

**Proposed Amendments to Pa.Rs.Crim.P. 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 403, 407, 408, 412, 413, 422, 423, 430, 454, 455, and 456. This Supplemental Report resulted from the Committee's review of the correspondence received after publication of our original Report that explained the Committee's proposal that would 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 Supplemental Report highlights the Committee's considerations in formulating this proposal. Please note that the Committee's Supplemental 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 Supplemental Report. Additions are shown in bold and are underlined; deletions are in bold and brackets.

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

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Criminal Procedural Rules Committee
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no later than Friday, September 2, 2011.

July 1, 2011 **BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:**

Risa Vetri Ferman, Chair

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Counsel*

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 fine 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 so the the case will proceed in the same manner as all other summary cases;** 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, and 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 2011 amendments to paragraph (B)(4)(a) provide notice to the defendant that one of the consequences of failing to respond to the citation is that the issuing authority will enter a not guilty plea on behalf of the defendant. Thereafter, the case will proceed in the same manner as all other summary cases under the rules.

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 2011 amendments to paragraph (B)(6) provide notice to the defendant of some of the consequences of failing to pay

any fine, costs, and restitution following a conviction. In these cases, the issuing authority may issue a bench warrant and may refer the collection of the fines, costs, and restitution of a defendant to a collection agency, or do both, and may institute contempt proceedings.

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, 2008 [.] ; **amended _____, 2011, effective _____, 2011.**

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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. 2519 (May 15, 2010). Supplemental 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 41 Pa.B. _____ (_____, 2011).

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) in all summary cases, 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 summary traffic cases 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** , **2011, effective** , **2011.**

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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. 2519 (May 15, 2010). Supplemental Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond published for comment at 41 Pa.B. (_____, 2011).

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 , 2011, effective , 2011.

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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 amendments to paragraph (B) adding entering a not guilty plea published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report published for comment at 41 Pa.B. (, 2011).

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) in all summary cases, 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 summary traffic cases 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 _____, 2011, effective _____, 2011.

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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. 2519 (May 15, 2010). Supplemental Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for comment at 41 Pa.B. (_____, 2011).

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** , **2011, effective** , **2011.**

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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. (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. 2519 (May 15, 2010). Supplemental Report published for comment at 41 Pa.B. (, 2011).

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) **in all summary cases, 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 summary traffic cases 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**
, 2011, effective , 2011.

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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. 2519 (May 15, 2010). Supplemental Report explaining the proposed addition of new paragraph (B) concerning procedures following failure to respond and (C) concerning service published for service at 41 Pa.B. (, 2011).

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 _____, 2011, effective _____, 2011.

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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. 2519 (May 15, 2010). Supplemental Report published for comment at 41 Pa.B. (_____, 2011).

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(F)(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.

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,

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 changes 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) concerning bench warrants for failure to pay fines and costs published for comment at 40 Pa.B. 2519 (May 15, 2010). Supplemental Report published for comment at 41 Pa.B. _____ (_____, 2011).

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, and 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

[(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).

The 2011 amendments to paragraph (E)(2) provide notice to the defendant of some of the consequences of failing to pay any fine, costs, and restitution following a conviction. In these cases, the issuing authority may issue a bench warrant and may refer the collection of the fines, costs, and restitution of a defendant to a collection agency, or do both, and may institute contempt proceedings.

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.

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.

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 26, 2007, effective February 1, 2008 [.] ; amended _____, 2011, effective _____, 2011.

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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. 2519 (May 15, 2010). Supplemental Report explaining the proposed amendments adding new paragraph (E)(2) concerning consequences of failing to pay published for comment at 41 Pa.B. (_____, 2011).

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 result in the issuance of **[an arrest] a bench warrant, the referral of the collection of the fines, costs, and restitution to a collection agency, or both, and the institution of contempt proceedings.**

(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 issue **a bench warrant, [for the defendant's arrest] refer the collection of the fines, costs, and restitution to a collection agency, or do both, and institute a contempt proceeding.**

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

(2) In non-traffic summary cases, upon the expiration of two years after the date of the imposition of fines and costs, if, after a bench warrant has been issued or the case has been turned over to a collection agency, the defendant has not paid the fines, costs, or restitution, the issuing authority shall conduct a review of the case. If the issuing authority determines further action is warranted, the case shall remain open. If the issuing authority determines no further action is warranted, the issuing authority shall do a case balance adjustment to close the case.

