

Proposed Amendments to Pa.R.Crim.P. 409 (Guilty Pleas), 414(Guilty Pleas), 424(Guilty Pleas), 460(Notice of Appeal), 462(Trial De Novo), and 550(Pleas of Guilty Before Magisterial District Judge in Court Cases)

INTRODUCTION

The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rules 409, 414, 424, 460, 462, and 550 to provide, in summary and court cases in which a defendant withdraws a plea or appeals for a trial de novo, for the reinstatement of charges dismissed as a result of a plea agreement. 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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Criminal Procedural Rules Committee
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no later than Friday, January 23, 2009.

December 8, 2008

BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

D. Peter Johnson, Chair

*Anne T. Panfil
Chief Staff Counsel*

*Jeffrey M. Wasileski
Staff Counsel*

RULE 409. GUILTY PLEAS.

(A) A defendant may plead guilty by:

(1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the citation; or

(2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the citation or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

(1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.

(2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the citation.

(3) Restrictions on the acceptance of guilty plea by mail:

(a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.

(b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.

(c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail shall also be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

(1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial *de novo*, the original charges will be reinstated and the case will proceed on the original charges;

[(2)] (3) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

[(3)] (4) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

[(4)] (5) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

[(5)] (6) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

COMMENT: The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C) **[(4)] (5)** was added in 2007 to permit an issuing authority to delay imposition of sentence 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, especially when the defendant appears personally to enter a guilty plea. Paragraph (D) would permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For procedure upon default in payment of the fine or costs, see Rule 456.

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

For procedures regarding arrest warrants, see Rules 430 and 431.

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

NOTE: Previous Rule 59 adopted September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 75. Present Rule 59 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 409 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007 **[.] ; amended _____ , 2009, effective 2009.**

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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).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 18, 2007 amendments to paragraphs (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. (, 2007).

Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. (, 2008).

RULE 414. GUILTY PLEAS.

(A) A defendant may plead guilty by:

- (1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or
- (2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons_or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

- (1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.
- (2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.
- (3) Restrictions on the acceptance of guilty plea by mail:
 - (a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.
 - (b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.
 - (c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail shall also be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2) the issuing authority shall:

- (1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial *de novo*, the original charges will be reinstated and the case will proceed on the original charges;

[(2)] (3) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

[(3)] (4) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

[(4)] (5) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

[(5)] (6) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

COMMENT: The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C) **[(4)] (5)** was added in 2007 to permit an issuing authority to delay imposition of sentence 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, especially when the defendant appears personally to enter a guilty plea. Paragraph (D) would permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For procedure upon default in payment of the fine or costs, see Rule 456.

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

For arrest warrant procedures, see Rules 430 and 431.

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

NOTE: Previous rule, originally numbered Rule 136, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 64 September 18, 1973, effective January 1, 1974; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule 84. Present Rule 64 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates all are extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 414 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007 **[.] ; amended _____, 2009, effective _____, 2009.**

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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).

Final Report explaining the August 7, 2002 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 18, 2007 amendments to paragraphs (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. (, 2007).

Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. (, 2008).

RULE 424. GUILTY PLEAS.

(A) A defendant may plead guilty by:

- (1) notifying the issuing authority in writing of the plea and forwarding to the issuing authority an amount equal to the fine and costs specified in the summons; or
- (2) appearing before the issuing authority for the entry of the plea and imposition of sentence when the fine and costs are not specified in the summons or after receipt of notice that a guilty plea by mail has not been accepted by the issuing authority pursuant to paragraph (B)(3).

