

## RULE 1003. PROCEDURE IN NON-SUMMARY MUNICIPAL COURT CASES.

### (A) INITIATION OF CRIMINAL PROCEEDINGS

(1) Criminal proceedings in court cases shall be instituted by filing a written complaint, except that proceedings may be also instituted by:

(a) an arrest without a warrant when a felony or misdemeanor is committed in the presence of the police officer making the arrest; or

(b) an arrest without a warrant upon probable cause when the offense is a misdemeanor not committed in the presence of the police officer making the arrest, when the arrest without a warrant is specifically authorized by law; or

(c) an arrest without a warrant upon probable cause when the offense is a felony.

### (2) Private Complaints

(a) When the affiant is not a law enforcement officer, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.

(b) If the attorney for the Commonwealth:

(i) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(ii) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter, the affiant may petition the President Judge of Municipal Court, or the President Judge's designee, for review of the decision. Appeal of the decision of the Municipal Court shall be to the Court of Common Pleas.

### (B) CERTIFICATION OF COMPLAINT

Before an issuing authority may issue process or order further proceedings in a Municipal Court case, the issuing authority shall ascertain and certify on the complaint that:

(1) the complaint has been properly completed and executed; and

- (2) when prior submission to an attorney for the Commonwealth is required, an attorney has approved the complaint.

The issuing authority shall then accept the complaint for filing, and the case shall proceed as provided in these rules.

### (C) SUMMONS AND ARREST WARRANT PROCEDURES

When an issuing authority finds grounds to issue process based on a complaint, the issuing authority shall:

- (1) issue a summons and not a warrant of arrest when the offense charged is punishable by imprisonment for a term of not more than 1 year, except as set forth in paragraph (C)(2);
- (2) issue a warrant of arrest when:
  - (a) the offense charged is punishable by imprisonment for a term of more than 5 years;
  - (b) the issuing authority has reasonable grounds for believing that the defendant will not obey a summons;
  - (c) the summons has been returned undelivered;
  - (d) a summons has been served and disobeyed by a defendant;
  - (e) the identity of the defendant is unknown;
  - (f) a defendant is charged with more than one offense, and one of the offenses is punishable by imprisonment for a term of more than 5 years; or
- (3) when the offense charged does not fall within the categories specified in paragraph (C)(1) or (2), the issuing authority may, in his or her discretion, issue a summons or a warrant of arrest.

### (D) PRELIMINARY ARRAIGNMENT

- (1) When a defendant has been arrested within Philadelphia County in a Municipal Court case, with or without a warrant, the defendant shall be afforded a preliminary arraignment by an issuing authority without unnecessary delay. If the defendant was arrested without a warrant pursuant to paragraph (A)(1)(a) or (b),

unless the issuing authority makes a determination of probable cause, the defendant shall not be detained.

(2) In the discretion of the issuing authority, the preliminary arraignment of the defendant may be conducted by using two-way simultaneous audio-visual communication. When counsel for the defendant is present, the defendant must be permitted to communicate fully and confidentially with defense counsel immediately prior to and during the preliminary arraignment.

(3) At the preliminary arraignment, the issuing authority:

(a) shall not question the defendant about the offense(s) charged;

(b) shall give the defendant's attorney, or if unrepresented the defendant, a copy of the certified complaint;

(c) if the defendant was arrested with a warrant, the issuing authority shall provide the defendant's attorney, or if unrepresented the defendant, with copies of the warrant and supporting affidavit(s) at the preliminary arraignment, unless the warrant and affidavit(s) are not available at that time, in which event the defendant's attorney, or if unrepresented the defendant, shall be given copies no later than the first business day after the preliminary arraignment; and

(d) shall also inform the defendant:

(i) of the right to secure counsel of choice and the right to assigned counsel in accordance with Rule 122;

