

RULE **[83] 454**. TRIAL IN SUMMARY CASES.

(A) Immediately prior to trial in a summary case:

- (1) the defendant shall be advised of the charges in the citation or complaint;
- (2) when there is a reasonable likelihood of imprisonment, the defendant shall be advised of the right to counsel and shall, upon request, be given a reasonable opportunity to secure counsel; and
- (3) the defendant shall enter a plea.

(B) If the defendant pleads guilty, the issuing authority shall impose sentence. If the defendant pleads not guilty, the issuing authority shall try the case in the same manner as trials in criminal cases are conducted in the courts of common pleas when jury trial has been waived; however, in all summary cases arising under the Vehicle Code or local traffic ordinances, the law enforcement officer observing the defendant's alleged offense may, but shall not be required to, appear and testify against the defendant. In no event shall the failure of the law enforcement officer to appear, by itself, be a basis for dismissal of the charges against the defendant.

(C) The attorney for the Commonwealth may appear and assume charge of the prosecution. When the violation of an ordinance of a municipality is charged, an attorney representing that municipality, with the consent of the attorney for the Commonwealth, may appear and assume charge of the prosecution. When no attorney appears on behalf of the Commonwealth, the affiant may be permitted to ask questions of any witness who testifies.

(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 issuing authority 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 issuing authority 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 within 30 days for a trial *de novo* in the court of common pleas, and that if an appeal is filed:
 - (a) the execution of sentence will be stayed and the issuing authority may set bail or collateral; and

(b) the defendant must appear for the *de novo* trial or the appeal may be dismissed;

(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 issuing authority. 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.

COMMENT: The defendant has a right to counsel at trial in all summary cases in which the issuing authority determines there is a likelihood of imprisonment. See Rules **[316] 122** and **[318] 121**.

The affiant may be permitted to withdraw the charges pending before the issuing authority. See Rule **[87] 457** (Withdrawal of Charges in Summary Cases).

Paragraph (E)(2)(b) is included in the rule in light of *North v. Russell*, 427 U.S. 328 (1976). For the procedures for taking, perfecting, and handling an appeal, see Rules **[86] 460, 461, and 462**.

As the judicial officer presiding at the summary trial, the issuing authority controls the conduct of the trial generally. When an attorney appears on behalf of the Commonwealth, or on behalf of a municipality pursuant to paragraph (C), the prosecution of the case is under the control of that attorney. When no attorney appears at the summary trial on behalf of the Commonwealth or a municipality, the issuing authority may ask questions of any witness who testifies, and the affiant may request the issuing authority to ask specific questions. In the appropriate circumstances, the issuing authority may also permit the affiant to question Commonwealth witnesses, cross-examine defense witnesses, and make recommendations about the case to the issuing authority.

Although the scheduling of summary trials is left by the rules

to the discretion of the issuing authority, it is intended that trial will be scheduled promptly upon receipt of a defendant's

plea or promptly after a defendant's arrest. When a defendant is incarcerated pending a summary trial, it is incumbent upon the issuing authority to schedule trial for the earliest possible time.

Under paragraph (E)(2)(a), the issuing authority should explain to the defendant that if an appeal is filed, any sentence, including imprisonment, fines, or restitution, will be stayed.

When setting the specific date for the defendant to appear for execution of a sentence of imprisonment pursuant to paragraph (E)(3), the issuing authority should set the earliest possible date for sentencing after the appeal period expires.

For the statutory authority to sentence a defendant to pay a fine, see 42 Pa.C.S. § 9726.

For the statutory authority to sentence a defendant to pay restitution, see 42 Pa.C.S. § 9721(c) and 18 Pa.C.S. § 1106(c). See *also* 18 Pa.C.S. § 1106(c)(2)(iv), which prohibits the court from ordering the incarceration of a defendant for failure to pay restitution if the failure results from the defendant's inability to pay.

Before imposing both a fine and restitution, the issuing authority must determine that the fine will not prevent the defendant from making restitution to the victim. See 42 Pa.C.S. §§ 9726(c)(2) and 9730(b)(3).

See Rule **[85] 456** for the procedures when a defendant defaults in the payment of restitution, fines, or costs.

A defendant should be encouraged to seek an adjustment of a payment schedule for restitution, fines, or costs before a default occurs. See Rule **[85] 456(A)**.

NOTE: **Rule 83 [A]** adopted July 12, 1985, effective

January 1, 1986; amended September 23, 1985, effective January 1, 1986; effective date extended to July 1, 1986; amended February 2, 1989, effective March 1, 1989; amended October 28, 1994, effective as to cases instituted on or after January 1, 1995; *Comment* revised April 18, 1997, effective July 1, 1997; amended October 1, 1997, effective October 1, 1998; *Comment* revised February 13, 1998, effective July 1, 1998 [.] ; **renumbered Rule 454 and *Comment* revised March 1, 2000, effective April 1, 2001.**

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COMMITTEE EXPLANATORY REPORTS:

***Final Report* explaining the October 28, 1994 amendments published with the Court's Order at 24 Pa.B. 5841 (November 26, 1994).**

***Final Report* explaining the April 18, 1997 Comment revision cross-referencing new Rule 87 published with the Court's Order at 27 Pa.B. 2119 (May 3, 1997).**

***Final Report* explaining the October 1, 1997 amendments to paragraph (E) and the Comment concerning the procedures at the time of sentencing published with the Court's Order at 27 Pa.B. 5414 (October 18, 1997).**

***Final Report* explaining the February 13, 1998 Comment revision concerning questioning of witnesses published with the Court's Order at 28 Pa.B. 1127 (February 28, 1998).**

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