

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

*Amendments to Pa.Rs.Crim.P. 515, 541, 543, 561, 589, 1002, and 1010*

### REMANDS OF CASES FROM THE COURT OF COMMON PLEAS

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On February 12, 2010, effective April 1, 2010, upon the recommendation of the Criminal Procedural Rules Committee, the Court amended Rules of Criminal Procedure 515 (Execution of Arrest Warrant), 541 (Waiver of Preliminary Hearing), 543 (Disposition of Case at Preliminary Hearing), 561 (Withdrawal of Charges By Attorney for the Commonwealth), 589 (Pretrial Disposition of Summary Offenses Joined With Misdemeanor, Felony, or Murder Charges), and 1010 (Procedure on Appeal) and approved the revisions to the *Comment* to Rule of Criminal Procedure 1002 (Procedure in Summary Cases) to preclude the practice of remanding cases from the court of common pleas to the magisterial district judge or the Philadelphia Municipal Court in several situations. The amendments address three areas in which remands from the court of common pleas to the issuing authority still are occurring despite the Court's policy that prohibits such remands: (1) the practice of remanding cases for a preliminary hearing where a defendant who was designated as "NEI" is apprehended; (2) use of remands as remedies for a waived preliminary hearing; and (3) the practice of remanding cases without court involvement when the district attorney withdraws felony/misdemeanor prior to the filing of the information.

#### I. INTRODUCTION

It has been a long-standing general requirement reflected in the Rules of Criminal Procedure that once a summary case moves to the court of common pleas, the

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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*.

case must stay in the court of common pleas and may not be remanded to the issuing authority.<sup>2</sup> This requirement applies both to summary cases on appeal for a trial *de novo*, Rule 462, and in cases in which the summary offenses have been joined with misdemeanor or felony charges, even when only summary charges remain. See, for example, Rules 313, 585, 589, and 622.

As a result of reports of several counties violating these requirements, on September 28, 2006, then-Chief Justice Cappy sent a letter to all President Judges emphasizing this point. After the Chief Justice's letter went out, the Committee received several inquiries from different judicial districts seeking clarification on whether certain remand practices violated the prohibition. Several counties raised scenarios in which cases are being remanded in circumstances that potentially were in contravention of Rules 589 and 622.

The Committee reviewed these scenarios and determined that rules changes were needed to make it clear in the rules that remands are improper in the following three situations:

1) The case is forwarded to the court of common pleas under the "NEI" practice. In these cases, the defendant has not been apprehended when the case is forwarded, nor has the defendant had a preliminary hearing. The defendant subsequently is apprehended before the filing of the criminal information occurs pursuant to Rule 565(A). In these situations, in some judicial districts, the case is remanded to the issuing authority for a preliminary hearing.

2) An originally unrepresented defendant initially waives the right to preliminary hearing and later, presumably after representation is obtained, requests such a hearing. It appears that these cases are being remanded to the issuing authority to hold the preliminary hearing as a matter of course.

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<sup>2</sup> This policy has been set forth specifically in several of the Committee's Recommendations adopted by the Court. For example, it may be found in the *Final Reports* to Recommendation 3 of 2003 (292 Criminal Procedural Rules Doc. 2, February 28, 2003, see 33 *Pa.B.* 1324), and Recommendation 5 of 2006, (342 Criminal Procedural Rules Doc. 2, see 36 *Pa.B.* 1385). There is also the above-mentioned then-Chief Justice Cappy's letter of September 28, 2006 to all President Judges emphasizing this policy. Despite these clear statements, the Committee continued to receive reports from Clerks of Courts and the AOPC automation staff that common pleas judges still are remanding in many cases which clearly should remain in the court of common pleas.

3) In cases in which summary offenses are joined with misdemeanor and felony charges, and, pursuant to Rule 561, the district attorney withdraws all the misdemeanor and/or felony charges prior to the filing of the information, leaving only summary offenses, the district attorney remands the case, without any court involvement, to the issuing authority for disposition of the summary offenses.

While the specifics of each of the rules changes for these scenarios are addressed separately below, the general concept of the changes is that, once a case has been transferred from the issuing authority to the court of common pleas, the cases must remain at the court of common pleas for further proceedings.

There are several reasons for the strong policy against remanding cases. First, there is the question of jurisdiction; once a case has moved from the issuing authority, the power of the issuing authority to hear the case comes into question. Second, any time a case moves from one level of court to another, there will be delays and complications that result from the physical requirements of the transfer.

## **II. DISCUSSION OF PROPOSED AMENDMENTS**

### **1. NEI**

The first remand situation occurs in cases declared “*NEI*,” where the defendant never had a preliminary hearing, and is then apprehended before the filing of the information occurs pursuant to Rule 565(A).

“*NEI*,” an abbreviation for the phrase “*non est inventus*,” is the procedure used in some counties when a warrant has been issued for the defendant’s arrest, the defendant cannot be found, and the case is transferred to the common pleas court for further proceedings. While the terminology is traditional, there is no written authority in the rules or statutes for the practice.

Presently, the practice is used in a limited number of counties to ensure that warrants initially issued by magisterial district judges are placed on law enforcement computer systems such as National Criminal Information Center (NCIC) system and the Commonwealth Law Enforcement Assistance Network (CLEAN). Another reason for its use is to transfer the warrant to a central fugitive unit at the county level.

The Court has approved the abolition of the practice of NEI, believing that there is no justification for the transfer of jurisdiction at this stage in the proceedings for essentially administrative law enforcement purposes. Currently, there is nothing to prevent the entry of issuing authority warrants on law enforcement systems such as CLEAN and NCIC except limited manpower. Additionally, with advances in systems technology, issuing authority warrant information will soon be routinely added to these systems via Magisterial District Justice System feeds to law enforcement networks. Furthermore, there is nothing to prevent a county from adopting a policy of providing all issuing authority warrants to a centralized fugitive unit upon their issuance.