(B) When the defendant pleads guilty pursuant to paragraph (A)(1):

- (1) The defendant must sign the guilty plea acknowledging that the plea is entered voluntarily and understandingly.
- (2) The issuing authority may issue a warrant for the arrest of the defendant as provided in Rules 430 and 431 if the amount forwarded with the plea is less than the amount of the fine and costs specified in the summons.
- (3) Restrictions on the acceptance of guilty plea by mail:
 - (a) The issuing authority shall not accept a guilty plea that is submitted by mail when the offense carries a mandatory sentence of imprisonment.
 - (b) In those cases in which the charge carries a possible sentence of imprisonment, the issuing authority may accept a guilty plea submitted by mail.
 - (c) In any case in which the issuing authority does not accept a guilty plea submitted by mail, the issuing authority shall notify the defendant (1) that the guilty plea has not been accepted, (2) to appear personally before the issuing authority on a date and time certain, and (3) of the right to counsel. Notice of the rejection of the guilty plea by mail shall also be provided to the affiant.

(C) When the defendant is required to personally appear before the issuing authority to plead guilty pursuant to paragraph (A)(2), the issuing authority shall:

- (1) advise the defendant of the right to counsel when there is a likelihood of imprisonment and give the defendant, upon request, a reasonable opportunity to secure counsel;

(2) when a plea agreement has been reached between the Commonwealth and the defendant to withdraw one or more of the original summary offenses in exchange for a plea to one or more other summary charges, advise the defendant that, if the defendant withdraws the plea or appeals for a trial *de novo*, the original charges will be reinstated and the case will proceed on the original charges;

[(2)] (3) determine by inquiring of the defendant that the plea is voluntarily and understandingly entered;

[(3)] (4) have the defendant sign the plea form with a representation that the plea is entered voluntarily and understandingly;

[(4)] (5) impose sentence, or, in cases in which the defendant may be sentenced to intermediate punishment, the issuing authority may delay the proceedings pending confirmation of the defendant's eligibility for intermediate punishment; and

[(5)] (6) provide for installment payments when a defendant who is sentenced to pay a fine and costs is without the financial means immediately to pay the fine and costs.

COMMENT: The rule was amended in 2007 to make it clear (1) that a defendant may not enter a guilty plea by mail to an offense that carries a mandatory sentence of imprisonment, and (2) in those cases in which the offense carries a possible sentence of imprisonment, the issuing authority has the discretion whether or not to accept a guilty plea submitted by mail.

Nothing in this rule is intended to require that an issuing authority should proceed as provided in paragraph (C) when the defendant returns the written guilty plea and the fine and costs in person to the issuing authority's office pursuant to paragraphs (A)(1) and (B). The issuing authority's staff should record receipt of the plea and monies in the same manner as those received by mail.

Paragraph (C)**[(4)] (5)** was added in 2007 to permit an issuing authority to delay imposition of sentence 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, especially when the defendant appears personally to enter a guilty plea. Paragraph (D) would permit the issuing authority to delay proceedings until the defendant's eligibility has been determined.

When the defendant is under 18 years of age at the time of the offense and appears as provided in paragraph (C), if a mandatory sentence of imprisonment is prescribed by statute, the issuing authority must forward the case to the court of common pleas for disposition. See the Juvenile Act, 42 Pa.C.S. §§ 6302 and 6303.

For procedure upon default in payment of the fine or costs, see Rule 456.

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

For procedures regarding arrest warrants, see Rules 430 and 431.

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

NOTE: Previous rule, originally numbered Rule 140, adopted January 31, 1970, effective May 1, 1970; renumbered Rule 69 September 18, 1973, effective January 1, 1974; *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 69 adopted July 12, 1985, effective January 1, 1986; amended September 23, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; amended May 28, 1987, effective July 1, 1987; amended January 31, 1991, effective July 1, 1991; renumbered Rule 424 and amended March 1, 2000, effective April 1, 2001; *Comment* revised August 7, 2003, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007 **[.] ; amended _____, 2009, effective _____, 2009.**

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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).

Final Report explaining the August 7, 2003 new Comment language concerning defendants under the age of 18 published with the Court's Order at 33 Pa.B. 4289 (August 30, 2003).

Final Report explaining the January 18, 2007 amendments to paragraphs (B)(3) and (C)(4) published at with the Court's Order at 37 Pa.B. (, 2007).

