____, 2010).

RULE 456. DEFAULT PROCEDURES: RESTITUTION, FINES, AND COSTS.

(A) When a defendant advises the issuing authority that a default on a single remittance or installment payment of restitution, fines, or costs is imminent, the issuing authority may schedule a hearing on the defendant's ability to pay. If a new payment schedule is ordered, the order shall state the date on which each payment is due, and the defendant shall be given a copy of the order.

(B) If a defendant defaults on the payment of fines and costs, or restitution, as ordered, the issuing authority shall notify the defendant in person or by first class mail that, unless within 10 days of the date on the default notice, the defendant pays the amount due as ordered, or appears before the issuing authority to explain why the defendant should not be imprisoned for nonpayment as provided by law, a **bench** warrant for the defendant's arrest **[may] shall** be issued, **the collection of the fines, costs, and restitution may be referred to a collection agency; a judgment may be entered against the defendant; the defendant's wages may be attached, or a contempt proceeding may be instituted.**

(C) If the defendant appears pursuant to the 10-day notice in paragraph (B) or following an arrest for failing to respond to the 10-day notice in paragraph (B), the issuing authority shall conduct a hearing to determine whether the defendant is financially able to pay as ordered.

(1) Upon a determination that the defendant is financially able to pay as ordered, the issuing authority may impose any sanction provided by law.

(2) Upon a determination that the defendant is financially unable to pay as ordered, the issuing authority may order a schedule or reschedule for installment payments, or alter or amend the order as otherwise provided by law.

(3) At the conclusion of the hearing, the issuing authority shall:

(a) if the issuing authority has ordered a schedule of installment payments or a new schedule of installment payments, state the date on which each installment payment is due;

(b) advise the defendant of the right to appeal within 30 days for a hearing *de novo* in the court of common pleas, and that if an appeal is filed:

(i) the execution of the order will be stayed and the issuing authority may set bail or collateral; and

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

(c) 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

(d) issue a written order imposing sentence, signed by the issuing authority. The order shall include the information specified in paragraphs (C)(3)(a) through (C)(3)(c), and a copy of the order shall be given to the defendant.

(D) If the defendant does not respond within 10 days to the notice in paragraph (B), the issuing authority shall issue a bench warrant for the defendant's arrest. When the issuing authority issues a bench warrant, the warrant shall expire 365 days after the date of issuance.

(1) When the defendant appears before the issuing authority following an arrest, the case shall proceed as provided in paragraph (C).

(2) When the bench warrant expires, the issuing authority shall close the case and forward it to the clerk of courts.

(a) The issuing authority shall prepare and forward a transcript of the proceedings with the case pursuant to Rule 135. The issuing authority shall include a request for the attachment of defendant's wages.

(b) Once a case has been forwarded pursuant to this paragraph, the case shall remain in the court of common pleas for any further proceedings. Further proceedings include the entry of a judgment for the fines, costs, restitution, and any interest or additional costs that may accrue; the referral of the collection of the fines, costs, and restitution to a collection agency; the attachment of defendant's wages; and a contempt proceeding being instituted.

(3) Any license suspension for failure to respond in effect at the time the bench warrant expires shall be continued pursuant to Rule 470 and 75 Pa.C.S. § 1533 as a suspension for failure to pay the fines and costs.

[(D)] (E) A defendant may appeal an issuing authority's determination pursuant to this rule by filing a notice of appeal within 30 days of the issuing authority's order. The appeal shall proceed as provided in Rules 460, 461, and 462.

COMMENT: The purpose of this rule is to provide the procedures governing defaults in the payment of restitution, fines, and costs.

Although most of this rule concerns the procedures followed by the issuing authority after a default occurs, paragraph (A) makes it clear that a defendant should be encouraged to seek a modification of the payment order when the defendant knows default is likely, but before it happens. For fines and costs, see 42 Pa.C.S. § 9730(b)(3).

An issuing authority may at any time alter or amend an order of restitution. See 18 Pa.C.S. § 1106(c)(2) and (3).

