

**SUPREME COURT OF PENNSYLVANIA  
CRIMINAL PROCEDURAL RULES COMMITTEE**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Pa.R.Crim.P. 462 and 1010**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the proposed amendment of Pa.R.Crim.P. 462 (Trial *De Novo*) and 1010 (Procedures for Trial *De Novo*) for the reasons set forth in the accompanying publication report. Pursuant to Pa.R.J.A. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any report accompanying this proposal was prepared by the Committee to indicate the rationale for the proposed rulemaking. It will neither constitute a part of the rules nor be adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **August 21, 2023**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Criminal Procedural Rules Committee,

Stefanie J. Salavantis  
Chair

**Rule 462. Trial *De Novo*.**

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

**[(B)](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)](c)** In appeals from summary proceedings arising under the Vehicle Code or local traffic ordinances, other than parking offenses, the law enforcement officer who observed the alleged offense **[must]shall** 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]self-represented**, 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)](d)** If the defendant fails to appear, the trial judge may dismiss the appeal and enter judgment in the court of common pleas on the judgment of the issuing authority.

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

**[(F)](f)** If the defendant has petitioned the trial judge to permit the taking of an appeal *nunc pro tunc* and **[this]the** petition is denied, the trial judge shall enter judgment in the court of common pleas on the judgment of the issuing authority.

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

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

(1) if the defendant's sentence includes restitution, a fine, or costs, state:

**[(a)](i)** the amount of the fine and the obligation to pay costs;

**[(b)](ii)** the amount of restitution ordered, including

**[(i)](A)** the identity of the payee(s),

**[(ii)](B)** to whom the restitution payment shall be made, and

**[(iii)](C)** whether any restitution has been paid and in what amount; and

**[(c)](iii)** 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]shall** 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 (H)(1) through (H)(3)]subdivisions (h)(1) through (h)(3)**, and a copy of the order shall be given to the defendant.

**[(I)](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.

**(i) Suppression Motion.**

**(1) A motion to suppress evidence shall be made in the first instance in the court of common pleas on appeal from a summary conviction.**

**(2) The motion shall comply with subdivisions (C) through (J) of Rule 581 and shall be filed with the clerk of courts within 30 days of the filing of the notice of appeal.**

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

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

“Entry,” as used in **[paragraph (A) of this rule]**subdivision (a), means the date on which the issuing authority enters or records the guilty plea, the conviction, or other order in the magisterial district judge computer system.

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

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

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

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

**[New paragraph (F) was added in 2017 to clarify]**Subdivision (f) clarifies that in a case in which a defendant seeks to file an appeal *nunc pro tunc*, and the common pleas judge denies that petition, the case will remain at the court of common pleas. This is consistent with the long-standing policy under the rules that once a case has moved from the minor judiciary to the court of common pleas, the case remains at common pleas.

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

Pursuant to **[paragraph (H)]subdivision (h)**, if the defendant is convicted, the trial judge **[must]shall** 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).

Certain costs are mandatory and must be imposed. See, e.g., **[Section 1101 of the Crime Victims Act,]**18 P.S. § 11.1101.

Once sentence is imposed, **[paragraph (I)]subdivision (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.

**Pursuant to subdivision (j), motions to suppress evidence are not to be made before the issuing authority at a summary trial but are to be filed with the clerk of courts no later than 30 days after a notice of appeal has been filed pursuant to Rule 460.**

For the procedure to dismiss upon satisfaction or by agreement a summary case, as defined in Rule 103, that has been appealed to the court of common pleas, see Rule 463.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

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

**[NOTE: Former Rule 86 adopted July 12, 1985, effective January 1, 1986; revised September 23, 1985, effective January 1, 1986; the January 1, 1986 effective dates extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended March 22, 1993, effective January 1, 1994; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; amended February 27, 1995, effective July 1, 1995; amended October 1, 1997, effective October 1, 1998; amended May 14, 1999, effective July 1, 1999; rescinded March 1, 2000, effective April 1, 2001, and paragraph (G) replaced by Rule 462. New Rule 462 adopted March 1, 2000, effective April 1, 2001; amended March 3, 2000, effective July 1, 2000; amended February 28, 2003, effective July 1, 2003; *Comment* revised March 26, 2004, effective July 1, 2004; amended January 18, 2007, effective August 1, 2007; amended December 16, 2008, effective February 1, 2009; *Comment* revised October 16, 2009, effective February 1, 2010; *Comment* revised May 7, 2014, effective immediately; amended March 9, 2016, effective July 1, 2016; amended December 29, 2017, effective April 1, 2018; *Comment* revised January 27, 2021, effective June 1, 2021.**

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**COMMITTEE EXPLANATORY REPORTS:**

**FORMER RULE 86:**

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

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

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

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

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

**NEW RULE 462:**

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

**Final Report explaining the March 3, 2000 amendments concerning appeals from guilty pleas published with the Court's Order at 30 Pa.B. 1508 (March 18, 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. 523 (February 3, 2007).**