(ii) of the day, date, hour, and place for the trial, which shall not be less than 20 days after the preliminary arraignment **[or for the preliminary hearing, which shall be given a first listing of not less than 3 days nor more than 10 days after the preliminary arraignment]**, unless the issuing authority fixes an earlier date for the trial or the preliminary hearing upon request of the defendant or defense counsel, with the consent of the attorney for the Commonwealth;

(iii) in a case charging a felony, of the date, time, and place of the preliminary hearing, which shall not be less than **[3] 14** nor more than **[10] 21** days after the preliminary arraignment unless extended for cause or the issuing authority fixes an earlier date upon the request of the defendant or defense counsel with the consent of the complainant and the attorney

for the Commonwealth **and that failure to appear without good cause for the preliminary hearing will be deemed a waiver by the defendant of the right to be present at any further proceedings before the issuing authority, and that the case shall proceed in the defendant's absence, and a warrant of arrest shall be issued;** and

- (iv) of the type of release on bail, as provided in Chapter 5 Part C of these rules, and the conditions of the bail bond.

(4) After the preliminary arraignment, if the defendant is detained, he or she shall be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she shall be committed to jail, as provided by law.

#### (E) PRELIMINARY HEARING IN CASES CHARGING A FELONY

In cases charging a felony, the preliminary hearing in Municipal Court shall be conducted as provided in Rule 542 (Preliminary Hearing; Continuances) and Rule 543 (Disposition of Case at Preliminary Hearing).

#### (F) ACCEPTANCE OF BAIL PRIOR TO TRIAL

The Clerk of Quarter Sessions shall accept bail at any time prior to the Municipal Court trial.

COMMENT: The 2004 amendments make it clear that Rule 1003 covers the preliminary procedures for all non-summary Municipal Court cases, see Rule 1001(A), and cases charging felonies, including the institution of proceedings, the preliminary arraignment, and the preliminary hearing.

See Chapter 5 (Procedure in Court Cases), Parts I (Instituting Proceedings), II (Complaint Procedures), III(A) (Summons Procedures), III(B) (Arrest Procedures in Court Cases), and IV (Proceedings in Court Cases Before Issuing Authorities) for the statewide rules governing the preliminary procedures in court cases, including non-summary Municipal Court cases, not otherwise covered by this rule.

The 2004 amendments to paragraph (A)(1) align the procedures for instituting cases in Municipal Court with the

statewide procedures in Rule 502 (Means of Instituting Proceedings in Court Cases).

The 1996 amendments to paragraph (A)(2) align the procedures for private complaints in non-summary cases in Municipal Court with the statewide procedures for private complaints in Rule 506 (Approval of Private Complaints). In all cases in which the affiant is not a law enforcement officer, the complaint must be submitted to the attorney for the Commonwealth for approval or disapproval.

As used in this rule, "Municipal Court judge" includes a bail commissioner acting within the scope of the bail commissioner's authority under 42 Pa.C.S. § 1123(A)(5).

The procedure set forth in paragraph (C)(3) allows the issuing authority to exercise discretion in whether to issue a summons or an arrest warrant depending on the circumstances of the particular case. Appropriate factors for issuing a summons rather than an arrest warrant will, of course, vary. Among the factors that may be taken into consideration are the severity of the offense, the continued danger to the victim, the relationship between the defendant and the victim, the known prior criminal history of the defendant, *etc.*

If the attorney for the Commonwealth exercises the options provided by Rule 202, Rule 507, or both, the attorney must file the certifications required by paragraphs (B) of Rules 202 and 507 with the Court of Common Pleas of Philadelphia County and with the Philadelphia Municipal Court.

For the contents of the complaint, see Rule 504.

Under paragraphs (A) and (D), if a defendant has been arrested without a warrant, the issuing authority must make a prompt determination of probable cause before the defendant may be detained. *See Riverside v. McLaughlin*, 500 U.S. 44, 111 S.Ct. 1661, 114 L.Ed.2d 49 (1991). The determination may be based on written affidavits, an oral statement under oath, or both.