When a defendant defaults on a payment of restitution, fines, or costs, paragraph (B) requires the issuing authority to notify the defendant of the default, and to provide the defendant with an opportunity to pay the amount due or appear within 10 days to explain why the defendant should not be imprisoned for nonpayment. Notice by first class mail is considered complete upon mailing to the defendant's last known address. See Rule 430(D).

If the defendant is under 18 years of age, the notice in paragraph (B) must inform the defendant and defendant's parents, guardian, or other custodian that, if payment is not received or the defendant does not appear within the 10-day time period, the issuing authority will certify notice of the failure to pay to the court of common pleas as required by the Juvenile Act, 42 Pa.C.S. § 6302, definition of "delinquent act," paragraph (2)(iv), and the case will proceed pursuant to the Rules of Juvenile Court Procedure and the Juvenile Act instead of these rules.

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

Pursuant to paragraphs (C) **and (D)**, the issuing authority must conduct a default hearing when a defendant responds to the 10-day notice as provided in paragraph (B), or when the defendant is arrested for failing to respond to the 10-day notice. If the default hearing cannot be held immediately,

the issuing authority may set bail as provided in Chapter 5 Part C.

Under paragraph (C)(1), when the issuing authority determines that a defendant is able to pay as ordered, the issuing authority may, as provided by law, impose imprisonment or other sanctions. In addition, delinquent restitution, fines, or court costs may be turned over to a private collection agency. See 42 Pa.C.S. §§ 9730(b)(2) and 9730.1(a).

When a defendant is in default of an installment payment, the issuing authority on his or her own motion or at the request of the defendant or the attorney for the Commonwealth must schedule a rehearing to determine the cause of the default. Before an issuing authority may impose a sentence of imprisonment as provided by law for nonpayment of restitution, fines, or costs, a hearing or rehearing must be held whenever a defendant alleges that his or her ability to pay has been diminished. See 42 Pa.C.S. § 9730(b). See *also* Rules 121 and 122 (dealing with the right to counsel).

When a rehearing is held on a payment schedule for fines or costs, the issuing authority may extend or accelerate the payment schedule, leave it unaltered, or sentence the defendant to a period of community service, as the issuing authority finds to be just and practicable under the circumstances. See 42 Pa.C.S. § 9730(b)(3).

Paragraph (D), added in 2010, provides that the issuing authority must issue a bench warrant when a defendant fails to respond to the 10-day notice. The bench warrant in this case will expire at the end of 365 days.

Once the case is in the court of common pleas, a judgment must be entered as provided in 42 Pa.C.S. § 9728(a)(1) for the amount of the outstanding fines, costs, and restitution, even if the amount is less than \$1000.00 notwithstanding the provisions of 42 Pa.C.S. § 9728(b)(2). Other actions that may be taken in the common pleas court include collection of fines, costs, and restitution by a collection agency, see 42 Pa.C.S. § 9730.1 and attachment of wages, see 42 Pa.C.S. § 8127.

Contempt proceedings for failure to pay fines and cost also may be instituted in court of common pleas as provided by law.

To transfer the case, the issuing authority must prepare and forward a transcript of the proceedings pursuant to Rule 135.

This rule contemplates that when there has been an appeal pursuant to paragraph ~~[(D)]~~ (E), the case would return to the issuing authority who presided at the default hearing for completion of the collection process.

Nothing in this rule is intended to preclude an issuing authority from imposing punishment for indirect criminal contempt when a defendant fails to pay fines and costs in accordance with an installment payment order, 42 Pa.C.S. §§ 4137(a)(4), 4138(a)(3), and 4139(a)(3), or fails to pay restitution, 42 Pa.C.S. § 4137(a)(3). Separate Rules of Criminal Procedure govern contempt adjudications. See Chapter 1 Part D.

NOTE: Adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986; January 1, 1986 effective dates extended to July 1, 1986; *Comment* revised February 1, 1989, effective July 1, 1989; rescinded October 1, 1997, effective October 1, 1998. New Rule 85 adopted October 1, 1997, effective October 1, 1998; amended July 2, 1999, effective August 1, 1999; renumbered Rule 456 and amended March 1, 2000, effective April 1, 2001; *Comment revised* August 7, 2003, effective July 1, 2004; amended March 3, 2004, effective July 1, 2004; *Comment* revised April 1, 2005, effective October 1, 2005 ~~[.] ; amended _____, 2010, effective~~
2010.

