

PART **[IIB] B(2)**: Procedures When Citation Filed

RULE **[60] 410**. FILING OF CITATION.

When it is not feasible to issue the citation to the defendant or when evidence is discovered after the issuance of a citation that gives rise to additional summary charges against the defendant resulting from the same incident, a law enforcement officer shall institute a criminal proceeding in a summary case by filing a citation with the proper issuing authority.

COMMENT: A law enforcement officer should file a citation with the issuing authority when, due to the circumstances of the case, the law enforcement officer is unable to issue the citation directly to the defendant at the time of the offense. Examples of situations when the law enforcement officer would be unable to issue a citation include, but are not limited to, when the officer receives information that the defendant has committed a summary violation from a witness but the defendant is not then present; when a witness is not present at the scene and the officer wants to question the witness before completing the investigation; or when the officer is summoned to another case that requires prompt action. See Section 902 of the Game and Wildlife Code, 34 Pa.C.S. § 902, which provides, *inter alia*, that "Deputy Wildlife Conservation Officers shall not be authorized to issue citations ... and shall provide the information to the Wildlife Conservation Officer." Under this statute, it would not be feasible for the Deputy Wildlife Conservation Officer to issue the citation, and, therefore, pursuant to this rule, the citation would be filed.

When a defendant acknowledges guilt pursuant to Section 926 of the Game and Wildlife Code, 34 Pa.C.S. § 926, or Section 925 of the Fish and Boat Code, 30 Pa.C.S. § 925, but does not pay the fine and costs or the check issued for the fine and costs cannot be cashed, the officer of the commission should file a citation with the issuing authority to institute a summary criminal proceeding.

When determining whether the filing of a citation was the correct procedure under the rules, the courts have considered whether there was a reasonable basis for filing,

whether there were compelling reasons to prevent issuing the citation, and whether the defendant was prejudiced by the filing. See, e.g., *Commonwealth v. Odle*, 16 D. & C. 3d 750 (Cambria County 1980); *Commonwealth v. Lombardo*, 4 D.& C. 3d 106 (Clearfield County 1977). See also Rule **[90, which] 109 that [would] permits** discharge or dismissal when the institution of proceedings by incorrect means is prejudicial to the rights of the defendant.

When evidence is discovered after the issuance of a citation that gives rise to additional charges against the defendant resulting from the same incident, the police officer must file with the issuing authority an additional citation alleging such additional summary offenses, or a complaint when the additional charges include a misdemeanor or felony. For proceedings on such charges when a complaint is filed, see Chapter **[100] 5** of these **[R] rules**.

With regard to the "proper" issuing authority as used in these rules, see Rule **[21] 130**.

NOTE: Previous rule, originally adopted as Rule 116 June 30, 1964, effective January 1, 1965; suspended effective May 1, 1970; readopted January 31, 1970, effective May 1, 1970, renumbered as Rule 60 and amended to apply only to summary cases September 18, 1973, effective January 1, 1974; amended April 26, 1979, effective July 1, 1979; amended January 28, 1983, effective July 1, 1983; rescinded July 12, 1985, effective January 1, 1986, and replaced by present Rule **[76] 431**. Present Rule 60 adopted July 12, 1985, effective January 1, 1986. The January 1, 1986 effective dates are all extended to July 1, 1986; *Comment* revised February 1, 1989, effective July 1, 1989; *Comment* revised August 13, 1999, effective immediately **[.] ; renumbered Rule 410 and Comment revised March 1, 2000, effective April 1, 2001.**

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COMMITTEE EXPLANATORY REPORTS:

Final Report explaining the August 13, 1999 revision of the Comment concerning 34 Pa.C.S. § 902 published with the Court's Order at 29 Pa.B. 4543 (August 28, 1999).

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