Within the meaning of paragraph (D)(2), counsel is present when physically with the defendant or with the issuing authority.

Under paragraph (D)(2), the issuing authority has discretion to order that a defendant appear in person for the preliminary arraignment.

Under paragraph (D)(2), two-way simultaneous audio-visual communication is a form of advanced communication technology.

See Rule 130 concerning *venue* when proceedings are conducted pursuant to this rule using advanced communication technology.

Paragraph (D)(3)(c) requires that the defendant's attorney, or if unrepresented the defendant, receive copies of the arrest warrant and the supporting affidavits at the preliminary arraignment. This amendment parallels Rule 540(B). See *also* Rules 208(A) and 513(A).

Paragraph (D)(3)(c) includes a narrow exception which permits the issuing authority to provide copies of the arrest warrant and supporting affidavit(s) on the first business day after the preliminary arraignment. This exception applies only when copies of the arrest warrant and affidavit(s) are not available at the time the issuing authority conducts the preliminary arraignment, and is intended to address purely practical situations such as the unavailability of a copier at the time of the preliminary arraignment.

Nothing in this rule is intended to address public access to arrest warrant affidavits. See *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414 (1987).

Under paragraph (D)(4), after the preliminary arraignment, if the defendant is detained, the defendant must be given an immediate and reasonable opportunity to post bail, secure counsel, and notify others of the arrest. Thereafter, if the defendant does not post bail, he or she must be committed to jail as provided by law.

**Paragraphs (D)(3)(d)(iii) and (E) make it clear that, except for the time for the preliminary hearing, the procedures in Municipal Court for both preliminary hearings and cases in which the defendant fails to**

**appear for the preliminary hearing are the same as the procedures in the other judicial districts.**

For purposes of modifying bail once bail has been set by a common pleas judge, see Rules 529 and 536.

NOTE: Original Rule 6003 adopted June 28, 1974, effective July 1, 1974; amended January 26, 1977, effective April 1, 1977; amended December 14, 1979, effective April 1, 1980; amended July 1, 1980, effective August 1, 1980; amended October 22, 1981, effective January 1, 1982; *Comment* revised December 11, 1981, effective July 1, 1982; amended January 28, 1983, effective July 1, 1983; amended February 1, 1989, effective July 1, 1989; rescinded August 9, 1994, effective January 1, 1995. New Rule 6003 adopted August 9, 1994, effective January 1, 1995; amended September 13, 1995, effective January 1, 1996. The January 1, 1996 effective date extended to April 1, 1996; amended March 22, 1996, effective July 1, 1996; the April 1, 1996 effective date extended to July 1, 1996; amended August 28, 1998, effective immediately; renumbered Rule 1003 and amended March 1, 2000, effective April 1, 2001; amended May 10, 2002, effective September 1, 2002; amended August 24, 2004, effective August 1, 2005; amended August 15, 2005, effective February 1, 2006 [.] ; **amended**  
**, effective** .

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**COMMITTEE EXPLANATORY REPORTS:**

**Report explaining the provisions of the new rule 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 September 13, 1995 amendments published with Court's Order at 25 Pa.B. 4116 (September 30, 1995).**

**Final Report explaining the March 22, 1996 amendments published with the Court's Order at 26 Pa.B. 1690 (April 13, 1996).**

**Final Report explaining the August 28, 1998 amendments 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 May 10, 2002 amendments concerning advanced communication technology published with the Court's Order at 32 Pa. B. 2591 (May 25, 2002).**

**Final Report explaining the August 24, 2004 changes clarifying preliminary arraignment and preliminary hearing procedures in Municipal Court cases published with the Court's Order at 34 Pa.B. 5025 (September 11, 2004).**

**Final Report explaining the August 15, 2005 amendments to paragraphs (A)(2)(b)(ii) and (D)(3)(d)(ii) published with the Court's Order at 35 Pa. B. 4918 (September 3, 2005).**