

Rule 454. Trial in Summary Cases.

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

[(b)](ii) 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)](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)](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)](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)] subdivision (e)**.

[(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)](f) At the time of sentencing, the issuing authority 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) the identity of the payee(s),
- (ii) to whom the restitution payment shall be made, and
- (iii) 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 issuing authority 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 within 30 days for a trial *de novo* in the court of common pleas, and that if an appeal is filed:

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

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

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

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

(g) 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 Rule 581(C) - (J) and be filed with the clerk of courts within 30 days of the filing of the notice of appeal.**

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] Pa.R.Crim.P.** 121 and 122.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See **[Rule] Pa.R.Crim.P.** 457 (Withdrawal of Charges in Summary Cases).

[Paragraph (F)(2)(b)] Subdivision (f)(2)(ii) 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)] subdivision (c)**, the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth, or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

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

pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

When the defendant was under 18 years of age at the time of the offense and is charged with a summary offense that would otherwise carry a mandatory sentence of imprisonment as prescribed by statute, the issuing authority is required to conduct the summary trial but may not sentence the defendant to a term of imprisonment. See 42 Pa.C.S. §§ 6302 and 6303 and 75 Pa.C.S. § 6303(b).

Under **[paragraph (F)(2)(a)] subdivision (f)(2)(i)**, 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)] subdivision (f)(3)**, the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

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

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

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See also 18 Pa.C.S. § 1106(c)(2)(iii), **which prohibits** **(prohibiting** 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).

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

[Paragraph (E)] Subdivision (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] See Rule 456 for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

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

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

[Official 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; Comment revised July 17, 2013, effective August 17, 2013; amended March 9, 2016, effective July 1, 2016.

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. 752 (February 17, 2007).

Final Report explaining the July 17, 2013 Comment revision concerning mandatory incarceration offenses and juveniles published with the Court's Order at 43 Pa.B. 4323 (August 3, 2013).

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

Rule 1002. Procedure in Summary Cases.

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

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

For the procedures governing suppression motions in summary cases, see Rule 454(g).

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[Official Note: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; *Comment* revised January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new Rule 1002; amended May 12, 2009, effective February 1, 2010; *Comment* revised February 12, 2010, effective April 1, 2010; amended December 22, 2010, effective February 20, 2011; *Comment* revised May 7, 2014, effective immediately.

Committee Explanatory Reports:

Report explaining the August 9, 1994 amendments published at 22 Pa.B. 6 (January 4, 1992); Final Report published with the Court's Order at 24 Pa.B. 4342 (August 27, 1994).

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

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

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

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

Final Report explaining the December 22, 2010 amendments published with the Court's Order at 41 Pa.B. 216 (January 8, 2011).

Final Report explaining the May 7, 2014 Comment revisions concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3056 (May 24, 2014).]

Rule 1005. Pretrial Application for Relief.

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Comment: For the procedures governing suppression motions in summary cases, see Rule 454(g).

[Official Note: Rule 6005 adopted December 30, 1968, effective January 1, 1969; amended July 1, 1980, effective August 1, 1980; renumbered Rule 1005 and amended March 1, 2000, effective April 1, 2001; amended November 9, 2017, effective January 1, 2018.

Committee Explanatory Reports:

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

Final Report explaining the November 9, 2017 amendment regarding the effect that taking an appeal has on the ability of the Municipal Court to take further action in a case published with the Court's Order at 47 Pa.B. 7182 (November 25, 2017).]

Rule 1030. Scope of Summary Municipal Court Traffic Division Rules.

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

For the procedures governing suppression motions in summary cases, see Rule 454(g).

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[Official Note: Adopted September 9, 2005, effective February 1, 2006; amended May 7, 2014, effective immediately.]

Committee Explanatory Reports:

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

Final Report explaining the May 7, 2014 Comment revision concerning the transfer of functions from the Philadelphia Traffic Court to the Philadelphia Municipal Court published with the Court's Order at 44 Pa.B. 3056 (May 24, 2014).]