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COMMITTEE EXPLANATORY REPORTS:

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

Final Report explaining the July 2, 1999 amendments to paragraph (C) 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 the Comment concerning failure to pay and juveniles published with the Court's Order at 33 Pa.B. 4293 (August 30, 2003).

Final Report explaining the March 3, 2004 amendment to paragraph (B) published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

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).

Report explaining the proposed amendments to paragraph (B) and the addition of new paragraph (D) concerning consequences for failure to pay published for comment at 40 Pa.B. (_____, 2010).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 135, 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456

PROCEDURES WHEN DEFENDANT FAILS TO RESPOND TO CITATION OR SUMMONS

I. INTRODUCTION

The Committee is planning to propose to the Supreme Court amendments to Rules of Criminal Procedure 135, 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456 that would establish new procedures in summary cases in which the defendant has failed to respond to a citation or summons. Instead of issuing an arrest warrant when the defendant fails to respond as is required under the current rules, the issuing authority would be required to enter a not guilty plea on behalf of the defendant and the case would proceed as provided in the rules.

These proposed changes were developed by a Joint Subcommittee of the Minor Court Procedural Rules Committee and the Criminal Procedural Rules Committee. The changes are the result of several years of discussions by the members of the two Committees separately and by the members of the Joint Subcommittee about what could be done to address the numerous inactive summary cases that the minor judiciary have open on their dockets. Inactive summary cases are cases in which a defendant has not responded to a citation or summons, or, cases in which the defendant has been convicted and has failed to pay the fine and costs. In either situation, under the current rules, warrants have been issued for these defendants' arrest and the warrants remain unexecuted.¹

The Joint Subcommittee's recommendations have been fully reviewed and approved for publication by both Committees.

¹ According to information provided by the Administrative Offices of Pennsylvania Courts (AOPC), for the time period from 2000 to 2007, there were 290,595 cases that had active warrants.

II. BACKGROUND

Initially, the focus of the Committees' discussions was to provide for the administrative termination of the inactive cases. The Committees noted that the Court's policy concerning inactive cases within the unified judicial system is "to bring each pending matter to a final conclusion as promptly as possible consistently with the character of the matter and the resources of the system," and that this policy applied to summary cases. See paragraph (a) of Rule of Judicial Administration 1901 (Prompt Disposition of Matters; Termination of Inactive Cases). Some judicial districts, relying on the provisions of Rule of Judicial Administration 1901, have provided for the administrative termination of these summary cases by local rule. Rule 1901(b)(1) provides that the courts of common pleas have the primary responsibility to "make local rules of court for purposes applicable to the court and to the community court or magisterial district judge of the peace of the judicial district" to terminate matters that have been inactive for an unreasonable period of time. However, other judicial districts have not proceeded pursuant to Rule 1901 because of uncertainty whether this rule permits the administrative termination of inactive summary case particularly when the cases have outstanding fines and costs. In view of the confusion in this area and the increasing number of open, inactive summary cases, both the Minor Court Procedural Rules Committee and the Criminal Procedural Rules Committee suggested to Zygmunt Pines, Court Administrator of Pennsylvania, in 2000 that Rule 1901 be amended to permit the administrative termination of open, inactive summary cases.

During this time period, the Intergovernmental Task Force to Study the District Justice System's Quality of Justice Subcommittee had been studying this issue and recommended that there be a statewide rule providing for "the termination of inactive cases in the minor judiciary that recognizes the special circumstances and jurisdictional issues at the district justice level."²

² A copy of the Subcommittee's Report may be found at <http://www.aopc.org/NR/rdonlyres/E6085C7B-721A-494D-B1B2-06DFE3016B40/0/04qualjust.pdf>

The Criminal Procedural Rules Committee and the Minor Court Procedural Rules Committee during this period continued to monitor the issues surrounding the staggering number of open and inactive summary cases. From their review of current practices, the members acknowledged that providing only for a procedure that authorized the administrative termination of all open, inactive cases, particularly those cases with outstanding fines and costs, could be perceived as forgiveness of alleged offenses and convey the message that, if the defendant waits long enough, then the case will go away. They also agreed that, conceptually, this would be a big step in the opposite direction from the goal of making summary proceedings meaningful.

