

RULE 1002. PROCEDURE IN SUMMARY CASES.

(A) Except as provided in this rule or by local rule authorized by this rule, or elsewhere in Chapter 10, all criminal proceedings in which a person is accused only of one or more non-traffic summary offenses or violations of municipal criminal ordinances shall proceed as provided in Chapter 4 of the Rules of Criminal Procedure.

(B) Non-traffic summary proceedings shall be instituted either by a citation issued to the defendant or arresting without a warrant when arrest is specifically authorized by law. [:]

(1) Issuance of Citation

(a) [Except as provided in paragraph (B)(2), the law enforcement officer shall take the defendant into custody and transport him or her to the appropriate district police station, where without unnecessary delay the law enforcement officer or a superior officer shall prepare and issue to the defendant a citation and a notice to appear. The defendant shall not be slated, fingerprinted, or photographed, except as provided by law.] The law enforcement officer shall issue the citation to the defendant pursuant to Rule 405 (Issuance of Citation), together with a notice to appear, unless required to proceed pursuant to paragraph (B)(1)(e). The notice to appear shall direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room.

[(2)] (b) When authorized by local rule promulgated pursuant to Rule 105 (Local Rules), [in lieu of taking the defendant into custody as provided in paragraph (B)(1),] the law enforcement officer may prepare, verify, and transmit a citation electronically. The law enforcement officer contemporaneously shall give the defendant a paper copy of the citation containing all the information required by Rule 403(A) (Contents of Citation) and a notice to appear. The notice to appear shall direct the defendant to appear before a judge or trial commissioner on a date and at a time certain in a specified court room.

[(3) Except as provided in paragraph (B)(5), in all cases, the law enforcement officer shall release the defendant on the defendant's own recognizance. The notice to appear shall direct the defendant to appear before a trial commissioner in a specified court room.]

[(4)] (c) Within 5 days after issuance of the citation and notice to appear, the citation shall be filed with the clerk of Municipal Court.

(d) When the defendant appears before the judge or trial commissioner as provided in paragraph (B)(1)(a) or (B)(1)(b), the judge or trial commissioner shall explain the process to the defendant.

- (i) If the defendant enters a guilty plea, the judge or trial commissioner shall impose the fines and costs.**
- (ii) If the defendant enters a not guilty plea, the judge or trial commissioner shall set a date for trial before a judge and issue a subpoena to the defendant.**
- (iii) If applicable, after paying any fee imposed, the defendant may be accepted into the Municipal Court's summary case diversionary program, or any other diversionary program offered pursuant to local rule promulgated pursuant to Rule 105 (Local Rules). When the defendant successfully completes the Municipal Court's summary case diversionary program, the defendant's arrest record automatically will be expunged.**

[(5)] (e) When required by local rule promulgated pursuant to Rule 105 (Local Rules), **[rather than releasing the defendant pursuant to paragraph (B)(3),] the law enforcement officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the law enforcement officer or a superior officer shall prepare and issue the citation to the defendant. [a] Thereafter, the** law enforcement officer without unnecessary delay shall transport the defendant to the Municipal Court for proceedings before a **[Municipal Court] judge, and the case shall proceed as provided by local rule promulgated pursuant to Rule 105 (Local Rules).**

(f) The defendant shall not be slated, fingerprinted, or photographed, except as provided by law.

(2) Arrest Without a Warrant

(a) When an arrest without a warrant in a non-traffic summary case is authorized by law, the police officer shall take the defendant into custody and transport him or her to the appropriate district police station, where, without unnecessary delay, the police officer or a superior officer shall prepare and issue a citation to the defendant.

(b) Except when the police officer is required to proceed pursuant to paragraph (B)(1)(e), or as otherwise provided in this rule, the case shall proceed as provided in Rule 441.

(c) If the defendant is to be released pursuant to Rule 441(B), the defendant shall be released on his or her own recognizance and given a notice to appear on a date and at a time certain in a specified court room.

(d) If the defendant is not released under Rule 441(B), the defendant without unnecessary delay shall be brought before a judge, who shall proceed as provided in Rule 441(C).

[(C) Procedures Following Institution of Summary Proceedings

(1) When the defendant is taken before a Municipal Court judge pursuant to paragraph (B)(5), the case shall proceed as provided by local rule promulgated pursuant to Rule 105 (Local Rules).

