

## FINAL REPORT<sup>1</sup>

*New Pa.R.Crim.P. 1037 and Revisions to the Comment to Pa.R.Crim.P. 462*

### PHILADELPHIA TRAFFIC COURT APPEALS

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On October 16, 2009, effective February 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court adopted new Rule 1037 (Appeal from Summary Conviction) and approved the revision of the *Comment* to Rule 462 (Trial *De Novo*). These changes provide the procedures governing appeals for trial *de novo* from the Philadelphia Traffic Court.

As part of its oversight of the rules governing procedures in the Philadelphia Traffic Court, the Committee was asked by the Traffic Court to examine several aspects of the summary traffic appeal procedures. As discussed more fully below, due to the high volume of cases and unique circumstances of the Philadelphia Traffic Court, practices have developed there that are not explicitly provided for in the statewide or local rules. The Committee therefore worked with representatives of the Traffic Court and the First Judicial District to develop rule changes that would address some of these differences.

Upon the Committee's recommendation arising from these discussions, the Court has adopted new Rule 1037 that provides the procedures for appeals from the Philadelphia Traffic Court to the Court of Common Pleas. This new rule replaces many of the Rule 462 appeal procedures for the Philadelphia Traffic Court. However, except where Rule 1037 differs, the procedures in Rules 460 and 461 still apply. A revision has been made to the Rule 462 Comment to reflect that Philadelphia Traffic Court summary appeal procedures are contained in new Rule 1037.

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<sup>1</sup> The Committee's *Final Reports* 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 Committee's explanatory *Final Reports*.

The new rule addresses three areas: (1) general appeal procedures; (2) procedures addressing failures to appear for trial *de novo*; and (3) procedures related to the collection of fine and costs.

### **Appeal Procedures**

As stated above, due to the high volume of cases in the Traffic Court and the significant numbers of appeals from Traffic Court, local practices have developed that vary from the strict letter of Rule 462 procedures. These variations do not adversely affect the rights of the parties and provide an efficient and effective method of adjudicating appeals arising from the Traffic Court. The explicit recognition of these procedures in the rules is intended to remove any confusion about them.

Currently, upon the filing of a Notice of Appeal in the Traffic Court, a summary trial date is assigned for an appearance at the Court of Common Pleas. The Traffic Court Docket and record are then forwarded to the Court of Common Pleas. On the summary trial date, a conference is conducted by a Trial Commissioner at which the defendant and a representative of the District Attorney's Office appear for purposes of negotiating a plea. If the parties agree on a plea, the plea is approved by a Common Pleas judge. If a plea cannot be agreed upon, a *de novo* summary trial is subsequently conducted by a Common Pleas judge. If the defendant pleads or is found guilty and sentenced, payment of any fine and costs is directed to the Traffic Court. The Traffic Court receives and distributes all payments of outstanding fines and costs and, as authorized by Rule 456, may establish and modify installment payment orders and may issue warrants for a defendant's arrest for non-payment.

These procedures are now formally recognized in paragraphs (A), (F), and (G) of new Rule 1037. Paragraphs (B) and (C) provide for the existing statewide practice of permitting the attorney of the Commonwealth, or in his or her absence, the affiant to conduct the trial *de novo* and requiring the law enforcement officer's appearance unless waived to be applicable in Traffic Court appeals.

## **Failure to Appear**

The new rule also clarifies the procedures for the execution of bench warrants issued when the defendant has failed to appear for the trial *de novo* in the Court of Common Pleas, especially in those cases that involve a mandatory sentence of incarceration. It was unclear under the prior practice whether the Common Pleas judge could dismiss the appeal and have a warrant issued for the defendant to be taken for service of the sentence. Therefore, paragraph (D) provides that, in a failure to appear case, the appeal will be dismissed and the judgment of the Traffic Court entered in the Court of Common Pleas. If the case involves a sentence of mandatory incarceration, a bench warrant will be issued by the Court of Common Pleas along with a commitment order. The warrant will contain the notation that defendant is already sentenced and therefore is to be taken directly to serve his or her sentence.

It should be noted that the hearing requirement of Rule 150 (Bench Warrants) is currently being satisfied in the First Judicial District by a Trial Commissioner who is present at the Philadelphia County Prison to conduct these hearings whenever a defendant is arrested on a bench warrant or surrenders himself or herself at the Traffic Court.

## **Fines and Costs**

The new rule also authorizes an exemption from the general policy of the Pennsylvania Supreme Court that once a case has gone up from a minor court to a court of common pleas, no remand to the minor court should be allowed.<sup>2</sup> After the initial policy of no remands was developed, the Philadelphia Traffic Court was excluded from the policy for purposes of the payment and collection of fine and costs. This exemption was stated as part of an amendment to Traffic Court procedures adopted by the Court in 2005.<sup>3</sup> Specifically, the *Final Report* to that Recommendation states:

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<sup>2</sup> The most recent statement of this policy was contained in a September 28, 2006 letter from then-Chief Justice Cappy to all President Judges, emphasizing this point.

<sup>3</sup> See 35 *Pa.B.* 5239 (September 24, 2005).

## **b. Trial *de novo***

Another issue concerns the 2003 changes to the Criminal Rules that clarify once a case is appealed for a trial *de novo*, the case is to remain in the common pleas court for disposition. This procedure is contrary to what is occurring in Philadelphia. Both Traffic Court and Philadelphia Common Pleas Court have serious concerns about the significant burden the statewide procedure would have on the Common Pleas Court, especially given the extraordinary number of cases involved and the amount of the fines and costs owed. Both courts note the current practice of returning the cases to Traffic Court for collection following the trial *de novo* works efficiently and has been successful.

However, because this exemption was not stated in the rules themselves, questions about these procedures continue to persist. Therefore, paragraph (G) provides that, either after the expiration of the time to file an appeal to the appellate courts, or, if a sentence of imprisonment has been imposed, after the execution of the sentence of imprisonment, the case is to be remanded to the Traffic Court for the collection of any outstanding fines and costs. The Traffic Court will also perform “all other appropriate action” such as requesting that the Pennsylvania Department of Transportation suspend the defendant’s operating privilege if the defendant failed to comply with the payment plan, and will be able to use the remedies set forth in Rule 456 if the defendant failed to comply with the payment plan.

Finally, in order to ensure the defendant understands this process, upon sentencing after the appeal, the Common Pleas judge is required to advise the defendant that he or she has 30 days to pay the fines and costs in full or to contact the Traffic Court to renegotiate the payment plan.