In view of these considerations, the Committees agreed to form a Joint Subcommittee to develop a new approach to address matter. The Joint Subcommittee's task was to develop other means within the scope of the existing Criminal Rules to reduce the number of open, inactive cases by providing the magisterial district judges (MDJs) with better tools to accomplish this goal, thereby eliminating the need for administrative terminations in summary cases.

III. DISCUSSION

The Joint Subcommittee noted in developing its proposal that in many of the inactive cases the defendant has failed to respond to the citation or summons after the case was instituted. Under the current rules, the issuing authority has one option – to issue a warrant for the arrest of the defendant. At this point, unless the defendant is located and arrested, the case will remain open without any disposition.

The second point at which cases will fall into the inactive case category is following a finding of guilt and imposition of a sentence of fine and costs. In many cases, the defendant will fail to pay the fines and costs. Under the current rules, the issuing authority is required to issue a bench warrant, and unless the defendant is located and arrested, the case will remain open.

The members agreed that a procedural mechanism was necessary that would keep the case moving after a defendant fails to respond to a citation in the first instance. The procedure they devised is that the issuing authority would enter a not guilty plea on behalf of a defendant who failed to respond to a citation or summons and the case would move forward to the trial. Only after a trial in the defendant's absence, a finding

of guilt, and the imposition of sentence, would the issuing authority have the option to issue a bench warrant.

At the same time, although the members are concerned about the negative consequences of administrative terminations of the inactive summary cases, particularly those cases with outstanding fines and costs, they also recognize that, in view of the staggering number of these cases that have been pending for years without any action that are not likely to ever be resolved, a one time administrative termination of the oldest cases makes sense. Accordingly, the Committee is considering proposing to the Supreme Court that it order a one-time administrative termination of all open inactive summary criminal cases, including cases in which there are outstanding fines and costs, initiated, from a specific date and earlier.

A. Overview of Proposed New Procedural Framework

This section provides an overview of the procedural framework devised by the Joint Subcommittee. The specific procedures are explained more fully in the description of the individual rules. Briefly,

- when a defendant fails to respond to a citation or summons, instead of issuing a warrant as provided in the current rules, the issuing authority must enter a not guilty plea on behalf of the defendant (Rules 407, 412, and 422);
- when a summons is delivered by first class mail and the defendant fails to respond, before entering a not guilty plea on behalf of the defendant, the issuing authority must do a second service in person or by certified mail receipt return requested as required in current Rule 451 (Rules 412 and 422);
- after entering a not guilty plea on behalf of the defendant, the issuing authority must send out the notice of trial and proceed as provided in the current rules (Rules 408, 413, and 423);
- when the defendant fails to appear for the summary trial or fails to pay fines and costs, the issuing authority must issue a bench warrant (Rules 430(B), 454, and 455); and
- if the bench warrant remains unexecuted after 365 days, the issuing authority must close the case and forward it to the common pleas court where a judgment may be entered, the case may be referred to a collection agency, the defendant's

wages may be attached, or a contempt proceeding may be instituted (Rules 455 and 456).

B. Explanation of the Proposed Rule Changes

Rule 135 (Transcript of Proceedings Before Issuing Authority)

The proposed amendments to Rule 135(A) make it clear that the transcript of proceedings must be prepared and forwarded to the court of common pleas in those cases that have been closed pursuant to Rules 455(F) and 456(D).

Rule 403 (Contents of Citation)

The proposed amendments to Rule 403(B)(4)(a) require that the copy of the citation that is given to the defendant include a notice to the defendant that failure to respond to the citation within the time set in the rules will constitute consent to have the issuing authority enter a not guilty plea on behalf of the defendant.