Report explaining the proposed amendments concerning procedures related to plea agreements published at 38 Pa.B. (, 2008).

RULE 460. NOTICE OF APPEAL.

(A) When an appeal is authorized by law in a summary proceeding, including an appeal following a prosecution for violation of a municipal ordinance that provides for imprisonment upon conviction or upon failure to pay a fine, an appeal shall be perfected by filing a notice of appeal within 30 days after the entry of the guilty plea, the conviction, or other final order from which the appeal is taken. The notice of appeal shall be filed with the clerk of courts.

(B) The notice of appeal shall contain the following information:

- (1) the name and address of the appellant;
- (2) the name and address of the issuing authority who accepted the guilty plea or heard the case;
- (3) the magisterial district number in which the case was heard;
- (4) the name and mailing address of the affiant as shown on the complaint or citation;
- (5) the date of the entry of the guilty plea, the conviction, or other final order from which the appeal is taken;
- (6) the offense(s) of which convicted or to which a guilty plea was entered, if any;
- (7) the sentence imposed, and if the sentence includes a fine, costs, or restitution, whether the amount due has been paid;
- (8) the type or amount of bail or collateral, if any, furnished to the issuing authority;
- (9) the name and address of the attorney, if any, filing the notice of appeal; and
- (10) except when the appeal is from a guilty plea or a conviction, the grounds relied upon for appeal.

(C) Within 5 days after filing the notice of appeal, a copy shall be served either personally or by mail by the clerk of courts upon the issuing authority, the affiant, and the appellee or appellee's attorney, if any.

(D) When a defendant appeals from a summary proceeding in any case in which a plea agreement has been reached between the Commonwealth and the defendant in which any of the original summary charges is withdrawn in exchange for a plea to one or more other summary charges, the magisterial district judge shall

reinstate any charges withdrawn as part of a plea agreement, and the case shall proceed upon the original charges.

[(D)] (E) The issuing authority shall, within 20 days after receipt of the notice of appeal, file with the clerk of courts:

(1) the transcript of the proceedings;

(2) **if the charges are reinstated pursuant to paragraph (D), a statement to that effect;**

(3) the original complaint or citation, if any;

[(3)] (4) the summons or warrant of arrest, if any; and

[(4)] (5) the bail bond, if any.

[(E)] (F) This rule shall provide the exclusive means of appealing from a summary guilty plea or conviction. Courts of common pleas shall not issue writs of *certiorari* in such cases.

[(F)] (G) This rule shall not apply to appeals from contempt adjudications.

COMMENT: This rule is derived from former Rule 86(A), (D), (E), (F), (H), and (I).

This rule applies to appeals in all summary proceedings, including appeals from prosecutions for violations of municipal ordinances which provide for the possibility of imprisonment, and default hearings.

Paragraph (D) was added in 2009 to provide for the reinstatement of charges withdrawn as part of a plea agreement when the defendant subsequently appeals for a trial *de novo*.

This rule is not applicable to cases that originated as court cases but all misdemeanor or felony charges are withdrawn in exchange for a plea to one or more summary charges. These cases will proceed under Rule 550.

This rule was amended in 2000 to make it clear in a summary criminal case that the defendant may file an appeal for a trial *de novo* following the entry of a guilty plea.

Appeals from contempt adjudications are governed by Rule 141.

The narrow holding in *City of Easton v. Marra*, 326 A.2d 637 (Pa. Super. 1974), is not in conflict, since the record before the court did not indicate that imprisonment was possible under the ordinance there in question.

See Rule 461 for the procedures for executing a sentence of imprisonment when there is a stay.

"Entry," as used in this rule, means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the district justice computer system.

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 456, the matter must be heard *de novo* by the appropriate judge of the court of common pleas and only those issues arising from the default hearing are to be considered. It is not intended to reopen other issues not properly preserved for appeal. A determination after a default hearing would be a final order for purposes of these rules.