(2) When the defendant appears before a trial commissioner, the trial commissioner shall explain the process to the defendant.

(a) If the defendant enters a guilty plea, the trial commissioner shall impose the fines and costs.

(b) If the defendant requests a trial before a Municipal Court judge, the trial commissioner shall set a date for trial and issue a subpoena to the defendant.

(c) If applicable, after paying any fee imposed, the defendant may be accepted into the Municipal Court's summary case diversionary program, or any other diversionary program offered pursuant to local rule promulgated pursuant to Rule 105 (Local Rules). When the defendant successfully completes the Municipal Court's summary case diversionary program, the defendant's arrest record automatically will be expunged.]

[(D)] (C) If the defendant fails to appear pursuant to the notice to appear or a subpoena, a bench warrant shall be issued.

[(E)] (D) When the same conduct is proscribed under an Act of Assembly and a municipal criminal ordinance, the charge shall be brought under the Act of Assembly and not under the ordinance.

COMMENT: This rule, which replaced former Rule 1002 in 2005, was developed to accommodate the procedures Philadelphia Municipal Court has implemented to address the issues in non-traffic summary cases unique to Philadelphia to more efficiently handle the vast number of non-traffic summary cases, to protect the defendants' rights to a fair and prompt disposition of their cases, and, when appropriate, to provide the necessary rehabilitation or social services. Municipal Court is required to implement local rules pursuant to Rule 105 (Local Rules) enumerating the details of the summary proceedings following the issuance of a citation or a summons. For purposes of this rule, "local rule" includes all memoranda of understanding and administrative orders that affect non-traffic summary case procedures.

The 2009 amendments to paragraph (B) conform the non-traffic summary citation procedures in Philadelphia with the statewide procedures governing the institution of a non-traffic summary case by issuing a citation to the defendant in person or arresting the defendant without a warrant. See Rules 405 (Issuance of Citation) and 440 (Arrest Without Warrant). The amendments require the police officer to issue a citation as provided in Rule 405 and proceed pursuant to paragraph (B)(1)(a) or (B)(1)(b), unless the case falls within the jurisdiction of one of Philadelphia Municipal Court's Nuisance Night Courts or Community Courts, or to arrest without a warrant when such an arrest is authorized by law.

The contents of the citation must comply with the requirements of Rule 403(A). The notice to appear required by paragraphs (B)(1)(a), (B)(1)(b), and (B)(2)(c) may be added to the citation form.

Arrests without a warrant in summary cases are authorized only in exceptional circumstances, such as cases involving enhanced penalties, or when the defendant fails to produce identification, or when there is violence or the imminent threat of violence, or when there is a likelihood that the defendant will flee.

Nothing in this rule prevents the filing of a citation pursuant to Rules 410 and 411.

The 2009 amendments do not modify the current procedures governing Philadelphia Municipal Court's Nuisance Night Courts and Community Courts that are implemented by paragraph (B)(1)(e).

Although defendants in summary cases ordinarily are not slated, photographed, or fingerprinted, the issuing authority should require the defendant to submit to administrative processing and identification procedures (such as fingerprinting) as authorized by law. See, e.g., 18 Pa.C.S. § 3929(g) concerning fingerprinting in retail theft cases.

[The contents of the citation must comply with the requirements of Rule 403.]

All summary offenses under the motor vehicle laws and parking violations are under the jurisdiction of the Philadelphia Traffic Court. See 42 Pa.C.S. §§ 1301-1303, 1321.

NOTE: Rule 6002 adopted June 28, 1974, effective July 1, 1974; amended July 1, 1980, effective August 1, 1980; *Comment* revised January 28, 1983, effective July 1, 1983; amended July 12, 1985, effective January 1, 1986; January 1, 1986 effective date extended to July 1, 1986; amended February 1, 1989, effective July 1, 1989; amended August 9, 1994, effective January 1, 1995; renumbered Rule 1002 and amended March 1, 2000, effective April 1, 2001. Rule 1002 rescinded August 15, 2005, effective February 1, 2006, and replaced by new

Rule 1002 [.] ; amended May 12, 2009, effective February 1, 2010.

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the August 9, 1994 amendments 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 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 provisions of the new rule published with the Court's Order at 35 Pa.B. 4918 (September 3, 2005).

Final Report explaining the May 12, 2009 changes to paragraph (B) concerning issuing citations and arrest without warrants in summary cases published at 39 Pa.B. (, 2009).