Proposed new paragraph (B)(6) requires that the copy of the citation that is given to the defendant include a notice to the defendant of the consequences of failing to pay any fines, costs, and restitution. The consequences include the issuance of a bench warrant, entry of a judgment, referral of the collection of fines and costs to a collection agency, attachment of wages, or institution of a contempt proceeding.

Rule 407 (Pleas in Response To Citation)

Proposed new paragraph (B) sets forth the procedures the issuing authority must follow in cases in which the defendant fails to respond to the citation within the 10-day period. In summary traffic cases, if the defendant has not responded, proposed new paragraph (B)(1) requires that, on the 15th day, the issuing authority must send the defendant a “DL 38” notice that if the defendant does not respond to the notice within 15 days, the defendant’s drivers license will be suspended.³ In the members' experience, this “DL 38” notice results in many of the non-responders responding.

³ Rule 470 (Procedures Related to License Suspension After Failure to Respond to Citation or Summons), which implements the procedures in 75 Pa.C.S. § 1533 (Suspension of Operating Privilege for Failure to Respond to Citation), requires that, (continued...)

In the cases in which the defendant has not responded to either the citation or the "DL 38" notice, on the 30th day after the citation is issued, the issuing authority will enter the not guilty plea on behalf of the defendant and the case will move forward. The additional 15 days incorporates the 15-day time period within which the defendant must respond to the "DL 38" notice.

Although the "DL 38" notice requirement only applies to summary traffic cases, the Committee agreed to have the same 30-day delay before the issuing authority enters the not guilty plea to also apply to the non-traffic summaries to avoid the confusion that having different times could cause.

Rules 408 (Not Guilty Pleas - Notice Of Trial), 413 (Not Guilty Pleas - Notice Of Trial), and 423 (Not Guilty Pleas - Notice Of Trial)⁴

The proposed amendments to Rules 408, 413, and 423 add to paragraph (B) the phrase "or entering a not guilty plea as required in Rule 407" to conform paragraph (B) with the new procedure of entering a not guilty plea on behalf of the defendant when the defendant fails to respond to the citation.

Rules 412 (Pleas in Response to Summons) and 422 (Pleas in Response to Summons)

Both Rules 412 and 422 include the same timing procedures concerning when the issuing authority may enter a not guilty plea after a defendant has failed to respond that are in Rule 407, as described above. The trigger for the time periods in these rules differ from Rule 407 because, in these cases, the summary proceedings are instituted by mailing a summons to the defendant and the time

(...continued)

before a license may be suspended for failure to respond to the citation or summons, the issuing authority must give the defendant notice that the license will be suspended.

⁴ The procedures when a citation is issued, Chapter 4, Part B(1), when a citation is filed and a summons is issued, Chapter 4, Part B(2), and when a complaint is filed, Chapter 4, Part C, are, for the most part, the same after the case is instituted. Therefore, for example, the procedures following an entry of a not guilty plea in Rules 408, 413, and 423 are the same.

within which the defendant must respond is 10 days after receipt of the summons. See paragraph (A). The 15-day time period for when a “DL 38” notice may be issued set forth in proposed new paragraph (B)(1) and the 30-day time period before the issuing authority may enter a not guilty plea on behalf of the defendant set forth in proposed new paragraph (B)(2) runs from the date of service. The Committee agreed to use the date of service in paragraphs (B)(1) and (B)(2) rather than the date of receipt that is in paragraph (A) because the issuing authority may not know when the summons was served.

Ordinarily, the summons initially is mailed by first class mail. As required in Rule 451(Service) and proposed new paragraph (C), if a defendant fails to respond to the summons, the issuing authority must serve the summons either in person or by certified mail, return receipt requested, before any of the subsequent actions may be taken. If the summons is returned undelivered, then the issuing authority is required to issue an arrest warrant to initiate the proceedings as provided in Rule 430(A). This is explained in the *Comment* to Rules 412 and 422.