Paragraph (D) was amended in 2003 to align this rule with Rule 401(A), which permits the electronic transmission of parking violation information in lieu of filing a citation. Therefore, in electronically transmitted parking violation cases only, because there is no original citation, the issuing authority would file the summons with the clerk of courts pursuant to paragraph (D)(3).

Rule 462(D) provides for the dismissal of an appeal when the defendant fails to appear for the trial *de novo*.

Certiorari was abolished by the Criminal Rules in 1973 pursuant to Article V Schedule Section 26 of the Constitution of Pennsylvania, which specifically empowers the Supreme Court of Pennsylvania to do so by rule. This Schedule section is still viable, and the substance of this Schedule

section has also been included in the Judicial Code, 42 Pa.C.S. § 934. The abolition of *certiorari* continues with this rule.

NOTE: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; amended March 3, 2000, effective July 1, 2000; rescinded March 1, 2000, effective April 1, 2001, and paragraphs (A), (D), (E), (F), (H), and (I) replaced by Rule 460. New Rule 460 adopted March 1, 2000, effective April 1, 2001; amended February 6, 2003, effective July 1, 2003; *Comment* revised February 28, 2003, effective July 1, 2003 [.] ; **amended _____, 2009, effective _____, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Former Rule 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order 30 Pa.B. 1509 (March 18, 2002).

New Rule 460:

Final Report explaining the reorganization and renumbering of the rules and the provisions of Rule 460 published at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the February 6, 2003 changes concerning electronically transmitted parking citations published at 33 Pa.B. (, 2003).

Final Report explaining the February 28, 2003 Comment revision cross-referencing Rule 461 published with the Court's Order at 33 Pa.B. (, 2003).

Report explaining the proposed amendments concerning plea agreements published at 38 Pa.B. (, 2008).

RULE 462. TRIAL *DE NOVO*.

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

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

(C) When a defendant appeals from a summary proceeding in any case in which a plea agreement has been reached between the Commonwealth and the defendant in which any of the original summary offenses is withdrawn in exchange for a plea to one or more other summary charges and the issuing authority has reinstated the withdrawn charges as provided in Rule 460(D), the case shall proceed upon the original charges.

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

- (1) the defendant waives the presence of the law enforcement officer in open court on the record;
- (2) the defendant waives the presence of the law enforcement officer by filing a written waiver signed by the defendant and defense counsel, or the defendant if proceeding *pro se*, with the clerk of courts; or
- (3) the trial judge determines that good cause exists for the law enforcement officer's unavailability and grants a continuance.

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

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

[(F)] (G) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial.

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

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

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

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

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

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

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

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

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

The provisions of paragraph **[(C)] (D)** that permit the court to continue the case if there is good cause for the officer's

unavailability were added in response to *Commonwealth v. Hightower*, 438 Pa. Super. 400, 652 A.2d 873 (1995).

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

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

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

NOTE: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended February 28, 2003, effective July 1, 2003; *Comment* revised March 26, 2004, effective July 1, 2004 amended January 18, 2007, effective August 1, 2007[.] ; **amended _____, 2009, effective _____, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

FORMER RULE 86:

Final Report explaining the March 22, 1993 amendments to former Rule 86 published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the October 28, 1994 amendments to former Rule 86 published with the Court's Order at 24 Pa.B. 5843 (November 26, 1994).

Final Report explaining the February 27, 1995 amendments to former Rule 86 published with the Court's Order at 25 Pa.B. 935 (March 18, 1995).

Final Report explaining the October 1, 1997 amendments to former Rule 86 concerning stays published with the Court's Order at 27 Pa.B. 5408 (October 18, 1997).

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

NEW RULE 462:

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

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

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

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

**Report explaining the proposed amendments concerning
procedures following plea agreements published at 38 Pa.B.
(_____, 2008).**

RULE 550. PLEAS OF GUILTY BEFORE MAGISTERIAL DISTRICT JUDGE IN COURT CASES.

