

[RULE 86. APPEALS.] RESCINDED.

[(A) When an appeal is authorized by law in a summary proceeding, including a prosecution for violation of a municipal ordinance which 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 conviction or other final order from which the appeal is taken and by appearing in the court of common pleas for the trial *de novo*. The notice of appeal shall be filed with the clerk of courts.

(B) Stays.

(1) In all cases in which a sentence of imprisonment has been imposed, execution of sentence shall be stayed until the time for appeal expires.

(2) In any case in which a notice of appeal is filed, the execution of sentence shall be stayed.

(3) Whenever the execution of sentence is stayed pursuant to this paragraph, the issuing authority may set bail or collateral.

(C) During the 30-day appeal period, failure to pay fines and costs, or restitution, shall not be grounds for imprisonment and shall not be grounds to preclude the taking of an appeal.

(D) 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 heard the case;

(3) the magisterial district number where 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 conviction or other final order from which the appeal is taken;

(6) the offense(s) of which convicted, 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 furnished to the issuing authority, if any;

(9) the name and address of the attorney, if any, filing the notice of appeal; and

(10) except when the appeal is from a conviction, the grounds relied upon for appeal.

(E) 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.

(F) 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) the original complaint or citation;

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

(4) the bail bond, if any.

(G) 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 appropriate division of the court of common pleas as the president judge shall direct. 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.

(H) This rule shall provide the exclusive means of appealing from a summary conviction. Courts of common pleas shall not issue writs of *certiorari* in such cases.

(I) This rule shall not apply to appeals from contempt adjudications.]

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

Appeals from contempt adjudications are governed by Rule 31.

The Rules of Criminal Procedure are applicable generally to these proceedings. See, e.g., Rule 3, Chapter 50 (Summary Cases), Rule 1117, and Chapter 6000. 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.

Under paragraph (B)(2), the stay applies to all "sentences" imposed after conviction, including sentences of imprisonment, fines and costs, or restitution, and sentences of imprisonment for defaults in payment pursuant to Rule 85.

When the only issues on appeal arise solely from an issuing authority's determination after a default hearing pursuant to Rule 85, 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.

The 1999 amendment of paragraph (G), made in response to *Commonwealth v. Hightower*, 652 A.2d 873 (Pa. Super. 1995), permits the court to continue the case if there is good cause for the officer's unavailability.

Certiorari was abolished by former Rule 67 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*, of course, continues.

Bail, when set in a summary case, must be set in accordance with the bail rules, Chapter 4000.]

NOTE: **Rule 86 [A]** adopted July 12, 1985, effective January 1, 1986; revised 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 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 and paragraphs (A), (D), (E), (F), and (I) replaced by Rule 460, paragraphs (B) and (C) replaced by Rule 461, and paragraph (G) replaced by Rule 462, effective April 1, 2001.**

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COMMITTEE EXPLANATORY REPORTS:

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

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

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

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

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

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