The Committee considered but rejected providing that proof of service in these cases would be similar to the proof of service provided for summonses in court cases pursuant to Rule 511(B). Rule 511(B) provides that proof of service by mail includes a return receipt signed by the defendant or a returned summons showing that the certified mail was not signed by a defendant and a notation on the transcript that the first class mail was not returned. The Committee noted that, under the proposed new procedures in which the issuing authority will enter a not guilty plea on behalf of a defendant who has failed to respond and the case will proceed through trial, there has to be actual proof of service. They agreed that the fact the first class mail is not returned, which is sufficient in the context of Rule 511, does not satisfy proof of actual service on the defendant for purposes of the case proceeding to trial.

The *Comment* includes a new paragraph explaining the option to use the postal service’s electronic return receipt for the certified mailing to conform Rules 412 and 422 with comparable recent changes to the Criminal Rules recognizing the validity of the postal service’s electronic return option.

Rule 430 (Issuance Of Warrant)

Rule 430(B)(1) and (B)(2) would be modified to conform to the proposed new procedures. Under paragraph (B)(1), with the proposed changes, the only time it will be mandatory that a bench warrant issue is when the defendant has failed to appear for execution of sentence pursuant to Rule 454(F)(3). The paragraph (B)(2) discretionary bench warrant procedures include the situation under the proposed new procedures when the issuing authority enters the not guilty plea on behalf of the defendant and may issue a bench warrant when the defendant fails to appear for the trial *de novo*.

Proposed new paragraph (B)(5) establishes a mandatory 365-day time limit on a bench warrant issued when a defendant has failed to pay fines, costs, and restitution. After the 365-day time period, the bench warrant automatically will expire and, as provided in the proposed changes to Rules 455 and 456 described below, the case will be closed and forwarded to the court of common pleas for further proceedings. The Committee reasoned providing a full year within which to find a defendant who has failed to pay is sufficient time before other action in the case may be taken.

The first three paragraphs of the Rule 430 *Comment* would be deleted as no longer necessary. Pursuant to the proposed new procedures, because the issuing authority is required to enter a not guilty plea on behalf of the defendant, there never will be a warrant issued when a defendant fails to respond to the citation. In addition, with the new “entry of a not guilty plea” procedure, the special summons procedures for juveniles are no longer necessary.

Rule 454 (Trial In Summary Cases)

Paragraph (F) would be amended by the addition of a new paragraph (2) that would require at the conclusion of the summary trial that the issuing authority give notice to the defendant of the consequences of the defendant’s failure to pay the fine, costs, and restitution as ordered. These consequences include the issuance a bench warrant for the arrest of the defendant, the referral of the collection of the fines, costs, and restitution of a defendant to a collection agency, the entry of a judgment against the defendant, the attachment of the defendant’s wages, or the institution of a contempt proceeding.

Rule 455 (Trial In Defendant's Absence)

The proposed changes to Rule 455 include a substantially re-written paragraph (F) that enumerates the proposed new procedures when a defendant fails to appear for the summary trial that is held in the defendant's absence, is convicted, and sentenced to pay fines and costs, and a change in the time set forth in paragraph (D).

Currently, paragraph (D) requires in cases in which the collateral posted is insufficient to pay the full amount of the fines and costs, that the issuing authority to send a notice to the defendant of the amount of fines and costs he or she owes. The notice also informs the defendant that he or she must pay the outstanding fines and cost or appear for a hearing within 10 days of the notice or a bench warrant will be issued.

During the Joint Subcommittee's discussions about the proposed changes to Rule 455, several of the MDJ members explained that they allow a 30-day time period for the defendant to respond to the notice before issuing a warrant so the time is consistent with the 30-day time period that the defendant has for filing an appeal pursuant to Rule 460. If the defendant does not take an appeal and does not respond to the notice, then they issue the warrant. The Committee agreed with this expansion of the time within which the defendant has to pay or appear, and is proposing the "10-day" time limits be changed to "30 days." Thus, under the proposed new procedures, within the 30-day time period after the fines and costs notice is sent to the defendant, the defendant has three options – to respond to the notice by paying the outstanding fines and costs, to respond to the notice by appearing for a payment determination hearing, or to file an appeal.