**Final Report explaining the December 16, 2008 amendments to permit delay in sentencing for determination of intermediate punishment status published with the Court's Order at 39 Pa.B. 8 (January 3, 2009).**

**Final Report explaining the October 16, 2009 Comment revision regarding new Rule 1037 and procedures for the appeal from the**

***Philadelphia Traffic Court published with the Court's Order at 39 Pa.B. 6327 (October 31, 2009).***

***Final Report explaining the May 7, 2014 Comment revision changing the cross-reference to the Philadelphia Traffic Court to the Traffic Division of the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3056 (May 24, 2014).***

***Final Report explaining the March 9, 2016 amendments to paragraph (G) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1532 (March 26, 2016).***

***Final Report explaining the December 29, 2017 amendments regarding appeals nunc pro tunc published with the Court's Order at 48 Pa.B. 224 (January 13, 2018).***

***Final Report explaining the January 27, 2021 Comment revisions regarding dismissal by agreement of summary cases in the common pleas court pursuant to Rule 458 published with the Court's Order at 51 Pa.B. 688 (February 6, 2021).]***



**Rule 1010. Procedures for Trial *De Novo*.**

**[(A)](a)** When a defendant appeals after conviction by a Municipal Court judge,

- (1) in a non-traffic summary case, upon the filing of the transcript and other papers, the case shall be heard *de novo* by the judge of the Court of Common Pleas sitting without a jury.
- (2) In a Municipal Court case, the attorney for the Commonwealth, upon receiving the notice of appeal, shall prepare an information and the matter shall thereafter be treated in the same manner as any other court case.

**[(B)](b)** If the defendant fails to appear for the trial *de novo*, the Common Pleas Court judge may dismiss the appeal and thereafter shall enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

**[(C)](c) Withdrawals of Appeals.**

- (1) If the defendant withdraws the appeal, the Common Pleas Court judge shall enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.
- (2) In a Municipal Court case, the defendant may withdraw the appeal only with the written consent of the attorney for the Commonwealth.

**[(D)](d)** At the time of sentencing, the Common Pleas Court judge shall:

- (1) if the defendant's sentence includes restitution, a fine, or costs, state:

**[(a)](i)** the amount of the fine and the obligation to pay costs;

**[(b)](ii)** the amount of restitution ordered, including

**[(i)](A)** the identity of the payee(s),

**[(ii)](B)** to whom the restitution payment shall be made, and

**[(iii)](C)** whether any restitution has been paid and in what amount; and

**[(c)](iii)** the date on which payment is due.

If the defendant is without the financial means to pay the amount in a single remittance, the Common Pleas Court 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]shall** be stayed and the Common Pleas Court 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 Common Pleas Court judge. The order shall include the information specified in **[paragraphs (D)(1) through (D)(3)]subdivisions (d)(1) through (d)(3)**, and a copy of the order shall be given to the defendant.

**[(E)](e)** After entry of judgment pursuant to **[paragraphs (B) or (C)(1)]subdivisions (b) or (c)(1)**, or after the trial *de novo* and imposition of sentence, the case shall remain in the Court of Common Pleas for the execution of sentence, including for the collection of any fines and restitution, for the collection of any costs, and for proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.

**(f) Suppression Motion in Summary Cases.**

- (1) A motion to suppress evidence shall be made in the first instance in the Court of Common Pleas on appeal from a summary conviction.**
- (2) The motion shall comply with subdivisions (C) through (J) of Rule 581 and shall be filed with the clerk of courts within 30 days of the filing of the notice of appeal.**

**Comment:** In any case in which there are summary offenses joined with the misdemeanor charges that are the subject of the appeal, the attorney for the Commonwealth must include the summary offenses in the information. See *Commonwealth v. Speller*, 458 A.2d 198 (Pa. Super. 1983).

**[Paragraph (B)]Subdivision (b)** makes it clear that the Common Pleas Court judge may dismiss an appeal when the judge determines that the defendant is absent without cause from the trial *de novo*. If the appeal is dismissed, the Common Pleas Court judge **[must ]shall** enter judgment and order execution of any sentence imposed by the Municipal Court judge. Nothing in this rule is intended to preclude the judge from issuing a bench warrant when the defendant fails to appear.

Certain costs are mandatory and must be imposed. See, e.g., **[Section 1101 of the Crime Victims Act, ]**18 P.S. § 11.1101.

For the procedures concerning sentences that include restitution in court cases, see Rule 705.1.

Once a judgment is entered and sentence is imposed, **[paragraph (E)]subdivision (e)** 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 Municipal Court judge. The execution of sentence includes the collection of any fines and restitution and any proceedings for violation of probation, intermediate punishment, or parole as provided by Rule 708.