Therefore, a new paragraph (C) is added to Rule 515 that abolishes the practice of transferring “NEI” cases to the court of common pleas solely on the basis of the defendant being a fugitive. Since these types of cases will no longer be transferred to the court of common pleas, upon apprehension, the case still will be within the jurisdiction of the issuing authority and will not need to be remanded.

## **2. Remand as Remedy for Waived Preliminary Hearing**

The second remand scenario arises when an originally unrepresented defendant initially waives the right to have a preliminary hearing and later, presumably after representation is obtained, requests such a hearing. The Committee received reports that these requests are being granted as a matter of course despite appropriate waiver colloquies having been conducted.

The Court has concluded that, ordinarily, there is no need to remand for a preliminary hearing in these situations; rather, if it is determined that the defendant should be granted a preliminary hearing, the preliminary hearing should be held in the court of common pleas. The one exception to this “no remands” policy is when all the parties, with the consent of the court, agree to a return of the case to the magisterial district judge. The Committee had received several publication responses arguing for this exception. The majority of the Committee members, after an extensive debate, ultimately concluded that it makes sense to carve out this limited exception. The Committee considered the suggestion that such an exception would emasculate the provision since the parties will always agree and the court will always consent to have

the case returned to the issuing authority. The Court has concluded that this dire prediction is unlikely, believing that the requirement that all parties and the court must agree to the remand would limit its use to appropriate cases.

Accordingly, Rule 541(D) is amended to provide that, after the defendant has waived the preliminary hearing and the case is held for court, there are no remands from common pleas court to the magisterial district judge for a preliminary hearing absent an agreement of the parties with the consent of the common pleas judge. Also, a new paragraph is added to Rule 543 to emphasize further the “no remands” policy.

### **3. Withdrawal of felony/misdemeanor prior to information.**

The third circumstance in which cases are being remanded from common pleas to the issuing authority is cases in which the summary offense has been joined with misdemeanor or felony charges, and, pursuant to Rule 561, the Commonwealth withdraws all the misdemeanor and/or felony charges, leaving only summary offenses. In some instances, the district attorney “remands” the case, without any court involvement, to the issuing authority for disposition of the summary offenses. Similarly, pursuant to Rule 589, when the misdemeanor and felony charges are dismissed and the Commonwealth does not appeal the dismissal, in some instances, the court will remand the summary offenses to the magisterial district judge for disposition.

The Court has concluded that there is no reason why these types of cases should be remanded. Since the case has gone up as a court case, the case remains a court case, and should be disposed of in common pleas court. Therefore, Rules 561 and 589 have been amended to provide that summary charges must be handled in common pleas court when the attorney for the Commonwealth decides to withdraw all non-summary charges and not to file an information.

Several publication comments were received that suggested that a complete ban on remands in this situation when only the summary offenses remain creates a problem in cases in which the defendant is on state parole and charged with a summary offense. The Pennsylvania Board of Probation and Parole (PBPP) interpreted the Parole Act, 61 P.S. §331.1 *et sec.*, as differentiating between convictions in a court of record and those in a magistrate’s court, with the former resulting in a revocation of a defendant’s

street time. On the other hand, the Board would not count a summary conviction at common pleas as a conviction by a court of record if the common pleas judge were declared to have been sitting as a magistrate but only when that declaration is made by the president judge. The Committee considered adding a provision to the *Comments* to Rules 561 and 589 explaining that for purposes of 61 P.S. § 331.21a(a), the common pleas court is not a court of record when disposing of summary offenses and 3rd degree misdemeanors. However, the Committee ultimately rejected this suggestion, believing that the relative rarity of this problem should not be the basis for such a broad interpretation to be added to the rules. Subsequently, the case of *Jackson v. Pennsylvania Bd. of Probation and Parole*, 951 A.2d 1238 (Pa.Cmwlt. 2008), which determined that the Parole Board's interpretation is incorrect, appears to have addressed this concern.

#### **4. Applicability to the Philadelphia Municipal Court**

Following the publication of the proposed rule changes, the Committee considered in detail whether the proposal should be made specifically applicable to the Philadelphia Special Courts. Rule 1000 provides that, absent a specific rule applicable to practice in the Special Courts or local rule, the general rules of procedure would apply. The Committee was concerned that the unique requirements of the Philadelphia Special Court would be adversely impacted by a casual application of these changes. The Committee therefore discussed this matter with representatives of the Municipal Court and the Traffic Court and reviewed their procedures regarding the practice of having cases remanded from the Philadelphia Court of Common Pleas.

In the case of the Municipal Court, it was determined that there are no reasons why this clarification of the "no-remands" policy should not be stated to be applicable to appeals from the Municipal Court. Therefore, the Rule 1002 *Comment* is revised to state that summary appeals shall not be remanded to the Municipal Court.

Additionally, Rule 1010 is amended to clarify that the procedures in an appeal from the Municipal Court where the defendant subsequently fails to appear for the trial *de novo* or withdraws the appeal are consistent with the procedures contained in Rule

462 and that the judgment of the Municipal Court may be entered in the Court of Common Pleas.

The Committee's examination of appeal practice from the Traffic Court raised additional issues that were addressed in a separate proposal that was developed in conjunction with representatives of the Traffic Court and the First Judicial District. This proposal was adopted by the Court on October 16, 2009.<sup>3</sup>

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<sup>3</sup> See 39 *Pa.B.* 6327 (October 31, 2009).