(3) In traffic summary cases, upon the expiration of two years after the date of the imposition of fines and costs, if, after a bench warrant has been issued or the case has been turned over to a collection agency, the defendant has not paid the fines, costs, or restitution, the issuing authority shall keep the case open until the defendant appears and pays the fines and costs or a payment plan is established. Any license suspension for failure to respond in effect shall be

continued 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 2011, provides when a defendant fails to respond to the 30-day notice in paragraph (D) that the issuing authority has discretion to issue a bench warrant and to refer the collection of the fine and costs to a collection agency, or to both issue a bench warrant and refer to a collection agency. Nothing in this rule is intended to preclude the issuing authority from using other collection tools such as sending courtesy notices to the defendants before issuing a bench warrant or referring the fines and costs to a collection agency. The issuing authority also may conduct a contempt proceeding as provided in 42 Pa.C.S. §§ 4137, 4138, and 4139 and Rule 140(B).

When the collection of the fines, costs, and restitution is referred to a collection agency, if the collection agency is unable to collect the fines, costs, and restitution within 180 days, the collection agency is statutorily required to cease its efforts to collect and to inform the issuing authority that it no longer is pursuing the collection. See 42 Pa.C.S. § 9730.1(c).

The option to proceed by collection agency as provided in this rule is subject to the judicial district having a contract with a collection agency as provided in 42 Pa.C.S. 9730.1(b).

After proceeding by bench warrant or collection agency, or both, if the fines, costs, and restitution have not been collected, pursuant to paragraph (F)(2), in non-traffic summary cases, the issuing authority is required to review the case to see if there is anything else that could be done to locate the defendant and to collect the fines and cost. If the issuing authority wants to continue pursuing the matter, the rule permits the issuing authority to keep the case active. If the issuing authority believes no further action will result in locating the defendant or collecting the fine and costs, the issuing authority is permitted to administratively terminate the case by doing a case balance adjustment.

“Case balance adjustment,” as used in this rule, means that the case will no longer have an outstanding balance. However, if the defendant subsequently is located, the case balance should be reinstated to permit payment of the fines and costs.

After proceeding by bench warrant or collection agency or both, if the fines, costs, and restitution have not been collected, pursuant to paragraph (F)(3), in traffic summary cases, the issuing authority is required to keep the case open until the defendant has paid the fines and costs. The license suspension would remain in effect until the fines and costs are paid or until a payment plan is established. See Rule 470 and 75 Pa.C.S. § 1533.

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 _____, 2011, effective _____, 2011.

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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 1, 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. 2519 (May 15, 2010). Supplemental Report explaining the proposed amendments to paragraph (F) concerning consequences of failure to pay fines and costs published for comment at 41 Pa.B. _____ (_____, 2011).

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 be issued, **the collection of the fines, costs, and restitution may be referred to a collection agency, or both, and 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 may issue a bench warrant for the defendant's arrest or refer the collection of the fines, costs, and restitution to a collection agency, or do both, and institute a contempt proceeding.

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

(2) In non-traffic summary cases, upon the expiration of two years after the date of the imposition of fines and costs, if, after a bench warrant has been issued or the case has been turned over to a collection agency, the defendant has not paid the fines, costs, or restitution, the issuing authority shall conduct a review of the case. If the issuing authority determines further action is warranted, the case shall remain open. If the issuing authority determines no further action is warranted, the issuing authority shall do a case balance adjustment to close case.

(3) In traffic summary cases, upon the expiration of two years after the date of the imposition of fines and costs, if, after a bench warrant has been issued or the case has been turned over to a collection agency, the defendant has not paid the fines, costs, or restitution, the issuing authority shall keep the case open until the defendant appears and pays the fines and costs or a payment plan is established. Any license suspension for failure to respond in effect shall be continued 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 2011, provides that the issuing authority has discretion to issue a bench warrant and to refer the collection of the fine and costs to a collection agency, or to both issue a bench warrant and refer to a collection

agency. Nothing in this rule is intended to preclude the issuing authority from using other collection tools such as sending courtesy notices to the defendants before issuing a bench warrant or referring the fines and costs to a collection agency. The issuing authority also may conduct a contempt proceeding as provided in 42 Pa.C.S. §§ 4137, 4138, and 4139 and Rule 140(B).

When the collection of the fines, costs, and restitution is referred to a collection agency, if the collection agency is unable to collect the fines, costs, and restitution within 180 days, the collection agency is statutorily required to cease its efforts to collect and to inform the issuing authority that it no longer is pursuing the collection. See 42 Pa.C.S. §§ 9730(b)(1) and (2) and 9730.1(a).

The option to proceed by collection agency as provided in this rule is subject to the judicial district having a contract with a collection agency as provided in 42 Pa.C.S. 9730.1(b).