Proposed new paragraph (F) sets forth the procedures when a defendant does not respond to the 30-day notice. As explained above in the discussion about Rule 430, the Committee agreed that the procedure when a defendant fails to respond to the notice following a trial *in absentia* would be that a bench warrant would issue and have a 365-day life. The warrant would expire 365 days after issuance of the citation or service of the summons.

Proposed new paragraph (F)(1) addresses the procedures when a defendant appears before the bench warrant expires. The case is to proceed as provided in Rule 456 by having a payment determination hearing.

Proposed new paragraph (F)(2) sets forth the procedures when the defendant has not been apprehended and therefore has not paid the fines and costs, or has not set up a payment plan within the 365-day period. The issuing authority is required to close the case and forward it to the court of common pleas. Paragraph (F)(2)(a) requires the issuing authority to prepare and forward the transcript.

Proposed new paragraph (F)(2)(b) requires that once the case is forwarded to the court of common pleas, it remains in that court for further proceedings. This is consistent with the Court's stated policy that once a case is forwarded to common pleas court from the magisterial district court, the case is required to remain in the common pleas court. "Further proceedings" are explained to include the entry of a judgment against the defendant for the full amount of fines, costs, and restitution, the referral of the case to a collection agency for the collection of the fines and costs, the attachment of the defendant's wages, or the institution of contempt proceedings against the defendant.

The Rule 455 *Comment* has been revised to elaborate on the provisions of paragraph (F). In the ninth paragraph of the *Comment*, the Committee has included cross references to the various statutes that provide the court of common pleas with the authority to enter the judgment, 42 Pa.C.S. § 9728 (Collection of Restitution, Reparation, Fees, Costs, Fines and Penalties), use a collection agency, 42 Pa.C.S. § 9730.1 (Collection of Court Costs, Restitution and Fines by Private Collection Agency), or attach wages, 42 Pa.C.S. § 8127 (Personal Earnings Exempt From Process). In addition, the *Comment* makes it clear that the judgments in these summary cases is for the amount of the outstanding fines, costs, and restitution, even if the amount is less than \$1000.00 notwithstanding the provisions of 42 Pa.C.S. § 9728(b)(2).

During the Committee's discussions about the proposed changes to Rule 455, the members also considered the practical effects of the proposed new procedures on the driver's license suspension that was imposed when the defendant failed to respond to the citation or summons. When the defendant has failed to respond to the citation or summons, Rules 407, 412, and 423 include a provision for the issuing authority to issue

the DL 38 notice. If the defendant still does not respond, then the defendant's license is suspended. If the defendant does not respond during the time before trial and fails to appear for trial, the trial is conducted in the defendant's absence. If the defendant is found guilty and a fine and costs are imposed, and if the defendant fails to pay or come in for a payment determination hearing, then the posture of the case has changed from one in which the defendant has not responded to the citation to one in which the defendant has not paid fines and costs. At this point, the defendant would be subject to the provisions of 75 Pa.C.S. § 1533 that require a license suspension for failure to pay the fines and costs. The Committee concluded that the original license suspension that had been imposed when the defendant failed to respond, and that has been in effect throughout the proceedings, should remain in effect until such time as the defendant pays the fines and costs in full or appears before the issuing authority to set up a payment plan.

Rule 456

The proposed changes to Rule 456 include a new paragraph (D) that enumerates the proposed new procedures when a defendant fails to pay the fines and costs or to set up a payment plan, and amendments to paragraph (B) adding to the information that must be included in the 10-day notice that is issued following a default in payment of fines and costs.

When a defendant defaults on the payment of fines and costs, current paragraph (B) requires the issuing authority to send a notice to the defendant advising him or her that if there is no response within 10 days of the notice, a warrant will be issued. The Committee agreed that, to conform with the proposed new procedures, this notice to the defendant also should include the list of the possible consequences for failing to respond to the 10-day notice. The consequences are the same as those set forth in proposed new paragraph (F)(2)(b) of Rule 455.

Proposed new paragraph (D) and the correlative provisions in the Rule 456 *Comment* are the same as the procedures provided in Rule 455(F) and the correlative Rule 455 *Comment* that are explained above.