

## Proposed Amendments to Pa.R.Crim.P. 1010

### INTRODUCTION

*The Criminal Procedural Rules Committee is planning to recommend that the Supreme Court of Pennsylvania amend Rule of Criminal Procedure 1010 (Procedure on Appeal) to conform the procedures for appeals for trials de novo in cases in Philadelphia with the statewide procedures for appeals for trials de novo. 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 Rule 1010 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,*

*Anne T. Panfil, Counsel  
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Criminal Procedural Rules Committee  
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**no later than Friday, September 17, 2010.**

July 12, 2010 BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:

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*Risa Vetri Ferman, Chair*

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*Anne T. Panfil  
Counsel*

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*Jeffrey M. Wasileski  
Counsel*

RULE 1010. PROCEDURE ON APPEAL.

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

**(C) 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.]**

**(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) If the defendant fails to appear, 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) Withdrawals of Appeals**

**(1) If the defendant withdraws the appeal, the Common Pleas Court judge shall enter the 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) The verdict and sentence, if any, shall be announced in open court immediately upon the conclusion of the trial.**

**(E) At the time of sentencing, the Common Pleas Court 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 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 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 (E)(1) through (E)(3), and a copy of the order shall be given to the defendant.**

**(F) After sentence is imposed by the Common Pleas Court judge, the case shall remain in the Court of Common Pleas for the execution of sentence, including for the collection of any fine and restitution, for the collection of any costs, and for proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.**

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*, 311 Pa. Super. 569, 458 A.2d 198 (1983).

**See Rule 1001(A) for the definition of "Municipal Court case."**

**Paragraph (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 should enter judgment and order execution of any sentence imposed by the Municipal Court judge.**

**Once sentence is imposed, paragraph (F) 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.**

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 \_\_\_\_\_, 2010, effective \_\_\_\_\_, 2010.

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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. 1071 (February 27, 2010).**

**Report explaining the proposed amendments concerning failure to appear for and withdrawal of appeals published at 40 Pa.B. \_\_\_\_\_ (\_\_\_\_\_, 2010).**

## REPORT

### *Proposed Amendments to Pa.R.Crim.P. 1010*

#### APPEALS FOR TRIAL *DE NOVO* IN PHILADELPHIA

##### **I. INTRODUCTION**

The Committee is planning to propose to the Supreme Court amendments to Rule of Criminal Procedure 1010 (Procedure for Appeals) that would conform the procedures for appeals for trials *de novo* in Philadelphia to the statewide procedures for appeals for trials *de novo*. The Committee undertook a review of the procedures for trials *de novo* in Philadelphia after receiving communications from the legal staff of the Administrative Office of Pennsylvania Courts (AOPC) suggesting that, because there are no rules setting forth the procedures for appealing for a trial *de novo* from Philadelphia Municipal Court to the Philadelphia Common Pleas Court, there is little uniformity in how these appeals for a trial *de novo* are handled.

The Municipal Court handles both non-traffic summary cases and all misdemeanor cases. Appeals from the disposition of the non-traffic summary and misdemeanor cases in the Municipal Court are to the Court of Common Pleas for a trial *de novo*.<sup>1</sup> Rule 1010 (Procedure on Appeal) only addresses the filing of an information by the Commonwealth after receiving the notice of appeal. The procedures for conducting appeals for trials *de novo* in the other judicial districts are limited to appeals from both traffic and non-traffic summary cases and are governed by Rule 462 (Trial *De Novo*).<sup>2</sup>

The Committee reviewed the statewide procedures for the trial *de novo* set forth in Rule 462, and agreed, for the most part, these procedures should be adapted to govern the trial *de novo* in Philadelphia. The members recognized that some of the statewide procedures would have to be modified for the appeals in misdemeanor cases.

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<sup>1</sup> Pursuant to Article V, Section 26 of the Constitution, the parties may petition for a *writ of certiorari* (only in misdemeanor cases) or may appeal for a trial *de novo*.

<sup>2</sup> In Philadelphia, the procedures for appeals in traffic summary cases are governed by Rule 1037.

For example, Rule 1010 already requires that an information be filed after a notice of appeal is filed in a misdemeanor case, and this requirement has been incorporated into the proposed amendments. Unless specifically provided otherwise in the Rule 1010, the procedures are the same for the non-summary traffic appeals and the appeals in misdemeanor cases.

## II. DISCUSSION OF PROPOSED RULE 1010 AMENDMENTS

Paragraph (A)(1) is identical to Rule 462(A) and provides that, in non-traffic summary cases, the case is to be heard *de novo* by a common pleas court judge sitting without a jury. Paragraph (A)(2) addresses misdemeanor cases, and incorporates the current language from Rule 1010 requiring the preparation of the information by the attorney for the Commonwealth. In addition, the case is to be treated in the same manner as any other court case.

Paragraph (B) is identical to Rule 462(D) and permits the Common Pleas Court judge to dismiss the appeal if the defendant fails to appear for the trial *de novo*. The *Comment* explains that the judge may dismiss the appeal if the judge determines that the defendant is absent without cause. If the judge does dismiss the appeal in this circumstance, the rule requires the judge to enter judgment in the Court of Common Pleas on the judgment of the Municipal Court judge.

Paragraph (C)(1) is identical to Rule 462(E) permitting the withdraw of an appeal in a non-traffic summary case, and requiring the Common Pleas Court judge to enter judgment in the Common Pleas Court on the judgment of the Municipal Court judge. Paragraph (C)(2) permits a defendant to withdraw an appeal in a misdemeanor case, but only with the written consent of the attorney for the Commonwealth. The Committee added this requirement because, for example, in the misdemeanor cases, the attorney for the Commonwealth will have to move the court to *nolle prosequi* the informations.

Paragraph (D) is taken from Rule 462(F). The paragraph requires the Common Pleas Court judge at the conclusion of the trial to announce the verdict and sentence, if any, in open court.

Paragraph (E) is identical to Rule 462(G). The paragraph sets forth the Common Pleas Court judge's responsibilities at the time of sentencing, including issuing a written order imposing the sentence. The judge also must state the date on which payment of any fines, costs, and restitution must be paid, and may provide for payment in

installment. Finally, the judge is required to advise the defendant of his or her appeal rights.

Paragraph (F) incorporates the provisions of Rule 462(H) requiring the case to remain in the Common Pleas Court for the execution of sentence. In addition, to accommodate the misdemeanor cases, paragraph (F) provides that the case would remain in Common Pleas Court for any proceedings for violation of probation, intermediate punishment, or parole pursuant to Rule 708.