**Pursuant to subdivision (f), motions to suppress evidence are not to be made before the Municipal Court judge at a summary trial but are to be filed with the clerk of courts no later than 30 days after a notice of appeal has been filed pursuant to Rule 1008.**

**[NOTE: Rule 6010 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; amended August 28, 1998, effective immediately; renumbered Rule 1010 March 1, 2000, effective April 1, 2001; Comment revised March 9, 2006, effective September 1, 2006; amended February 12, 2010, effective April 1, 2010; amended September 21, 2011, effective November 1, 2011; amended March 9, 2016, effective July 1, 2016.**

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***COMMITTEE EXPLANATORY REPORTS:***

***Final Report explaining the August 28, 1998 amendment published with the Court's Order at 28 Pa.B. 4627 (September 12, 1998).***

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

***Final Report explaining the March 9, 2006 Comment revision concerning joinder of summary offenses with misdemeanor charges published with the Court's Order at 36 Pa.B. 1385 (March 25, 2006).***

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

***Final Report explaining the September 21, 2011 amendments to paragraphs (A)—(C) and adding new paragraphs (D) and (E) concerning the procedures for trials de novo in the Court of Common Pleas published with the Court's Order at 41 Pa.B. 5353 (October 8, 2011).***

***Final Report explaining the March 9, 2016 amendments to paragraph (D) concerning required elements of the sentence published with the Court's Order at 46 Pa.B. 1540 (March 26, 2016).]***

**SUPREME COURT OF PENNSYLVANIA  
CRIMINAL PROCEDURAL RULES COMMITTEE**

**PUBLICATION REPORT**

**Proposed Amendment of Pa.R.Crim.P. 462 and 1010**

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court the amendment of Pa.R.Crim.P. 462 and 1010 to provide for the filing of suppression motions when a summary conviction is appealed to the court of common pleas.<sup>1</sup>

The Committee received a request to consider incorporating procedures into the rules for filing a suppression motion in summary cases. As the requester noted, Pa.R.Crim.P. 581 (Suppression of Evidence) is contained in Chapter 5 of the rules, which is titled “Pretrial Procedures in Court Cases.” Pa.R.Crim.P. 103 defines “court case” as “a case in which on or more of the offenses charged is a misdemeanor, felony, or murder of the first, second, or third degree.” Consequently, a case only involving a summary charge is not a court case and thus outside the scope of Pa.R.Crim.P. 581. To accommodate summary suppression motions, the amendment of Rules 462 and 1010 is being proposed.

When considering the request, the Committee needed to determine in which court a motion to suppress in a summary case should be heard. The Committee concluded that suppression motions in summary cases should be heard in the first instance in the court of common pleas on appeal from a summary conviction. The Committee reasoned that magisterial district courts have no motions practice and magisterial district judges are not currently trained with regard to suppression issues and the relevant jurisprudence. Additionally, the need to devise an appropriate appellate procedure, which does not currently exist, to accommodate appeals from summary suppression motions decided in magisterial district courts also weighed against this option. To create consistency in the First Judicial District, the Committee decided suppression motions in summary cases in the First Judicial District should also be heard in the first instance in the court of common pleas on appeal, even though a motions practice does exist in Philadelphia Municipal Court. The Committee is specifically seeking comment on this aspect of the proposal, particularly from the bench and bar of the First Judicial District.<sup>2</sup>

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<sup>1</sup> Stylistic amendments have also been made to conform to the Supreme Court of Pennsylvania Style and Rulemaking Guide for Procedural and Evidentiary Rules.

<sup>2</sup> It is the Committee’s understanding that the appeal of a suppression determination entered in Philadelphia Municipal Court is accomplished via a petition for writ of *certiorari* (continued...)

As this proposal requires summary suppression motions to be filed in the court of common pleas on appeal in all judicial districts, both Rule 462 and Rule 1010 would be amended to include a new subdivision, subdivision (j) (Suppression Motion) in Rule 462 and subdivision (f) (Suppression Motion in Summary Cases) in Rule 1010. Proposed Rule 462(j)(1) and Proposed Rule 1010(f)(1) would both provide that motions to suppress evidence “shall be made in the first instance” in the court of common pleas on appeal from a summary conviction. Proposed Rule 462(j)(2) and Proposed Rule 1010(f)(2) would then require such motions to “comply with subdivisions (C) through (J) of Rule 581” and to be filed with “the clerk of courts within 30 days of the filing of the notice of appeal.” Thirty days was chosen to mirror the timing requirement for a suppression motion in a court case. See Pa.R.Crim.P. 579 (Time for Omnibus Pretrial Motion and Service).

The following two paragraphs would be removed from the Comment, the first for being merely historical and the second for simply being a restatement of the rule text:

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

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

Also, the Comment to each rule would be amended to advise that motions to suppress are not to be made in a magisterial district court or in Philadelphia Municipal Court but are to be filed with the clerk of courts within 30 days of a notice of appeal being filed pursuant to Pa.R.Crim.P. 460 or 1008, respectively.

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to the court of common pleas. However, “[c]ertiorari is available in non-summary cases only.” Pa.R.Crim.P. 1006, cmt. Thus creating a parallel procedure for summary cases is not feasible.