After proceeding by bench warrant or collection agency, if the fines, costs, and restitution have not been collected, pursuant to paragraph (D)(2), in non-traffic summary cases, the issuing authority is required to review the case to see if there is anything else that could be done to locate the defendant and to collect the fines and cost. If the issuing authority wants to continue pursuing the matter, the rule permits the issuing authority to keep the case active. If the issuing authority believes no further action will result in locating the defendant or collecting the fine and costs, the issuing authority is permitted to administratively terminate the case by doing a case balance adjustment.

“Case balance adjustment,” as used in this rule, means that the case will no longer have an outstanding balance. However, if the defendant subsequently is located, the case balance should be reinstated to permit payment of the fines and costs.

After proceeding by bench warrant or collection agency, if the fines, costs, and restitution have not been collected, pursuant to paragraph (D)(3), in traffic summary cases, the issuing authority is required to keep the case open until the defendant has paid the fines and costs. The license suspension would remain in effect until the fines and costs are paid or until a payment plan is established. See Rule 470 and 75 Pa.C.S. § 1533.

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 _____, 2011, effective 2011.**

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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. 2519 (May 15, 2010). Supplemental 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 41 Pa.B. (, 2011).

SUPPLEMENTAL REPORT

Proposed Amendments to Pa.Rs.Crim.P. 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 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. This *Supplemental Report* explains changes to these rules the Committee is proposing following the publication of the proposal.¹

The purpose of the proposal as explained in the published *Report* ("initial proposal") is to provide other means within the scope of the existing Criminal Rules to reduce the number of open, inactive cases² by providing issuing authorities with better tools to accomplish this goal, thereby eliminating the need for administrative terminations in summary cases.³ To do this, the initial proposal required the issuing authority to enter a not guilty plea on behalf of the defendant who fails to respond to a citation instead of issuing an arrest warrant when the defendant fails to respond as is required under the current rules. The case would proceed as any other summary case under the rules. If the defendant fails to appear for the summary trial, the trial would be conducted in the defendant's absence. After one year following a trial in the defendant's absence, if the defendant has not been found on a bench warrant or has not paid the fine and costs, the magisterial district judge would be required to close the case

¹ See 40 Pa.B. 2519 (May 15, 2010).

² 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 and active. According to information provided by the Administrative Offices of Pennsylvania Courts (AOPC), for the period from 2000 to 2007, there were 290,595 cases that had active warrants.

³ Concerning administrative termination of cases, see, e.g., Rule of Judicial Administration 1901 (Prompt Disposition of Matters; Termination of Inactive Cases) and the Intergovernmental Task Force to Study the District Justice System's Quality of Justice Subcommittee at <http://www.aopc.org/NR/rdonlyres/E6085C7B-721A-494D-B1B2-06DFE3016B40/0/04qualjust.pdf>.

and send it to the common pleas court for further proceedings.⁴

A major concern of the individuals who commented on the Committee's initial proposal was the impact that sending all these open, inactive cases would have on the common pleas court. The respondents believed that the proposal would be too burdensome on the common pleas courts and would create additional work for the clerks of courts and prothonotaries and that additional work would be unfunded. They also opined that sending these cases to common pleas court would result in significantly greater costs for the summary case defendants. They thought imposing these additional cost was unfair when the outstanding balance in many of these cases is relatively small, and would only result in unenforceable judgments.

After reviewing all the publication comments, the Committee agreed, as explained more fully below, that the initial proposal should be modified to address the concerns of the respondents by:

- providing that the case will remain with the issuing authority rather than being sent to the common pleas court;
- providing additional tools, in addition to issuing a bench warrant that was the only option for issuing authorities in the initial proposal, to the issuing authorities for handling these cases including adding the option for the issuing authority to send a case to a collection agency; and to find the defendant in contempt;⁵
- providing that, in non-traffic summary cases, the MDJ has discretion at the conclusion of a two-year period after the imposition of fines and costs if there is no payment to either keep the case open or administratively close the case; and
- providing that the traffic summary cases will remain open in the MDJ's office until payment is made.

II. DISCUSSION

The Committee, after reviewing the publication responses, is appreciative of the input about the impact of the initial proposal and sensitive to the increased burdens being placed on the common pleas courts and the clerk of courts offices statewide. We therefore went back to the drawing board. The members re-examined the various tools

⁴ The Committee's published *Report* provides a more detailed explanation of the proposal.