(A) In a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction, **or in which a plea agreement has been reached between the Commonwealth and the defendant and all misdemeanor or felony charges are withdrawn in exchange for a plea to one or more summary charges**, a defendant may plead guilty before a magisterial district judge at any time up to the completion of the preliminary hearing or the waiver thereof.

(B) The magisterial district judge may refuse to accept a plea of guilty, and the magisterial district judge shall not accept such plea unless there has been a determination, after inquiry of the defendant, that the plea is voluntarily and understandingly tendered.

(C) The plea shall be in writing:

(1) signed by the defendant, with a representation by the defendant that the plea is entered knowingly, voluntarily, and intelligently; and

(2) signed by the magisterial district judge, with a certification that the plea was accepted after a full inquiry of the defendant, and that the plea was made knowingly, voluntarily, and intelligently.

(D) A defendant who enters a plea of guilty under this rule may, within 10 days after sentence, change the plea to not guilty by so notifying the magisterial district judge in writing. In such event, the magisterial district judge shall vacate the plea and judgment of sentence, **shall reinstate any charges withdrawn as part of a plea agreement**, and the case shall proceed in accordance with Rule 547, as though the defendant had been held for court.

(E) Ten days after the acceptance of the guilty plea and the imposition of sentence, the magisterial district judge shall,

(1) in a court case in which a magisterial district judge is specifically empowered by statute to exercise jurisdiction, certify the judgment, and shall forward the case to the clerk of courts of the judicial district for further proceedings[.] ; **or**

(2) in a court case in which a plea agreement has been reached between the Commonwealth and the defendant and all misdemeanor or felony charges are withdrawn in exchange for a plea to only summary charges, the magisterial district judge shall enter a final disposition.

Once the case has been forwarded to the court of common pleas, the case shall not be remanded to the issuing authority.

COMMENT: In certain cases, what would ordinarily be a court case within the jurisdiction of the court of common pleas has been placed within the jurisdiction of magisterial district judges. See Judicial Code, 42 Pa.C.S. § 1515(a)(5), (5.1), (6), (6.1), and (7). This rule provides the procedures to implement this expanded jurisdiction of magisterial district judges

In those cases in which either the defendant declines to enter a plea of guilty before the magisterial district judge or the magisterial district judge refuses to accept a plea of guilty, the case is to proceed in the same manner as any other court case.

This rule applies whenever a magisterial district judge has jurisdiction to accept a plea of guilty in a court case.

This rule also applies in any court case in which the Commonwealth agrees to withdraw all misdemeanor or felony charges in exchange for the defendant's plea to one or more summary charges. Even though only summary charges remain, the case still is considered a court case. The procedures for appeal for a trial *de novo* in summary cases set forth in Rules 460-462 are not applicable.

Once the 10-day period for withdrawal of the guilty plea has expired, the case will not be forwarded to the court of common pleas, but will have a final disposition entered in the magisterial district court. However, if the guilty plea takes place after the case is held for court, the case shall remain in the court of common pleas and thereafter would proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation.

Under paragraph (A), it is intended that a defendant may plead guilty at the completion of the preliminary hearing or at any time prior thereto.

Prior to accepting a plea of guilty under this rule, it is suggested that the magisterial district judge consult with the

attorney for the Commonwealth concerning the case, concerning the defendant's possible eligibility for ARD or other types of diversion, and concerning possible related offenses that might be charged in the same complaint. See *Commonwealth v. Campana*, 452 Pa. 233, 304 A.2d 432 ([Pa.] 1973), vacated and remanded, 414 U.S. 808 (1973), on remand, 455 Pa. 622, 314 A.2d 854 (1974).

Before accepting a plea:

(a) The magisterial district judge should be satisfied of jurisdiction to accept the plea, and should determine whether any other related offenses exist that might affect jurisdiction.

(b) The magisterial district judge should be satisfied that the defendant is eligible under the law to plead guilty before a magisterial district judge, and, when relevant, should check the defendant's prior record and inquire into the amount of damages.

(c) The magisterial district judge should advise the defendant of the right to counsel. For purposes of appointment of counsel, these cases should be treated as court cases, and the Rule 122 (Appointment of Counsel) procedures should be followed.

(d) The magisterial district judge should advise the defendant that, if the defendant wants to change the plea to not guilty, the defendant, within 10 days after imposition of sentence, must notify the magisterial district judge who accepted the plea of this decision in writing.

(e) The magisterial district judge should make a searching inquiry into the voluntariness of the defendant's plea. A colloquy similar to that suggested in Rule 590 should be conducted to determine the voluntariness of the plea. At a minimum, the magisterial district judge should ask questions to elicit the following information:

(1) that the defendant understands the nature of the charges pursuant to which the plea is entered;

- (2) that there is a factual basis for the plea;
- (3) that the defendant understands that he or she is waiving the right to trial by jury;
- (4) that the defendant understands that he or she is presumed innocent until found guilty;
- (5) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;
- (6) that the defendant is aware that the magisterial district judge is not bound by the terms of any plea agreement tendered unless the magisterial district judge accepts such agreement; and
- (7) that the defendant understands that the plea precludes consideration for ARD or other diversionary programs.

See Rule 590 and the *Comment* thereto for further elaboration of the required colloquy. See also *Commonwealth v. Minor*, 467 Pa. 230, 356 A.2d 346 (1976), overruled on other grounds in *Commonwealth v. Minarik*, 493 Pa. 573, 427 A.2d 623, 627 (1981); *Commonwealth v. Ingram*, 455 Pa. 198, 316 A.2d 77 (1974); *Commonwealth v. Martin*, 445 Pa. 49, 282 A.2d 241 (1971).

While the rule continues to require a written plea incorporating the contents specified in paragraph (C), the form of plea was deleted in 1985 because it is no longer necessary to control the specific form of written plea by rule.

Paragraph (C) does not preclude verbatim transcription of the colloquy and plea.

At the time of sentencing, or at any time within the 10-day period before transmitting the case to the clerk of courts pursuant to paragraph (E), the magisterial district judge may accept payment of, or may establish a payment schedule for, installment payments of restitution, fines, and costs.

If a plea is not entered pursuant to this rule, the papers must be transmitted to the clerk of courts of the judicial district in accordance with Rule 547. After the time set forth in paragraph (A) for acceptance of the plea of guilty has expired, the magisterial district judge no longer has jurisdiction to accept a plea.

Regardless of whether a plea stands or is timely changed to not guilty by the defendant, the magisterial district judge must transmit the transcript and all supporting documents to the appropriate court, in accordance with Rule 547.

Once the case is forwarded as provided in this rule and in Rule 547, the court of common pleas has exclusive jurisdiction over the case and any plea incident thereto. The case would thereafter proceed in the same manner as any other court case, which would include, for example, the collection of restitution, fines, and costs; the establishment of time payments; and the supervision of probation in those cases in which the magisterial district judge has accepted a guilty plea and imposed sentence.

NOTE: Rule 149 adopted June 30, 1977, effective September 1, 1977; *Comment* revised January 28, 1983, effective July 1, 1983; amended November 9, 1984, effective January 2, 1985; amended August 22, 1997, effective January 1, 1998; renumbered Rule 550 and amended March 1, 2000, effective April 1, 2001; amended December 9, 2005, effective February 1, 2006 [.] ; **amended _____, 2009, effective _____, 2009.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 22, 1997 amendments, that clarify the procedures following a district justice's acceptance of a guilty plea and imposition of sentence in a court case [.] published with the Court's order at 27 Pa.B. 4549 (September 6, 1997).

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 December 9, 2005 changes to the rule clarifying the magisterial district judges' exercise of jurisdiction published with the Court's Order at 35 Pa.B. (, 2005).

Report explaining the proposed amendments concerning procedures following plea agreements published at 38 Pa.B. (, 2008).