⁵ See 42 Pa.C.S. § 9730.1 (Collection of Court Costs, Restitution and Fines by Private Collection Agency). Other collection strategies, "tools," used in various judicial districts include courtesy notices and warrant sweeps.

that could be made available to the issuing authorities for handling these cases with outstanding fines and costs and agreed if the issuing authorities would be given more options for proceeding, the cases could be successfully resolved without imposing the burden on the common pleas courts. To that end, the members agreed with the suggestion of several respondents that the issuing authorities should be able to send the case to a collection agency in addition to using the bench warrant procedure that was in the initial proposal. In addition, the issuing authorities would be able to use other collection tools, such as courtesy letters, currently in use in some judicial districts. Finally, the issuing authorities may exercise their contempt powers as set forth in Rule 140(B) and 42 Pa.C.S. §§ 4137, 4138, and 4139. To facilitate the efforts to collect the fines and costs and to ensure that all reasonable efforts using the tools available to the issuing authorities to collect the outstanding fines and cost are pursued, the one-year outside limit imposed in the initial proposal would be expanded to two years.

The Committee spent a good deal of time considering what would occur with the case at the end of the two-year period, including the feasibility and wisdom of providing for administrative termination of cases as suggested in the publication responses. The members recognize that administrative terminations of the inactive summary cases, particularly those cases with outstanding fines and costs, may have unintended consequences. Although uncomfortable with the concept, the Committee concluded, as a matter of public policy and judicial economy, that an administrative termination is the most realistic option in some cases given the number of these cases that have been pending for years without any action and that are not likely ever to be resolved. However, the members also agreed that administrative terminations should not be mandated, but rather left to the discretion of the MDJ on a case-by-case basis. In view of these considerations, the Committee agreed that, at the end of two years from the date of the imposition of the fines and costs, in cases in which the issuing authority's efforts to collect the fines and costs using the various tool available have been unsuccessful, the issuing authority would be required to review each case. From this review, the MDJ must determine whether to keep the case open longer because the MDJ believes there are reasons to continue to pursue the defendant or to administratively close the case.

A correlative issue related to permitting administrative closure of these cases is whether an administratively closed case could be re-opened. In considering this issue, the members noted, for example, that there may be situations in which a defendant with outstanding fines and costs whose case has been administratively closed subsequently is

arrested on other charges. In this situation, should the issuing authority be able to collect on the “closed” case, and if so how procedurally should this be accomplished? In considering this question, the Committee examined a function in the magisterial district judge computer system that permits issuing authorities to do a “case balance adjustment.”⁶ The Committee thought this function would be a reasonable means of closing the summary cases subject to administrative termination while providing the issuing authority with the ability to re-open the case to accept a defendant’s payment by restoring the balance.

The Committee also considered whether traffic summary cases and non-traffic summary cases should be treated in the same manner under the proposed new procedural scheme. Some members argued that it made no sense to administratively close traffic summary cases because (1) driving is a privilege and (2) the license suspension that is imposed for failure to respond and failure to pay is an effective tool to get defendants to pay.⁷ After further consideration, the Committee agreed with these members. Therefore, the proposal requires that in summary traffic cases, the case will remain open until the defendant pays all outstanding fines and costs.

III. EXPLANATION OF THE CHANGES TO THE PUBLISHED VERSION OF RULES⁸

Rule 135 (Transcript of Proceedings Before Issuing Authority)

Rule 135 has been deleted from the package of rule changes because the only change that had been proposed to the rule related to sending the case to the court of common pleas that will not take place under the new procedures.

⁶ A Case Balance Adjustment (“CBA”) is a functionality that allows the MDJS user to adjust a case balance to zero, effectively closing the case in certain types of cases. Currently, if a CBA was done in error, the systems allow the user to undo the CBA and restore the case balance.

⁷ See 75 Pa.C.S. § 1533 and Pa.R.Crim.P. 470 concerning license suspensions for failure to respond and to pay fines and costs. In addition, 42 Pa.C.S. § 5553 provides for a 3-year statute of limitations in traffic summary cases. In *Commonwealth v. Marra*, the Superior Court held that the statute of limitations in Section 5553 does not apply when there are outstanding fines and costs.

⁸ Except for the changes to the proposal described in this section, the proposed rule changes remain the same as published.

Rule 403 (Contents of Citation)

Rule 403(B)(4) has been revised with the addition of notice that once a not guilty plea is entered on behalf of the defendant, the case will proceed in the same manner as all other summary cases. Paragraph (B)(6) has been revised by deleting the provisions for a judgment to be entered or wages to be attached because these two functions are statutorily permitted only at the common pleas level. The correlative explanatory provision in the *Comment* has been similarly revised.

Rules 407 (Pleas in Response To Citation), 412 (Pleas in Response to Summons), and 422 (Pleas in Response to Summons)

The only change to Rules 407, 412, and 422 is the addition in paragraph (B)(2) of “in all summary cases” at the beginning of the sentence to make the rules clear that the 30-day time period applies to both traffic and non-traffic summary cases.

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

There are no changes to the versions of Rules 408, 413, or 423 published as part of the initial proposal.

Rule 430 (Issuance Of Warrant)

The version of Rule 430 published as part of the initial proposal contained a new paragraph (B)(5) that provided for the automatic expiration of the bench warrant at the end of a one-year period. This paragraph has been deleted as no longer necessary because under the proposed new procedural scheme the bench warrant will not have a one-year time limit and will not expire.

Rule 454 (Trial In Summary Cases)

The version of Rule 454 published as part of the initial proposal contained a new paragraph (E)(2) that provided a judgment to be entered or wages to be attached. These two functions have been deleted because they are statutorily permitted only at the common pleas level.

Rules 455 (Trial In Defendant's Absence) and 456 (Default Procedures: Restitution, Fines, and Costs)

Rules 455 and 456 have been substantially reworked to reflect the Committee's decision to change the procedural scheme that had been set forth in the published version of the rules in the initial proposal.

Rule 455(D) and Rule 456(B) have been revised so the notice that is sent to a defendant before action is taken after a trial in the defendant's absence or after a defendant defaults in paying the fines and costs advises the defendant of the collection agency option and the possibility of contempt proceedings.

Rule 455(F) and Rule 456(D) have been revised to require the issuing authority to either issue a bench warrant or refer the collection of the fines and costs to a collection agency, or to do both. The *Comments* to both rules elaborate on this provision noting that it is expected that the issuing authority would be able to use other collection tools such as sending courtesy notices to the defendant in addition to issuing a bench warrant or referring the fines and costs to a collection agency. The issuing authority also may conduct a contempt proceeding as provided 42 Pa.C.S. §§ 4137, 4138, and 4139 and Rule 140(B). The Committee reasoned that the issuing authority is the most familiar with the case, and in most cases with the defendant, and is in the best position to determine what collection tools to utilize. Therefore, the decision of how to proceed in a given case is left to the issuing authority with the expectation that the issuing authority will use all the collection tools available to him or her necessary to collect the outstanding fines and costs. Finally, the version of these paragraphs published as part of the initial proposal concerning the expiration of the bench warrant has been deleted as unnecessary under the new procedures.

As explained above, the Committee agreed that the rules should provide different procedures for handling non-traffic and traffic summary cases when the defendant has failed to pay the fines and costs and the two-year period has expired. These new procedures are set forth in Rules 455(F)(2) and 456(D)(2) for non-traffic summary cases, and Rules 455(F)(3) and 456(D)(3) for traffic summaries.

The versions of Rule 455(F)(2) and Rule 456(D)(2) published as part of the initial proposal had provided for the closure of the case at the magisterial district court level and the forwarding of the case to the common pleas court for further proceedings. These paragraphs have been deleted, and are replaced by new language that sets forth the new procedures for non-traffic summary cases. Paragraphs (F)(2) and (D)(2) now

provide that upon the expiration of the two-year period from the date of the imposition of fines and costs, if the defendant has not appeared and paid the fines and cost, the issuing authority must conduct a review of the case. The purpose of this review is to determine whether to keep the case open to take further action to find the defendant and collect the outstanding fines and cost or to do a case balance adjustment and administratively close the case.

The versions of Rule 455(F)(3) and Rule 456(D)(3) that were published as part of the initial proposal provided that any license suspension for failure to respond that was in effect at the time the bench warrant expired would be continued as a license suspension for failure to pay. Because the bench warrant expiration provisions have been deleted from the rules, the bench warrant expiration language in these paragraphs has been deleted, but the provision for continuing the license suspension for failure to pay in traffic summary cases has been retained. In addition, paragraphs (F)(3) and (D)(3) have been modified to include the procedures for traffic summary cases when the defendant has not paid at the end of the two-year period. As explained above, the summary traffic cases must remain open until the fines and costs have been paid and may not be administratively terminated.

The *Comments* to both rules provide further elaboration about the new procedures and explain the functionality of the “case balance adjustment.” The *Comments* also include cross-references to correlative statutory provisions such as 42 Pa.C.S. § 9730.1(c) concerning the procedures relative to collection agencies and 42 Pa.C.S. §§ 4137, 4138, and 4139 concerning contempt powers of issuing authorities.