REPORT

Proposed Amendments to Pa.Rs.Crim.P. 409, 414, 424, 460, 462, and 550

SUMMARY PLEA AGREEMENTS

The Committee recently examined the procedures when a court case¹ is brought before an magisterial district judge, presumably for a preliminary hearing or other proceeding, and the defendant enters into a plea agreement with the Commonwealth. The defendant enters a guilty plea before the magisterial district judge to one or more summary offenses in exchange for the withdrawal of the misdemeanor or felony charges, and subsequently appeals the summary conviction to the court of common pleas. In this procedural posture, the issue is whether an appeal for a trial *de novo* should be permitted and what charges should go forward.

The Committee believes that it would be unfair for the defendant to enjoy the benefit of a bargain of reduced charges that was premised upon the entry of a guilty plea and then attempt to defeat the reduce charge on appeal. If the defendant desires to withdraw his or her plea, there should be a mechanism to reinstate the original charges.

The Committee concluded that, since these types of cases initially included misdemeanors or felonies, the cases should be treated as court cases throughout. This is consistent with the definition of “court case” in Rule 103 that states that a “court case is a case in which one or more offenses **charged** is a misdemeanor, felony, or murder of the first, second, or third degree (emphasis added).” Therefore, the defendant should not be permitted to appeal for a trial *de novo*. Rather, these cases should be treated as

¹ The case originates by charging misdemeanor, felony or murder offenses.

being akin to the acceptance of a third degree misdemeanor guilty plea as provided in Rule 550.

The Committee is proposing amendments to Rule 550 that would broaden the types of cases that would be covered by the Rule 550 procedures to include the acceptance by the magisterial district judges of guilty pleas to summary charges in cases that originally included felony or misdemeanor charges. If the defendant subsequently withdraws his or her plea, as is currently provided in Rule 550(D), the magisterial district judge must reinstate the charges withdrawn as part of the plea agreement, and thereafter the case will proceed in accordance with Rule 547, as though the defendant had been held for court.

As a procedural point, the Committee noted that Rule 550(E) requires that, if the defendant has not withdrawn his or her guilty plea within ten days of its entry, the magisterial district judge is required to certify the judgment and forward the case to the clerk of courts. The Committee recognized that the purpose of this procedure was to ensure the subsequent supervision by the probation department in a misdemeanor case and was therefore unnecessary in the situation of a plea to summary charges. Therefore, language has been added to Rule 550(E) that would provide, in cases involving the entry of a summary plea pursuant to a plea agreement, that once the period for withdrawal of the plea has passed, the case would remain with the magisterial district judge.

Recognizing that the approach set forth in the proposed procedure could be confusing, especially when the case is sent to the court of common pleas, the Committee also is proposing an addition to the *Comment* to Rule 460 explaining that the Rule 460 procedures are not applicable to a plea taken under Rule 550 in the context of a court case with a plea agreement to summary offenses only.

The Committee also examined the situation in which the case originates entirely as a summary case and one or more summary offenses are dismissed or reduced based upon an agreement to plead to one or more other summary charges.

The Committee believes that these cases should be treated in the same manner as the court cases discussed above. If the defendant subsequently withdraws the plea or appeals for a trial *de novo*, the original charges should be reinstated. This would be consistent with the holding in *Commonwealth v. Rose*, 820 A.2d 164 (Pa.Super. 2003), a case in which the Superior Court found that the Commonwealth's voluntary withdrawal of three Motor Vehicle Code citations against the defendant in exchange for a guilty plea to two remaining citations did not constitute a dismissal, and therefore, the original citations could be reinstated when the defendant filed a summary appeal. The proposal includes language to be added to Rules 460 and 462 that would require the magisterial district judge to reinstate the original charges if the charges had been withdrawn as part of a plea agreement that the defendant subsequently abrogates by withdrawing his or her plea or filing an appeal for a trial *de novo*. The proposal also adds a requirement to the summary guilty plea rules, Rules 409, 414, and 424, that the defendant be given notice of the consequences of a withdrawal from such a plea agreement at the time of the entry of the plea.